

**THE PRESIDENT'S FISCAL YEAR 2012 BUDGET  
FOR TRIBAL PROGRAMS**

---

---

**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

FIRST SESSION

MARCH 15, 2011

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PRINTING OFFICE

67-655 PDF

WASHINGTON : 2011

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON INDIAN AFFAIRS

DANIEL K. AKAKA, Hawaii, *Chairman*

JOHN BARRASSO, Wyoming, *Vice Chairman*

DANIEL K. INOUE, Hawaii

KENT CONRAD, North Dakota

TIM JOHNSON, South Dakota

MARIA CANTWELL, Washington

JON TESTER, Montana

TOM UDALL, New Mexico

AL FRANKEN, Minnesota

JOHN McCAIN, Arizona

LISA MURKOWSKI, Alaska

JOHN HOEVEN, North Dakota

MIKE CRAPO, Idaho

MIKE JOHANNIS, Nebraska

LORETTA A. TUELL, *Majority Staff Director and Chief Counsel*  
DAVID A. MULLON JR., *Minority Staff Director and Chief Counsel*

## CONTENTS

---

	Page
Hearing held on March 15, 2011 .....	1
Statement of Senator Akaka .....	1
Statement of Senator Barrasso .....	2
Statement of Senator Franken .....	3
Statement of Senator Murkowski .....	24
Statement of Senator Tester .....	3
Statement of Senator Udall .....	29

### WITNESSES

Allen, Hon. W. Ron, Treasurer, National Congress of American Indians; Chairman, Jamestown S'Klallam Tribe .....	32
Prepared statement .....	34
Barbry, Sr., Hon. Earl J., Chairman, Tunica-Biloxi Tribe of Louisiana; Chair- man, United South and Eastern Tribes, Inc. Carcieri Task Force .....	81
Prepared statement .....	83
Blackhawk, Hon. John, Chairman, Winnebago Tribe of Nebraska .....	112
Prepared statement .....	113
Dasheno, Hon. Walter, Governor, Pueblo of Santa Clara .....	115
Prepared statement .....	118
Echo Hawk, Hon. Larry, Assistant Secretary for Indian Affairs, U.S. Depart- ment of the Interior .....	5
Prepared statement .....	7
Finley, Hon. Michael O., Chairman, Confederated Tribes of the Colville Res- ervation .....	107
Prepared statement .....	110
Oatman-Wak Wak, Mary Jane, President, National Indian Education Associa- tion .....	41
Prepared statement with attachments .....	45
Roubideaux, Hon. Yvette, M.D., M.P.H., Director, Indian Health Service, U.S. Department of Health and Human Services; accompanied by Randy Grinnell, Deputy Director .....	11
Prepared statement .....	13
Steele, Jr., Hon. James, First Vice-President, Affiliated Tribes of Northwest Indians; Council Member, Confederated Salish and Kootenai Tribes .....	93
Prepared statement .....	95

### APPENDIX

Alaska Federation of Natives, prepared statement .....	138
Barnett, D'Shane, Executive Director, National Council of Urban Indian Health, prepared statement .....	133
Causley, Hon. Cheryl A., Chairwoman, National American Indian Housing Council, prepared statement .....	130
Gschwind, Russell, Director, National Ironworkers Training Program for American Indians, prepared statement .....	137
Murphy, Hon. Charles W., Chairman, Standing Rock Sioux Tribe, prepared statement .....	127



## **THE PRESIDENT'S FISCAL YEAR 2012 BUDGET FOR TRIBAL PROGRAMS**

**TUESDAY, MARCH 15, 2011**

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

The Committee met, pursuant to notice, at 10 o'clock a.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Aloha maika'i ko'u. And welcome to the Committee on Indian Affairs.

As Chairman, it is my great pleasure to welcome you to this special place in the Senate. And I want to tell you, I am delighted to have a partner here with me on this Committee. And Senator Barrasso, of course, has served real well the years that he has been here in the Senate.

Mahalo or thank you to all of our witnesses for being here to share your views on the President's budget priorities for tribal programs. I want to extend a special mahalo to those who have traveled so far to be here with us today.

We have limited time to receive oral testimony, but the record on this hearing will continue to be open for two weeks, and I want to encourage tribes, Native organizations and other interested parties to share your views with us in the form of written testimony.

Before we begin, I want to share the Hawaiian concept of aloha with you to help you understand how I, as Chairman, intend to lead on this Committee. Aloha is a word that in Hawaiian is love. And each of you, I know, knows that word so well. And aloha is more than just a greeting or a farewell. When we say it to each other and when we work together, it means we do so in the spirit of caring for each other, and out of a mutual respect for one another.

It is my goal to conduct the business of this Committee in the spirit of aloha, to encourage stakeholders to participate in the process, to listen to varying viewpoints, and to work together to address important issues.

The Federal policy of supporting self-determination and self-governance is vital for honoring our Nation's unique relationship with America's first people. Tribal programs are tasked with delivering on promises made, promises made implementing the Federal re-

sponsibility to be a good trustee and more importantly, partner for tribal nations as they exercise self-determination and enhance the self-sufficiency of their communities.

While I am concerned with several areas where funding requests do not adequately address the known needs, I am happy to see that the President's budget reflects the longstanding priority of tribes to strengthen self-governance in practical and meaningful ways.

I would like to take a moment to introduce you to the newest additions to my hard-working team at the Committee. My Staff Director and Chief Counsel is Loretta Tuell. Serving as General Counsel is Lenna Aoki and Jade Danner is our new Policy Director.

Also new to the team are Josh Pitre and Christiane Cardoza.

Vice Chair Barrasso has served his State well and also our Country, and I am delighted to be working with him. And at this time, I ask him for any opening remarks he has.

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

Senator BARRASSO. I want to thank you, Mr. Chairman, and I look forward to working with you. We have had a number of very successful and productive meetings and discussions, and I look forward to continuing to work with you as we have through the history of this Committee in a bipartisan way, looking for the best results.

So thank you, Mr. Chairman. I want to thank you for holding this important hearing today. This Congress, our work begins by examining the President's budget and the requests regarding Indian programs. All of us on this Committee recognize that the Federal Government has important responsibilities in Indian Country. And Mr. Chairman, I think you started by mentioning the responsibilities and obligations, and I concur with you.

The United States provides law enforcement, land management, health care, education services on Indian reservations and communities across the Country. And we all know that the government cannot carry out these responsibilities without adequate finances.

We are all aware that the deficit is spiraling out of control and all Federal agencies are going to be called upon to address this problem. What that means is more than ever, Federal agencies need to prioritize the use of resources and must use the resources effectively, as well as efficiently.

So I am looking forward to hearing from our Federal and tribal witnesses today about how best to do that, how to establish the priorities and use Federal resources with greater efficiency, greater effectiveness.

I also want to hear, Mr. Chairman, how the Department of Interior intends to roll out the Indian Land Consolidation Program under the Claims Resolution Act of 2010. The court has not yet approved that settlement. That has to happen before the money gets spent. I understand that, but \$1.9 billion is a lot of money and how it gets spent is critical to the success of that program. So I hope to hear something at least in general terms about how the Department thinks it may carry out that program.

Finally, Mr. Chairman, along with you, I want to welcome our witnesses, some of whom you and I know have traveled long dis-

tances to be here and to share their best thoughts today in testimony. So I look forward to their testimony and I want to thank you again, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Barrasso. Would any of my colleagues like to comment?  
Senator Franken?

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

Senator FRANKEN. Thank you, Mr. Chairman.

In a very tight budget year, we see that the President's budget proposes constant funding or relatively small cuts to Indian programs across agencies. In many important areas like contract health services, tribal law enforcement, and Indian energy development, this budget proposes increases that are sorely needed by Minnesota tribes and across Indian Country.

So that is good. But while these increases are welcome, they don't come close to meeting the dire needs in Indian Country. Once again, the cuts in this budget come at the expense of critical programs like the construction budget for schools and detention facilities. The truth is that Indian programs just aren't a high priority for the Federal Government. We see that in this budget.

On schools and detention facilities this year, it is my understanding that no new schools will be built with the requested funds for education construction. That is a shame for the students at the Bug-O-Nay-Ge-Shig School at the Leech Lake Reservation in Minnesota. That school is literally falling apart with exposed wires, mold, and ceilings that are caving in. None of us, none of us would feel comfortable sending our own children to these schools. And it is shameful that we ask parents in Indian communities to do so.

I am also concerned about the administration of various programs at the BIA and the Indian Health Service. We need to see more money for programs like contract health services and Indian energy financing, but only if the agencies responsible for these programs are administering them in a timely and transparent manner. I am concerned that this isn't always the case and I am looking forward to discussing these issues more in depth today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.  
Senator Tester?

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

Senator TESTER. Chairman Akaka, thank you very much for holding this hearing. I, too, look forward to working with you on this very important Committee as we move forward. And I want to welcome all our distinguished guests. It is good to see you all again.

A special welcome to James Steele, from the Confederated Salish and Kootenai Tribe in northwestern Montana. I can't guarantee that I will be here when you testify, James, on the second panel, but I certainly appreciate you being here to lend your perspective. You have been a dynamic leader on the Flathead Reservation at

the Montana-Wyoming Tribal Leaders Council, and now with Affiliated Tribes of the Northwest Indians.

No matter what the job title, you have shown how important it is to build strong partnerships. I have known James since I was in the State Senate and a good example of partnerships is the National Bison Range. The range is located completely within the boundaries of the Flathead Reservation and it only makes sense that the tribe would have a hand in managing that natural resource because they have been doing it forever.

Although they were once enemies, James and I worked with the Fish and Wildlife Service and other locals to figure out a way for everybody to work together. Today, the tribe and the government support an annual funding agreement to manage the National Bison Range.

So I want to thank you for your good work, James, and I look forward to hearing your thoughts today. And I will apologize ahead of time if I have to duck out, but hopefully we will catch up either here in D.C. or in Montana or maybe on the plane ride between the two.

Mr. Chairman, this is undoubtedly the most important hearing of Indian Country this year. The Federal budget impacts no other group of citizens more than Native Americans. And although I continue working to make sure that the tribes don't have to rely on the government, we still have important responsibilities.

Congress was very productive in Indian affairs last year. As we all know, passing laws is only the first step. Implementing them requires solid leadership, a workable budget, and sound oversight. I look forward to hearing from different panel members today on how you plan to implement the Indian Health Care Improvement Act, Tribal Law and Order Act, legal settlements including *Cobell* and others.

But in addition to improving health care, housing and education and public safety, I am also working to create jobs and increase economic opportunities in Indian Country, as I know is a high priority on your guys' list. And I look forward to hearing your ideas on how we get that accomplished. It is a huge challenge.

Some of the most exciting opportunities we have out there involve energy. Indian Country contains vast potential of both renewable and traditional forms of energy development. I look forward to working with tribal leaders, the Administration, my colleagues on this Committee and in the Senate as a whole to craft this year's Indian Energy Parity Act and other job-related bills.

While we work to make tribes self-sufficient through self-determination, the United States still has trust responsibilities. I look forward to hearing from the members of President Obama's Administration on how they prioritize their budget to carry out those important duties.

Mr. Chairman, we live in interesting times, and I look forward to hearing from all our witnesses today on what they think our priorities should be as we put together next year's budget. From agency folks, I would like to hear how you plan to do your work with a little bit less money than in the past. From advocacy groups and tribal representatives, I want to hear about what you are doing to

become strong, independent nations that have to rely less on the Federal Government.

From everybody, I would like to hear your ideas on how government can become more effective. Make no mistake about it, we need to eliminate waste, fraud and abuse so we can invest in the activities that create jobs and improve our families.

As we all know, the Federal Government is at best a safety net in Indian Country. Many argue that it is not even very good at that. I want to try to have more than just a safety net.

I look forward to the hearing today and your suggestions on how we can empower progress in Indian Country. I look forward to being a partner in that process as we move forward.

So Mr. Chairman, congratulations on the Chairmanship and I look forward to working with you, as always.

Thank you.

The CHAIRMAN. Thank you very much, Senator Tester.

I would like to welcome our first panel to the witness table. Joining us from the Department of Interior, we have the Honorable Larry Echo Hawk, Assistant Secretary for Indian Affairs. And he is accompanied by Michael Black, Director of the Bureau of Indian Affairs, and Keith Moore, Director of Bureau of Indian Education.

Also testifying from the Department of Health and Human Services, we have the Honorable Yvette Roubideaux, Director of the Indian Health Service, accompanied by Deputy Director Randy Grinnell.

Welcome Assistant Secretary Echo Hawk and Director Roubideaux to this hearing.

And at this time, I would like to ask you to deliver your testimony. So we will begin with Larry Echo Hawk with your testimony.

**STATEMENT OF HON. LARRY ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY: MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS; KEITH MOORE, DIRECTOR, BUREAU OF INDIAN EDUCATION; AND RAY A. JOSEPH, PRINCIPAL DEPUTY SPECIAL TRUSTEE FOR AMERICAN INDIANS**

Mr. ECHO HAWK. Chairman Akaka and Vice Chairman Barrasso and Committee Members, thank you for this opportunity to provide the Department of the Interior's statement on the President's 2012 budget request for Indian Affairs.

The President has requested \$2.5 billion for Indian Affairs within the Department of the Interior. And through the work of the Tribal-Interior Budget Council, this budget has been crafted after careful consideration with American Indian and Alaska Native government representatives.

The President has called upon members of his Administration to meet important objectives, while also exercising fiscal responsibility. And consistent with that directive, difficult choices have been made in formulating the 2012 budget request for Indian Affairs.

The budget request is \$18.9 billion or 4.5 percent below the fiscal year 2010 enacted budget level. I point out that the majority of

these reductions, however, are due to one-time program increases provided in prior appropriations, completion of projects, and completion of payments to settlements.

Still, Indian Affairs had to make tough decisions that reflect the President's commitment to fiscal responsibility. We have made strategic cuts at the central office of Indian Affairs in order to fund tribal priorities. Thus, the proposed budget has \$89.6 million in targeted increases to tribal programs. I would like to highlight some of those targeted increases which are part of the President's Strengthening Tribal Nations Initiative.

Under the first category of advancing nation-to-nation relationships, there is a \$42.3 million increase which includes \$25.5 million for contract support costs. And I point this out to note that this was the top priority identified by the Tribal-Interior Budget Council.

Along with that is another \$4 million request to increase the Indian Self-Determination Fund, which is funding to assist tribes who want to contract or compact new programs. There is also included within this initiative support for small and needy tribes in the amount of a \$3 million increase. This helps those small tribes meet the very basic responsibilities of tribal government. This will affect 114 tribes, 86 of which are in the State of Alaska.

Under the second category of protecting Indian communities, there is an increase of \$20 million, which includes \$5.1 million for law enforcement operations and a total of \$11.4 million for detention center operations and maintenance. There is also an increase of \$2.5 million for tribal courts.

Under a third category of improving trust land management, there is an increase of \$18.4 million, which includes \$2 million for grants directly to tribes for projects to evaluate and develop renewable energy resources on tribal trust lands. There is also an increase of \$7.7 million for trust natural resource management.

And the fourth category to highlight is improving Indian education. And here we have a request to increase expenditures of \$8.9 million. And one of the things that are included in this request would be an initiative to advance safe and secure schools. That is in the amount of \$3.9 million, which will implement safety and security programs at 10 schools and two dormitories to mitigate issues identified by the Inspector General last year.

And there is also \$3 million requested as an increase for the tribal grant support costs, and this funds administration and indirect costs at about 126 tribally controlled schools and residential facilities.

There are decreases, including in the operation of Indian programs, a decrease of \$43.3 million in construction; a decrease of \$65 million; and there is \$7.9 million in program eliminations, and there is \$64.4 million in program completions. And also another reduction is in administration of \$22.1 million.

This budget will serve more than 1.7 million American Indian and Alaska Natives. And I emphasize that almost 90 percent of all appropriations are expended at the local level. And 63 percent of these appropriations are provided directly to tribes.

What is good about the increases that are proposed in this budget is a 5 percent increase in the tribal priority allocation, and there

is also an increase for fixed costs that will affect tribal governments of \$8.2 million.

So I recognize that there are certainly great needs in Indian Country and this budget will not meet all of the needs that we have. But President Obama's Administration has been faithful in seeking to meet those needs by following the priorities of tribal leaders.

We would be happy to respond to questions from the Committee. Thank you.

[The prepared statement of Mr. Echo Hawk follows:]

PREPARED STATEMENT OF HON. LARRY ECHO HAWK, ASSISTANT SECRETARY FOR  
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning Chairman Akaka and Vice-Chairman Barrasso, and members of the Committee on Indian Affairs. Thank you for the opportunity to provide the Department of the Interior's (Department) statement on the fiscal year (FY) 2012 President's Budget request that was released on February 14, 2011 for Indian Affairs' programs. The FY 2012 budget request for Indian Affairs programs within the Department totals \$2.5 billion in current appropriations. This reflects \$118.9 million, a 4.5 percent decrease, from the FY 2010 enacted level. The budget includes a reduction of \$50.0 million to eliminate the one-time forward funding provided in 2010 to Tribal Colleges and Universities; a reduction of \$41.5 million for detention center new facility construction due to a similar program within the Department of Justice; and a reduction of \$22.1 million for administrative cost savings and management efficiencies.

Overall, the 2012 Indian Affairs budget reflects a fiscally responsible balance of the priorities expressed by the Tribes during consultation and broader objectives of the Administration, as well as demonstrated program performance, and realistic administrative limitations. The 2012 budget focuses on core responsibilities to American Indians and Alaska Natives through programs and services that are vital to Indian Country and that benefit the greatest number of Indian people on a nationwide basis. The budget focuses on priority areas in Indian Country and honors the Federal Government's obligations to tribal nations in a focused and consulted manner.

As the Assistant Secretary for Indian Affairs, I have the responsibility to oversee the numerous programs within the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE), along with other programs within the immediate office of the Assistant Secretary for Indian Affairs. The Office of the Assistant Secretary for Indian Affairs, BIA, and BIE programs expend over 90 percent of appropriations at the local level. Of this amount, at least 62 percent of the appropriations are provided directly to tribes and tribal organizations through grants, contracts, and compacts for tribes to operate government programs and schools. Indian Affairs' programs serve the more than 1.7 million American Indian and Alaska Natives living on or near the reservation.

The Indian Affairs FY 2012 budget request provides funding for three of the Department's priority initiatives: Strengthening Tribal Nations, New Energy Frontier, and Cooperative Landscape Conservation.

**Strengthening Tribal Nations**

The Strengthening Tribal Nations initiative is a multi-faceted approach to enhance Nation-to-Nation relationships, improve Indian education, protect Indian communities, and reform trust land management, with the ultimate goal of greater tribal self-determination. This initiative was highlighted over a year ago when President Obama and his Administration engaged in direct dialogue with Tribal Nations in November 2009 at the White House Tribal Nations Conference held at the Department's Yates Auditorium, with over 400 tribal leaders in attendance. The President held a second successful conference in December 2010 to continue dialogue and work with Tribal Nations.

*Nation-to-Nation Relationship*

The Administration, in believing that investing in Indian Country is the key to advancing our Nation-to-Nation relationship, seeks \$42.3 million in programmatic increases for contract support, self determination contract specialists, and social workers. At the forefront of this investment is contract support, which was identified by many Tribal Nations as their top priority.

Funding contract support costs encourages tribal contracting and supports Indian self-determination. Contract support funds are used by Tribes that manage Federal programs to pay a wide range of administrative and management costs, including finance, personnel, maintenance, insurance, utilities, audits, communications, and vehicle costs.

The requested FY 2012 increases will also allow the BIA to fund Self-Determination Specialist positions to ensure proper contract oversight. In addition, it will allow the BIA to add more social workers to assist tribal communities in addressing problems associated with high unemployment and substance abuse. Through this assistance, and by addressing these problems, there will be positive indirect impacts on public safety and education in these tribal communities. We also plan for \$3.0 million of this request for approximately 86 Alaska and 17 “lower-48” Small and Needy Tribes that both have populations below 1,700 and receive less than the recommended threshold for base funding. These funds will bring these Tribes to the minimum funding necessary to strengthen their tribal governments (\$160,000 in the lower-48 and \$190,000 in Alaska).

In addition, reflecting a top priority of President Obama, Secretary Salazar and I, the budget request includes language confirming the Department of the Interior’s authority to acquire land in trust for all federally recognized tribes. Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Since 2009, the Department has acquired more than 34,000 acres of land in trust on behalf of Indian nations. Tribal homelands are essential to the health, safety and welfare of American Indians and Alaska Natives.

#### *Protecting Indian Country*

For the past several years, Tribal Nations have consistently identified public safety as one of their top priorities. The BIA supports 193 law enforcement programs throughout the nation. Within the 193 programs, there are 6 district offices and 187 programs performing law enforcement services consisting of: 36 BIA-operated programs and 151 tribally-operated programs. Approximately 78 percent of the total BIA Office of Justice Services (OJS) programs are outsourced to tribes.

President Obama, Secretary Salazar and I have prioritized public safety based on feedback from the respective tribes. The FY 2012 budget request seeks an additional \$20.0 million in public safety funding over the FY 2010 enacted level. Within the increase, \$5.1 million is for tribal and bureau law enforcement operations and \$10.4 million for tribal and bureau detention facilities operations. The funding will be used for staffing, training, implementation of the Tribal Law and Order Act, and equipment to increase staffing capacity for law enforcement and detention programs and ensure communities can support efforts to combat crime in Indian Country. The budget requests an additional \$1.0 million, for a total of \$13.8 million in funding for detention facilities operations and maintenance throughout Indian Country.

The budget includes \$2.5 million for tribal courts to support the enhanced capabilities given to tribal courts in the Tribal Law and Order Act. The increases to tribal courts and corrections will augment recent increases to the size of the tribal police forces over the last several years, which is part of a multistep plan to strengthen tribal justice systems.

The budget also includes \$1.0 million for tribal Conservation Law Enforcement Officers (CLEO). The CLEO’s primary responsibility is the protection of tribal natural resources; however, officers are often cross-deputized with local law enforcement agencies providing CLEOs with the authorization to enforce criminal law.

#### *Advancing Indian Education*

The BIE is one of only two agencies in the Federal government that manages a school system, the other being the Department of Defense. Education is critical to ensuring a viable and prosperous future for tribal communities and American Indians. It is this Department’s goal to improve Indian education and provide quality educational opportunities for those students who attend the 183 BIE funded elementary and secondary schools and dormitories located on 64 reservations in 23 states and serving approximately 41,000 students.

The FY 2012 request maintains the President’s, Secretary Salazar’s, and my ongoing commitment to improve Indian education for students in bureau-funded schools and tribally controlled colleges. The budget provides an increase of \$8.9 million to improve the state of BIE schools. We plan to use \$3.9 million to promote safe and secure schools by implementing safety and security measures at 10 schools and 2 dormitories. This request also includes an increase of \$2.0 million, which will provide funds for additional professionals to conduct environmental audits at BIE schools.

Another component of BIE funding is Tribal Grant Support Costs, which cover administrative and indirect costs at 126 tribally controlled schools and residential facilities. Tribes operating BIE-funded schools under contract or grant authorization use these funds to pay for the administrative overhead necessary to operate a school, meet legal requirements, and carry out other support functions that would otherwise be provided by the BIE school system. The budget increases funding for these activities by \$3.0 million.

#### *Improving Trust Land Management*

In addition to the human services components of Indian Affairs, the United States holds 55 million surface acres of land and 57 million acres of subsurface mineral estates in trust for tribes and individual Indians. Trust management is vital to tribal and individual economic development. The management of Indian natural resources is a primary economic driver in many regions within the country. For example, some of the larger forested tribes operate the only sawmills in their region and are major employers of not only their own people, but of the non-tribal members who live in or near their communities.

This Administration seeks to continue advancing the Strengthening Tribal Nations initiative by assisting tribes in the management, development and protection of Indian trust land, as well as natural resources on those lands. The FY 2012 budget request includes \$18.4 million in programmatic increases for land and water management activities. Those activities include: \$1.2 million for land development in the former Bennett Freeze area in Arizona on the Navajo Nation reservation and \$1.0 million for the Forestry program.

The 2012 budget provides \$2.0 million for the Rights Implementation program and the Tribal Management and Development program to support fishing, hunting, and gathering rights on and off reservations. The request provides \$2.0 million for Fish, Wildlife, and Parks programs and projects to support fisheries management at BIA and tribal levels. The budget also provides an additional \$500,000 for the Invasive Species/Noxious Weed Eradication program to provide weed control on 20,000 acres.

The budget proposes an additional \$1.0 million for the Water Management and Pre-Development program to assist tribes in the identification and quantification of water resources; \$1.0 million for Water Rights/Litigation to defend and assert Indian water rights. The budget also provides an increase of \$3.8 million to help BIA address dam safety deficiencies and ensure public safety near high hazard dams in Indian Country.

Additional increases for Improving Trust Land Management are included in the New Energy Frontier and the Cooperative Landscape Conservation initiatives.

#### **New Energy Frontier Initiative**

The Office of Indian Energy and Economic Development (IEED) works closely with tribes to assist them with the exploration and development of tribal lands with active and potential energy resources. These lands have the potential for renewable and conventional energy resource development. The FY 2012 budget includes an increase of \$3.5 million in Indian Affairs for conventional and renewable energy projects as part of the Department's New Energy Frontier initiative, which will allow Indian Affairs and tribes to explore and develop 1.8 million acres of active and potential energy sources on tribal land. The IEED provides funding, guidance, and implementation of feasibility studies, market analyses, and oversight of leasehold agreements of oil, gas, coal, renewable and industrial mineral deposits located on Indian lands.

This increase includes \$2.0 million in the Minerals and Mining program to provide grants directly to tribes for projects to evaluate and develop renewable energy resources on tribal trust land, a vital first step before energy development can begin. The budget also contains a \$1.0 million increase for conventional energy development on the Fort Berthold Reservation. To further expedite energy development on the Fort Berthold Reservation, Indian Affairs, the Bureau of Land Management, Bureau of Ocean Energy Management, Regulation and Enforcement, and the Office of the Special Trustee for American Indians created a "virtual" one-stop shop. The IEED—Division of Energy and Mineral Development, at the one-stop shop, has been proactive in using technology and technical assistance to process permits on the Fort Berthold Reservation. In 2010, the number of wells went from zero wells at the start of 2010 to over 100 producing wells at the end of 2010. It is anticipated that in 2011 this number will double to over 200 producing wells on Indian trust lands. The budget includes a \$500,000 increase to support staff onsite, as well as provide on-call access to the full range of the Department's operational and financial management services.

In addition, IEED supports economic growth in Indian Country and assists Indian Tribes in developing economic infrastructure, augmenting business knowledge, increasing jobs, businesses, capital investment, as well as developing energy and mineral resources on trust lands. IEED has initiated many programs, projects, technical conferences and training programs to address the lack of employment, and intends to continue these efforts.

#### **Cooperative Landscape Conservation Initiative**

Indian Affairs will co-lead the North Pacific Landscape Conservation Cooperative (LCC) with the U.S. Fish and Wildlife Service and support tribal outreach efforts of other LCCs, particularly those in the northwestern U.S. In the North Pacific Cooperative, Indian Affairs will seek tribal input and perspective from tribes with traditional ecological knowledge; and both Indian Affairs staff and local tribal members will be involved to develop strategies to address adaptation.

#### **Requested Decreases**

The initiatives described above, and the related increases in the Administration's request, mark a continued step toward the advancement of the Federal Government's relationship with tribal nations. These initiatives focus on those programs geared toward strengthening tribal nations and reflect the President's priorities to support economic development in Indian Country.

The President has also called upon members of his Administration to meet important objectives while also exercising fiscal responsibility. Consistent with that directive, we made several difficult choices in the FY 2012 appropriations request for Indian Affairs.

The 2012 request includes \$43.3 million in program decreases for the Operation of Indian Programs account including administrative central office reductions of \$14.2 million for streamlining and improving oversight operations and to correspond to other programmatic cuts within the 2012 request. The budget reduces Real Estate Projects by \$10.9 million; the remaining funds will be used to focus program operations on cadastral surveys as a catalyst for economic development for tribes. The budget reduces Land Records Improvement by \$8.5 million; the remaining funds will maintain core operations for the Trust Asset and Accounting Management System. The budget reduces the Probate Backlog by \$7.5 million as over 18,000 cases are expected to be completed.

The Indian Affairs 2012 budget includes \$32.9 million for ongoing Indian land and water settlements, which includes a reduction of \$14.5 million reflecting completion of the Pueblo of Isleta, Puget Sound Regional Shellfish, and Soboba Band of Luiseno Indians settlements. The budget includes \$9.5 million for the sixth of seven required payments for the Nez Perce/Snake River Settlement. The Omnibus Public Land Management Act of 2009 authorized payments to Shoshone-Paiute Tribes of the Duck Valley Reservation; this budget includes \$12.0 million for the third payment for that settlement. The Act also authorized settlement payments to the Navajo Nation; the budget includes \$6.0 million for Navajo Nation Water Resources Development Trust Fund and \$4.4 million for the San Juan Conjunctive Use Wells and San Juan River Navajo Irrigation Rehabilitation Project which are part of the Navajo-Gallup Settlement.

The Construction program contains program reductions of \$65.0 million. Of this programmatic decrease, \$41.5 million for Public Safety and Justice new facility construction has been reduced from the Construction budget. The budget is reduced by \$8.9 for Education Replacement Facility Construction, \$5.0 million for Public Safety and Justice Employee Housing; the Department has taken a strategic approach to not fund new construction in 2012. At the requested level, the Education Construction budget redirects funding from new construction activities to Facility Improvement and Repair to achieve greater flexibility in maintaining existing facilities and employee housing.

The budget includes a reduction of \$9.0 million for the Navajo Indian Irrigation Project. Indian Affairs is evaluating continuing construction on the Navajo Indian Irrigation Project. Additionally, \$57.3 million was transferred from Construction to the Operation of Indian Programs account so to better align and consolidate operations and maintenance funding.

The request takes into consideration the \$285.0 million that was provided to Indian Affairs for school and detention center construction activities and \$225.0 million provided to the Department of Justice for detention center construction in Indian Country under the American Recovery and Reinvestment Act (Recovery Act). With funding from the Recovery Act, Indian Affairs will complete a number of high priority projects.

Although there are decreases to the construction programs in the appropriations request, the appropriations request does contain the following construction items: \$52.1 million for Education, \$11.3 million for Public Safety and Justice, \$33.0 million for Resource Management, and \$8.5 million for Other Program Construction.

The budget provides \$3.1 million for the Indian Guaranteed Loan program, a reduction of \$5.1 million from the 2010 Enacted level. The program will undergo an evaluation, develop a comprehensive performance metric framework, and improve efforts to work with other Federal agencies that assist tribes in loans.

The 2012 budget includes a reduction of \$3.0 million for the Indian Land Consolidation Program. The Claims Resolution Act of 2010 included the *Cobell v. Salazar* settlement agreement. The agreement includes \$1.9 billion for land consolidation within the Office of the Secretary. This new funding will be utilized to consolidate fractionalized land interests to be more economically viable for tribes.

### **Conclusion**

We are aware of the current fiscal challenges our nation faces. This Administration understands the need to take fiscal responsibility, and also understands the need to strengthen tribal nations, foster responsible development of tribal energy resources, and improve the Nation-to-Nation relationship between tribal nations and the United States. It is our sincere belief that we have struck a balance in this FY 2012 budget request for Indian Affairs that achieves the President's objectives of fiscal discipline while at the same time meeting our obligations to tribal nations with which our Federal government has a Constitutionally-based government-to-government relationship.

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Secretary Echo Hawk.

And now we will ask Director Roubideaux to proceed with your statement.

### **STATEMENT OF HON. YVETTE ROUBIDEAUX, M.D., M.P.H., DIRECTOR, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ACCOMPANIED BY RANDY GRINNELL, DEPUTY DIRECTOR**

Dr. ROUBIDEAUX. Mr. Chairman and Members of the Committee, good morning. I am Dr. Yvette Roubideaux and I am the Director of the Indian Health Service. I am accompanied by Mr. Randy Grinnell, the Deputy Director.

I am pleased to have the opportunity to testify on the President's 2012 budget request for the Indian Health Service.

While the President's fiscal year 2012 budget for the entire Federal Government reflects hard choices necessary to control the deficit, the IHS budget request reflects the same commitment by President Obama to honor treaty commitments made by the United States, reflects Secretary Sebelius' continued priority to improve IHS, and represents one of the largest annual percent increases in discretionary budget authority compared to other operating divisions within the Department of Health and Human Services.

This budget was built upon tribal priorities and maintains current services and focuses program funding increases to be distributed broadly across as many patients and communities as possible. Our agency priorities are to renew and strengthen our partnership with tribes; to reform the IHS; to improve the quality of and access to health care; and to make all of our work transparent, accountable, fair and inclusive.

The fiscal year 2012 President's budget request and discretionary budget authority for the IHS is \$4.6 billion, an increase of \$571.4 million or a 14 percent increase over fiscal year 2010 enacted funding levels. The request includes increases to maintain current serv-

ices, including pay costs for Commission Corps personnel, inflation and population growth, and funding to start and operate newly constructed health facilities, including facilities completely constructed by tribes under the Joint Venture Construction Program. The success of the Joint Venture Program demonstrates the strong commitment of this Administration and the tribes to reduce the backlog of health facility construction projects and staffing needs.

The IHS proposed budget also includes a total increase of \$169.3 million for contract health services, the top tribal priority for program increases. And this increase will help meet the significant needs for referrals for medical services in the private sector.

The budget request also includes \$54 million for the Indian Health Care Improvement Fund and will allow approximately 88 of our lowest-funded hospitals and health centers to expand health and primary care services. To fund the shortfall in contract support costs, a \$63 million increase is included for tribes for the management of health programs previously managed by the Federal Government.

The budget request also includes modest increases for health information technology security, prevention of the principal risk factors for chronic diseases, smoking and obesity, and expands access to and improving quality of substance abuse treatment in our primary care settings.

For the facilities appropriation, the total health care facilities construction budget is \$85.2 million for construction to continue on the replacement hospital in Barrow, Alaska; the San Carlos Health Center in Arizona; and the Kayenta Health Center on the Navajo Reservation. It will also fund the design and site-grading of the Youth Regional Treatment Center for Southern California.

This budget helps us continue our work to bring reform to the Indian Health Service. In my first year as Director, I sought input from tribes and staff on where improvements are needed in IHS. In this past year, input from external stakeholders have reinforced the need for change and improvement in IHS, improving the way we do business, and to focus more on our oversight responsibilities to assure accountability in providing quality health care in the most effective and efficient manner.

We are working hard to make improvements and implement the recommendations of this Committee from the Aberdeen Area investigation. The budget includes funding increases for direct operations and business operations support to improve our business capacity and oversight.

We are making progress on implementing the Indian Health Care Improvement Act with permanent reauthorization included in the Affordable Care Act. This budget proposes funding for two high-priority demonstration projects: youth telemental health project and innovative health care facility construction.

IHS is predominantly a rural, highly decentralized Federal, tribal and urban Indian health system that provides health care services under a variety of challenges. However, IHS has proven its ability to improve the health status of American Indians and Alaska Natives over the years. This budget request for the IHS is a necessary investment in winning the future that will result in healthier American Indian and Alaska Native communities.

Thank you for the opportunity to present the President's fiscal year 2012 budget request for the Indian Health Service. I would be happy to answer questions.

Thank you.

[The prepared statement of Dr. Roubideaux follows:]

PREPARED STATEMENT OF HON. YVETTE ROUBIDEAUX, M.D., M.P.H., DIRECTOR, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ACCOMPANIED BY RANDY GRINNELL, DEPUTY DIRECTOR

Mr. Chairman and Members of the Committee:

Good morning. I am Dr. Yvette Roubideaux, Director of the Indian Health Service. I am accompanied today by Mr. Randy Grinnell, Deputy Director. I am pleased to have the opportunity to testify on the President's FY 2012 budget request for the Indian Health Service (IHS).

While the President's FY 2012 budget for the entire federal government reflects hard choices necessary to control the deficit, the IHS budget request reflects a sustained commitment by President Obama to honor treaty commitments made by the United States and to provide for a necessary investment in our future. In addition, the FY 2012 budget request reflects Secretary Sebelius' continued priority to improve the IHS, and represents one of the largest annual percent increases in discretionary budget authority, compared to other operating divisions within the Department of Health and Human Services. This request will help IHS further meet its mission to raise the physical, mental, social and spiritual health of American Indians and Alaska Natives to the highest level.

#### **Agency and Tribal Priorities**

This budget request was built upon tribal priorities identified during the IHS budget formulation process. Tribes have consistently expressed that maintaining current services must be addressed before programs are expanded, and they have consistently identified the need for program funding increases to be distributed broadly across as many patients and communities as possible. The agency priorities provide a framework for responding to the Tribes and improving what we do and how we do it. Specifically, our agency priorities are:

- Renew and strengthen our partnership with Tribes
- Reform the IHS
- Improve the quality of and access to health care
- Make all of our work transparent, accountable, fair and inclusive

#### **Budget Request**

The FY 2012 President's budget request in discretionary budget authority for the IHS is \$4.6 billion; an increase of \$571.4 million, or 14 percent, over the FY 2010 enacted funding level.

#### *Maintaining Current Services*

The request includes \$327.5 million in increases for pay costs for Commissioned Corps personnel, inflation and population growth that will cover the rising costs of providing health care to maintain the current level of services provided in IHS, Tribal, and Urban Indian Health Programs. This amount also includes \$71.5 million to staff and operate newly constructed health facilities, including facilities completely constructed by Tribes under the Joint Venture Construction Program, one facility constructed primarily from Recovery Act funds, and one facility constructed by the Army Corps of Engineers. The success of the Joint Venture program demonstrates the strong commitment of this Administration and the Tribes to reduce the backlog of health facility construction projects and staffing needs.

#### *Funding Increases to Improve Quality of and Access to Care*

The IHS proposed budget includes a \$243.9 million increase for a number of programs and initiatives that will increase access to care, and strengthen the capacity of the Indian health system to provide clinical and preventive care. This budget will also help address longstanding unmet needs and inequities in funding levels within the Indian health system. The budget request includes a total increase of \$169.3 million for the Contract Health Services (CHS) program, the top Tribal priority for program increases. This increase will help meet the significant need for referrals for medical services in the private sector. The increase provides \$79.6 million to maintain current services and \$89.6 million to expand the program. Within the programmatic increase, \$10 million will be targeted to the Catastrophic Health Emer-

gency Fund (CHEF), for a total funding level of \$58 million for the CHEF to help pay for very high-cost cases. The budget request also includes \$54 million for the Indian Health Care Improvement Fund and will allow approximately 75 of our lowest funded hospitals and health centers to expand health and primary care services. To fund the shortfall in Contract Support Costs (CSC), a \$63.3 million increase is included for Tribes that have assumed the management of health programs previously managed by the Federal government. These increases represent some of the highest priorities identified by Tribes over the past several years, as well as by me to increase the recurring base budget for our patients' provide needed healthcare services.

In this budget request we also target modest but important funding increases to specific activities to improve quality and access to care. A request of \$4 million for Health Information Technology will address critical security maintenance and enhancements, and facilitate IHS participation in external exchanges and support meaningful use requirements. Prevention of chronic illness, currently widespread and costly in the American Indian and Alaska Native population, will be enhanced by the request for \$2.5 million in competitive awards to reduce the principal risk factors of chronic diseases, i.e., smoking, obesity, and a sedentary lifestyle. IHS also has an important role in the national drug control strategy, as behavioral health issues are pervasive throughout Indian communities. Therefore, the budget requests \$4 million for a competitive grant program to expand access to and improve quality of substance abuse treatment in our primary care settings.

For the Facilities appropriation, the overall request is \$457.7 million, with an increase of \$62.9 million over the FY 2010 funding level. Within this increase, the total Health Care Facilities Construction budget is \$85.2 million, for construction to continue on the replacement hospital in Barrow, Alaska, the San Carlos Health Center in Arizona, and the Kayenta Health Center on the Navajo Reservation. It will also fund the design and site grading of the Youth Regional Treatment Center for Southern California.

#### *Funding Increases to Reform the IHS*

This budget helps us continue our work to bring reform to the IHS. In my first year as Director, I sought input from Tribes and staff on where improvements are needed in IHS. Tribal priorities for reform focused on broad issues such as the need for more funding, the distribution of resources, and improving how we consult with Tribes. Staff priorities focused on how we do business and how we lead and manage people. In this past year, input from external stakeholders have reinforced the need for change and improvement in the IHS and to focus more on our oversight responsibilities to assure accountability in providing quality health care in the most effective and efficient manner possible. We are working hard to make improvements and implement the recommendations of this committee from the Aberdeen Area investigation.

This budget includes funding increases for Direct Operations and Business Operations Support to improve our capacity for performing the functions highlighted above. The funds for Direct Operations will allow us to focus on improvements in the hiring process, recruitment and retention, performance management, and more effective financial management and accountability. The funds for Business Operations Support will allow IHS and Tribal health programs to focus on ensuring effective and efficient processes in billing and collecting from third party payers, processing CHS claims, and ensuring the best rates are negotiated for health care provided through CHS programs. All of these reforms are being conducted as we make all our work more transparent, accountable, fair and inclusive.

We are making progress on implementing the Indian Health Care Improvement Act's permanent reauthorization included in the Affordable Care Act. This budget proposes funding for two high priority demonstration projects: youth telemental health project; and innovative healthcare facility construction.

#### *Savings*

This budget request for IHS demonstrates actions to achieve fiscal responsibility without endangering patient care. Two areas of proposed savings have been identified that allow funds to be targeted to higher priority activities. One area is in the small grant programs funded within the Hospitals and Clinics budget, where \$7 million of savings can be accomplished. These grant programs have a small number of grantees, ranging from 1 to 11 Tribes or Urban Indian Health Programs receiving the awards. Tribes have expressed a preference for direct funding rather than competitive grant programs that benefit only a few Tribes, and the savings achieved here can be redirected towards priority budget items that benefit all Tribes. Another area identified for savings in FY 2012 is the Sanitation Facilities Construction pro-

gram. Although the overall need for water, sewage and solid waste disposal facilities remains significant, funds received in FYs 2009 and 2010, including Recovery Act funds, totaled nearly \$350 million compared to an annual appropriation of approximately \$96 million for both FY 2009 and FY 2010. Redistribution of these funds will, thus, lessen the impact of this decrease in base funding.

#### **Indian Health System—Accomplishments**

The FY 2012 budget proposal will provide resources to help the IHS further meet its mission. The IHS provides high quality, comprehensive primary care and public health services through a system of IHS, Tribal, and Urban Indian Health operated facilities and programs based on treaties, judicial determinations, and acts of Congress. This Indian health system provides services to nearly 1.9 million American Indians and Alaska Natives through hospitals, health centers, and clinics located in 35 states, often representing the only source of health care for many American Indian and Alaska Native individuals, especially for those who live in the most remote and poverty stricken areas of the United States. The purchase of health care from private providers is also an integral component of the health system for services unavailable in IHS and Tribal facilities or, in some cases, in lieu of IHS or Tribal health care programs. Unlike many other health delivery systems, the IHS is involved in the construction of health facilities, including the construction of staff quarters necessary for recruitment and retention of health care providers, as well as being involved in the construction of water and sewer systems for Indian homes and communities that lack this basic infrastructure. I know of no other health care organization that accomplishes such a wide array of patient care, public health and community services within a single system.

#### *Addressing Health Disparities*

For several years since its inception in 1955, IHS made significant strides in reducing early and preventable deaths from infectious or communicable diseases. However, deaths due to chronic diseases and behavioral health conditions have been more challenging to address since they result primarily from lifestyle choices and individual behaviors. Progress in addressing these disparities will be a sure investment in winning the future, as more youth are ushered into adulthood without engaging in the risky behaviors that are so prevalent in the population today, and as more adults become tribal elders without succumbing to the complications of chronic disease.

Performance through GPRA measures indicates that the Indian health system is making progress in addressing health disparities. For example, the agency achieved its FY 2010 performance targets for mammography and colorectal cancer screenings performed, increasing the portion of the population screening by three and four percentage points respectively; however, the end result for both indicates less than half the user population received these important screenings. Also, while the IHS did not fully meet its FY 2010 performance targets for diabetic patients with ideal blood sugar control or with controlled blood pressure, there were improvements over the previous year's results. With this budget proposed for FY 2012, we anticipate seeing a positive impact on the lives of American Indian and Alaska Native people and progress towards improving the health status of the communities we serve.

#### **Closing**

The IHS is a predominantly rural, highly decentralized federal, Tribal, and Urban Indian health system that provide health care services under a variety of challenges. However, IHS has proven its ability to improve the health status of American Indians and Alaska Natives over the years. The President's FY 2012 budget request for the IHS is a necessary investment in winning the future that will result in healthier American Indian and Alaska Native communities.

Thank you for this opportunity to present the President's FY 2012 budget request for the Indian Health Service and helping to advance the IHS mission to raise the physical, mental, social, and spiritual health status of American Indians and Alaska Natives to the highest level, and I look forward to working with you over the next year.

The CHAIRMAN. Thank you very much, Director Roubideaux.

Assistant Secretary Echo Hawk, last year, Congress passed the *Cobell* settlement. It is now up to the court to approve the settlement. I understand that you are recused from answering questions about the *Cobell* decision, but do you have someone with you today

who could answer some critical questions about how the settlement is being implemented?

Mr. ECHO HAWK. Chairman Akaka, I believe that Ray Joseph is in the room and I would be happy to have him take a place here at the table to respond.

The CHAIRMAN. Thank you very much, Mr. Assistant Secretary.

Mr. Joseph, welcome and let me ask you, part of the *Cobell* settlement includes \$1.4 billion for individual Indians whose trust accounts were mismanaged. Those individuals eligible for the settlement need to opt out of the settlement by April 20th if they choose not to participate.

Can you tell this Committee what type of outreach the Department has done to make sure all account-holders are identified and made aware of the opt-out provisions in the settlement? Also, can you tell the Committee what the opt-out rate is so far? And in which regions are the individual account-holders opting out at the highest rates?

Mr. JOSEPH. Good morning, Chairman, Vice Chairman Barrasso and Members of the Committee. My name is Ray Joseph. I am the Principal Deputy Special Trustee for American Indians. It is a pleasure to be here before you today to answer and address your questions.

The opt-out period is April 20th. You are correct, sir. That opt-out rate that you asked about is not information that I have readily available, but I can obtain it and provide it to you in a short time frame.

As it relates to specific regions and to the highest rate per region, I don't have that information readily available to me today, but I will be able to provide that to you in a short time afterward.

As it relates to the outreach that is being done to the tribal members to ensure they are being contacted, that is being done by Kinsella Media, as well as a company called the Garden City Group. That is a group that is being managed by the plaintiff's attorneys organization providing television ads, outreach through magazines, radio communication and a variety of different media outlets that are targeted at specific Indian members to make sure they are aware of these issues and aware of what their rights are, as well as the procedures to follow.

There is also a website under [Indiantrust.com](http://Indiantrust.com) that also addresses these matters and has a complete list of questions, FAQs, frequently asked questions to address this matter. A phone number as well can be provided to members to contact that don't have access to the Internet, and that is 1-800-961-6109.

So there are a variety of different mechanisms that have been utilized to contact members. In addition, Judge Hogan has exempted Secretary Ken Salazar, Deputy Secretary Hayes, and the Solicitor Hilary Tompkins from the no-contact order. There are monthly calls with tribal leaders at this time that Deputy Secretary Hayes and Solicitor Tompkins participate in and they speak with tribal leaders to address this issue and other issues that come up.

The CHAIRMAN. I have also asked about what the rate is so far and which regions are individual account-holders opting out at the highest rates.

Mr. JOSEPH. Mr. Chairman, at this time there have been only 28 individuals that have opted out. I don't have that information as determined by region. We can obtain that information and provide it to you. I think it is a very small percentage based upon the numbers out of 300,000 or approximately 300,000 individual member accounts.

The CHAIRMAN. Please provide us with that information.

Mr. JOSEPH. Yes.

The CHAIRMAN. Mr. Echo Hawk, the budget recommends a decrease of \$5.1 million in the Indian Loan Grant Program. This program has proven successful in allowing tribes to build reservation businesses and provide access to capital that would otherwise be unavailable. I understand that the reason for the decrease is because the program may be duplicative at other Federal agencies.

My question to you is, has the Department identified other agency programs and funding opportunities available to tribes? And have you communicated with tribes about where these programs are located?

Mr. ECHO HAWK. Mr. Chairman, this is a good program and it has strong support among tribal leaders. There are concerns that have been raised not only with the fact that some feel that this is duplicate of what is offered primarily by the FDA and also by USDA. But there was also concern that under the ARRA program funds that were allocated to loan guarantee that those were not obligated fast enough.

But we are working to preserve this program and are presently evaluating and coming up with a plan to correct whatever concerns have been raised so that we can have this program continue to serve Indian Country.

The CHAIRMAN. Dr. Roubideaux, I am pleased to see that the President's budget proposal includes an increase in funding for the Indian Health Service. As you know, this agency has historically been under-funded. However, I was surprised that the budget requests \$16 million less than the fiscal year 2010 enacted level for sanitation facilities construction.

These funds are used to build water supply, sewage and solid waste disposal facilities for American Indian and Alaska Native homes. The agency's documents indicated that there were 230,000 homes in need of these facilities. Why does the budget request a decrease in funding for this program?

Dr. ROUBIDEAUX. Well, the reduction in the sanitation facilities construction was proposed in the budget as a way to have grant savings, and the reason for that was we, like everyone, had to find ways to help reduce the debt and to find ways to save.

Waste water, sewage, solid waste disposal is so incredibly important and we have actually been very fortunate to receive a lot of ARRA funding, \$68 million, and we also received EPA funding of \$90 million. And we are still implementing projects with that funding. And so we felt that we could absorb a minor decrease in this funding, given that those projects are ongoing.

In addition, the funding that we have available will still provide those services for 18,000 homes. So we are still making sure that we are making progress on an incredible need we have for sanitation facilities construction.

The CHAIRMAN. Dr. Roubideaux, the Committee's December 2010 investigation of part of the Indian Health Service included a statement from you describing some of the actions you were taking to address the problems that were identified during the investigation.

Can you provide the Committee with an update on your efforts to address those problems, either here or later?

Dr. ROUBIDEAUX. Yes. Thank you, Chairman. I can give you a brief update now and I am happy to brief staff on the details.

We take the report of the Senate Committee on Indian Affairs on the Aberdeen investigation very seriously. We have acknowledged that these problems should not have occurred and we are doing everything we can to make sure they are not occurring in the Aberdeen area, as well as throughout the rest of the system.

For example, the first thing I did was establish a strong tone at the top that we will address these issues and that there will be no excuses for staff for not addressing them. The second thing was to have a strong improvement in how we hold people accountable for taking actions and making these improvements. And we have included measures in this year's performance plan so the entire agency can make sure that we are making progress so people will be held accountable.

After the hearing, after I heard some of the very serious issues that were brought up, I took immediate action and asked our Area Directors and everybody throughout the system to make improvements. One example is the horrible problem of I guess a couple of people had been hired who appeared on the OIG exclusion list, which says they are not eligible for Federal hire. I immediately established a policy where no one can be hired in the Indian Health Service unless the OIG exclusion list has been checked and there has been a background investigation.

And we also just to be sure, checked the OIG exclusion list for all 15,740 employees at the Indian Health Service. And I can say as a result of that revealed no one is on the OIG exclusion list in the Indian Health Service.

We are also addressing the Aberdeen Area concern specifically with corrective action plans, training of staff, new policies, reviews, new electronic tools for accountability, and also trying to increase the number of providers, which is a big issue.

And then finally, as directed by the Committee, we are expanding these investigations to the other IHS areas. We just completed our first investigation of the Albuquerque area and the Billings area is next. And we have been working very carefully with the Department of Health and Human Service Program Integrity Coordinating Council to make sure that we are doing reviews that will make sure that the findings of the Aberdeen area investigation are not occurring in the rest of the system. And we are putting in sort of long-term improvements that will ensure this doesn't occur again.

So I am grateful to the Committee for that report. It has given us a lot of good information to help us make improvements. We want to spend our Federal dollars wisely and we want to make sure we are as efficient and effective as possible.

The CHAIRMAN. Thank you very much for your response.  
Senator Barrasso?

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Echo Hawk, I read your testimony fully and enjoyed the parts where you talked specifically about New Energy Frontier Initiatives, and I found there were some encouraging words in there. And then your conclusion at the end was you wanted to foster responsible development of tribal energy resources, and I agree completely.

The President's budget for fiscal year 2012 proposes a number of fees, though, for oil and gas development on Indian lands. One of these is a processing fee for the APD, the applications for permit to drill. And the Department is now charging \$500 for this, and has been doing that since last year, which is a 62 percent increase in fees charged on oil and gas development in Indian lands.

There are other fees as well, like inspection fees ranging from \$600 to \$5,700 for oil and gas leases, that is up 400 percent from the year before.

In light of the recent international developments driving up the price for gasoline at the pump, I am compelled to ask: How do these hefty fees contribute to the development of oil and gas resources on Indian lands?

Mr. ECHO HAWK. Vice Chairman Barrasso, I am aware of the problems that we have out there with these fees that are added on because it inhibits the development of energy resources within tribal communities. I was recently on the homelands of the Crow Nation in Montana and they raised this issue once again. I heard it when I was in North Dakota. And so this is something that we have to work with with the BLM because they are the agency that is charging the \$6,500 fee and we are going to try to resolve this within the Department.

Senator BARRASSO. Because it is interesting when you take a look at on-shore versus off-shore, the application to drill on-shore on an Indian reservation right now is actually three-and-a-half times, three-and-a-quarter times the cost for an off-shore permit. And you would think in terms of how much it costs to actually go and do the evaluation, the off-shore permit is \$1,959; on-shore on reservations, \$6,500. It just doesn't seem like a fair application. So I appreciate you taking a look into that. Thank you.

I wanted to get to Wind River Reservation Law Enforcement Pilot Program. The BIA's high-priority performance goal pilot program was developed to reduce violent crime by 5 percent over a two-year period on specifically four reservations, including the Wind River Reservation in Wyoming. From all indications, it has been a very successful program.

The proposed 2012 budget indicates that this effort may be extended to four additional reservations, and I would encourage that. My question is: Will this extension in any way affect the effort and resources provided to the four reservations that are already being served successfully by the program?

Mr. ECHO HAWK. Vice Chairman Barrasso, first of all, I will be visiting Wind River, Wyoming on April 4th, and specifically to visit with all of the people that are involved in the high-priority performance goal that we are operating there.

That has been a very tremendous success on the four reservations that we have worked on. It is a program that is designed to

reduce violent crime by 5 percent within a 24-month time period. Already at this point, we have the latest figure showing that the decrease in violent crime has exceeded 11 percent cumulatively on these four reservations. And we are hoping that we can expand that now into other communities.

We need to demonstrate that given adequate resources, we can really reduce crime, and this, of course, affects the quality of life of people in those communities.

Senator BARRASSO. Thank you very much.

If I could, I was going to ask Mr. Joseph a question about the *Cobell* settlement.

As I noted earlier, I am interested in hearing, at least in general terms, how the Department plans to carry out the \$1.9 billion buy-back program included in that settlement. I know it still has to be approved by the courts, and that has not happened yet. But I would just like to hear how the Department plans to implement this program in terms of is it going to be in-house, will you use the existing Land Consolidation Program staff, are you thinking of hiring contractors?

If you could just have a little overview and a discussion on those aspects of this.

Mr. JOSEPH. Thank you for your question, Vice Chairman Barrasso.

I think it is important for us to state that we agree with you. We are greatly concerned about this endeavor. It is a very large program to go after and I think it is something we take very seriously.

But I do want to stress that we do not have a plan at this time. I think the most important thing that we need to focus is that we don't want to jeopardize beneficiaries' ability to participate in this landmark settlement, all the hard work that has gone into this settlement, and the efforts by Congress as well as the Administration to make this thing happen.

So the first thing we want to do is put their interests first, if you will, as a fiduciary. And without being able to contact them, we can't do consultation for this plan. But that doesn't preclude us from doing a lot of, if you will, thinking, evaluating, looking at other programs that have been done of similar nature, and pre-positioning ideas and concepts. But we don't want to in any way dismiss the idea that we are focused on tribal consultation.

So until that settlement that has been finalized by Judge Hogan, we cannot put forth a plan. But again from a concept, I think it leads to some ideas. There is a lot of good concepts out there that we can share upon. We have looked at a number of scenarios to do this.

We are also asking others to present ideas in the outreach programs or the outreach discussions that Deputy Secretary Hayes and Solicitor Tompkins have had. We have asked those individuals to put forth ideas and concepts they might have.

Again, we don't have a plan, but I think we have a number of scenarios in which to attack this problem.

Senator BARRASSO. Thank you very much for that response.

Mr. Chairman, this is a question that I know you and I are both going to continue to come back to and look at and monitor this very

closely to make sure that everyone is fairly represented and taken care of.

If I could just have one more question for Dr. Roubideaux, if I may, Mr. Chairman. Thank you.

And it is along the line we have discussed before in my office, as well as here, the significant concerns with diabetes and your landmark research on diabetes among Indian people. And I wanted to get into the proposed budget request for the contract health services program. I know it is going to increase funding by about \$169 million over the current level of \$780 million. The new funding would be distributed based on a formula driven by user population, cost of purchasing care, access to care.

Anything that you are thinking of in terms of taking in and weighing into this morbidity, mortality rates and other issues as how you try to plan to implement this additional spending?

Dr. ROUBIDEAUX. Thank you, first, for your suggestions for the contract health services formula. We actually recently consulted with tribes on their ideas for how to improve that formula. It has a number of factors, but some areas get relatively more than other areas, and so everybody wants to find a way to get these resources because they are so important. They pay for very much medically needed referrals.

We brought together a Federal-Tribal Work Group in 2010 which looked at the formula that was originally developed in 2001, and they felt that we needed to see the impact of the formula because we really hadn't had the increases in contract health services since 2001.

So the Work Group is going to review this formula, review the results of the tribal consultation, see what was recommended, and then they will make recommendations to me probably later in the year. So I am looking forward to seeing that and interested in any ideas you may have.

Senator BARRASSO. Perhaps we can have an additional discussion on morbidity, mortality issues and how they have an impact on that.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Barrasso, for your questions.

And now I would like to call on Senator Tester for his questions.

Senator TESTER. Thank you, Mr. Chairman.

I will have to have Ray Joseph up again, too, but my first question is for Larry Echo Hawk.

Larry, I talked in my opening statement about the unemployment in Indian Country and how it is very high. On some reservations in Montana, it is 80 percent. One of the programs that is out there is the Indian Loan Guarantee Program. How would you assess its abilities to work?

Mr. ECHO HAWK. Senator Tester, this program has operated in my view very well. It leverages private investment funds. I think the ratio is about 13 to 1. For every dollar we put up in the loan guarantee, we are able to get \$13 out of private investment, and this has had huge impact.

It has had a fairly low default rate and so it has served Indian Country well, but there are concerns in the very tight budget cli-

mate that we are living in about whether or not there are other agencies of the Federal Government that should be operating.

Senator TESTER. Okay. Well, let me just back up a little bit, then. The Indian Loan Guarantee Program was given \$7 million in the Recovery Act. That money was later rescinded because those funds were never obligated, after we worked pretty darn hard to get them in.

I mean, if the program works well, can you explain why those funds were never used?

Mr. ECHO HAWK. Senator Tester, I know something about this, but I would be happy to have a more detailed response given to you to address your question. But in the time frame that we are dealing with here with the ARRA funding that went into this program, banks were faulted for making risky loans, and so they were a bit reticent.

Senator TESTER. Yes, but isn't this backstop for those banks? I mean, isn't this fund a backstop to give them some guarantee?

Mr. ECHO HAWK. I think that is just one of the issues and I think the banks were very cautious. But also on the tribal side in terms of borrower equity, there were problems that we were facing there. And a lot of the banks that would normally be lending were the smaller banks, and they were not receiving a lot of Federal assistance.

Senator TESTER. I don't want to put you on the spot, but I will. What you are saying is that the banks weren't ready to lend the money? Or are you saying there weren't the applications to get the banks to lend the money?

Mr. ECHO HAWK. What I am saying is that there were smaller banks that we normally would have been doing business through the loan guarantee and they were not receiving as much assistance as the larger banks would, and that they were just averse to making bad loans.

Senator TESTER. Just let me ask you point blank. Were the requests that you got for the Loan Guarantee Program processed and were banks approached and were you turned down?

Mr. ECHO HAWK. Senator Tester, I don't have the detailed information.

Senator TESTER. Okay. If I could get that, it would be good because then what I am getting at Larry, and I know your commitment to Indian Country. Make no mistake about it. It has been solid. But if in fact this program works and if in fact it will help reduce unemployment in Indian Country, why the \$7 million wasn't spent and why there is a reduction of \$5 million, those two issues go hand in hand.

And I understand it is tight budget time. Trust me. We are dealing with it. And so that it is. Please get back to me on that, if you could.

Mr. Ray Joseph, real quick. You answered a question from the Chairman and the Ranking Member and you said that there was no plan at this time for the *Cobell* settlement, that you would have a plan at some point in time after Judge Hogan made his decision. I don't want to put words in your mouth, but is that basically what you said?

Mr. JOSEPH. Thank you for your question, Senator Tester.

That plan will be devised after consulting with the tribal members. That is a collaborative effort.

Senator TESTER. Okay, so a couple of things have to happen. Number one, the judge has to make a decision. Right?

Mr. JOSEPH. Yes, sir.

Senator TESTER. And then you consult with the tribes. Right?

Mr. JOSEPH. Yes.

Senator TESTER. Anything else?

Mr. JOSEPH. Obviously, that is going to be consulting with Congress as well.

Senator TESTER. Okay, that is good. When can we anticipate a plan after the judge makes his decision? Do you have any sort of time frame on when that could go? And by the way, the fact that the Chairman and the Ranking Member and myself have called you back up to the table on this, this is a big issue with a lot of dough, and we want to make sure it gets to the ground.

But if we don't have some time frames, I am very, very concerned that it might not get to where it needs to be. So can you give me some time frames on what you anticipate after the judge makes his decision?

And the gentleman, you can come up if you want and address that. It is up to you. I don't want to put you on the spot either, but I am just curious. What kind of time frames are we looking at? Are we looking a year after the judge makes his decision, or six months, three months?

Mr. JOSEPH. Senator Tester, that individual is Mike Berrigan from the Solicitor's office, so I was asking him for clarification on this matter.

Senator TESTER. Okay. Sure.

Mr. JOSEPH. At this point, we are still waiting for the judge to render his opinion.

Senator TESTER. I have got you.

Mr. JOSEPH. And that has not been set in date after the fairness hearing. So it is obviously up to the judge's discretion at that time frame of when he sets that hearing, or I am sorry, he sets the final settlement date.

After that settlement date, we are also focused on if there is an appeal, that precludes the ability for the funds to flow to start looking at this.

Senator TESTER. Do you anticipate an appeal?

Mr. JOSEPH. I can't say I anticipate or don't anticipate. I am not an attorney and this is far out of my level of responsibility.

Senator TESTER. Go ahead. We are taking too much time. You just need to tell me when it is going to happen. That is all. After the judge's opinion, if there is no appeal, when do you anticipate there will be a plan? I don't think that is an unfair question. If it is, you can tell me and I will do it again later.

Mr. JOSEPH. Senator Tester, I don't believe your question is unfair. I just think it is a very complex question to answer because we only control one part of that equation. That is what the Department of Interior's effort is to resolve this matter, which we take very seriously.

The other two members are, of course, Congress and the tribal consultation piece. We will set forth an overlay of the dates we will

go out and perform tribal consultation. The challenges are going to be for those organizations, consulting with a number of these tribes, which are over 500, and then getting meaningful feedback and incorporating it into an overall structure.

Senator TESTER. And my time is long past. But here is what I would ask you. Could you go back, and assuming there is no appeal, what kind of time frame are you looking at for implementation, to have a plan? What kind of time frame before you have a plan? Because it ain't never going to happen if you don't have a plan, right?

Mr. JOSEPH. I believe it will happen, Senator Tester.

Senator TESTER. But you have to have a plan or it won't happen, right?

Mr. JOSEPH. Yes, Senator Tester, you have to have a plan, but you also have to understand we have to make sure we take into account—

Senator TESTER. I understand. You are exactly right, but there is a level of accountability here that I am after. Okay? I need to know once the judge makes his decision, I don't know when that is going to be, when you anticipate you will have a plan. That is all, assuming there is no appeal.

Okay, so you must have it laid out how long it is going to take you to get input from the tribes, you anticipate, and so we can move the ball down the court. Okay? That is all. If you can get back to me, I would appreciate it.

I have run out of time. Ms. Roubideaux, I will tell you that you have answered many of the questions before. There is an issue that deals with youth suicide in Indian Country. Hopefully, you can tell me how this budget is going to deal with that. It is a big issue, and it involves more than health care, for sure. But if you could get back to me on it, that would be good.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

Now, I will ask for questions from Senator Murkowski, and following that I will ask Senator Franken.

Senator Murkowski, welcome.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. Good to be back with you.

Dr. Roubideaux, a couple of questions for you first this morning. As you know, Tanana Chiefs Conference, South Central Foundation and the Copper River Native Association have been successful in their efforts for joint venture health facilities. We are very encouraged with that. But there is some anxiety given what we are facing with the budget and budgetary constraints that IHS will not be able to meet its commitment to provide the equipment and the staffing packages in fiscal years 2012 and 2013.

I have had multiple meetings with folks from these three entities, all quite concerned about the timing of this. Can you give me any confidence that we are going to be Okay with the staffing packages?

Dr. ROUBIDEAUX. Well, thank you, Senator Murkowski, for your concern about the joint venture projects. The deal is the tribe builds the facility and then IHS requests the appropriations for staffing and equipment. And we intend to keep our deal and continue to request the staffing and the equipment.

In 2012 budget, we have several joint venture projects and a placeholder in place if one of the Alaska joint venture projects becomes available and completes construction. And so we believe in joint venture. We think it is a great example of how tribes and IHS can work together to help reduce the backlog of facility construction needs in Indian Country.

So we will continue to request these funds from Congress. We will continue to support the Joint Venture Program and we will do everything we can.

Senator MURKOWSKI. Well, we appreciate your support. We certainly think that it is advantageous as well. The concern here is all about timing. It is one thing if we are able to advance some good infrastructure, some facilities that are most desperately needed. But as we have seen in the YKHC region, you have a facility and we are still waiting for staffing packages.

So we are very, very concerned about this timing and we need to have a little more assurance that in fact this is all going to work together. If there is a schedule going forward, I think that that would provide for some confidence.

On the same lines then, as it relates to facilities, the Barrow Hospital remains your top facility on the in-patient priority list, presently under construction. We are very pleased with that. But we also recognize that it is just tough to get the construction materials to Barrow; that the construction season is extremely short.

Do you have any thoughts on how or what we need to do in Congress to ensure that this project is seen through to completion, IHS's commitment to doing just that?

Dr. ROUBIDEAUX. Yes, we are committed to completing that project. We have met with the tribes. We know how important it is to them. And the challenges, you are right, of trying to purchase enough materials to get on the barges before the ice comes and you can't get the materials up there, plus the cost of doing the actual construction.

In fiscal year 2011, we are hopeful that we will have a budget soon and that we can continue to do the planning to be able to help with our health facilities construction. However, we did make a decision to allocate some funding to purchase the materials for the barge so at least we can get the materials up there. And we are hopeful with the rest of the appropriations this year we can continue construction. And when we also have proposed a large increase that would help us complete the construction on the Barrow project.

So we are very committed. We are doing everything we can to try to keep that moving along, given the unique challenges it has with construction and the weather and the transportation issues, and the employment issues as well.

Senator MURKOWSKI. And I think we recognize that with the challenges that we have faced with the Continuing Resolution, that doesn't respect the fact that you have a very, very brief window to

get those materials on to the barge that will make it up there. I don't think most people in the rest of the world realize that you have one barge in the spring, one barge in the fall, and if you miss it, you miss it.

Mr. Echo Hawk, question for you this morning, and thank you all for your testimony here today. We have tribal courts that exist in Public Law 280 States like Alaska and States that are not subject to Public Law 280. Alaska tribes have told me that the BIA does not provide funding to tribal courts in Public Law 280 States even though those tribal courts clearly play an important role.

Is this the case? And if so, what is the justification for not providing funding for one and funding for another?

Mr. ECHO HAWK. Senator Murkowski, the Public Law 280 goes back to the termination era in the 1950s, 1953. And as a result of that, the Federal Government backed away from providing these kinds of services in Public Law 280 States. I think there is a trend that is changing that.

I notice the provisions in the Tribal Law and Order Act call for the United States on I would call it maybe a pilot program basis, to reenter responsibility in those Public Law 280 States and I think that there is an opportunity perhaps for the United States to start providing more funds back into communities. I am hoping that that is the direction that the budget will be going, paying more attention to law enforcement and judicial services in Public Law 280 jurisdiction. But you are correct, it has not been the way that the budget has been allocated in the past. Those States have been left out.

Senator MURKOWSKI. So it is not a situation, then, of not being able to do it. It is just that historically we haven't seen that play out that way. But it sounds, based on your comments, that you don't see a reason that it could not change so that in the future those Public Law 280 States could take advantage of that funding.

Mr. ECHO HAWK. Senator Murkowski, like I said, I think it is the trend, and personally it is the direction that I would like to go. But without additional resources, what we would be doing if we provide service in Public Law 280 States is taking away from those tribes that are presently receiving funds.

And so it is a delicate matter, but I certainly think that that is the direction we are going in is for the United States maybe to re-assume responsibility in Public Law 280 jurisdictions.

Senator MURKOWSKI. I have one more question, if I may, Mr. Chairman, and this relates to the 477 programs. I understand that DOI and HHS were in Alaska and in Washington State last week for consultations regarding some changes, and some changes that we think would be pretty major.

Eleven of the 12 regional tribes in Alaska, or excuse me, of the regional nonprofits run the 477 programs and there is some real concern that these proposed changes might undermine the progress that the tribal consortium within the State have been made as it puts people to work and really has been very helpful to them.

Can you tell me where these changes originated? How your Department justifies moving forward with some of these changes? The folks in Alaska, many of them have come to me and said, look, this

is something that has worked successfully for a long period of time. Why now? Why are we seeing this?

Mr. ECHO HAWK. Senator Murkowski, I think I am supposed to know everything about everything, but I don't have the detailed information on this. Jodi Gillette from our Indian Affairs in Interior recently attended a consultation on this, and I think rather than try to guess about this, I ought to just get back to you in writing to give you details about what we are learning from this.

Senator MURKOWSKI. You can do that, or if Jodi can contact us with an update, I would appreciate knowing a little bit more. But I would also appreciate your response in writing just in terms of what you feel the justification of these changes are.

Mr. ECHO HAWK. Okay. I will do that, Senator.

Senator MURKOWSKI. I appreciate that. Thank you, Mr. Echo Hawk.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Franken?

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Echo Hawk, we have discussed school construction several times before, and as we have discussed previously, many schools are on the waiting list that are in dire need of repair. For example, the Bug-O-Nay-Ge-Shig High School on the Leech Lake Reservation is literally falling apart, as I mentioned in my opening statement.

Can you explain why the administration has proposed decreasing funding for school construction and repairs when there is at least a \$1.3 billion backlog of school construction and repair needs?

Mr. ECHO HAWK. Senator Franken, that is a very good question.

Senator FRANKEN. Thank you.

Mr. ECHO HAWK. Going back to 2001, I think at that time we had 120 schools that were in poor condition. We appreciate the funding that has been channeled into this area because that has been now reduced to 64 schools that are considered in poor condition. And we especially appreciated the infusion of about \$284 million that came in through the ARRA funding, which allowed us to construct some new schools.

But the reality in this 2012 budget is it is about belt-tightening, and with the limited funds that we had available, we have made the strategic decision not to build new schools because new schools cost between \$20 million and \$60 million. I am just reminded of the two schools that were built at Navajo. I went to one of them for the groundbreaking, Rough Rock, and there is one at Kaibeto. Between those two schools, that was \$95 million.

And I am, of course, very happy. A lot of people rejoice when we are able to build a new school that is desperately needed, but with limited funds, our strategic decision is to try to have an impact on a broad basis. So the money that we have available that we could have used it to build one or two schools, our judgment in these tight budget times is to spread that out and try to impact as many students as we can through improvement of the schools that are existing. It is not to replace the school, but to renovate it and to repair it.

Senator FRANKEN. I understand. I think in the long run that repairing schools that are in incredibly awful condition may be less cost-effective than building new schools.

But speaking of building new things, we have talked before about the beautiful juvenile detention facility at the Red Lake Reservation that has stood empty. So here is something that was built and it is a beautiful structure and it has been unused for the past seven years because BIA won't provide funding for staffing the place.

And as you know, the lawsuit over this was settled last year, but the building remains empty for lack of permanent program funding. Now, for nearly two weeks, my staff has been trying to get hold of your criteria for funding operations at detention centers under your corrections/detention programs. Yet, we still haven't gotten an answer from your agency.

So I will take this opportunity to ask directly. Can you tell me the criteria for the corrections/detention programs?

Mr. ECHO HAWK. Senator Franken, I am sorry that we haven't been forthcoming with a timely response according to your comment, but I assure you that we will respond immediately to that information. I don't have it to give to you today, but we will respond very soon.

Senator FRANKEN. Okay, thank you. I appreciate that. You can't know everything about everything. Thank you for agreeing to have your staff get back to me.

Let me go to Dr. Roubideaux. Thank you for being here. Thank you both for your service.

Senator Murkowski and I in a hearing on this were very adamant about dental therapists. They work very well in Alaska, and one problem we have encountered in Minnesota is the lack of dentists available to serve on tribal lands. And access to dental care has been such a problem that in our State we passed legislation allowing mid-level dental providers to practice.

Given the success of dental therapists in Alaska and the actual failure to recruit enough dentists in Indian Country, shouldn't funding be available for mid-level providers so that we can increase access to quality dental care?

Dr. ROUBIDEAUX. Certainly in Alaska, they have shown it is a very valuable health care provider to add to the team to provide important services. What we are doing is reviewing the new provisions in the Indian Health Care Improvement Act and we are also reviewing the Kellogg Report, which talked about the evaluation of the dental health aide therapists. And staff are going to be making some recommendations to me soon, and then we will determine next steps.

Senator FRANKEN. Well, can you get back to us as soon as you have those conclusions? Because in the hearing we had, it became very clear that we aren't providing enough dentists and that the program in Alaska has worked wonderfully because during that testimony we heard that in certain tribal villages in Alaska, they would basically see a dentist only once a year who would fly in. And now they have dental therapists who are there all year and can talk to the kids about the importance of brushing and it reduced the cavities and reduced the damage to their dental health tremendously.

And it seemed from that hearing that we were pretty clear that we came to the conclusion that we weren't getting the dentists and that dental therapy has been tremendously successful in Alaska, and I suggest it will be tremendously successful in the rest of Indian Country. So I thank you for that.

Mr. Chairman, thank you for the opportunity.

The CHAIRMAN. Thank you very much, Senator Franken.  
Let me call on Senator Udall.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much, Mr. Chairman. Sorry to be visiting with staff so that you didn't see me there.

Assistant Secretary Echo Hawk, it is my understanding that the President's budget includes a decrease of \$9 million in funding for the Navajo Indian Irrigation Project and that it is justified by the creation of a team to determine the long-term plan for that project. Has such a team been formed yet? Has the Navajo Nation been consulted in this process? What reaction to the cut in funding and justification have you received from the Navajo Nation? And what is your sense of where we are headed on this project?

Mr. ECHO HAWK. Senator Udall, with your permission, I would like to ask our BIA Director to respond to your question.

Senator UDALL. Sure, that would be great.

Mr. Black, go ahead.

Mr. BLACK. Thank you, Senator.

Yes, in fiscal year 2010 at the tribe's request, there was a team developed.

Senator UDALL. At the Navajo Nation's request?

Mr. BLACK. Yes, at the Navajo Nation's request the Assistant Secretary formed a team. The Principal Deputy Assistant Secretary, Del Laverdure, is part of the team. And as well, we will be convening that team here shortly, hopefully with the Nation. And again on I believe it is March 25th, I will be meeting with the Nation personally to discuss some of the alternatives regarding the overall total completion of NIIP, the cost-benefits of a full build-out of NIIP, and alternatives to a build-out of NIIP.

I have received the agenda from the Nation on that meeting, so those discussions will be ongoing here shortly.

Senator UDALL. And your understanding is the Nation has agreed to all of this?

Mr. BLACK. No.

Senator UDALL. Yes, they haven't.

Mr. BLACK. I don't believe so. No, sir.

Senator UDALL. Okay. Did they even agree to the formation of the team with the discussion of the idea that there may not be a full build-out of NIIP?

Mr. BLACK. We have not even had the opportunity to sit down with the Nation and talk about the budget reduction and the options and the alternatives.

Senator UDALL. Okay. Well, we want to stay on top with you in terms of what the Nation wants. My understanding they have been over the years very frustrated with the funding and the development of NIIP and the failure to build-out. So I hope you will keep

us apprised as we move along and of those meetings that are going on out there. Thank you.

Mr. BLACK. Yes, sir. I would be glad to do that.

Senator UDALL. Assistant Secretary Echo Hawk, could you address the President's cut in funding for the construction of schools? I know that Senator Franken asked you about this and you may have already answered. It seems to me that, and one of the tribal officials, Governor Dasheno is sitting almost exactly behind you or right back there in the back, and Santa Clara School is one of the 64 schools that is in the list that is not getting attention right now. And I am just wondering what is the criteria? Why not that school as opposed to another school? What is going to happen to those schools waiting for a new school to be built? That kind of situation.

Mr. ECHO HAWK. Senator Udall, I won't repeat the comments that I have already made about school construction and the progress that we have made and the fact that we are all in a belt-tightening mode right now. But the good news is that we have been involved in a negotiated rulemaking progress that is focused directly on cataloguing all school facilities and reporting about the need for school replacement and construction, and also reporting on major and minor renovation needs, and also formulas for equitable distribution.

And what will be arrived at eventually is a priority list that will guide us in how we distribute funding for repair, renovation and new schools. We will be going through consultation. There have already been five meetings that have been held. There will be another couple of them coming up and then we will be doing additional consultation on this.

So I think in the long term, there is a plan to identify which schools need to be replaced, which ones need to be repaired and renovated, and then we all need to start praying that we are going to have the resources to actually execute the plan.

Senator UDALL. I will be in with you on that prayer, and I hope you also have an opportunity to visit with Governor Dasheno before you leave about where Santa Clara is on that.

Just one final question, Assistant Secretary Echo Hawk. It is my understanding that in the last six or seven years, the BIA and the DOI Inspector General have done reports on tribal detention facilities, both of which had alarming findings. The 2004 Inspector General's report found that, and I am quoting from it, "BIA has failed to provide safe and secure detention facilities throughout Indian Country. Our assessment revealed a long history of neglect and apathy on the part of BIA officials, which has resulted in serious safety, security and maintenance deficiencies at the majority of the facilities."

Can you speak on the \$46.5 million in reduction in tribal jail construction in the President's budget? And how you are trying to move forward on these Inspector General reports, which I know that you are very interested in the law enforcement side of this?

Mr. ECHO HAWK. Senator Udall, I think we are all aware of the significant infusion of funding that has gone into law enforcement in Indian Country in recent years and this budget continues to establish that as a priority. Most of that money to this point has gone into police services. Hiring additional law enforcement officers is

not just putting more police on the ground to make arrests. They have to be processed through the courts, and thus we have requested an increase for tribal courts this year, and also they have to be housed once they are sentenced to some detention facility.

And so the Tribal Law and Order Act addresses that. We have some responsibilities working with the Department of Justice to come up with long-term plans for detention facilities, so there is an orderly process that is beginning to work forward as a result of that enactment by the Congress.

With regard to the \$46.5 million reduction, we had to make tough choices and we know that the Department of Justice has similar program money available, so it is not like there is nothing out there that can meet these needs. They are the primary department that provides funding for detention facilities. The main responsibility that we have is the operation and maintenance.

So yes, there is a reduction there, but that is a strategic reduction that we had to make in order to free up money to meet other tribal priorities. The \$89.6 million I think tribes are very happy about that go basically into their tribal priority allocations. We have to make some sacrifices, so that was a strategic call that we made in this budget.

Senator UDALL. Thank you for that answer. I very much appreciate all the testimony from this panel today. I haven't been able to get through all my questions, so I will submit some of them for the record.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall.

I want to thank this panel very much for your responses. I look forward to continuing to work with you and to try to help the indigenous people of our Country as much as we can. We want to do that as rapidly as possible. I thank you so much for your responses and also want to thank the staff on both sides of the aisle for all of their work in preparing for these hearings and doing the work of the Indian Affairs Committee.

So thank you very much and we will certainly see you again.

Dr. ROUBIDEAUX. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to welcome our second panel to the witness table.

The Honorable Ron Allen, who is the Treasurer of the National Congress of American Indians in Washington, D.C., and the Chairman of the Jamestown S'Klallam Tribe of Sequim, Washington.

We also have with us Mary Jane Oatman-Wak Wak. She serves as the President of the National Indian Education Association here in Washington, D.C.

Also joining us is the Honorable Earl Barbry, Sr., from the United South and Eastern Tribes in Nashville, Tennessee. He also serves as Chairman of the Tunica-Biloxi Tribe of Louisiana in Marksville, Louisiana.

Finally, we have the Honorable James Steele, Jr., who is the First Vice President of Affiliated Tribes of Northwest Indians, located in Portland, Oregon, and also a Council Member in the Confederated Salish and Kootenai Tribes of Pablo, Montana.

Mr. Allen, will you please begin with your statement.

**STATEMENT OF HON. W. RON ALLEN, TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS; CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE**

Mr. ALLEN. Thank you, Chairman Akaka.

As you stated, my name is Ron Allen. I am Chairman for the Jamestown S'Klallam Tribe located in western Washington State and Treasurer for NCAI. It is always an honor to come before the Committee and we join the chorus of congratulations in your new Chairmanship and we look forward to working with you and the Committee on the myriad of issues that face our native communities throughout America.

We know you are well aware of those challenges and inclusive of that we are highly anticipating the passage of the Native Hawaiian bill that you came close to last session and hope that that will happen this session.

On behalf of President Jefferson Keel, NCAI, and our Executive Board, we have submitted to you our testimony. And we thank you for accepting the testimony and putting it in the record. We would also like to ask that our book that we put out every year called "Indian Country Budget Request,"\* that NCAI coordinates with the other national Indian organizations, including NIEA and so forth, that that would also be submitted for the record.

Without a doubt, when Indian Country comes to Congress and makes requests with regard to our respective community needs, the needs are great. And so often over the past years, we are used to focusing on the BIA and IHS. Well, that is just simply not the case anymore.

HUD has a role. EPA has a role. Energy has a role. Transportation has a role. Agriculture has a role and so forth, even to the Department of Defense with regard to the interests of Indian Country.

We are very delighted that Congress passed a couple of major bills last session, the Affordable Health Care Act which included the reauthorization of the Indian Health Care Improvement Act which you have so noted already in the previous panel. That was a big deal to us. The Law and Order Act is a big deal to us in terms of the authority of the tribes, our ability to take care of our own people, and care for the safety, the public safety of our people.

There are a lot of issues that are important to us, but nothing is more important than the exercise of our sovereignty, the exercise of our governmental authority in our jurisdiction to care for the future of our people, their current condition, as well as the future.

And the issue for us is not just that the legislation is meaningful, but also how you appropriate the resources in order to implement the commitment in the laws. The laws are meaningful, but unless they can act to make a difference within our communities, they are rhetoric. And so these budget requests that we have put out are important to us to make a difference.

We want to express our appreciation to the Administration that they have fought hard for our Indian budget. You have heard from IHS that they have a very substantial increase of \$458 or so mil-

\*The information referred to has been retained in Committee files and can be found at [http://www.ncai.org/fileadmin/ncai\\_events/2010soin/NCAI\\_FY2011\\_Budget\\_Request.pdf](http://www.ncai.org/fileadmin/ncai_events/2010soin/NCAI_FY2011_Budget_Request.pdf).

lion increase into their \$4.6 billion budget. It sounds impressive, but when you measure that against the conditions of our Indian citizens across America, we have a long way to go. And we know you have heard countless testimony about what those needs are.

Now, the IHCA improves that situation for us, and what is the IHS's role with CMS and with regard to implementation of the Health Care Improvement Act, so that we can reach out to the other 60-plus percent of our Indian citizens across America that are not served by the antiquated IHS system that serves only in the service area and not outside the service area. So those are going to be big issues for us.

We want to note to you that the Department of Interior and the BIA have made a major step in moving our agenda forward in terms of implementing the trust obligation. One of their fundamental goals is the empowerment of tribal government.

So the BIA budget needs to reflect that commitment. And if you look to the Department of Interior over the past number of years, you see the substantial increases for parks and reclamation and minerals and fish and wildlife. At the bottom of the pecking order of the priority for the budget system is the BIA budget. Over the years, we have the lowest growth of any agency of the Department of Interior.

So the budget doesn't reflect the goal. It doesn't reflect that kind of a commitment; 565 Indian Nations, from the largest tribe of Navajo Nation to the smallest tribe, that has a myriad of issues. And the budget needs to reflect our ability to become self-reliant. So if we can't become self-reliant, if you are not empowering the tribal governmental infrastructure, the legal infrastructure, the physical infrastructure, if you don't empower us to be able to create jobs and create businesses, to create revenues outside of the Federal Government, then we will never be able to accomplish our goals.

The treaties and the trust obligation have many commitments to Indian Country, but quite frankly, we know you can't get there. So help us get there together. And these budgets with regard to loan guarantee programs, surety bonding guarantee programs, things that will empower our governments and our businesses so we can make meaningful progress to this agenda.

I will close since I see my time is up. It is always difficult to try to capture the complex issues. Our testimony and our budget request I think capture those important issues that are in here. We can certainly get into details with you. I am looking forward to working with you and answering any questions we might.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF HON. W. RON ALLEN, TREASURER, NATIONAL CONGRESS OF  
AMERICAN INDIANS; CHAIRMAN, JAMESTOWN S'KLALLAM TRIBEIntroduction

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 2012 budget. Despite reductions for many federal agencies and programs, the President's FY 2012 budget proposal largely protects funding for many Indian programs, and even contains some proposed increases for Indian health and public safety. NCAI commends the Administration for these proposed increases, especially given diminished federal resources. But as Congress deliberates over the FY2012 budget, and the remaining FY2011 fiscal year as well, we ask that you remember that funding for Indian programs supports the trust responsibility—and that trust responsibility is not a line item—it is a solemn duty.

Although Congress will begin deliberations on the FY2012 federal budget in a very tight budget atmosphere, it also follows one of the most significant years of bipartisan accomplishments for Indian Country in recent memory. As you know, in 2010, the U.S. government took historic steps to address numerous long-standing challenges faced by tribal nations. Congress made permanent the Indian Health Care Improvement Act (IHCA) and President Obama signed into law the Tribal Law & Order Act (TLOA). But, like other laws, TLOA and IHCA will not mean much if they are not implemented, and effective implementation is contingent upon adequate federal funding for authorized programs. The U.S. Department of Agriculture settled the long-standing Keepseagle case and the President signed into law the Cobell Settlement, closing the chapter on more than a century of government mismanagement of Indian assets. This moment presents the federal government with an extraordinary opportunity to further tribal self-determination and honor the promises of the federal trust responsibility.

A key theme of the last election was that Congress and the federal budget should focus on programs that are unquestionably the constitutional role of the federal government. The federal obligations to tribal citizens—largely funded by the federal budget—are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources. These obligations are better known as the trust responsibility. The authority to fund programs that fulfill this responsibility is founded in the Constitution, specifically the Indian Commerce Clause, the Treaty Clause, and the Property Clause.

Meeting this constitutional responsibility and empowering citizens and communities to meet the challenges that they face is a priority tribal communities share with many new members of Congress. In this context, NCAI commends the Administration for including language for the *Caricieri* fix in the FY 2012 budget request and urges immediate passage of a clean *Caricieri* fix.

NCAI has compiled recommendations on many specific programs and agencies that affect Indian Country, but, in general, NCAI urges Congress to at least hold Indian programs harmless in the FY 2012 appropriations process and exempted from across-the-board rescissions. Tribal programs have endured tremendous fluctuations in recent decades, making it difficult for tribes to achieve community stability. Each year, tribes should receive resources at least equal to those appropriated to state and local governments so tribal governments may meet the critical needs of their citizens and the federal government may fulfill its sacred trust responsibility. As members of Congress begin considering the nation's federal budgetary priorities, the debate should acknowledge the solemn agreements made with Indian tribes that are backed by the Constitution.

### **Public Safety and Justice**

In recent years, tribal leaders from across the nation have highlighted the shortcomings of the current system of justice administered on tribal lands in numerous formal consultations, informal dialogues, conference calls, meetings, and congressional hearings surrounding issues of public safety and justice in Indian Country. They have emphasized that the current lack of resources for law enforcement on Indian lands poses a direct threat to Native citizens and the future of Indian Country.

The recent passage of the Tribal Law & Order Act (TLOA) is proof that their words have not fallen on deaf ears. Congress and the Obama Administration have heard the concerns of Indian people and attempted to address them in this new law. The intended ends of the TLOA cannot be achieved unless tribes have the means to implement them. This requires adequate federal funding for TLOA-authorized programs, as well as full funding of other critical tribal justice programs that will support the overarching TLOA vision of comprehensive law enforcement reform. Increased and targeted funding in the following program areas will help combat the violent crime epidemic on Indian lands and strengthen tribal justice systems for future generations. Native Americans—like all Americans—deserve to live free of fear in their communities, where their basic rights are protected and they can trust the justice system that serves them.

### **Department of Justice**

The President's FY 2012 Budget requests a total of \$424.4 million for public safety initiatives in Indian country, a 29 percent increase over the FY 2010 enacted level, and demonstrates the Administration's continued commitment to improving the criminal justice system on tribal lands.

### **Office of Justice Programs**

Similar to last year's request, the Department again proposes bill language for a **7% tribal set-aside** from all discretionary **Office of Justice Programs (OJP)** programs to address Indian country public safety and tribal criminal justice needs. This 7% set-aside totals \$113.5 million, and although the details of how these funds will be administered are yet to be determined, the goal is to provide a more flexible grant structure for tribes. To offset this new policy, the Department proposes to eliminate bill language contained in prior years' Appropriations Acts that had specific funding amounts for traditional tribal justice programs -- such as tribal prison construction, tribal courts initiative, tribal alcohol and substance abuse reduction assistance, and tribal youth.

*NCAI supports the creation of a 7% tribal set-aside of OJP programs, but at the same time urges that those funds are allocated in an equitable manner and that each formerly separate*

*program area receives funding at or above FY2010 funding levels, including tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention.*

DOJ funding levels to support tribal justice systems and improve reservation public safety have not met these solemn obligations. For example, FY2000 funding for tribal justice programs relating to courts, police hiring and equipment, jails, and juvenile justice was \$91.5 million. Funding levels for these programs from FY2001 to FY2009 was below, and at times far below, the FY2000 level, reaching a low of \$42 million in FY2006. Not until FY2010 did Congress appropriate funding above the FY2000 levels when it granted \$159 million for these critical justice programs.

For FY2010, the Department of Justice for the first time issued a single Coordinated Tribal Assistance Solicitation (CTAS) for 10 of its tribal grant programs. This new solicitation attempted to streamline the application process for tribes, enabling them to submit a single application and select multiple purpose areas (ranging from juvenile justice to violence against women), as opposed to previous years in which they would have been required to submit multiple grant applications. However, this streamlined application model will not achieve its intended success unless and until it is accompanied by a streamlined funding mechanism.

#### Federal Bureau of Investigation

In an effort to help tribes combat illegal drug use, trafficking, and violent crime, the President's request contains an increase of \$9 million to support 40 new **Federal Bureau of Investigation** (FBI) positions (24 agents) assigned to investigate violent crimes in Indian country.

*NCAI supports the requested increase for FBI agents assigned to Indian Country.* The federal government's failure to make addressing crime in tribal communities a priority has compounded the problem. Given the complex jurisdictional scheme on Indian lands, a disproportionate number of Indian Country cases are investigated and prosecuted by federal law enforcement officials. Funding for additional FBI agent positions, whose sole job would be to focus on investigating crimes on Indian reservations, would go a long way toward addressing both the perception and the reality of lawlessness that exist in some tribal communities. The BIA and DOJ Native American Issues Subcommittee have already indicated that adding more agents is a priority. This personnel enhancement would enable the FBI to be more proactive in its approach to addressing crime on reservations.

#### Office of Violence Against Women

Approximately \$44 million is requested for tribal initiatives within 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. Of these funds, \$39,275,000 will be disbursed through the VAWA Tribal Government Grants Program, while \$3,626,000 will be funneled to tribal coalitions through the VAWA Tribal Coalitions Grants Program. Also within these OVW funds, the President has requested that \$500,000 be available for establishment and maintenance of a new Sexual Assault Clearinghouse in Indian Country that will offer a one-stop shop for tribes to request free on-site training and technical assistance. While the FY 2012 budget sustains funding for Analysis and Research on Violence Against Indian Women at \$1 million, it eliminates funding for the national tribal sex offender registry. *NCAI supports funding programs intended to end violence against Native women, and it urges Congress to continue funding the national tribal sex offender registry mandated by the Violence Against Women Act of 2005.*

#### Community Oriented Policing Services

The FY 2010 funds available to tribes under the **Community Oriented Policing Services** (COPS) program to fund tribal law enforcement expenses have been reduced by 50% under the President's request, from \$40 million to \$20 million. However, the Administration has requested an additional \$302 million for the COPS Hiring Program, \$42 million of which is to be used for the hiring and rehiring of tribal law enforcement officers.

In addition to these major initiatives, \$5 million will be set aside for a comprehensive tribal grants pilot program that aims to reduce gun crime and gang violence through competitive and evidence-based programs. Tribes will also be eligible for a portion of the \$12 million proposed for grants to assist state and tribal governments in improving the automation and transmittal of criminal history dispositions and records under the NICS Improvement Amendments Act of 2007.

Finally, the President's Budget contains a \$3 million request for research on the nature and extent of crime in Indian country and an additional \$500,000 request for improving Indian country crime statistics, including data collection on tribal jails, tribal justice agencies, prosecution and adjudication of Indian country crime, and Indian victimization.

*NCAI supports the significant increase over the FY 2010 funding levels for DOJ tribal grant programs.* This demonstrates the Justice Department's continued commitment to improving the administration of justice on Indian lands and protecting Native peoples across the nation.

#### **Department of the Interior**

Under Public Safety and Justice activities in the Bureau of Indian Affairs, the President has proposed a net \$25.8 million increase from the FY 2010 level, which includes \$20 million in programmatic increases and \$10.6 million for fixed costs. *NCAI supports the continued support for Indian Affairs Public Safety and Justice programs.*

#### Housing and Infrastructure

##### **Department of Housing and Urban Development**

The President's FY 2012 Budget request for the Department of Housing and Urban Development (HUD) **Indian Housing Block Grant (IHBG)** is \$700 million. The Department recognizes that tribal communities are most in need of housing infrastructure. IHBG funding is the means of support for housing development, construction, infrastructure, maintenance, and repair in Native communities. *NCAI supports President's Request level, which maintains the FY 2010 level of \$700 million for the IHBG and encourages Congress to fund the IHBG at or above the President's requested level.*

The FY 2012 proposed budget also would provide \$65 million for the **Indian Community Development Block Grant**, which NCAI supports. Community Development Block Grant funds are dedicated to improving not only housing but the overall economic and community development of tribal communities. The ICDBG funds are essential to tribal economies and community development efforts, such as a variety of commercial, industrial, and agricultural projects.

## Human Needs and Human Services

### **Indian Health Service**

The FY 2012 Request for the Indian Health Service is \$4.6 billion in discretionary budget authority – a significant increase of \$571 million, or 14.1 percent, over the FY 2010 enacted level. Indian Country won a substantial victory in 2010 with the passage and permanent reauthorization of the Indian Health Care Improvement Act (IHCIA) as part of the Patient Protection and Affordable Care Act (PPACA). American Indians and Alaska Natives realized a number of positive provisions in the overall PPACA legislation. As such, Indian Country seeks to ensure that the Indian health care delivery system is strengthened so that Indian people and Indian health programs benefit from reformed systems. In order to achieve these results, fundamental components are necessary to fully implement IHCIA and PPACA in Indian Country. *In the current fiscal environment, NCAI and tribal leaders are encouraged to see strong support in the FY 2012 Budget Request for the Indian Health Service and urge Congress to enact the 14.1 percent increase for IHS overall.*

Contract Support Costs (CSC) -- The FY 2012 request for IHS contract support costs is \$461.8 million, an increase of \$63.3 million and 16 percent. Year after year, CSC has not been fully funded. The last increase was in FY 2010, which reduced the CSC by about one-half. A more than \$100 million shortfall remained in FY 2010. The IHS recently projected that the shortfall in FY 2012 will be \$153 million, which would result in a cut of \$153 million in tribally-contracted programs, not IHS-administered programs. *NCAI recommends the IHS CSC line item be increased to \$615 million, which does not include CSC for new or expanded IHS programs.*

### **Department of Education**

Many programs in the Department of Education for Indian Country are level funded in the FY 2012 budget request. However, in the debate over the remaining FY 2011 appropriations, many education programs that benefit Indian students have been slated for elimination due to mistaken designations as earmarks. Many of these are recurring programs, such as the **Tribally-Controlled Postsecondary Career and Technical Education** program that provides core funding to the United Tribes Technical College (UTTC) in North Dakota and Navajo Technical College (NTC). A similar issue arose for the **Alaskan Native Education Equity program** and the **Native Hawaiian Education Program**, existing programs that have been improperly considered earmarks and targeted for elimination. NCAI urges Congress to provide continued funding for longstanding programs for Indian students—make no mistake, funding for Indian education is not an earmark, it is an integral component of the federal trust responsibility, and congressional leaders should guard against any attempts to eliminate or decrease it.

### Natural Resources

The health and maintenance of natural resources -- forestlands, water, fisheries, wildlife, and outdoor recreation -- is vital to tribal economies, culture, and subsistence practices.

### **Environmental Protection Agency (EPA)**

The President's FY 2012 budget request for the Environmental Protection Agency includes proposed funding for a **Multimedia Tribal Implementation Grants** program to support on-the-ground implementation of environmental protection on tribal lands. These grants, for which \$20

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 initiative and the proposed FY 2012 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 2012 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 percent increase – from 1.5 percent to up to 2 percent - for the existing tribal set-asides under both the **Clean Water and Drinking Water State Revolving Funds**. Incremental funding increases will be necessary to meet the overall \$1.2 billion needed to address the reality that over 12 percent 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**

After years of natural resources program cuts, several meaningful increases were provided in FY 2010. An increase of \$12 million was provided for **Rights Protection Implementation**, and \$4 million for **Fish Hatchery Operations and Maintenance**.

Several modest but helpful increases are requested in the FY 2012 budget request. These include \$1 million for Rights Protection Implementation, \$1 million for **Tribal Management/Development**, \$1 million for **Forestry**, \$1 million for **Water Management Planning and Pre-Development**, \$1 million for **Wildlife and Parks**, \$1 million for Wildlife and Parks fish hatchery maintenance projects, and \$500,000 for **Invasive Species**. Even with these increases, the base TPA programs that fund tribes' day-to-day conservation responsibilities: Tribal Management/Development; Natural Resources TPA; Wildlife and Parks TPA; and Forestry are funded at levels lower than they were funded a decade ago. *NCAI also supports these requested increases, and urges sustained and increased in future years, especially given level funding over a number of years for BIA natural resources programs.*

In FY 2012, there is a provision of \$200,000 for **Cooperative Landscape Conservation** to address climate change adaptation in the Northwest. Compared to the \$131 million provided to Interior in FY 2010 and the \$175 million requested in FY 2012 for climate change adaptation, the \$200,000 is woefully inadequate. This amount of funding must be increased as it is well established that tribes are disproportionately impacted by climate change, and tribal lands make up 4 percent of the entire land area of the United States, and 16 percent of the lands managed by Interior. *NCAI supports a significant increase proportionate to the climate impacts on tribal lands and the size of the Indian Country land base to enable tribes to address the impacts of climate change.*

### **Department of Agriculture**

The **Federally Recognized Tribes Extension Program (FRTEP)** supports extension agents who establish programs in agriculture, community development, families and societal issues facing Native Americans. 96% of counties in the nation have an extension program, compared to less than 10% of tribal governments. The budget proposes an increase of \$5 million that would more than double the number of tribes being served by extension services, providing among other things technical assistance to Native American farmers and ranchers, whose numbers have increased over 88% since 2002, and tribal youth in careers and opportunities in agriculture. *NCAI supports this increase.*

Additionally, the budget proposes an increase of \$1 million for **Extension Services at the 1994 Institutions** to conduct an Expanded Food and Nutrition Education Program (EFNEP) pilot in a number of Native American communities through a competitive grant process. Also, an increase of \$300,000 is requested for the **Tribal Colleges Education Equity Grants Program** which is designed to promote and strengthen higher education instruction in the food and agricultural sciences at the 34 Tribal Colleges. The budget proposes \$2.4 million in order to strengthen tribal relations. FY2012 proposes \$250,000 for communication and outreach on tribal land, \$125,000 for the Advisory Council on Native American Farming and Ranching and an additional \$2 million to open additional sub-offices on tribal reservations. *NCAI also supports these increases.*

### **Support for Tribal Governments**

Every tribe in the United States, directly or through intertribal consortia, operates one or more contracts with the IHS or the BIA under the Indian Self-Determination and Education Assistance Act (ISDA, P.L. 93-638). ISDA establishes a critical mechanism to maximize tribal self-determination by moving essential governmental functions from federal agency administration to tribal government administration. The statute requires that IHS and BIA fully reimburse every tribal contractor for the “contract support costs” that are necessary to carry out the transferred federal activities. Cost-reimbursable government contracts similarly require payment of “general and administrative” costs. Full payment of fixed contract support costs is essential. Without this support, offsetting program reductions must be made, vacancies cannot be filled, and services are reduced, all to make up for the shortfall.

For the past 15 years, the Administration has failed to request full funding for contract support cost payments, and the resulting shortfalls have grown. A meaningful increase occurred in FY2010, when Congress made a \$116 million increase for IHS CSC payments and a \$19 million increase for BIA CSC payments. Even still, these increases left a net shortfall of \$100 million in IHS CSC requirements and approximately \$50 million in BIA CSC requirements. NCAI Resolution #ABQ-10-005 calls upon Congress “to finally close the gap in funding contract support cost requirements.”

The FY2010 funding level for BIA contract support costs was \$147 million. The president recommended, and the House appropriations subcommittee approved, an increase of \$15 million in this line-item to \$162 million. *NCAI recommends an increase in this line-item for FY2012 of \$50 million, bringing the total line-item to \$212 million.*

### **Tribal Grant Support Costs (TGSC) for Tribally Operated Schools**

The operation of schools by tribes or locally elected tribal school boards is a major exercise of tribal self-determination, encouraged by federal Indian policy for the last 35 years. Tribes and tribal organizations that exercise this option are entitled by law to receive Tribal Grant Support Costs or TGSC (formerly known as Administrative Cost Grants) to cover the administrative or indirect costs incurred when they take over a school. Currently, 124 of the 183 BIE-funded schools are operated by tribes or tribal school boards. In FY2010 the funding available for TGSC met only 60 percent of need, the lowest rate to date. Given this reality, schools are required to reduce staff to bare bones levels and to divert funds from educational programs to meet their statutorily mandated administrative requirements. *For current contract and grant schools, \$70.3 million should be appropriated to fully fund TGSC need, with an additional \$2 million to fund the administrative needs of those schools that convert to contract or grant status in FY2012, to avoid diverting funds from existing tribally operated schools.*

### **Bureau of Indian Affairs**

The Administration and Congress have listened to the calls from tribes to provide meaningful increases to BIA overall in FY 2010. Efforts have also been made to address tribal priorities in the FY 2012 budget in the face of overall budget constraints. The FY 2012 budget request includes increases for natural resources, law enforcement and courts, and contract support costs. However, from a broader view, BIA and tribes continue to receive less funding increases relative to other bureaus and agencies in the Department of the Interior. For instance, the President's FY 2012 budget requests an increase of \$138 million for the National Park Service (NPS), an increase of \$48 million for the Fish and Wildlife Service (FWS), and a decrease of \$119 million for the BIA. Additionally, over the last nine fiscal years the budget for the FWS has grown by 30 percent; NPS by 28 percent; U. S. Geological Survey by 19 percent; Bureau of Land Management by 13 percent. The BIA has seen the lowest increase of only 8 percent. *NCAI and tribal leaders appreciate that reductions to Indian Affairs funding could have been steeper, but urge this committee and appropriators to reverse this trend and provide an increase to the overall BIA budget to support tribal self-determination and communities throughout Indian Country.*

### **Conclusion**

I thank the Senate Indian Affairs Committee for the opportunity to provide views on behalf of NCAI regarding the President's FY 2012 budget for Indian programs. We understand the very difficult choices that will have to be made to address the soaring budget deficit but would also recommend Congress make alternative efforts to reduce the deficit, not solely by decreasing non-security discretionary funding, which is about 16 percent of federal spending and under which funding for Indian programs falls. Thank you and we look forward to working with this Committee to ensure the federal budget honors the trust responsibility to tribes in the FY 2012 appropriations process.

The CHAIRMAN. Thank you very much, Mr. Allen.

Now, we will receive the statement of Mary Jane Oatman-Wak Wak. Please proceed.

### **STATEMENT OF MARY JANE OATMAN-WAK WAK, PRESIDENT, NATIONAL INDIAN EDUCATION ASSOCIATION**

Ms. OATMAN-WAK WAK. Thank you, Chairman Akaka. [greeting in native tongue].

Thank you to the Creator for gathering us all here today. Thank you to the Committee for inviting the National Indian Education Association to participate in this hearing.

NIEA has been tirelessly dedicated to promoting native education issues and embracing every opportunity to advocate for the

unique education and culturally related needs of all of our native students.

In February, I had the opportunity to provide the State of Native Education Address, and through this address, we focused on the trust responsibility, its breach, the resulting poverty in Indian communities of the results of that breach, and shared with Indian Country our vision, as well as mechanisms, for restoring that trust through education through collaborative efforts and partnership with the tribes, Federal agencies, and State governments.

A part of that restoration and the reason that we address you today is to address the Federal budget, which is most likely the most tangible manner in which we can address the restoration of that trust responsibility and the breach of that trust.

Because it all begins and ends with culture. Culture is our identity as native peoples, our languages, our traditions. If our schooling for our native students does not reinforce culture within the classrooms, our students tend to become disengaged within that school and within their community.

I say this without diminishing any other aspect of the education process because NIEA embraces a 200 percent education philosophy; 100 percent of their traditional cultures and values merged with 100 percent high-quality content academia. So we see the emergence of those being how our native students are going to thrive and succeed in the 21st century.

Our statistics are also very harsh. Ironically, native education has well-documented statistics that paint a bleak picture of native student outcomes. Yet at the same time, we have inadequate research to focus on promising practices and models that can work on that transformation and turnaround throughout Indian Country.

Among the most telling statistics in the Nation is the graduation rate for American Indian high school students, which was 50 percent in 2005–2006, compared to 69.2 percent overall and 76.1 percent for white students.

Addressing the dropout issue, we feel we cannot be realistic without examining some of the other issues around adequate yearly progress and high school completion. We also have to look at the racial discrimination in the school environment that many of our native students are being situated and that lead to some of the concerns addressed earlier with detention facilities, and many of our native-serving schools being that school-to-prison pipeline.

We also understand that addressing native education in the time of tight budgets causes us to have to make those difficult decisions in this critical funding area for Indian education. What we ask and what we continue to advocate for in these tight times is to hold native education harmless. We also understand the situation that you are all up against, and are looking at areas where there might be duplication or replication of services.

We have also taken time to do that throughout Indian Country. And so the proposals that I bring before you today have been examined through that lens of the tight budget considerations, as well as the perception or any reality of duplication or replication of Indian-serving programs.

Because it has been the mark of the history of this Country to have some very anti-Indian policies that kind of led us to the situation where we are with our bleak statistics, we embrace the No Child Left Behind Title 7 policy which has been a more humane policy for Indian Country to address the unique educational and culturally related needs of native students.

The National Indian Education Association urges Congress to fulfill the promises made within No Child Left Behind Act and stand strong for native youth in the 2012 budget. If the Federal Government should cut its investment in Indian education initiatives, not only will this be a violation of that trust responsibility, but it will also be setting Indian education back for generations with an untold loss among our native youth.

When you weigh the budget issues against the needs of native education, even President Obama's fiscal year 2012 budget is insufficient to bring about the transformational change that we need for native education. We ask that the Committee make every effort to seek increases in this budget, even as we understand the work that you must succeed at the end of the day in the budget cuts.

In that context, it is all the more important to marry the budget to the smart policies that multiply the value of every dollar and to promote an emphasis on the culture and language instruction and increase in local and tribal control over education as we look to steward our greatest natural resource in our Indian Country, our children. And promote an emphasis on increasing effective collaborations and partnerships among tribes, education organizations, governmental agencies, and State education agencies in order to accomplish what is best for our children.

Because the budget is made up of very specific programs, NIEA believes that the recommendations that we will focus with you on today are in regards to Title 7, education facilities construction, tribal grant support costs, addressing concerns within the BIE budget, as well as some no-cost proposals or initiatives that will yield huge improvements throughout native education. And before I close, we will also address some concerns with the Continuing Resolution as well.

A growing body of research through the Kamehameha Schools and studies that have been done on culturally based education in Hawaii are showing resounding results that the well being, self-worth, resiliency and identity of native students correlates to an increase in academic achievement and school success. We urge that Title 7 national activities research dollars have a heavy emphasis and focus on the correlation between culturally based education programs and the classroom, and that success in core content areas within the academic components.

We also urge your support, and not just level funding, but increased funding within those Title 7 programs so that we can address the unique cultural and academic needs within the classroom, as well as the research that is needed to show that those programs work.

Unfortunately, Indian education has been studied to death with a deficit model, and we know that there are successful programs that are out there working in our Indian Country and we urge sup-

port so that we can undertake those kind of studies with a large end-size so that we can say this is what works for Indian Country.

Education construction is a huge concern for the National Indian Education Association. This assures an adequate facility to learn. Safe and secure schools are a huge concern, but we also realize that most of our schools that are serving native students within the BIE school system have severe concerns. Of the 4,495 education buildings in the BIA inventory, half of them are more than 30 years old; 20 percent are older than 50 years old. And on average, the BIA education buildings are 60 years old. Yet, 40 years is the average life for a public school condition.

Sixty-five percent of school administrators report that the physical conditions of one or more school buildings are inadequate. We have seen situations where detention facilities were closed due to having poorer conditions than the facilities that our students are being forced to be educated in.

We know that the Department of Interior in developing the 2012 budget request was forced to make those difficult decisions. Although we understand that this is the situation, redirecting funding for replacement school construction is a concern because we realize that not only do we have the concern with the backlogs with the BIE school construction, but that deferring the critically needed build-up of the new facilities could bring higher costs in the future when we take into account the cost of inflation and construction costs in the future.

We also want to address tribal grant support costs within the scope of increasing tribal control. These tribal grant support costs foster tribal self-determination and enable both the transfer of the responsibility and the means for tribal entities to run their own schools and control the education of our youth.

The fiscal year 2012 budget asks for the same amount of tribal grant support cost funding requested in the fiscal year 2011 budget, even though there are two and perhaps as many as five more schools that would be sharing the slice of the pie of the \$46.3 million requested.

The CHAIRMAN. Ms. Wak Wak, would you please summarize your statement?

Ms. OATMAN-WAK WAK. In closing, I would like to bring forward a few of those no-cost initiatives within the bureau, within our recommendations. One of those is to require the Secretary of the Department of Education, as well as Interior, to align their agency budgets and policies to ensure more adequate access to general education opportunities, as well as perhaps a call for a new Government Accounting Office review of some of the concerns within the agency, not the schools themselves, but within the agency at the Department of Interior and some of the concerns around school construction funding.

In closing, concerns around the Continuing Resolution, specifically in regards to the elimination of Perkins funding, which would substantially devastate two tribally operated technical colleges.

So with that, thank you for your time.

[The prepared statement of Ms. Oatman-Wak Wak follows:]

PREPARED STATEMENT OF MARY JANE OATMAN-WAK WAK, PRESIDENT, NATIONAL  
INDIAN EDUCATION ASSOCIATION

**Hineesqis Qeciwyewew nuunim Hanyawaat piamkcix kine weetespe (thank you to our Creator for gathering us here).** ‘iinim weenikt wees Mary Jane Oatman-Wak Wak. I am the president of the National Indian Education Association, a position I will hold for one year. I am also an enrolled member of the Nez Perce Tribe of Idaho and a descendent of the Delaware Nation - an identity that will be mine forever. I currently serve as the Coordinator of Indian Education for the State of Idaho. I thank you for this opportunity to provide testimony to the Committee on the President’s FY 2012 budget and on ways that the Federal government can support transformational changes and restore the Trust in Native education.

Founded in 1970, NIEA is the largest Native education organization in the nation with a membership of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, elders, parents, and students. NIEA is dedicated to promoting Native education issues and embraces every opportunity to advocate for the unique educational and culturally related academic needs of Native students.

**Restoring the Trust in Native Education.** At the NIEA Legislative Summit in February 2011, I gave the State of Native Education address and spoke on the theme of “Restoring the Trust in Native Education.” I have attached that address to this testimony and would urge the Committee to review the broad principles it sets forth. In brief, my address talks about the trust responsibility, its breach, the resulting poverty, and mechanisms for restoring the trust through education, including Federal support for culture and language instruction, local and tribal control, and increased collaboration and partnerships within and among the Tribes, Federal agencies, the States and other entities. A part of that restoration is also the Federal budget, which in some ways is the most tangible manner in which the Federal government fulfills its trust obligation.

**It all begins and ends with culture.** Culture is our identity. If our schooling does not reinforce our culture and we lose the spiritual, intellectual and moral connection that we have to our ancestors, our communities and to the land, then we become a hollow people and the vivid color of our Native heritage turns to black and white. *So above all else, the goal of Native education must be to instill the culture of our peoples in our youth – and in like manner this too must be the goal of Federal support for Native education.* I say this without diminishing the importance of all the other areas of learning. We live in an age where to be well-educated means to have a

multi-disciplinary and multi-cultural understanding of the world. But all people must have a base upon which they stand, and for Native peoples it is our culture, including our languages, traditional beliefs, practices, and life ways.

**The Statistics are Harsh.** Ironically, the Native education area has well-documented statistics that paint a bleak picture of Native student success and yet at the same time we have inadequate research on Native education and would urge more funding for such research. These statistics do not cause us to despair, if only because we have so many wonderful examples of successful programs and successful students. Still, they tell us that the problems are large and systemic and continue to inflict great damage on our people and that our efforts to date remain insufficient. Among the most telling statistics is the national graduation rate for American Indian high school students, which was 50% in the 2005-2006 school year, compared to 69.2% overall and 76.1% for white students. The drop-out rate for Native students in college is also phenomenally high, although greatly improved when those students have spent a couple years at a tribal college or university, or go to a college that makes a focused effort to provide a culturally supportive environment for Native students. Realistically, addressing school dropout issues and the lack of Adequate Yearly Progress around high school completion, we must examine not only funding issues, but also racial discrimination in the school environment, including school disciplinary processes, which are contributing to the crisis.

**Addressing Native Education in a Time of Tight Budgets – Increases Remain Warranted.** NIEA urges the Congress as it makes difficult budget decisions to protect the critical funding gains made in recent years in the Indian education area. For millennia, Native American cultures and communities flourished on this continent. However, in recent centuries our ability to educate our children has been under assault. The Federal government historically has displayed a keen understanding of the central importance of our ancient ways, beliefs, culture and language to tribal unity and strength - and for years made every effort to destroy those beliefs, including establishing boarding schools on the evil principle “Kill the Indian to Save the Man.” This effort to kill our minds and our spirits failed, but not without first doing great damage. Indian languages are in retreat. Native students perform far below their potential. Federal paternalism has encouraged poor self-esteem for too many of our youth. Extraordinarily, the Native spirit has endured and, in recent years, even grown stronger. Much of the harm inflicted upon Native peoples is being undone by Native people themselves - *and yet the resources needed to complete this great task can only be found with the originator of the harm – the Federal Government.*

It is a mark of America’s unique character that the anti-Indian policies of the past have been replaced with more humane policies. For example, Title VII of the No Child Left Behind Act (NCLB) provides:

*“It is the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian Children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.” (No Child Left Behind, Section 7101)*

NIEA urges that Congress fulfill the promise made in the No Child Left Behind Act and stand strong for Native youth in the FY 2012 budget. If the Federal government should cut its investment in Indian education initiatives, not only will it be violating its trust obligation to Tribal nations, but it will also be setting back Indian education for a generation, with an untold loss among our youth.

**In the context of the Federal budget deficit and by Washington standards, the President's budget for tribal education programs may be considered a good one, but it will not transform Native education.** President Obama, in his "State of the Union" speech recently, stated that every child deserves a quality education and that "higher education must be within the reach of every student." NIEA is pleased that the Administration has given funding for education a prominent emphasis in the Fiscal Year 2012 budget request. NIEA is keenly aware that the President directed all agencies and departments to submit a Fiscal Year 2012 budget request that was 5% below the prior year's levels. We know that the themes of deficit reduction, spending cuts and elimination of duplicative programs are on lawmakers' minds every day as you consider not only the Fiscal Year 2012 budget request, but authorizing legislation as well. We know what impact the spending reductions contained in the House-passed continuing resolution for the balance of FY 2011 (H.R. 1) would have on education, nutrition, community services, environmental and other programs that serve not only Natives but all citizens.

NIEA is also mindful of the vast array of aspects that bear on the education of Native children – not only the need for well-trained teachers and administrators, the involvement of local parents and community leaders, and the inclusion of Native languages and cultures, but the need for safe buildings; well-maintained roads and school buses; schools where students are safe from being intimidated and bullied; good nutrition and health; safe drinking water; homes to return to that are physically sound as well as safe from domestic violence and the influence of drugs and alcohol; communities facilities that have access to broadband and wireless services so that tribal buildings and Indian homes can communicate with the rest of the nation and the world; economic opportunities to keep Native students in tribal communities or bring them back to their reservation for employment upon graduation; and services to care for the learning and other needs of students with disabilities.

When you weigh the budget issues against the needs in Native education, even President Obama's FY 2012 budget is insufficient to bring about transformative change. NIEA asks the Committee to make every effort to seek increases to this budget, even as we understand that we must work – and we must succeed – with whatever the budget is at the end of the day. In that context, it is all the more important to marry the budget to smart policies that "multiply" the value of every dollar such as those that: promote an emphasis on culture and language instruction; increase local and tribal control of Indian education; and increase effective collaborations and partnerships among tribes, education organizations and government agencies in order to accomplish what is best for our children in the most efficient way possible.

Because the Federal budget is made up of very specific programs, NIEA has specific recommendations and will focus here on those that we believe contain the most potential for transformative educational change.

**(1) Title VII Programs – Strengthening Culture and Language**

**A. The Title VII programs of the Elementary and Secondary Education Act are important because they address culture.** Viewed together as a whole, the Title VII programs support the alignment of educational approaches with the Native culture, languages, values, traditions, and history of the Native students being educated. A growing body of research has found that education processes such as these are instrumental in building a strong sense of well being, self worth, resiliency, and identity in Native students with the result that those students have an increased desire to learn, are more engaged in school activities and have better school attendance records. All of this leads to academic achievement and student success. (NIEA is separately submitting to the record of this hearing, with the Committee's approval, a study recently completed by the Kamehameha Schools in Hawaii entitled "Culture-Based Education and Its Relationship to Student Outcomes" (September, 2010) which demonstrates the positive impact cultural based approaches have on a student's social and emotional well-being, which in turn positively affects math and reading scores.

The President's FY 2012 budget calls for level funding for Indian Student Education, traditionally called the Office of Indian Education in the Department of Education, at the FY 2010 enacted level (\$127.3 million). Level funding is also requested for other Title VII programs, such as Native Hawaiian Student Education (\$34.3 million) and Alaska Native Student Education (\$33.3 million). This is also true for other Department of Education programs serving Native students, including the Strengthening Tribally Controlled Colleges and Universities, Strengthening Native American-Serving Nontribal Institutions and Tribally Controlled Post-Secondary Vocational and Technical Institutions programs. Notably, as introduced H.R. 1 would have zeroed out the Alaska Native and Native Hawaiian program, a provision that was eliminated by amendment before H.R. 1 was voted out of the House, but which demonstrated a lack of understanding by some as to how vital these programs are.

The NIEA supports initiatives such as these because they are effective and because they build strong and nurturing relationships between education institutions, Native students, their families, and their communities. The NIEA also supports an increase in research designed to better understand why these programs are so effective, how they may be replicated, and how they may be brought to scale in more Native communities across the country. Similarly, NIEA supports the Native Language programs funded through the Administration of Native Americans, HHS, and urges more overall funding for these programs including for immersion schools. We want our cultural knowledge stored in the minds of our children, not in books on a shelf.

*NIEA recommends that the Federal government continue to invest in the Title VII and ANA programs mentioned above by increasing funding, rather than supporting the level funding called for in the President's budget request.*

**B. Immersion School Formula Grants and Demonstration Projects that Serve as Technical Assistance Centers for Culturally Based Education**

With the historic passage of the Esther Martinez Native American Languages Preservation Act of 2006 (Pub. L. 109-394), Congress acknowledged both the dire condition of Native languages, the urgent need to expand revitalization efforts and the academic benefit of heritage language instruction. Revitalizing Native languages is critical to Native cultural identity and survival, as well as to the ultimate success of Native students in mainstream society, but Native languages

are in great peril. We believe Native languages can be saved and historic academic deficiencies addressed through Department of Education support for Immersion schools.

**Title VII of the ESEA should include a section that establishes a “formula grant” program for Immersion schools (\$5,000-\$7,000 per student). This would allow for the first time a consistent funding stream and a commitment to support immersion schools regardless of the educational systems that house them.** The Secretary may make grants to Indian tribes, and tribal organizations approved by Indian tribes, public schools, Bureau of Indian Affairs funded schools and parochial schools that utilize the heritage language of the community as the medium of instruction.

Approximately 19 immersion schools exist in the continental United States serving roughly 1,000 Native children. These efforts need support for they are building a foundation of best practice techniques in Indian education. DoE support is crucial to the continued success of these schools and expansion of model schools to tribal communities that have the capacity to deliver heritage language instruction.

**Title III of the ESEA, Subparts A and B currently allow for Native language instruction; however, these provisions should be strengthened so that schools receive the support they need to support heritage language instruction.** Native learners, even English only speakers enter school with limited English speaking skills, and perform subsequently far lower academically than any other group of people in America. Investment in immersion schools will both elevate academic engagement and strengthen second language acquisition.

**Immersion School Demonstration Projects / Culturally Based Education Technical Assistance Training Centers.** Title VII National Activities should establish regional Training Centers of culturally based Education labs utilizing existing immersion schools. These TA centers or labs would be strategically located in cultural geographic regions including the East Coast, Oklahoma, Southwest, Northern Plains, Great lakes, Rocky Mountains, Alaska and the Northwest. The collective experience of existing immersion schools would be utilized to train interested tribal communities in second language acquisition, culturally based education, curriculum development and integration of culturally responsive education techniques into broader mainstream educational venues.

## **(2) Education Construction – Assuring An Adequate Facility to Learn Within**

**Many BIA School buildings do not meet basic standards necessary to assure student safety and student success.** We know that the condition and safety of the buildings and facilities within which Native students are educated has a direct bearing on whether or not children are able to learn and perform at their peak, and be kept safe and healthy in the process. For example, In Washington State a principal reported to NIEA that in one portable classroom building the roof and windows leaked, and in two buildings there was a continuous problem with mold in the walls, which was difficult to control due to the wet climate. She said that the mold was a health problem for children with certain allergies. In a South Dakota school, a teacher expressed concerns about aging asbestos floor tiles in her classroom that had to be partially removed due to cracking, leaving other tiles exposed. Asbestos floor tiles, which are present in more than 90 of

BIA's schools, can be a threat to the health of students and staff if the asbestos fibers are disturbed, released into the air, and inhaled. Of the 4,495 education buildings in the BIA inventory, half are more than 30 years old and more than 20% are older than fifty years. On average, BIA education buildings are 60 years old; while, 40 years is the average age for public schools serving the general population. 65% of school administrators report the physical condition of one or more school buildings as inadequate. See *School Facilities: Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs* (GAO/HEHS-98-47, Dec. 31, 1997).

In this context, there must be increased funding and a more effective and streamlined process to fully expend the funds appropriated and to begin the construction so desperately needed. We know that the Department of the Interior, in developing the FY 2012 budget request, was forced to make difficult decisions and that construction programs across the board were cut. This is true for BIA Education Construction, which is proposed to be funded at \$52.1 million, a decrease of more than \$60 million from the FY 2010 enacted level. Although we understand that the BIA is redirecting funding for Replacement School Construction to Facilities Improvement and Repair, we also know that the physical condition of BIE and tribal schools impacts the achievement of our students and that the present backlog for Indian school construction now exceeds \$2 billion.

Unfortunately, the decision to cut funding for school construction is really analogous to battlefield triage – some will live and some will die – but that is not an acceptable choice in Native education. Deferring the critically needed build-out of new school facilities will only bring higher costs in the future and therefore be more difficult to achieve.

*NIEA would support the Committee's recommendation in its FY 2011 views and estimates letter of \$293 million for Indian school construction, which was the FY 2003 level.*

### **(3) Tribal Grant Support Costs – Increasing Tribal Control**

**Tribal Grant Support Costs (TGSC) foster tribal self-determination and enable the transfer of both the responsibility and the means for tribal entities to run their own schools and control the education of their youth.** The FY 2012 budget asks for the same amount of TGSC funding requested for FY 2011, even though at least 2 more, and perhaps as many as 5 more, tribal schools will have to be supported by the same \$46.3 million requested. The NIEA appreciates that the FY 2011 request is a \$3 million increase over the FY 2010 level for TGSC's, but the resulting total funding -- \$46.3 million -- would, at best, supply only 65% of the amount required by law. To fully fund TGSC at the statutory formula level, \$72.3 million would be needed. NIEA is concerned that of the amount of TGSC support pales in comparison to the amount of funding provided to accomplish similar self-determination efforts by tribes who operate *non-school* programs of the Bureau of Indian Affairs and the Indian Health Service. NIEA is hopeful that comparable increases will be provided to tribes and tribal school boards to cover the administrative and indirect costs of exercising local authority and exercising tribal self-determination in assuming the operation of a school.

**(4) Specific Concerns with the BIE budget.** NIEA would like to highlight some other issues that arise from a review of the BIA/BIE FY 2012 education budget.

**Indian School Equalization Formula (ISEF).** This account supports the basic educational and dormitory programs for BIE schools. The FY 2012 request is only 0.3% higher than the amount sought for FY 2011 and is only 9.5% above the amount provided 5 years earlier (FY08). This works out to less than a 2% per-year increase, which is not sufficient to keep up with growing costs, even as the BIE acknowledges that only 56 of the 183 schools in the BIE system met Adequate Yearly Progress (AYP) in SY08-09.

**Student Transportation.** This account must fund all costs of transporting student to and from BIE schools. The FY 2012 amount requested is actually lower than the amount provided in FY 2010 and the amount requested for FY 2011 – despite the enormous increase in motor fuel over the past several years and increased bus leasing costs. BIE estimates its request will provide only \$3.23/mile for school bus costs – the same rate supplied in FY 2010 and the same rate estimated in the FY 2011 budget.

**Facilities Operations and Facilities Maintenance.** These accounts must fund all operation and maintenance costs of all school and dormitory buildings at 183 campuses. Funding for Facilities Operations and Maintenance has remained at nearly the same level since FY 2004 – despite ever increasing costs for such vital services as utilities. The amount supplied to schools is less than 50% of the sums needed.

**BIE's Share of Funding for Academic Programs Continues to Decline and its Calculations are Unreliable.** The FY 2012 budget says the BIE supplies only 74% of the "overall funding used to operate the BIE elementary and secondary schools". [p. IA-EDU-5] In the FY11 budget request, the BIE said its share was 76%. The balance of funding comes from the Dept. of Education. Even if these BIE calculations were accurate, no State in the country would be permitted to let its share of education funding fall to such a low percentage *vis-a-vis* Dept. of Education funding. The BIE is not meeting its "maintenance of effort" responsibility. BIE's budget analysis lacks transparency. To make an accurate "apples to apples" comparison, BIE must isolate only the funds it supplies for **academic programs** and compare that amount to the Dept. of Ed funding, all of which is targeted for academic programs. Such a calculation would demonstrate the BIE supplies **less than 50%** of the funds spent on BIE school academic programs.

**Conclusions regarding BIE Funding.** BIE is not meeting its obligation to tell Congress the true level of need to properly operate the school system it created to educate the Indian children at its 183 schools. BIE is undermining Indian self-determination by chronically under-funding the indirect costs of tribes that operate schools. BIE acknowledges the funding requested for Tribal Grant Support Costs would, *at best*, supply only 65% of need. (Even this estimate is undermined by BIE's acknowledgement that more schools will have to be supported by TCSC, but with no increase in funding.) By contrast, funding for the indirect costs (called "Contract Support Costs") of *non-school* tribal contracts, while still inadequate, fares far better than the funding supplied

for tribally operated schools. Over the 5-year period of FY08 (enacted) and FY 2012 (requested) –

- o IHS CSC increased by \$194.4 million; a difference of +72.7%
- o BIA CSC increased by \$48.2 million; a difference of +32.7%
- o BIE TGSC would increase by \$3 million; a difference of +6.9% -- but this is still subject to appropriation; if not appropriated for FY11 or FY12, TGSC increase would be 0% for this period.

*NIEA recommends that if TGSC cannot be funded at the full level of need, that this item should be at least funded at 75% of need -- \$54.2 million.*

**(5) Residential Education Placement Program – Serving the Most Vulnerable Native Kids and Families.** The Residential Education Placement Program (REPP) is a program that supports the BIE-funded schools for students who require 24/7 residential treatment services. The primary responsibility of the REPP Education Specialist is to provide technical assistance on all referrals to and placements made at residential programs. These programs consist of residential treatment centers (RTC's) as well as comprehensive care and education-focused programs, behavioral health care, etc. The REPP Specialist also assists schools with the referral and placement process (including identifying resources) for students in need of residential programming.

**In FY 2010 and 2011 CR this program was funded at \$3,760,000. President Obama's Budget would zero out this program for FY 2012.** His budget implies that this critical program is not necessary as the NCLB and the IDEA require schools to provide educational services and the Department of Education provides funds for children with disabilities which may be used for the same purposes as the REPP.

**NIEA urges the Committee to support the restoration of this funding.** This program supports the most vulnerable students of the already vulnerable Native student population. Loss of this program would be devastating for these students and for their families.

**(6) Section 117 Perkins Act Funding for United Tribal Technical College and Navajo Technical College.** As the Senate considers the Fiscal Year 2011 Continuing Resolution (H.R. 1), we bring to your attention a potentially devastating funding cut that could endanger two higher education institutions in our states – technical tribal colleges funded under P.L. 109-270, section 117, Perkins grants to provide basic support for the education and training of Indian students. Section 1833 of H.R. 1 eliminates funds authorized under Section 117 of the Carl D. Perkins Career and Technical Education Act (Tribally Controlled Postsecondary Career and Technical Institutions). Two tribally controlled colleges – United Tribes Technical College (UTTC) in North Dakota and Navajo Technical College (NTC) in New Mexico, with a second campus in Arizona have been the successful applicants for this program.

**NIEA strongly urges that funding be restored to this programs.** The Section 117 Perkins program has provided crucial core funding for the colleges – for example, at Navajo Technical College, 50% of their funding comes from this source. NTC would lose 51 employees, and without predictable funding, lose its accreditation, compromising its ability to obtain other federal and tribal funds and compromise a stable environment for faculty and students.

Please note that this funding is not an earmark, but a competitive grant. In fact, that program has been authorized (20 U.S.C. 2327) since 1990. Funding is awarded by competition and distributed via an Indian Student Count formula. In FY 2010, this program received \$8.2 million, a small portion of the Department of Education budget. This is about half of the federal funding for these schools, with the other half coming from the BIE Budget

These institutions are not part of state higher education systems and do not benefit from state-appropriated college funds. The consequences of eliminating these funds are that these vital tribal institutions would be forced to dramatically scale back or even close their doors.

UTTC and NTC may seem small, but their missions – to train a workforce for communities that have faced devastating poverty for decades – is extremely important to our states and all of Indian Country. Defunding these colleges takes away hope from tribal communities that education is a pathway out of poverty and helplessness. We have an honored trust responsibility to support these schools, which have been doubling their enrollment while federal support has not kept pace. We urge you to continue funding the Section 117 program at FY 2010 levels to ensure that UTTC and NTC can continue to operate as vital educational institutions.

**(7) Johnson O'Malley Program.** NIEA urges the Committee to support the Johnson O'Malley Program (JOM) and requests that it be fully funded. The JOM program was funded at \$24 million in FY 1994. In the President's FY 2012 budget JOM would receive \$13.402 million under the Education line item. The budget also indicates that JOM would receive \$7.189 million under self-governance and \$919,000 under CTGP. Totaling all of these equals \$21.510 million.

JOM is a program critical to thousands of American Indian students across this country. First authorized in 1934, JOM was designed to provide assistance to Indian children located outside of the Bureau of Indian Affairs school system. Today, the JOM program became a supplemental aid program to Indian students from age 3 through twelfth grades attending Public Schools. The JOM programs are located in 32 states, often serving very poor and geographically isolated students.

Unique to this program, the local JOM programs are run by an Indian Education Committee (IEC) whose members are elected from among the parents and guardians of eligible Indian students enrolled in schools served by a JOM contract. The IEC conducts an annual needs assessment and from that assessment, develops education plans in cooperation with the subcontractors. The education plans are as varied as the areas in which students are located -- which is consistent with the intent of JOM. The IEC plays a critical role in the planning, development, implementation, and evaluation of all the JOM programs for purposes of designing a program that meets the educational goals and needs of each unique community.

The uniqueness of the IEC system is one reason why the JOM program should not be considered duplicative of other programs. The framers of the authorizing language saw the need to create a program that allows parents, at a very "grass roots" level, to be involved with and administer to the specific educational needs of the Indian community. This makes JOM special. But in addition to this, JOM was designed to be a supplemental program, not like other programs administered by the federal government, such as the No Child Left Behind Act, that specifically requires funding to go toward making Annual Yearly Progress. JOM funding permits students, who otherwise would not be able to afford it, receive funding for things such as SAT preparation, athletic equipment, eye glasses, after school tutoring, culturally specific education, and other countless "supplemental" program and related needs. Certainly, a side effect of the supplemental help received through JOM means that Indian students are able to excel academically. However, JOM has other specific goals, separate from the mandate of other federal laws.

**(8) American Indian – Alaska Native Head Start. Recent Congressional budget proposals would devastate Indian Head Start, and therefore Native communities, for years to come.**

Assuring a good budget in FY 2012 must begin by ensuring a good budget in FY 2011. H.R. 1 would cut the Head Start program by almost 25% for FY 2011 from 8.2 billion to 6.2 billion. If applied to the Indian Head Start and Indian Early Head Start programs, this would mean that approximately 4,396 kids would have to be sent home. Additionally, approximately 1,217 teachers and staff would have to be laid off. The negative effect of this loss of slots and staff would be overwhelming and would literally adversely impact Native communities for generations.

**Indian Head Start is one of the most important and successful Federal programs focused on the dire circumstances faced by all too many Native children.** The Head Start model, addressing as it does health, education, family and community needs in a holistic manner, is akin to traditional Native learning styles and cultural practices. Indeed, Indian Head Start is on the frontline in the preservation of Native language and culture, which have proven to be key elements in Native student confidence and success in later years. However, only about 16% of the age-eligible Indian child population is enrolled in Indian Head Start. Of the approximately 562 federally recognized Tribes, only 186 have Head Start programs. These programs are funded through 152 grantees in 26 states. That means 374 Tribes do not have Head Start programs. These programs employ approximately 6,627 individuals and 331 contracted people. Approximately 3,191 of these employees are either former or current Head Start/Early Head Start parents and approximately 86 people under contract are either former or current parents. There are approximately 34,901 volunteers, 22,942 of which are parents, working in AIAN Head Start and Early Head Start programs.

**NIEA urges the Congress to take a no compromise stance on funding for Head Start.** The Congress should stand firm on funding Head Start at 8.2 billion in FY 2011 as the president requested and make continued investments in FY 2012 and beyond. Studies have demonstrated that the return on every dollar spent on Head Start to society is on the order of \$7 to \$9. Investing in Head Start is smart policy, the right thing to do and a central obligation of the Federal trust responsibility to Native Americans.

**(9) No-cost Initiatives.** There are a number of items that this Committee can support that with no or minimal cost that have great potential to improve Native education, including:

- Include BIE/tribal schools in Race to the Top grant eligibility, with a set-aside for these schools.
- Establish the position of Assistant Secretary of Indian Education at the Department of Education as a low cost way of assuring communication, collaboration, and coordination of all programs that impact Native education presently available within the U.S. Department of Education.
- Require the Secretary of Education and Secretary of Interior to jointly consult and collaborate on the alignment of policy and budget processes to ensure efficiency and equitable funding for Native education both through the Native-specific programs and through increased opportunities to access general education programs.
- Establish a legal structure to assure formal State-Tribal consultations and collaborations. Both states and tribes have a shared responsibility to use public resources effectively and efficiently; both seek to provide comprehensive services such as education, health care and law enforcement to their respective citizens; and both have interconnected interests in safeguarding the environment while maintaining healthy and diversified economies. The shared, mutual education objectives call for the establishment of federal language that leads to cooperative state-tribal relationship on shared concerns and specific Native policy issues. As Congress develops legislation to reauthorize the Elementary and Secondary Education Act, language must be included that calls for formal state-tribal consultation and collaborations.
- Address school construction within the BIE by focusing attention on the gap between the funds being appropriated by the Congress and the over 2 billion dollar backlog in projects being constructed. Attention has been focused in the past on such delays through the Government Accounting Office. Perhaps it is time once again to review whether there are ways to improve the process by which projects move from the drawing board to completion.
- Strengthen the existing statutory language for programs that benefit Native students. Please see NIEA's testimony on the ESEA for specific ideas in this regard.
- Assure a Native voice and a Native perspective in the reauthorization of the ESEA by the House and the Senate.

**Conclusion.** It is the hope and goal of NIEA that this hearing will serve as a catalyst for future hearings on Native Education to better understand the opportunities, issues, and barriers facing Native families and children. We stand ready to assist the Committee in anyway we can and thank you for this opportunity to testify. Although the challenges are daunting, we have high hope that the future is bright for Native education.

## **Attachments**



NATIONAL  
INDIAN  
EDUCATION  
ASSOCIATION



## State of Native Education Address "Restoring the Trust in Native Education"

Mary Jane Oatman- Wak Wak, *Nez Perce*  
NIEA President

Fellow board members, Executive Director Colin Kippen & Staff and Members of the National Indian Education Association

Himeesqis Qeciwyewew nuunim Hanyawaat piamkcix kine weetespe (thank you to our Creator for gathering us here). "Inim weenikt wees Mary Jane Oatman-Wak Wak, an enrolled member of the Nez Perce Tribe of Idaho and descendent of the Delaware Nation. I currently serve as the Coordinator of Indian Education for the State of Idaho. As the President of the National Indian Education Association, it is my honor to provide the 2011 State of Native Education Address.

I want to thank the board members of the NIEA for your efforts and support in these last several months. I also want to thank our NIEA members for their patience and resolve during NIEA's times of transition. I know that you will find the growing pains and fruits of the labor will be well worth it. Your support is allowing our NIEA to change the conversation about the impact of Native education for our children.

We are on the brink of incredible change and are all gathered with a single goal and purpose: to build our NATIONS. So on this day I speak to all of you about an issue that is central to that future – and that is the issue of our foundation - the important structure on which our Nations will be rebuilt. The foundation in which this occurs is through the right of self-determination, not just in terms of administrative control over federal programs with predetermined priorities, but self-determination that grows from your communities' desire to shape your own futures and improve the quality of lives for this and many generations to come. This foundation of self-determination reminds me of Stephen Cornell's chapter on *Colonial Legacies, Indigenous Solutions* that discusses the responsibilities "under conditions of genuine self-determination, what does or does not happen increasingly depends on what they do, and less on what federal governments or other outsiders do."

There are many layers of policy, funding and politics that impact the education of Native children in this nation, but NIEA has never wavered from our foundational pillar of advocacy or of providing that voice to ensure that the federal trust responsibility for the education of our people is upheld. We will continue to lead in this area- but are emerging into new scopes of services and research development - to shift gears and provide the customer service that our members deserve.

### TRUST

The Constitution recognizes the fundamental right and legal distinction of Indians people. The "trust relationship" has existed between the U.S. government and the American Indian ever since. In administering this trust, the various federal agencies are responsible for preserving, protecting, and guaranteeing Indian rights and property. All of these federal programs for Indians share two purposes: the fulfillment of specific treaty provisions and the commitment to the Indian tribes to improve their social and economic conditions.

The pendulum has shifted back and forth in terms of the fulfillment of these responsibilities. Under the Obama Administration, we have had unprecedented levels of Indian Education Policy reform. Yet we proceed with caution, being fully aware of the changing political environment and the increasing budget deficits. The Office of Management and Budget has directed all agencies to reduce their budgets by 5%... we must ensure that our Native communities are held harmless from these cuts, again reflecting on the unique legal and moral duty of the United States to assist Indians in the protection of their property and rights."

Trust has as its primary purpose the continued survival of Indian tribes and their governments. The trust relationship existing between the federal government and Indian tribes governs that special, unique relationship between the United States government and Indian nations.

Since the introduction of colonial education to our people, the curriculum in Indian schools offered no Indian languages, culture, or history. The same languages that tie Native peoples to the land and their pre-histories are endangered. NIEA

supports Native Nations recognition that culture and land are interrelated-and that the past record of denying our culture and languages were a part of the federal policy to destroy our traditional way of life.

#### BREACH

The initial attempt at educating American Indians was to fulfill a mission to change our cultures, traditions, and values- our way of life... or "Kill the Indian, Save the Man." In many instances our languages were banned & our people were punished for speaking them. The late Nez Perce elder Hinmatooyalokot Laxaylaxay, Irving Waters I, shared with me his experience on the first day of boarding school when he was a young boy. He was sat next to his brother, whom he had not seen in nearly a year, and turned to him to greet him in Titooqatim only to be spanked for speaking the tongue gifted to him by the Creator.

Schools were established as an attempt to "civilize and convert" the natives. Every attempt at changing the American Indian/ Alaska Native/Native Hawaiian) has met with failure or minimal success. Early approaches at changing the American Indian are explained in an 1899 statement by a top government Indian affairs official:

*"The settled policy of the government is to breakup the reservations, destroy tribal relations, settle Indians upon their own homesteads, incorporate them into the national life, and deal with them not as nations and tribes or bands, but as individual citizens. The American Indian is to become the Indian American..."*

This statement makes it very clear... that Indian education policies have historically had two thrusts: isolation and assimilation. Both these thrusts have been challenged by Native people: Indians today are deeply concerned with getting effective and relevant education for their children. They want the educational system to reflect tribal values and their way of life, and they feel they ought to influence and exercise control over this education.

In 1928, the most significant investigation ever conducted in the field of Indian affairs-the Merriam Report-was published. Among its major findings was the reality that Indians were receiving poor quality of services, especially health and education, from the public officials charged with upholding the trust responsibility. The report suggested that public schools, with their traditional curriculums, were not the answer: "The Indian family and social structure must be strengthened, not destroyed. The qualifications of teachers in Indian schools must be high, not poor to average. The federal school system must be a model of excellence."

#### GENERATIONAL POVERTY

The experiences highlighted in the Merriam Report and the history of abuse and poverty are of still of great concern, because our children and families still suffer from the residual effects of the termination and assimilation policies. Current data shows that many of our tribal students suffer from disproportionately low achievement scores, graduation rates, and educational attainment levels. And these dropout statistics have a great impact on the tribal and national economy. According to a study from the Alliance for Excellent Education, if half of the Class of 2008 dropouts actually graduated:

- They would have earned a combined \$23.9 million dollars more than if they didn't graduate.
- Of that \$23.9 million, \$16.8 million would have been spent in the communities and \$6.5 million would have been invested each year. Home purchases would have increased by \$61.5 million.
- This is money that would have been poured back into our Native communities, improving efforts to effectively manage natural resources, improve the reach of tribal governments, and innovate for the future with developing energy resources for a better nation.

The education deficit that continues to plague our students is the impetus for change and the reason that our tribal leaders are stepping up to the plate in the management of education policies and programs impacting their children. NIEA and the National Congress of American Indians will continue to work together to find joint strategies and solutions to ensure the voices of our Native children are heard.

#### RESTORING THE SACRED TRUST

NIEA is on a relentless pursuit of progress to restore the sacred Trust, and we're doing more behind the scenes to maintain that momentum. We are looking to move forward in this effort in three ways. First, we will increase the emphasis on culture and language instruction, especially by having increased amounts of data and research about what works best for our Native students. Second, we unite to restore the trust by increasing local and tribal control of Indian Education. Third, we need to join together, both within our tribes and also collaborate with Native education organizations and government agencies to

do what is best for our children. And fourth, our success depends on capturing and telling our story of success, both for the benefit of sharing with others, but also so that all will know how incredibly successful we are.

#### *Culture and Language Instruction*

We started with the lifeblood of our organization, our members, to make sure that the benefits and services align with our mission and support their efforts to increase education opportunities for Native students. We are encouraged that the US DoE has conducted the tribal leader/community consultations and these key findings and data will be an integral piece in driving the much needed reform in the reauthorization of ESEA.

#### *Local and Tribal Control*

We will continue to advocate for the expansion of opportunities for Native nations to set their own priorities and manage their own programs, dollars and systems that INCREASES accountability. Our Native communities have a better idea of what's wrong and what the priorities should be, yet many continue to find themselves competing with each other for funding that does not align with their priorities as a short term mean of improving the lives of their nation's citizens. Our tribal leaders are stepping forward and in a unified voice saying they that they want to lead in the co-management of our Nations greatest natural resource- our children. As one tribal leader so eloquently stated: "If we don't perform, hold us accountable."

#### *Collaboration*

Collaborations and partnerships are essential when putting the Native "self" back into self-determination. Former NCAI President and Tribal Chairman Joe Garcia stated it best at the May 2, 2010 Tribal consultation, "If we can initiate a partnership, a partnership between the tribes, NCAI, NIEA, the White House and the Department of Education, as well as the BIE, then we've got the right group moving toward a common goal." A part of this common goal goes back to data - sharing of data between these agencies and our tribal communities are an essential part of telling our stories. But there is a lot we NEED to know: the "where" and "who" of our students. It is imperative that the BIE and DOE work together to conduct a new survey and accounting of our students. Our tribes and schools are currently funded for Johnson O'Malley at a 1994 student count. The funding freeze must be lifted so that funding for these programs are based upon a true reflection of our student populations. As an example, one of the PL 93-638 contracts for JOM is funded for the 2008-09 school year at a student count of 3,154 but the actual Indian student count for 2008-09 was 4,242.

We must work with the U.S. Department of Education and Department Of Justice Office of Civil Rights to address the fact that our country suspends, expels, pushes out, and eventually incarcerates our youth and citizens. The United States leads all countries in the percentage of its citizens incarcerated. Our American Indian youth make up 1 percent of the U.S. population ages 10-17, but constitute 2 to 3 percent of the youth arrested for such offenses as larceny-theft and liquor law violations."

Unprecedented levels of collaboration are taking place between the US Department of Education and the Department of Interior's Bureau of Indian Education. The Department of Education's series of Tribal Leader Consultations throughout the country are not over, but were rather the beginning of a collaborative approach at revitalizing the education systems within Native communities. Cooperative agreements and intergovernmental collaboration are a valid means of exercising tribal sovereignty. They do not in and of themselves compromise tribal sovereignty.

The BIE, under the leadership of director, Mr. Keith Moore, is partnering with tribal nations to create an education system that supports academic achievement, safe learning environments, student growth, tribal control, and the teaching of tribal cultures and languages. Tribal control is the essence of local control, and under the current direction of the BIE, those school systems will emerge as successful models of tribal control and excellence.

But the advocacy for the successful transitions for our Native people does not begin in the K-12 setting. Our advocacy starts before a life is formed and follows our people into the transition as wisdom keepers, the elders in our communities. A critical component in our Nation building process includes the establishment of priorities for our Native students in higher education. Tribes must take an active role in promoting and addressing Native higher education issues at a community and national level. Respectively, the BIE has a longstanding role in Native higher education and needs to support tribes in more effectively addressing priority areas. Further the trust responsibility of the federal government to provide for the education of Native students must be a priority. Addressing these issues will require collaborative efforts that involve tribe, federal

agencies, education institutions national organizations and communities.

#### ***Sharing our Story***

We have a powerful story to tell – one that empowers Native youth to succeed beyond any barriers that are placed in their way. To fully restore the sacred trust, we need to restore the “self” in self-determination by capturing and sharing our story of success. This is incredibly important for two reasons: When we collaborate and share the stories of what works when educating our Native children will rise to the top; and when we share stories of success, all of the world will know how incredibly essential our educational programs are and the power that they hold for the future of Native children. My story is much different than the late Nez Perce elder Hinmatocoyalokot Laxaylaxay—I had the opportunity to minor in my Native language in a four year higher education institution. NIEA wants you all to share your story of how language and culture is cherished and shared in a way that builds up the foundation of our Nations, our communities, our families.

The momentum towards self-determination as it relates to Indian Education began many decades ago. As former Deputy Commissioner of the Office of Indian Affairs Purnell Swett stated, “the passage of the Indian Education Act of 1972 marked a milestone of change for Indian people in many ways—in the role they were to play in their children’s education; in the quality of education Indian children were to receive; in the accepted policy of telling Indian people what they could have rather than asking them what they wanted. In essence, the keynote in Indian education continues to be change but with one significant difference. We are now in a position to initiate that change.”

And the change has begun. This new era of Indian Education Policy is moving in the right direction. Please join us in putting the Native at the forefront of education and self-determination. Join us in increasing our ability to more effectively educate our children with the necessary steps to restore the sacred trust. Qeciwyewew/thank you all for gathering to tell our story of success both on Capitol Hill and in our local and state communities so that the discussions about Native education reflect the voice of our Native Nations.

#### **Restoring the Trust and Honoring the Constitution through Federal Appropriations**

A critical way to restore the Trust in Native education is to honor the Constitution through Federal Appropriations. Our Republican and Democrat legislators are concerned about the tough economic times that this great nation faces. Some policy makers state that they want to return Federal domestic program funding to 2008 levels – which would be between a \$55 – 60 billion dollar cut and would be catastrophic to American Indian, Alaska Native and Native Hawaiian education programs. Some Members of Congress would go even further, effectively defunding large government programs that support our children. In contrast, in the White House Tribal Nations meeting last December, President Obama said that the FY 2012 budget, those most in need would be cut the least.

We are also in a unique moment in history with a very large freshman Congressional class in the House of Representatives, many of whom represent our homelands. We will be walking onto Capitol Hill this week as both Congressional houses are in a state of flux – the 112th Congress is settling in, committee assignments and rules are being made, and Members are marking out their own roles. This is the perfect time to change the legislative and budget conversation to show the best and most effective practices that we use to educate our children. Our methods work – let’s tell Congress how and why we make a difference through our Native children in ways that impact our great nation.

Despite the budget situation, Native education programs and funding cannot be cut any more than they already have in the past. Federal funding generates dramatic economic, social and cultural returns, and fulfills the Federal government’s trust obligation to Native peoples.

#### **Restoring the Trust Through Increased Culture and Language Instruction**

We can work to restore the Trust by making Indian Education a national priority. I was encouraged to hear President Obama place such a high emphasis on education reform in his State of the Union speech a few weeks ago. He stated that EVERY child deserves a quality education and that “higher education must be within the reach of every student.” I stand firm and say that American Indian, Alaska Native and Native Hawaiian students MUST be a part of this conversation. We want to see this realized in the reauthorization of the Elementary and Secondary Education Act in the 112th Congress.

Since 2005, NIEA has actively prepared for the reauthorization of ESEA by conducting 11 field hearings and numerous listening sessions with Native students, educators, school administrators, Native parents, and tribal leaders to learn about the challenges Native people face under ESEA. NIEA developed its proposed amendments to ESEA based upon all the input it

received over two years and submitted these amendments to the House Education and Labor Committee and the Senate Health, Education, Labor, and Pensions Committee, and the ESEA bills drafted in the 110th Congress included many of NIEA's proposed amendments, including provisions that create a Native language immersion and revitalization grant program in Title VII of ESEA within the Department of Education.

In his State of the Union speech, President Obama said that this act would replace No Child Left Behind with "a law that is more flexible and focused on what is best for our kids." To that end, the reauthorization should respect tribal sovereignty, the self-determination of Native peoples, and the protection and instruction of Native American languages. We also recommend that it includes:

- Expanding Title VII to address the unique cultural and educational needs of Native students
- Improving cooperation among tribes, states and the Federal government – making sure all are placing education as a top priority
- Providing support for Native American language instruction
- Improving opportunities for parents, families and tribes to participate in the education process
- Improving the measurement system for Adequate Yearly Progress that reflects our students' success
- Requiring data collection and research evaluation on Native education
- Increasing funding for ESEA, especially Title VII

On behalf of the National Indian Education Association board, staff and members, Himeesqis Qeciyewew nuunim Hanyawaat piamkcix kine weetespe (thank you to our Creator for gathering us here). Thank you to our past warriors, the founders of NIEA, and all of you as our members - the fabric of our organization - that allows us to be strong today while we plan for many, many generations to come. Yox Kalo (Now, that is all).

**CULTURE-BASED EDUCATION**

SEPTEMBER 2010



Recommended Citation:  
Kana'iaupuni, S., B. Ledward, and U. Jensen. *Culture-Based Education and Its Relationship to Student Outcomes*. Honolulu: Kamehameha Schools, Research & Evaluation.



KAMEHAMEHA SCHOOLS

## Culture-Based Education and Its Relationship to Student Outcomes

By Shawn Kana'iaupuni, Brandon Ledward, 'Umi Jensen

### Executive Summary

The long standing achievement gap of Native Hawaiian students in the state's public schools represents a significant concern, one that diverse stakeholders are committed to resolving. New research and developments in education provide fresh opportunities to re-examine the teaching and learning of Native Hawaiian students in ways other than the conventional models many schools have used, most of which have failed to make significant differences in student outcomes.

A recent study, *Hawaiian Cultural Influences in Education (HCIE)*, provides new quantitative data about Hawaiian students and their peers from both private and public schools. The study used hierarchical linear models to conduct multilevel statistical analyses of the data. Results are consistent with prior qualitative studies, indicating that culture-based educational strategies positively impact student outcomes, particularly Native Hawaiian student outcomes.

Specifically, the study found a set of nested relationships linking the use of culture-based educational strategies by teachers and by schools to student educational outcomes. First, culture-based education (CBE) positively impacts student socio-emotional well-being (e.g., identity, self-efficacy, social relationships). Second, enhanced socio-emotional well-being, in turn, positively affects math and reading test scores. Third, CBE is positively related to math and reading test scores for all students, and particularly for those with low socio-emotional development, most notably when supported by overall CBE use within the school.

The study also found that students of teachers using culture-based educational strategies report greater Hawaiian cultural affiliation, civic engagement, and school motivation than do students of other teachers. For example, the survey data show that students of teachers using CBE are more likely to have strong community ties as exemplified by working to protect the local environment and attending public meetings about community affairs. They are also more likely to put cultural skills to use in their communities and report higher levels of trusting relationships with teachers and staff, underscoring a deeper sense of belonging at school. The strength of these connections is critical to producing engaged and successful learners as they prepare for the future.

This research project is the first large-scale empirical study of its kind among high school students. The results are based on survey data from 600 teachers, 2,969 students, and 2,264 parents at 62 participating schools, including conventional public schools, charter schools, schools with Hawaiian-immersion programs, and private schools. It is a collaborative effort of the Kamehameha Schools, Hawai'i Department of Education, and Nā Lei Na'auao, an alliance of Hawaiian-focused public charter schools.

	SP1 = Prenatal to 8-years (Optimize and Build)	SP2 = Grades 4 to 16 and post-high (Sustain Momentum)	SP3 = Kamehameha Schools Campuses, K to 12 (Innovate and Optimize)
---	---	--	---

## Introduction

The long standing achievement gap of Native Hawaiian students in the state's public schools represents a significant concern, one that diverse stakeholders are committed to resolving. New research and developments in education provide fresh opportunities to re-examine the teaching and learning of Native Hawaiian students in ways other than the conventional models many schools have used, most of which have failed to make significant differences in student outcomes. Increasingly, data and practice in indigenous communities demonstrate the importance of culturally relevant education as a means of engaging and empowering students and their families in the learning process. This report shares the results of a quantitative research study that examines the impact of culture-based teaching strategies on student achievement and socio-emotional development. The findings are consistent with prior qualitative studies, indicating that culture-based educational strategies positively impact student outcomes, particularly Native Hawaiian student outcomes. This research underscores the benefits of culturally responsive pedagogy and practice. The implications of this study are valuable for education practitioners, programs, and policymakers seeking ways to eliminate achievement gaps for indigenous and other students.

## Prior Research

Data consistently document the longstanding gaps in Native Hawaiian educational outcomes, ranging from lower achievement, attendance, and graduation rates combined with higher disciplinary and risk-taking behavior among youth (for example, Kana'iaupuni, Malone, and Ishibashi 2005). Various theories have emerged to explain such gaps in student performance. *Cultural deficit theory* attributes the academic shortcomings of minority students to students' home culture and environment whereas *cultural difference* theories shift focus from the home to differences in language and communication styles between home and school (Erickson 1993). *Cultural compatibility* (Vogt, Jordan, and Tharp 1993) and *cultural congruence* (Mohatt and Erickson 1981) theories similarly explain poorer student outcomes among some groups as a result of language differences and, more generally, cultural mismatch. *Oppositional theory* focuses on student responses to these mismatches, to include broader societal inequities and experiences with discrimination (Ogbu 1996).

Recent theories place culture at the center of debates surrounding relevance, relationships, and rigor in learning processes. *Culturally responsive/relevant education* recognizes cultural gaps between home and school as part of the achievement gap and calls for increased cultural relevance in education to engage, support, and empower learners (Castagno and Brayboy 2008). *Cognitive theory* (Demmert and Towner 2003) reasons that students learn more readily when prior knowledge is activated and connected to new information they are learning, hence supporting the importance of cultural relevance. Finally, *cultural-historical-activity theory*, or CHAT, more specifically emphasizes connectedness to community and culture as the foundation for teaching and learning (Roth and Lee 2007).

Despite some differences in approach and emphasis, all of these theories consider the degree of continuity and congruence between home and school. This body of work suggests that education is both an individual and a collective experience, where engagement and success can be enhanced and enriched via strengths-based approaches which integrate the culture and community of learners. In this research, the term culture-based education (CBE) is used to represent a holistic and comprehensive application of culturally relevant education and refers to educational approaches that are grounded in a particular cultural worldview (Demmert and Towner 2003).

A strong premise of this body of work is that education is a cultural process. Schools are the primary vehicle for transmitting knowledge and skills as well as the values, practices, and culture of a society. What may be less obvious is that all educational systems and institutions are rooted in a particular cultural worldview. Critical questions to consider are whose culture

is being transmitted and what cultural values are being instilled in children? In the United States, schools reflect mainstream, Western worldviews, where American culture is the norm. Some scholars argue that there is bias against non-Western worldviews and that children of non-Western ethnic or indigenous groups are thereby disadvantaged (Jacob and Jordan 1996, Cornelius 1999, Loewen 2007, Sue 2004, King 2005,). Although these biases may be invisible or unrecognized, students of indigenous and other minority communities often feel disconnected in an educational system in which their values, knowledge, and practices are largely ignored. Resulting educational disparities are evident. The gaps are particularly enduring among cultural groups that have not voluntarily migrated to this country with the intent of assimilating (e.g. American Indians, African Americans, and Native Hawaiians).

As prior research indicates, cultural relevance matters because it directly impacts student engagement, learning, and achievement. In education, efforts have been made to include non-Western cultural traditions and knowledge and to promote cultural awareness and tolerance for diversity in our schools and nation. These efforts have led to the practice of teaching *about* cultures rather than grounding teaching and learning within the culturally relevant framework of a particular community. However, in response to the continuing gaps in academic performance, many indigenous communities and educators have developed culture-based pedagogy and strategies to improve the educational experiences and achievement of their children. These strategies have emerged through decades of theorizing and research about educational disconnects between indigenous and minority communities and Western practices.

#### Why Culture?

Mounting evidence demonstrates the benefits of creating an educational environment that is relevant to and reflective of student realities, background, and culture. (See Christman et al 2008; Kaiwi and Kahumoku 2006; and Kana'iaupuni 2007 for examples of successful programs.) This research shows that cultural and ethnic identity mitigate negative experiences, increasing self-confidence, self-esteem, and resiliency among both children and adults. At the collective level, culture is related to the survival of distinct practices and languages, and also the functioning of social and family networks and support systems that may contribute to internal sustainability and vitality of social groups. Many areas of human service have capitalized on these inherent benefits by integrating culturally specific practices or approaches into the delivery of health, social work, education, counseling, and other services. On a global level, diversity is vital to the healthy evolution of any species. As such, cultural diversity contributes to innovation and creativity; the overall advancement of the human race relies on its innovative capacity.

Primarily fueled by the concern and passion of Hawaiian community members, parents, and advocates, culture-based education reform has been an organic solution to the sobering negative statistics that are negatively associated with Native Hawaiian children: high rates of poverty, substance abuse, juvenile deviance and criminal activity, teenage pregnancies, poor educational outcomes, domestic abuse, depression, and suicide. For example, place-based learning is a pillar of educational reform throughout the Hawaiian-focused charter school movement. Typical of this approach, these innovative schools implement project-based and place-based teaching and learning for children, integrating culture, community and the natural environment. Some of the schools use Hawaiian language as the medium of instruction, but all use the language routinely and offer language classes. Students engage in authentic experiences at wahi pana (sacred places) and other community outdoor learning laboratories. They conduct science experiments to assess the relative successes of various methods to revive endangered endemic species or water resources. Their curriculum includes learning about the lifestyles, knowledge, and values of Native Hawaiians. In this way, connections to the land, culture, and community create a rich educational environment that nourishes spiritual, physical, and educational well-being. These connections generate a sense of kuleana (respon-

sibility) and love for learning in students who come to understand that who they are is the foundation with which they learn to engage with the global community.

The results indicate progress. Studies show that best practices among successful teachers of Native Hawaiian students include experience-based, authentic activities (e.g., Kawakami and Aton 2001). Other studies report higher levels of engagement (attendance, timely completion, postsecondary aspirations) among Native Hawaiian students enrolled in conventional public schools that offer hands-on experiences at significant places within students' communities such as streams, freshwater ecosystems, and cultural sites (Yamauchi 2003). The findings are consistent with research on other indigenous groups. For example, studies have found that Native American students exhibit greater preference for tactile and concrete learning experiences than do their peers (Rhodes 1990). Many studies indicate the positive effects of place-based forms of education in a wide variety of settings (Gruenewald 2003; Kawakami 1999; Smith 2002).

Although there are many programs, case studies, and narratives documenting the successful application of CBE, the scholarship is not strongly grounded in quantitative research. Several studies indicate that culturally relevant schooling enhances self-esteem, supports healthy identity formation, and fosters political activity and community participation. These studies provide weak links, however, between CBE and student achievement outcomes. Some empirical studies have supplied stronger causal links to academic performance (see Lipka, Sharp, Adams and Sharp 2007) but there remains a dearth of large-scale quantitative studies on the issue. This study seeks to provide new insights that strengthen our understanding of the impact of CBE on student outcomes. The purpose is to identify relevance-building strategies that lead to positive learning and growth among Native Hawaiian children who, along with other indigenous children in this nation, have yet to achieve parity in educational outcomes with other children in conventional public education settings. The intent is that the findings will contribute to policies and programs directed at improving the condition of education through relevance, relationships, and rigor.

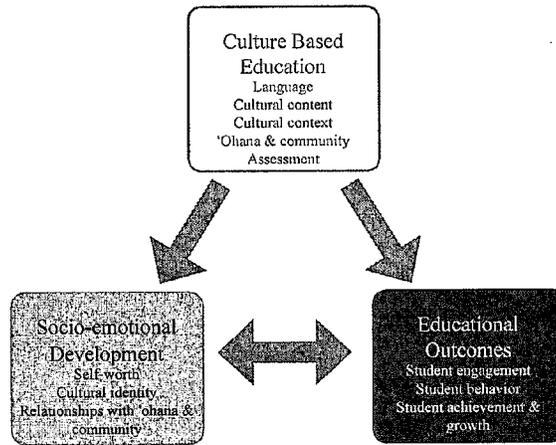
#### Study Model and Methods

Seeking new data on the impact of culturally relevant and culture-based education on student outcomes, Kamehameha Schools began the collaborative study entitled, *Hawaiian Cultural Influences in Education (HCIE)* in partnership with the Hawai'i Department of Education, several Hawaiian organizations, and charter schools in the state. HCIE represents a state-wide research effort across a range of educational settings. The ultimate objective is to understand how we can provide more engaging and relevant educational experiences for all of Hawai'i's children. Planning for the study took place with diverse community stakeholders in 2005 followed by data collection among teachers in spring 2006 and among students and parents/caregivers in fall 2007.

This community-based, participatory research project teamed up first to define CBE and identify indicators of implementation. CBE refers to the "grounding of instruction and student learning in the values, norms, knowledge, beliefs, practices, experiences, places, and language" that are the foundation of a cultural group, in this case, Native Hawaiians. CBE is identifiable by five critical components including language, family and community, content, context, and assessment (Kana'iaupuni and Kawai'ae'a 2008). These initial efforts in defining CBE and its elements informed the creation of the Hawaiian Indigenous Education Teaching Rubric (HIER) and a set of surveys specific to teachers, administrators, students and their parents to serve as tools in gauging the use and impact of specifically Hawaiian culture-based educational strategies (see Table A in the appendix).

The HCIE study explored the kinds of teaching strategies being used in Hawai'i classrooms and investigated the impact of teachers' use of CBE on student socioemotional development and educational outcomes. Based on the existing literature, researchers expected that cultural relevance in education would have direct effects on student socioemotional factors such as self-worth, cultural identity, and community/family relationships, as well as direct and indirect effects on educational outcomes such as student engagement, achievement, and behavior (see Figure 1).

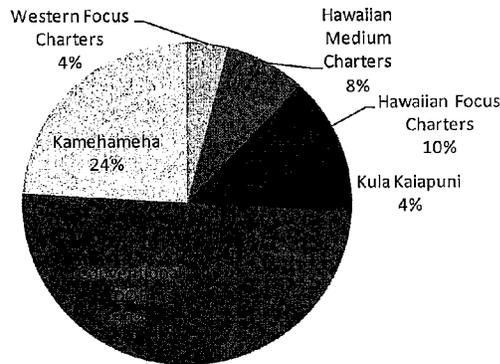
Figure 1. Hawaiian Cultural Influences in Education Study Model



**Participation Rates**

In the first phase of the study, teachers across the state were asked to complete voluntary surveys. Sixty-two out of eighty-one schools, or 77 percent, elected to participate. Surveys were distributed to approximately 1,500 teachers who had instructional contact with 7-12<sup>th</sup> grade students. A total of 600 teachers (40 percent) completed surveys. Participating schools reflect a range of geographic and institutional differences across five islands (Hawai'i, Maui, Moloka'i, O'ahu, and Kaua'i) including conventional and immersion schools in the DOE, start-up and conversion charter schools, and three private campuses of Kamehameha Schools. Figure 2 contains a breakdown of participating teachers by six school types.

Figure 2. Participating Teachers by School Type



In the second phase of the study, students of responding teachers and their respective parents/caregivers were surveyed. Out of an eligible population of around 9,000 students, just over 3,000 surveys were completed for an overall response rate of 33 percent. Parent/caregiver surveys saw a slightly lower rate of return of about 28 percent. Just over half of responding students were from Kamehameha Schools (52 percent), 40 percent attended DOE schools, and 8 percent attended charters (See Table 7 showing student characteristics).

A series of descriptive and multilevel analyses were conducted based on these data. Descriptive analyses examined the characteristics of respondents as well as teacher reports of the frequency and intensity of culture-based teaching strategies that they used in the classroom. These are summarized in the following section, along with aggregate profiles by school type, based on teacher reports. We also include summary descriptive data on student respondents, followed by the results of bivariate analyses examining relationships between use of culture-based strategies and key educational and socioemotional student outcomes. The independent scholars Ronald Heck, Ph.D. from the University of Hawai'i at Mānoa and Scott Thomas, Ph.D. from Claremont Graduate University conducted multilevel statistical analyses of the data. These analyses use hierarchical linear models to formulate and test models about multilevel relationships among student-, teacher-, and school-level characteristics. For the purpose of this report, results examining the relationships of culture-based strategies specific to math and reading test scores are presented.

### Teachers' Use of Culture-Based Educational Strategies

The first step of this project examines the range of cultural strategies that are reported by teachers in various types of classrooms, including public, private, immersion, and charter schools.

#### Teacher Characteristics

Table 1 displays descriptive characteristics of participating teachers by school type. About two-thirds of overall respondents are women. Ethnicity varies considerably with a quarter of DOE teachers reporting Hawaiian ancestry, a third reporting Japanese ancestry and the largest group (46 percent) reporting Caucasian ancestry.<sup>1</sup> Kamehameha Schools follows a similar trend in age and gender, but more teachers report Hawaiian ancestry (45 percent). In charter schools, 61 percent of teachers identified as Hawaiian, 50 percent as Caucasian, and 19 percent as Japanese. On average, charter school teachers are younger with 60 percent under the age of 35, compared to half that percentage in the other groupings.

Table 1. Teacher Characteristics by School Type

	DOE	KS	Public Charter	All Schools
<b>Age (n =574)</b>				
Avg. teacher age (yrs)	44.1	45.5	37.6	43.1
% Age 35 or younger	28.5	26.3	61.2	34.8
<b>Gender (n =585)</b>				
% Female	65.2	58.2	70.5	64.6
<b>Ethnicity (n =582)</b>				
% Hawaiian	24.3	44.6	61.0	36.9
% Caucasian	46.4	47.5	49.6	47.3
% Japanese	32.1	28.8	18.7	28.5
% Other	42.1	51.1	47.2	45.3

<sup>1</sup> Across all schools, roughly 45 percent of teachers reported other ethnicities.

Educational Attainment (n =527)				
% BA, Post-Baccalaureate	44.6	32.3	43.3	41.4
% MA or more	54.8	66.2	41.7	54.8
% Hawaiian degree	9.9	14.5	36.5	16.4
Tenure at school (n =537)				
% Employed 5 years or less	52.1	53.3	70.2	56.2
% Employed 20 years or more	6.6	16.3	2.6	8.2
Years of Hawaii residence (n =581)				
% Resided 20+ years	75.8	88.7	80.3	79.9
Subject(s) taught (n =453)				
% Math	15.8	9.7	17.3	14.7
% English	18.2	13.2	23.6	18.2
% Science	9.4	11.1	10.2	10.0
% History/Social studies	16.1	2.8	15.8	12.8
% Hawaiian studies/language	2.4	11.1	17.3	7.7
% Other	36.5	28.5	38.6	35.0
% Missing (n =600)	21.9	26.4	23.6	23.3
N	329	144	127	600

Note: For Ethnicity and Subjects taught, respondents were asked to choose all that apply, therefore percentages will not sum to 100%

Educational attainment also differs considerably across school type. Sixty-six percent of Kamehameha Schools respondents held a Master's degree, followed by 55 percent of DOE and 42 percent of charter school respondents. More than one-third of charter school respondents have a degree in Hawaiian language or Hawaiian studies, compared to 10 and 14 percent in the DOE and Kamehameha Schools, respectively.

Responses about school tenure and Hawai'i residence also differed by school type. Significantly fewer DOE and Kamehameha Schools teachers worked at their school for five years or less (about 52 percent), compared to 70 percent of charter school teachers. This difference is indicative of the fact that most charter schools were established after the year 2000. Persistence is noticeably high at Kamehameha where 17 percent of teachers have been employed on site for 20 years or more, compared to 7 and 3 percent of teachers in DOE and charter schools, respectively. Across all school types, roughly 80 percent of teachers have lived in Hawai'i for 20 or more years. Teachers reported a range of subjects taught; the most common being Math, English, Science, Social Studies and Hawaiian Studies.

### Teaching Practices

Questions on the teacher survey correspond to items on the Hawaiian Indigenous Education Rubric (see Appendix A). Summative values were calculated after weighting and summing survey responses according to the intensity of CBE use. These values were standardized on a scale ranging from 0 to 100 percent to allow comparisons across the five CBE continua defined by the model (language, content, context, family & community, and assessment). An additional continuum was defined based on teacher responses to survey items measuring three standards of effective pedagogy identified by the Center for Research on Education, Diversity, and Excellence (CREDE). The CREDE standards were included as additional measures of effective teaching and for external validation of the CBE strategies (See Kana'iaupuni and Kawai'ae'a 2008). Table 2 shows the reported use of culture-based

educational approaches by teachers in different school settings. Average summative values are provided for the five CBE continua outlined in the Hawaiian Indigenous Teaching Rubric, plus the CREDE continuum. On average, teachers in charter schools reported greatest use of both CBE strategies and CREDE standards, relative to those in the DOE and Kamehameha Schools.

Table 2. Average Summative Values for CBE Use by School Types

Continua	DOE	KS	Public Charter	All Schools
Content (n =587)	56.5	66.0	79.0	63.6
Context (n =596)	64.8	69.5	81.9	69.6
Assessment (n =592)	77.5	80.8	86.0	80.1
Family & community (n =597)	56.4	54.7	73.0	59.5
Language (n =598)	37.9	54.2	74.2	49.5
CREDE (n=600)	70.8	67.5	78.8	71.7
N	329	144	127	600

Note: Scores are summed across all survey items and standardized to 100% to allow comparisons across the continua

To better understand differences in educational approaches, the data were further disaggregated by school type. Table 3 contains the results, showing average summative values for the expanded set of six school types, including conventional and kula kaiapuni (Hawaiian immersion) schools in the DOE, as well as Hawaiian-focused, Western-focused, and Hawaiian-medium charters. The use of CBE strategies varies among the sample with kula kaiapuni, Hawaiian-medium and Hawaiian-focused charters consistently reporting the greatest level of implementation across all five areas.<sup>2</sup>

Table 3. Average Summative Values for CBE Use by Disaggregated School Types

Continua	Conventional DOE	Kula Kaiapuni	KS	Western- Focus Charter	Hawaiian- Focus Charter	Hawaiian Medium Charter
Content (n =597)	33.1	42.2	34.5	33.3	42.4	46.0
Context (n =596)	58.2	75.5	63.8	55.4	74.0	79.8
Assessment (n =592)	68.7	81.0	72.6	77.0	77.9	85.2
Family and community (n =598)	57.0	68.8	56.4	57.2	71.2	84.1
Language (n =598)	31.3	85.4	49.8	28.7	66.7	89.4
CREDE (n=593)	70.2	78.5	67.5	68.9	78.2	84.3

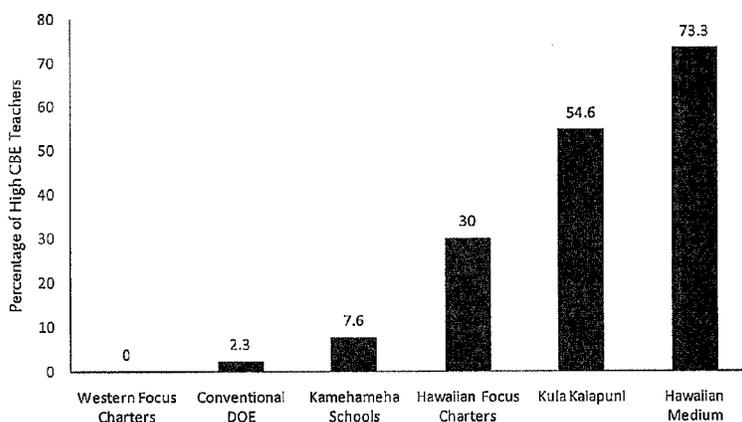
Note: Standardized to 100% to allow comparisons across the continua

Based on the summative values, teachers were classified into three analytical categories by CBE use: individuals who scored above 75 in four or five areas of the CBE continua were categorized as High CBE Teachers; those who scored above 75 in one to three areas were labeled Moderate CBE Teachers; and the remaining group were considered Low CBE Teachers. Results indicate that half of the respondents (53 percent) are Low CBE Teachers, one-third (33 percent) are Moderate CBE teachers, and roughly 14 percent are High CBE Teachers. Figure 3 illustrates the distribution of High CBE Teachers across six school types. In line with previous results, Hawaiian-medium charters (73 percent), Kula Kaiapuni (55 percent), and Hawaiian-focused charters (30 percent) have the highest concentrations of High CBE

<sup>2</sup> For more discussion regarding teacher survey results, see Ledward, Takayama, and Elia 2009 and Ledward, Takayama, and Kahumoku III 2008.

Teachers on average. In contrast, roughly 8 percent of respondents from Kamehameha fall into the same category as do 2 percent of conventional DOE teachers. None of the 22 teachers from Western-focused charters were classified as High CBE teachers.<sup>3</sup>

Figure 3. Concentration of High CBE Teachers by Disaggregated School Types



CBE strategies are reported by both Hawaiian and non-Hawaiian teachers. Although not shown here, about a third of non-Hawaiian teachers are Moderate or High CBE Teachers compared to 69 percent of Hawaiians. Table 4 contains figures for Hawaiians and non-Hawaiians for the five CBE continua. Across all school types, 1 out of 20 non-Hawaiian teachers was in the High CBE group, compared to 6 out of 20 Hawaiians.

Table 4. Percentage of Teachers with High CBE Use by Teacher Ethnicity

	Non-Hawaiian	Hawaiian
Content	15.0	47.0
Context	11.7	37.7
Assessment	23.6	50.7
Family and community	7.6	25.6
Language	6.2	44.7
High CBE Teachers	4.9	28.8

Notes: 1 Teachers with high CBE use score at or above 75 for each individual continuum

2 High CBE Teachers intensively use CBE strategies in at least 4 of the 5 continua

Internal reliability coefficients and correlations among the five continua, the CREDE standards, and patterns in responses by school type suggest the Hawaiian Indigenous Education Rubric is a reasonable tool for gauging CBE. Cronbach's Alpha coefficients for each of the CBE continua are provided in Table 5. Results ranged from .71 to .94, suggesting a high degree of internal reliability. In addition, fairly high correlations (ranging from .78 to .88) exist among the CBE and CREDE sets of items. Table 3 compares the reported use of CBE strategies and CREDE standards by six school types. Data show a convergence among high rates of CBE users within schools and implementation of CREDE standards. Hawaiian-medium charters, Hawaiian-focused charters, and Kula Kaiapuni have both greater concentrations of

<sup>3</sup> The results for Western-focused charters and Kula Kaiapuni should be considered with caution given the small sample sizes.

Moderate and High CBE Teachers and higher reported use of CREDE standards compared to others.<sup>4</sup>

Table 5. Correlations between CBE and CREDE

Continuum	<i>N</i>	Raw $\alpha$	Std $\alpha$	Correlation with CREDE standards
Language	598	.94	.94	.88
Family and community	597	.80	.80	.86
Content	585	.78	.78	.85
Context	585	.75	.76	.84
Data and accountability	592	.64	.71	.78
All items combined	578	.93	.93	.94

The first-ever statewide effort to assess the affects of culture-based educational approaches on high school students produced a great deal of rich and meaningful data, which are presented here in highly summarized form. The development of the Hawaiian Indigenous Teaching Rubric and the teacher survey results provide new understandings of CBE strategies across geographic, institutional, and ethnic differences. Findings indicate that culture-based education is not the normative approach to teaching and learning in Hawai'i. Instead, there is substantial potential for its development, both through its alignment with other research-based best practices and its appeal among a growing number of teachers seeking to enhance relevance for their learners. The information in Table 6 summarizes the CBE strategies that teachers reported as most helpful to effective teacher practices.

Table 6. Culturally Relevant Strategies Reported by Teachers Aligned with Best Practices

Theme	Description	Best Practice
Pilina 'Ohana	Family integration where parents are seen as a child's first teachers	Active participation of family members in educational activities;
Pilina Kaiāulu	Community integration informed by a Hawaiian sense of place	Using the community as a setting for student learning
Haku	Original compositions imbued with a person's experience and spirit	Rigorous assessments accounting for a range of competency and skills
Hō'ike	Performances requiring multilevel demonstrations of knowledge and/or skills	
Mālama 'Āina	Land stewardship focusing on sustainability and a familial connection	Place-based and service learning projects promoting community well-being
Kōkua Kaiāulu	Community responsibility embodying the Hawaiian value of lōkahi (unity, balance)	
Ola Pono	Values and life skills that synthesize Hawaiian and global perspectives	Career planning and preparation for global citizenship

Note: Themes above came from responses to open-ended items on the teacher survey.

<sup>4</sup> See Kana'iaupuni and Kawai'ae'a, 2008 for discussion about the development and testing of the Hawaiian Indigenous Teaching Rubric.

### Summary of Teacher Results

The teacher data reveal three main findings. First, the data show evidence that CBE is being implemented to varying degrees in classrooms across the state. As expected, Hawaiian culture- and language-based schools are quick to adopt CBE. However, results indicate strong CBE users teaching in mainstream settings as well. Second, CBE is not limited to Hawaiian teachers. Although Hawaiians subscribe to culture-based pedagogy more often, these approaches also are embraced by non-Hawaiian teachers, especially those in school settings that prioritize cultural relevance in education. Third, across all school types, including culturally grounded schools, teachers report regular use of the strategies that are generally considered best practice in teaching and instruction. Rather than CBE being divergent from best practices, the data suggest a “double win” for children in culture-based environments. Specifically, the data suggest that in culture-rich environments, teachers go above and beyond conventional best practice to achieve relevance and rigor, delivering highly relevant education via culture-based strategies *in addition to* the research-based body of teaching strategies known as best practices. In effect, principles such as contextualization and joint productive activity are most often achieved by teachers using culturally relevant strategies.

### Student Outcomes Associated with Teacher Use of CBE

The second step of this project examines student outcomes associated with teachers' CBE use. Student characteristics are identified as well as indicators of socioemotional development reported by students across private, public, immersion, and charter schools.

### Student Characteristics

Table 7 displays select student characteristics by school type. Because of its admissions policy and mission, Kamehameha Schools has an almost exclusively Hawaiian student body (99.9 percent), albeit an ethnically mixed one. The Hawaiian student populations in charter schools and the DOE are 83 percent and 54 percent, respectively. Based on proportions of students receiving free- and reduced-price lunches, a much larger portion of charter school students come from low-income families compared to DOE (70 percent and 45 percent, respectively). There are no directly comparable data available from Kamehameha Schools, although over 60 percent of the student body receives need-based financial assistance. Less than 3 percent of the students in charter schools and at Kamehameha Schools lived in Hawai'i for five years or fewer compared to about 8 percent in the DOE.

Table 7. Student Characteristics by School Type

	DOE	Kamehameha Schools	Public Charter	All Schools
Gender (n=2,695)				
% Female	56.1	50.8	44.3	52.6
Ethnicity (n=2,802)				
% Hawaiian	54.1	99.9	83.0	79.7
Social Economic Status (n=1,425)				
% Free/reduced lunch*	44.6	NA	70.5	NA
Hawai'i Residence (n=2,969)				
% Five years or less	8.3	2.7	2.7	5.05
N	1242	1544	183	2969

### Socioemotional Development

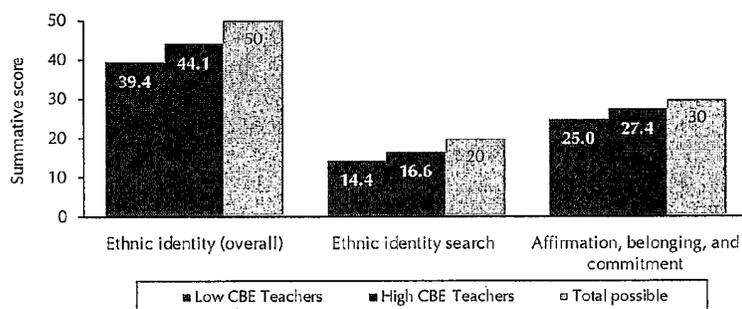
To better understand how culture-based educational strategies relate to student outcomes, respondents were classified into two groups: students who had instructional contact with one or more High CBE Teachers and those who attended classes with only Low CBE Teachers.<sup>5</sup>

In the initial bivariate analyses reported here, the sample was reduced to Hawaiian students in public schools only. As shown below, the results from various components of socioemotional development suggest culture-based educational strategies resonate well with Hawaiian students.

#### *Hawaiian Cultural Affiliation*

A modified version of Phinney's (1992) Multigroup Ethnic Identity Measure (MEIM) was used to gauge Hawaiian cultural affiliation, specifically. The 10-item scale contains two subfactors, "Ethnic Search" (four items) and "Affirmation, Belonging and Commitment" (six items). Together they total 50 possible points, with higher scores indicating greater cultural affiliation (see Figure 4). Students with at least one High CBE Teacher reported significantly higher scores than students with all Low CBE Teachers for the overall scale as well as both subfactors ( $p < .001$ ).<sup>6</sup>

Figure 4. Hawaiian Cultural Affiliation among Hawaiian Students by Teacher CBE Use



#### *Community Connections*

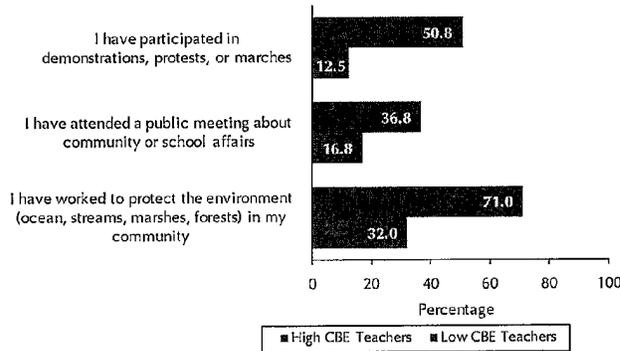
Across the board, students of High CBE teachers reported higher rates of community attachment and giveback compared to students of Low CBE teachers. Positive and significant differences were seen between the groups in all seven items in this domain ( $p < .001$ ).<sup>7</sup> Figure 5 highlights a sub-domain labeled, "community involvement," where respondents answered that they participated in the given event more than once. In results not shown, students of High CBE teachers also reported greater engagement with local issues such as: land development, Hawaiian language revitalization, and native rights.

<sup>5</sup> Students with Moderate CBE Teachers were omitted from analyses. Descriptive analyses focused on indicators of student socioemotional development, particularly, cultural affiliation, community connections, and school engagement.

<sup>6</sup> Table B1 in the Appendix lists all the items relating to this category.

<sup>7</sup> Table B2 in the Appendix contains the full set of questions about community connections.

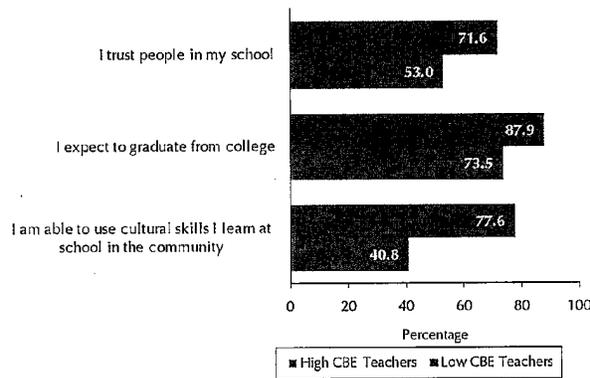
Figure 5. Community Connections among Hawaiian Students by Teacher CBE Use



*School Engagement*

Overall, students of High CBE teachers reported greater school engagement compared to those exposed only to Low CBE teachers. Out of 15 items on the student survey relating to school engagement, seven were positively and significantly related to CBE ( $p < .05$ ).<sup>8</sup> Figure 6 displays results for select items relating to emotional, behavioral, and cognitive engagement, which are areas researchers routinely use to assess school engagement. In results not shown, 71 percent of students of High CBE teachers also reported that they would attend their current school if given a choice compared to 54 percent of students with Low CBE teachers ( $p = .012$ ).

Figure 6. School Engagement among Hawaiian Students by Teacher CBE Use



**Summary of Student Results**

Initial bivariate analyses show positive and significant relationships between teachers' implementation of culture-based educational strategies and student socioemotional development. When classified in two groups, students with at least one High CBE Teacher report higher Hawaiian cultural affiliation, community attachment and giveback, and school engagement than students with all Low CBE Teachers. They also are more likely to feel connected to Hawaiian culture, participating in Hawaiian cultural practices and celebrating important events in Hawaiian history. Likewise, students of High CBE Teachers are more strongly engaged

<sup>8</sup> Table B3 in the Appendix lists the items in this question set.

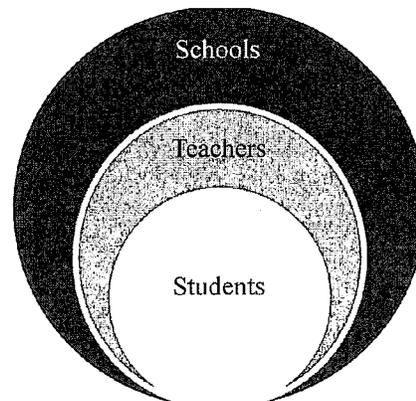
with their community than students of Low CBE Teachers. They have worked to protect the local environment and attended public meetings about community affairs. Students exposed to high levels of CBE by their teachers are also more likely to be engaged in schooling than others, by putting cultural skills to use in their communities and forming trusting relationships with teachers and staff.

### Piecing It All Together: Results of Multilevel Analyses

Culture-based educational strategies seek to integrate native language and ways of knowing into the classroom and involve using teaching strategies that integrate students' cultural and community context. Using multilevel statistical models, data from this phase of the study clarify how teachers' reported use of CBE instructional strategies affects classroom behavior and student educational outcomes across a variety of school contexts. The theoretical model portrayed in Figure 1 requires linking data across surveys to examine how teacher practices relate to key student outcomes. The relationships are additionally complex, however, because the impact of any teacher practice on student learning may vary from student to student depending on his or her individual attributes (ethnicity, gender, socioeconomic status); from one classroom to the next (e.g., a classroom with a new versus an experienced teacher); and from one school setting to another (e.g., a Hawaiian immersion compared to an English-medium private school). The benefit of generating data from a large sample of students and teachers is the ability to examine the relationship of CBE strategies on student outcomes across a range of individuals and settings, controlling for other explanatory variables that impact outcomes.

These relationships were operationalized using a three-level hierarchical linear model (see Heck and Thomas 2009) tiered by students, then by teachers to whom those students are connected, and finally to the schools within which the sampled students are enrolled (see Figure 7). The final dataset yielded 10,791 paired student/teacher records, where students' responses are linked to those of their teachers represented in the survey. This figure is based on a total of 1,991 unique students for whom test data were available. These data were used to examine the impact of CBE on student math and reading achievement outcomes.

Figure 7. Multilevel Analysis of Nested Relationships



The results are consistent with prior qualitative studies demonstrating that culture-based educational strategies positively impact student outcomes, especially among Native Hawaiian students. Thomas and Heck report:

*Taken together, the results from our various multilevel analyses suggest that CBE is an important predictor of achievement, contingent on the school's implementation of these principles. We note that the three major constructs at the center of this research (i.e., teacher CBE, student affect [socioemotional development], and achievement) seem to work in expected ways. More specifically, we have evidence that teacher CBE (at either the school or teacher level) is related to both student affect and achievement (Thomas and Heck, 2009, p. 38).*

Tables 8 and 9 present a set of final results for math and reading outcomes, controlling for student socioemotional development, prior achievement in the content area, ethnicity, socioeconomic status, gender, and private school attendance. At the teacher level, controls for gender and experience are included, in addition to teacher CBE use and an interaction variable<sup>9</sup> for average CBE use in the school. At the school level, explanatory variables include overall content area scores, socioeconomic composition, and socioemotional development, in addition to average CBE use in the school.

Results in Table 8 show that individual student math outcomes are positively affected by overall math performance in the school and the interaction between average CBE in the school and teacher CBE use in the classroom. Additionally, math scores are positively affected by student socioemotional development, the interaction of teacher CBE and low socioemotional development, student SES, female gender, previous math test scores, and private school attendance.

Table 8. Multilevel Analysis Modeling Math Outcomes

Variable	Estimate	SE
<i>School</i>		
Mean Math	45.81*	5.24
Mean SES	1.56	1.28
Mean CBE	-0.15	0.97
Mean Socio-Emotional	-0.34	1.80
<i>Classroom</i>		
Teacher CBE	-0.15**	0.08
Mean CBE x Teacher CBE	0.49*	0.18
Female	0.11	0.14
Experience	0.01	0.01
<i>Student</i>		
Socio-Emotional	1.56*	0.07
Teacher CBE x Low Socio-Emotional	0.23*	0.07
Hawaiian	-0.04	0.31
SES	0.48*	0.06
Female	1.15*	0.13
Previous Math	1.10*	0.01
Kamehameha Student	5.92*	0.48

\*p < .05; \*\*p < .10 (N = 10,791 [1991 students], N = 372 teachers, N = 43 schools)

<sup>9</sup> An effect of interaction occurs when a relation between (at least) two variables is modified by (at least) one other variable.

Table 9 shows that individual student reading outcomes also are positively affected by overall school reading performance and mean CBE use in the school, teacher CBE use in the classroom, gender distribution of students in the classroom and the presence of experienced teachers. Additionally, reading scores are positively affected by student socioemotional development, the interaction of teacher CBE and low socioemotional development, female gender, previous reading test scores, and private school attendance.

Table 9. Multilevel Analysis Modeling Reading Outcomes

Variable	Estimate	SE
<i>School</i>		
Mean Reading	51.38*	5.27
Mean SES	0.87	1.29
Mean CBE	1.92*	0.96
Mean Socio-Emotional	-2.21	1.77
<i>Classroom</i>		
Teacher CBE	0.21**	0.12
Mean CBE x Teacher CBE	0.23	0.23
Female	0.96*	0.17
Experience	0.14*	0.01
<i>Student</i>		
Socio-Emotional	0.29*	0.09
Teacher CBE x Low Socio-Emotional	0.80*	0.25
Hawaiian	-2.65*	0.38
SES	0.04	0.07
Female	0.34	0.17
Previous Reading	0.80*	0.01
Kamehameha Student	7.15*	0.67

\* $p < .05$ ; \*\* $p < .10$ ; (N = 10,791 [1991 students], N = 372 teachers, N = 43 schools)

From the results of these multilevel analyses, several findings emerge based on the nested relationships linking the use of CBE strategies by teachers and throughout schools to student outcomes<sup>10</sup>:

1. CBE use is positively related to student socioemotional well-being (e.g., identity, self-efficacy, social relationships).
2. Enhanced socioemotional well-being, in turn, is positively linked with math and reading test scores.
3. The analyses indicate a statistically significant relationship between CBE use and math and reading test scores, most notably for math when teachers' use of culture-based strategies is supported by overall use of culture-based strategies in the school. For reading outcomes, the impact of average CBE use in the school has a large, statistically significant positive relationship in addition to a smaller, positive relationship of teacher CBE use.
4. The association of teacher CBE use to math and reading outcomes is strongest among students with lower socioemotional development, relative to those with higher socioemotional development.

<sup>10</sup> Forthcoming publications will provide greater detail on the methodology and results of multilevel analyses.

### Limitations

There are two significant limitations attached to this study. First, due to external constraints, the dataset is cross-sectional and therefore provides a snapshot of relationships at one moment of time. The processes through which CBE is presumed to impact student behavior and learning likely unfold over time. Therefore a future longitudinal study would add greatly to our current understanding of the positive relationships observed between CBE and student outcomes and would begin to address the issue of causality.

A second limitation of the study has to do with the nature of secondary schooling. In middle and high school, students typically have instructional contact with six or more teachers in any given semester. One objective of this study, particularly the teacher survey, was to gain a better sense of what CBE looks like in the classroom. Therefore, teachers were surveyed first, followed by the students of participating teachers. However, it was not possible to match some students with all their teachers and vice versa. Ideally, a future study could maximize statistical power by a more targeted and complete data collection effort.

### Conclusion

The question of whether a particular educational model has a substantial impact on student learning is of primary importance for educational reform. School personnel are challenged to change practices in ways that can lead to improved student outcomes. Building a school's capacity for delivering challenging and culturally relevant instruction through targeted professional learning activities represents a key objective of school leadership efforts to meet the needs of a diverse student body, particularly of Native Hawaiian students.

Previous research on school effects suggests that some schools are better able to produce high quality and more equitable outcomes across a broad social and racial/ethnic distribution of students. Efforts to improve schools often attempt to impact conditions that create positive learning environments for students. One approach is to increase teacher sensitivity and pedagogical knowledge for working with the cultural diversity of all students. Studies of promising practices are needed if research is to provide information about new instructional practices that are more effective with culturally diverse students than contemporary mainstream school and classroom practices.

As such, the focus of this study was to create a model and definition for understanding the relationships between culture-based education and student outcomes. Culturally-based educational practices encourage instruction and learning that is rooted in cultural and linguistically relevant contexts. Based on this framework, this study explored the use of CBE by teachers in diverse educational settings. The project linked this information on the use of culturally-based instructional practices to students' reported socioemotional development and academic outcomes in reading and math.

Overall, the HCIE study adds to an understanding of culture-based education with a definition of CBE from a Hawaiian perspective, a theoretical model of what it looks like in the classroom, and a set of rich, quantitative data that can be used to examine various questions about schools, teachers, parents, and students. The findings to date offer fresh insights regarding culture-based education, where it is implemented, who implements it, and how its implementation is related to socioemotional and academic student outcomes.

The data help to debunk some myths associated with culture-based education such as: the use of CBE is limited to only "Hawaiian teachers" or "Hawaiian schools", CBE is radically different from conventional best practices, or there is no added value of CBE to educational outcomes. In fact, the data support the hypothesis that cultural approaches strongly enhance relevance and relationships at school, while also supporting positive academic outcomes.

The latter is critical, given limited prior quantitative research on student academic outcomes related to CBE implementation. Further research using these data and longitudinal data can be used to guide programs and policies designed to support positive Hawaiian and other indigenous student outcomes. For example, the HCIE rubric offers a useful framework for actual teaching strategies and the analyses indicate that support for CBE at the school level enhances the impact of teacher's CBE use on student achievement. Additionally, the survey data offer information about types of CBE that teachers find useful.

Taken together the bivariate and multilevel analyses tell a compelling story. Cultural knowledge and language are clearly areas of greater proficiency among students of teachers that intensively use culturally relevant strategies. These students are also more likely to know stories and facts about their communities and demonstrate higher levels of civic responsibility. They reported multiple occasions of working to protect the environment in their communities (reflecting *malama 'āina*, caring for the land, a significant value and practice in Hawaiian culture). Perhaps more importantly, students exhibit high levels of trust and connection to their schools. This outcome is exceptionally meaningful because many Native students come from families with low socioeconomic backgrounds who have experienced multiple generations of marginalization in public schools.

In addition to enhanced socioemotional outcomes, multilevel analyses consistently point towards positive relationships between CBE and student math and reading test scores. In terms of broader policy and program implications, recent national education policies have failed to recognize the importance of language and culture for native children. The consequences of this failure are significant and replete in the well worn trail of low achievement, low socioeconomic status and poor health of this nation's indigenous populations. One-size-fits-all education models make no sense at the community level, where scripted approaches could be replaced by those that harness the wonders, the fullness, and the richness of cultural practices, values, and knowledge in the educational process. This study contributes to the work of many educators and researchers across the nation who demonstrate the possibilities that arise when communities are able to guide the education of their children and to ensure relevance and meaning in both outcome and substance.

## References

- Castagno, A. and B. Brayboy. 2008. Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature. *Review of Educational Research*, 78 (4): 941-993.
- Christman, D., R. Guillory, A. Fairbanks, and M. Gonzalez. 2008. A model of American Indian School Administrators: Completing the Circle of Knowledge in Native Schools. *Journal of American Indian Education*, 47(3). Pp. 53-71
- Cornelius, C. 1999. *Iroquois Corn in a Culture-Based Curriculum: A Framework for Respectfully Teaching About Cultures*. Albany, NY: State University of New York Press.
- Demmert, W. G., Jr., and J. C. Towner. 2003. *A review of the research literature on the influences of culturally based education on the academic performance of Native American students*. Portland, OR: Northwest Regional Education Laboratory.
- Erickson, F. 1993. Transformation and school success: The politics and culture of educational achievement. In *Minority education: Anthropological perspectives*, by E. Jacob & C. Jordan, (Eds.). New Jersey: Ablex, 27-52.
- Gruenewald, D. A. 2003. The Best of Both Worlds: A Critical Pedagogy of Place. *Educational Researcher* 32(4): 3-12.
- Hishinuma, E. S., J. J. McArdle, R. H. Miyamoto, S. B. Nahulu, G. K. Makini, Jr., Y. C. Yuen, S. T. Nishimura, J. F. McDermott, Jr., J. A. Waldron, K. L. Luke, and A. Yates. (2000). Psychometric Properties of the Hawaiian Culture Scale-Adolescent Version. *Psychological Assessment* 12(2), 140-157.
- Jacob, E. and C. Jordan. 1996. *Minority education: Anthropological perspectives*. Norwood, New Jersey: Ablex Publishing.
- Ka'iwi, M. A. and W. Kahumoku III. 2006. Makawalu: Standards, Curriculum, and Assessment for Literature through an Indigenous Perspective. *Hūlili: Multidisciplinary Research on Hawaiian Well-being* 3: 183-206.
- Kana'iaupuni, S. M. and K. Kawai'ae'a. 2008. E Lauhoe Mai Na Wa'a: Toward a Hawaiian Indigenous Education Teaching Framework. *Hūlili: Multidisciplinary Research on Hawaiian Well-being* 5: 67-90.
- Kana'iaupuni, S. M. (2007). *A brief overview of culture-based education and annotated bibliography* (Culture-Based Education Brief Series). Honolulu: Kamehameha Schools, Research & Evaluation.
- Kana'iaupuni, S. M., N. Malone and K. Ishibashi. 2005. *Ka Huaka'i: 2005 Native Hawaiian educational assessment*. Honolulu: Kamehameha Schools, Pauahi Publications.
- Kawakami, A. J. 1999. Sense of Place, Community, and Identity. *Education and Urban Society* 32(1): 18-39.
- King, J. (Ed.). 2005. *Black education: A transformative research and action agenda for the new century*. Mahwah, New Jersey: Lawrence Erlbaum Associates.
- Ledward, B., B. Takayama and K. Elia. 2009. *Hawaiian cultural influences in education (HCIE): Culture-based education among Hawai'i teachers* (Culture-Based Education Brief Series). Honolulu: Kamehameha Schools, Research & Evaluation.

Ledward, B., B. Takayama and W. Kahumoku, III. 2008. *Hawaiian cultural influences in education (HCIE): 'Ohana and community integration in culture-based education* (Culture-Based Education Brief Series). Honolulu: Kamehameha Schools, Research & Evaluation.

Lipka, J., N. Sharp, B. Adams, F. Sharp. 2007. Creating a Third Space for Authentic Biculturalism: Examples from Math in a Cultural Context. *Journal of American Indian Education* 46(3): 94-115.

Loewen, J. 2007. *Lies My Teacher Told Me: Everything Your American History Teacher Got Wrong*. New York: Simon & Schuster.

Mohatt, G. and F. Erickson. 1981. Cultural differences in teaching styles in an Odawa school: A sociolinguistic approach. In *Culture and the bilingual classroom: Studies in classroom ethnography* by H. Trueba, G. Guthrie, and K. Au (Eds.). Rowley, MA: Newbury, 105-119.

Ogbu, J. 1996. Variability in minority school performance: A problem in search of an explanation. In *Minority education: Anthropological perspectives* by E. Jacob and C. Jordan (Eds.). Norwood, New Jersey: Ablex Publishing, 83-112.

Phinney, J. 1992. The Multigroup Ethnic Identity Measure: A new scale for use with adolescents and young adults from diverse groups. *Journal of Adolescent Research* 7 (1), 156-176.

Rhodes, R. W. 1990. Measurements of Navajo and Hopi brain dominance and learning styles. *Journal of American Indian Education* 29 (3): 29-40.

Roth, W. and Y. Lee. 2007. Vygotsky's Neglected Legacy: Cultural-Historical Activity Theory. *Review of Educational Research* 77 (2): 186-232.

Smith, G. A. 2002. Place-Based Education: Learning to Be Where We Are. *The Phi Delta Kappan* 83(8): 584-594.

Sue, D. 2004. Whiteness and Ethnocentric Monoculturalism: Making the "Invisible" Visible. *American Psychologist* 59: 761-769.

Thomas, S. and Heck, R. 2009. Hawaiian Cultural Influences in Education Multilevel Statistical Analyses. Report delivered to Kamehameha Schools, Honolulu.

Vogt, L. A., C. Jordan and R. G. Tharp. 1993. Explaining school failure, producing success: Two cases. In *Anthropological perspectives on minority education* by C. Jordan & E. Jacobs (Eds.). Norwood, NJ: Ablex, 53-65.

Yamauchi, L. A. 2003. Making school relevant for at-risk students: The Wai'anae High School Hawaiian Studies Program. *Journal of Education for Students Placed At Risk* 8(4): 379-390.

Zehr, M. 2010. Culture-Based Education "Hawaiian Cultural Influences in Education: School Engagement Among Hawaiian Students." *Education Week* 29(28): 5.

The CHAIRMAN. Thank you very much for your statement.  
Chairman Earl Barbry, would you please proceed with your statement?

**STATEMENT OF HON. EARL J. BARBRY, SR., CHAIRMAN,  
TUNICA-BILOXI TRIBE OF LOUISIANA; CHAIRMAN, UNITED  
SOUTH AND EASTERN TRIBES, INC. CARCIERI TASK FORCE**

Mr. BARBRY. Mr. Chairman, Committee Members, thank you for the opportunity to testify here today. I am Chairman Earl Barbry of the Tunica-Biloxi Tribe from Louisiana. I am also Chairman of the United South and Eastern Tribes *Carciери* Task Force.

As you know, the President's budget includes a legislative fix for the *Carciери* decision and I am very pleased to testify in strong support of that provision. USET firmly believes the Supreme Court decision is a fundamental attack on tribal sovereignty. The Court's decision creates two classes of federally recognized tribes that would be treated differently under Federal law: tribes that were under Federal jurisdiction in 1934 and tribes that were not.

The decision also opens the door to confusion about the status of tribal lands, tribal businesses and civil and criminal jurisdictional issues.

Mr. Chairman, my written testimony provides a number of technical points about why the President's proposal is needed. Today, I will share some personal thoughts from Tunica's perspective.

At the time of the Louisiana Purchase in 1803, Tunica-Biloxi owned tens of thousands of acres of land in Louisiana. Through fraud, deceit, encroachment and cold-blooded murder, and that is what I said, cold-blooded murder, our landholdings dwindled to a fraction of that amount.

In 1826, the Federal Land Commissioner said that we were savages unable to manage our own land and stripped of a Tunica settlement that included thousands of acres.

In the 1840s, a local landowner who regularly encroached onto the land shot and killed Chief Melancon, who confronted the landowner and protested his encroachments. Mr. Chairman, sadly, the Chief lost his life because he was doing something that the Federal Government failed to do, and that is to provide protection for our lands and the rights of the Tunica people.

By the time the local courts considered this incident, Tunica landholdings had been reduced to 134 acres. That individual got away with cold-blooded murder and our land, and that was wrong.

This is the amount of Tunica landholdings when we were federally recognized in 1980. Since that time, through trust application acquisitions, we have been able to ensure a land-base for current tribal members and for future generations. So to me, the *Carciери* fix is about Tunica survival.

Mr. Chairman, the *Carciери* fix proposed here does nothing more than restore the understanding of the IRA held by the Department of Interior and tribes around the Country for 75 years before the *Carciери* decision. However, Congress' failure to act may have dire consequences. For example, it creates a significant threat to public safety. The decision complicates Federal prosecution of crimes committed in Indian Country, as well as civil jurisdiction over much of Indian Country.

Again, I must emphasize the role of IRA in protecting tribal homelands and promoting tribal self-determination. Under IRA, tribes have been able to rebuild the land bases that are the very foundation of tribal governance. Tribal trust acquisitions have

helped protect traditional practices and have also helped spur tribal economic development. This has created much-needed financial resources, including jobs for tribal communities and surrounding non-Indian communities.

I urge the Committee to quickly move the proposed IRA amendments through the Senate.

Likewise, USET urges the Committee to support funding increases substantially above the inflation rate in several key areas. First, tribal priority allocation or TPA is the principal source of funds for many tribal governments and is used across many areas of need. Past reports indicate that the TPA falls well short of identified need. We ask that funding for the Eastern Region tribes' TPA increase by at least \$9.4 million.

Tribal courts are another area of concern. In the Eastern Region, only 46 percent of those tribes receive BIA funding for the operation of their tribal courts. Without tribal courts, tribes are often unable to provide for the protection and well being of tribal members. Many programs, including Indian child welfare, adult protection and child support enforcement require tribes to have established judicial systems before taking on these programs.

Finally, contract support costs are a key area for this Committee to consider. When contract support costs are not fully funded, tribes must use limited direct program service dollars or tribal resources to cover shortfalls, thus forcing tribes to cut or under-fund other important programs. The President's proposed increase brings BIA to 94 percent of fully meeting the obligation.

Other bureaus within the Department of Interior, as with other Federal agencies, have achieved their obligations, paying 100 percent of contract support to their non-native contractors. This discrepancy cannot continue. I might add, it also is discriminatory.

Again, thank you to this Committee for giving me the opportunity to testify here today. I would be happy to answer any questions.

[The prepared statement of Mr. Barbry follows:]

PREPARED STATEMENT OF HON. EARL J. BARBRY, SR., CHAIRMAN, TUNICA-BILOXI  
TRIBE OF LOUISIANA; CHAIRMAN, UNITED SOUTH AND EASTERN TRIBES, INC.  
CARCIERI TASK FORCE

**Chairman Akaka, Vice Chairman Barrasso and members of the Committee, my name is Earl Barbry.** I am the Chairman of the Tunica-Biloxi Tribe of Louisiana and serve as Chair of the USET Carcieri Task Force. Thank you for this opportunity to present to you on the President's FY 2012 Budget and the budget priorities of USET.

The United South and Eastern Tribes, Inc. (USET), is an inter-tribal organization representing 26 federally recognized Tribes from Texas across to Florida and up to Maine. The USET Tribes are within the Eastern Region of the Bureau of Indian Affairs (BIA) and the Nashville Area Office of Indian Health Services (IHS), covering a large expanse of land and area compared to the Tribes in other Regions. USET Tribes can be found from the Canadian Border in Maine and New York, along the east coast to Florida, west into Mississippi and south into Texas. Due to this large geographic area, the tribes in the Eastern Region have incredible diversity.

**The Constitution, Indian Tribes, Treaties and the Laws of the United States.** From the earliest days of the United States, the Founders recognized the importance of America's relationship with Native nations and Native peoples. They wove important references to that relationship into the Constitution (e.g., Art. I, Section 8, Cl. 3 (Indian Commerce Clause); Article II, Section 2, Cl. 2 (Treaty Clause). Native Americans influenced the Founders in the development of the Constitution as recognized by the 100<sup>th</sup> Congress, when the Senate and the House passed a concurrent resolution that "on the occasion of the 200<sup>th</sup> Anniversary of the signing of the United States Constitution, acknowledges the historical debt which this Republic of the United States of America owes to the Iroquois Confederacy and other Indian Nations for their demonstration of enlightened, democratic principles of government and their example of a free association

of independent Indian nations;....” (S. Con. Res. 76, 100<sup>th</sup> Congress.) One only has to walk the halls of the Capitol to see many works of art and sculpture that depict, although sometimes in ways that are objectionable to Native peoples, the central role that Native nations have played in the development of America’s national identity. Not depicted on the walls of the Capitol are the many injustices that Native peoples have suffered as a result of Federal policy, including Federal actions that sought to dismantle and destroy Native culture, traditions, and way of life. Out of those injustices, coupled with the cession of millions of acres of land and resources and from other legal sources, there has arisen a sacred Federal trust obligation and responsibility to support Native governments and Native peoples and to protect their inherent sovereign rights.

The Indian provisions in the Constitution were given immediate life in treaties that the United States entered into with Indian nations beginning with the Treaty with the Delaware in 1778 and continuing through with an additional 373 treaties. Additionally, in the first decades of the United States, numerous laws were enacted addressing the details of the Federal-Tribal relationship (e.g., Trade and Intercourse Acts of 1790, 1793, 1796, 1799, 1802, and 1834), even as the Federal courts defined the Federal government’s trust obligation to Indian nations (e.g., *Cherokee Nation v. Georgia* (1831)). Notwithstanding this Constitutional foundation, the Federal government often engaged in actions that were in direct contradiction and dismissive of the treaties and trust obligation to Indian nations, such as the seizure of Indian lands and the forced assimilation efforts of the Indian boarding school system, whose philosophy was captured by the founder of the Carlisle Indian School in the phrase “Kill the Indian in him, and save the Man.”<sup>1</sup> Fortunately, American greatness has led to more enlightened policies since the boarding school era, reflected in a host of laws that support tribal sovereignty and are critical to the vitality and well-being of tribal communities and surrounding non-Indian communities. Regrettably, these laws are rarely funded to the level necessary to achieve their intended purposes.

**USET STRONGLY SUPPORTS THE PRESIDENT’S PROPOSAL TO AMEND THE INDIAN REORGANIZATION ACT IN RESPONSE TO *CARCIERI V. SALAZAR***

USET was extremely pleased to see that the Obama Administration has included language in its proposed FY 2012 budget that addresses the U.S. Supreme Court’s 2009 *Carcieri v. Salazar* decision.

---

<sup>1</sup> Captain Richard H. Pratt. The full quote is: “A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.”

As you know, the Court held in *Carcieri* that the Secretary of the Interior has authority to take land into trust under the Indian Reorganization Act of 1934 (IRA) only for those tribes that were “under federal jurisdiction” in 1934. Before the Court’s decision, USET closely followed the progress of the *Carcieri* litigation through the federal court system because (1) the litigation involved one of USET’s member tribes – the Narragansett Tribe of Rhode Island – whose effort to have land taken into trust by the Secretary of Interior for a tribal housing project was challenged by the State of Rhode Island; and (2) USET’s member tribes realized that if the Court accepted Rhode Island’s interpretation of the IRA, the consequences would be devastating for all of Indian Country. USET firmly believes that this is a fundamental attack on tribal sovereignty.

USET sees the Court’s opinion as inequitable because it creates two classes of federally recognized tribes that would be treated differently under federal law – those that were “under federal jurisdiction” in 1934 and those that were not – and because it opens the door to considerable confusion and potential inconsistencies concerning the status of tribal lands, tribal businesses, and important civil and criminal jurisdictional issues.<sup>2</sup>

**The Proposed Language is the Proper Response to *Carcieri v. Salazar*.** USET strongly supports the proposed amendment to the IRA that is included in the President’s budget. The language is a direct and comprehensive response to the confusion generated by *Carcieri*. In its key provisions, this proposal:

- makes clear that the IRA applies to all federally recognized tribes;
- ratifies previous actions taken by the Secretary under the IRA for any federally recognized tribe so that such action cannot be challenged on the basis of whether the tribe was federally recognized or under federal jurisdiction in 1934;
- impacts no statute other than the IRA; and
- does not diminish or expand the Secretary’s authority under any statute or regulation other than the IRA.

Simply put, the proposal does nothing more than restore the *status quo ante*. For nearly 75 years before the *Carcieri* decision, DOI and tribes throughout Indian Country consistently interpreted the IRA as applying to all federally recognized tribes. The language proposed here by the President, and vigorously supported by USET, as well as tribes and tribal organizations across the country, ensures that that understanding is now clear in the law.

<sup>2</sup> These concerns are significantly heightened given the recent holding in *Patchak v. Salazar*, --- F.3d ---, 2011 WL 192495 (D.D.C. Jan 21, 2011) that the Quiet Title Act did not bar a challenge to the Secretary of Interior’s decision to take land into trust for the Gun Lake Band that was raised on several grounds, including because the tribe was allegedly not “under federal jurisdiction” in 1934.

Importantly, this proposal found strong support in the 111th Congress. Identical language was proposed by Representative Tom Cole (R-OK) in the House Interior Appropriations Subcommittee last fall, supported on a strong bi-partisan basis, and unanimously approved by that subcommittee. Subsequently, the language was included in the continuing resolution (H.R. 3082) that passed the House in early December 2010. Likewise, the Senate Indian Affairs Committee approved a similar proposal (S.1703) in the 111th Congress.

Two additional considerations are worth noting. First, the “equal footing” doctrine compels Congress to enact this proposal. The courts and Congress have long recognized that states enjoy the same basic sovereign rights, regardless of when they were admitted to the Union. Congress recognized the importance of applying that principle to Indian Country, and amended the IRA in 1994 to make clear that all federal agencies must provide equal treatment to all Indian tribes regardless of how or when they received federal recognition.<sup>3</sup> Unfortunately, the Supreme Court ignored this principle in deciding *Carcieri*.

Second, Congressional action is needed to ensure permanent resolution of this issue. Although DOI may continue to acquire land in trust for tribes, any decisions to do so remain under the threat of *Carcieri*-based administrative and court challenges. Until Congress takes action to clarify that the Secretary’s authority to take land into trust applies to all federally recognized tribes, *Carcieri* will undoubtedly be a source of controversy and challenge as DOI and the courts struggle to determine what it means to have been “under federal jurisdiction” in 1934 – a question that the Supreme Court did not answer in *Carcieri*.

**Protecting Tribal Homelands and Promoting Self-Sufficiency.** DOI has used the IRA to assist tribal governments in placing lands into trust, enabling tribes to rebuild their homelands and provide essential governmental services through the construction of schools, health clinics, Head Start centers, elder centers, veteran centers, housing, and other tribal community facilities. Tribal trust acquisitions have also been instrumental in helping tribes protect their traditional cultures and practices. Equally important, tribal trust lands have also helped spur economic development on tribal lands, providing much needed financial benefits, including jobs, not only for tribal communities, but also the non-Indian communities that surround them. These important benefits should move Congress to ensure that tribal self-determination is supported by clarifying that the Secretary’s IRA trust acquisition authority extends to all federally recognized tribes.

In enacting the IRA, Congress sought to reverse the devastating impact of the federal policies of allotment and assimilation that marred federal Indian policy in the late 19th and early 20th centuries. In place of that policy, the IRA offered comprehensive reform allowing for the establishment of tribal constitutions and tribal business structures, as well as land bases to be held in trust.

---

<sup>3</sup> See 25 U.S.C. §476(f)-(g).

Tribal land bases are the very foundation of tribal economies. The *Carcieri* decision creates uncertainty and promises years of legal wrangling as to all tribal land bases, even those held by tribes that were federally recognized in 1934. Those who oppose tribal sovereignty use the *Carcieri* decision to challenge all trust acquisitions, even for tribes with long-standing treaty relations with the United States and clear federal recognition in 1934. Even lands currently held in trust for such tribes are now subject to challenge in court under the *Patchak* decision. Of course, the situation is even more uncertain for tribes that were not federally recognized in 1934. Each of us is obliged to comb through years and volumes of historical records to establish a standard – under federal jurisdiction – that remains a moving target. This uncertainty, both during and after trust acquisition by the United States, undermines the very purpose of the IRA. Congress must provide Indian country certainty by enacting the proposed legislative fix to *Carcieri*.

Opponents argue that the *Carcieri* fix proposed here would lead to the proliferation of off-reservation Indian gaming across the country. That notion is incorrect and lacking factual support. Although Indian gaming activities occur on trust lands, the IRA's land-into-trust process is legally distinct and separate from determining whether Indian land is eligible for gaming. The Indian Gaming Regulatory Act (IGRA) establishes a general prohibition against gaming on lands placed in trust after 1988, making exceptions for gaming on lands acquired in trust after that date only in extremely limited circumstances. The most notable of these is a two-part test requiring the Secretary of the Interior to determine that gaming would be in the best interest of the tribe and not detrimental to the surrounding community, as well as the concurrence of the governor of the state where the proposed Indian gaming activity would occur. Further, DOI has promulgated strict regulations (25 C.F.R. Part 292) to guide the Secretary in determining whether Indian land meets an exception to the prohibitions set out in IGRA. As a result of these statutory and administrative limitations, only 3 tribes have gained approval to conduct off-reservation gaming since 1988.

Those with concerns over the expansion of gaming have every opportunity to oppose and possibly stop any off-reservation expansion under existing law and regulations. The *Carcieri* fix does not affect that balance of power between tribes and states struck in IGRA and should not become hostage to this concern. Ignoring the fact that IGRA governs gaming in Indian Country is dismissive of the federal law established to address such concerns.

**Congressional Inaction Has Significant Consequences.** Failing to enact the proposed amendment deprives tribal governments of important benefits that the IRA was intended to provide. As already noted, tribal land bases are a fundamental component of creating and sustaining tribal economic development. Federally recognized tribes that lack the ability to have land acquired in trust, or whose land holdings are threatened because of *Carcieri*, likewise lack the ability to promote economic development, attract investing businesses, and create jobs on their lands. This also harms surrounding non-Indian communities that are just as likely to benefit from successful tribal business enterprises as tribal members who are residing on tribal lands where such activity is occurring.

Congressional inaction could also generate significant costs for the federal government and tribes. *Carcieri* failed to resolve the meaning of the phrase “under federal jurisdiction.” Until Congress settles this question – which would occur most easily by amending the IRA to clarify that it applies to all federally recognized tribes – we should expect tribal opponents to frequently challenge pending trust acquisitions using *Carcieri*. Indeed, since the Supreme Court handed down the *Carcieri* decision, more than a dozen federal court cases have been filed raising this objection to a Secretarial decision to take land into trust.

The recent D.C. Circuit opinion in *Patchak* – holding that the Quiet Title Act did not bar a *Carcieri*-based challenge to land already in trust – only compounds this problem. American taxpayers will bear the burden of such litigation, which will undoubtedly be protracted and costly, as the federal government will be called upon to defend its past and pending Indian trust acquisitions. Litigation of this nature will also be a costly burden to tribes whose lands are at issue, as they will likely want to intervene or act as *amici* in challenges to the trust status of their lands.

By contrast, the IRA amendment proposed would have no negative financial implications. It costs taxpayers nothing for Congress to pass the proposal. At the same time, it eliminates the threat of significant litigation and mushrooming costs to U.S. taxpayers on the question of what “under federal jurisdiction” means. This factor alone should offer Congress sufficient reason to amend the IRA to ensure its full application to all federally recognized tribes.

Finally, *Carcieri* creates a significant threat to public safety on tribal lands. By upending decades-old interpretations regarding the status of Indian lands, the Supreme Court has thrown into doubt the question of who has jurisdictional authority over the lands. The geographic scope of federal criminal jurisdiction depends upon the existence of Indian country – a term that includes trust land. And the Supreme Court has used this same concept of Indian country to define the complicated boundaries between federal and tribal authority on one hand and state authority on the other. Thus, the *Carcieri* decision could cast doubt on federal prosecution of crimes committed in Indian country as well as civil jurisdiction over much of Indian country. The proposed IRA amendment would alleviate this concern, making clear that the Secretary can lawfully take land into trust for all federally recognized tribes in the future, and ratifies the Secretary’s past trust acquisitions.

For all of the reasons set forth here, we strongly urge Congress to swiftly enact the proposed amendment in Section 118 and restore the federal government’s and tribes’ longstanding view that the IRA applies to all federally recognized tribes.

### GENERAL BUDGET CONSIDERATIONS

USET urges the Committee to support funding increases substantially above the inflation rate for Tribal Priority Allocations, Contract Support Costs, Tribal Courts, Scholarships and Cultural Properties, within the Bureau of Indian Affairs and Bureau of Indian Education budgets, Department of the Interior, as well as for the other budget priorities described below.

This testimony is focused on the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE). It does not address in detail critical priorities for Indian health care, Indian Housing, energy development, language and natural resources strategy, although the USET priorities in each of those areas are set forth below. With regard to those areas, USET generally endorses the national Tribal priorities put forth by the relevant national Indian associations for funding of the Indian Health Service through HHS, Indian Housing programs through HUD, Indian language and culture through the Department of Education, Tribal Historic Preservation Officers through the National Park Service budget, and other important Tribal budget priorities.

Most of the USET BIA and BIE budget priorities are in-line with the identified national Tribal priorities; however there are several areas of concern that are specific to the Tribes of the Eastern Region. While USET believes that *all* Indian programs are vital to creating strong Tribal Governments, and that Congress should protect and improve current base funding levels for all programs, the USET priority programs are: *Tribal Priority Allocations, Contract Support, Tribal Court, Scholarships and Cultural Resources*.

**Tribal Priority Allocations (TPA).** The Tribal Priority Allocation is the principal source of funds for tribal governments. Tribes have the latitude to prioritize TPA funding among numerous general categories, including Social Services, Resources Management, Tribal Government, Real Estate Services, Education, Public Safety & Justice, and Community & Economic Development. This flexibility is particularly important to USET, due to the diverse nature of our membership.

The 1999 Bureau of Indian Affairs Tribal Priority Allocation Report showed that the TPA base met only one-third of identified need. Considering the minimal funding increases since that time, coupled with inflation and population increases, the situation has only worsened. To catch up in part, USET believes that funding for the Eastern Region Tribes TPA needs to increase by at least \$9.4 million, even without considering our unmet historical needs.

**Tribal Courts.** As former Attorney General Janet Reno noted “fulfilling the federal government’s trust responsibility to Indian nations means not only adequate law enforcement in Indian Country, but enhancement of tribal justice systems as well.” Despite increases in FY 2010, the high cost of legal personnel (i.e. judges, prosecutors, attorneys, mediators) means that funding for effective Tribal courts needs to remain a priority. As cited in a Civil Rights Commission Report, “the critical financial need of tribal courts has been well documented and ultimately led to the passage of the Indian

Tribal Justice Act.” Currently in the Eastern Region, only 46% of the tribes receive BIA funding for the operation of their tribal courts. Many of these courts have a judge that only hears cases once a month, raising due process concerns. Tribes do not have the funding to purchase much needed legal materials or to send personnel to relevant trainings. The need for tribes to establish drug courts is growing as more and more tribes face an increase in prescription drugs, methamphetamines and other controlled substances on tribal lands. Without tribal courts, tribes are not able to provide for the protection and well-being of their tribal members. Many programs such as Indian Child Welfare, Title IV-B, Adult Protection, and Child Support Enforcement require tribes to have established judicial systems in place prior to assumption of these programs.

**Scholarships.** Over the last several years, funding for BIA’s post-secondary education programs has remained largely stagnant. Despite the increasing costs of college tuition and other related costs (between School Year 2001 – 2009 tuition costs increased by more than 26%), the average grant (\$2,700 per student) has remained the same for the last 5 years. The FY 2011 Indian Affairs Budget Justification states that tribes will experience a decline from the prior year in the number of scholarships. Even though the projected decline is slight, any decline is devastating considering the existing disparities. Due to funding limitations, most Tribes must turn students away or can only supplement partial scholarships for their tribal members. Tribal youth are increasingly interested in pursuing higher education degrees; however tribal graduates still remain far behind the number of graduates from other groups in America. Other financial aid and grant opportunities for higher education have been reduced in previous years, making it extremely difficult for most tribal students to afford pursuing higher education.

Effective educational systems are crucial for nurturing strong and self-reliant young adults. Strong emphasis on education in communities has shown reduced criminal and domestic violence rates, reduced cases of substance abuse, and reduced poverty levels while increasing the economic vitality of the community. Providing additional funding for BIA’s scholarship program is vital to fostering equity in higher educational attainment for Indians to other people groups in America.

**Contract Support Costs.** The FY 2012 President’s Budget proposes a funding increase of \$21.5 million for Contract Support Costs over FY 2010/2011CR levels. This complex funding area has been a priority issue for decades, not only for the Eastern Region Tribes, but for all Tribes operating federal programs. When Contract Support Costs are not fully funded the Tribes are forced to utilize limited direct program service dollars or tribal resources to cover shortfalls. The methodology behind Contract Support Costs basically dictates that Tribes need to identify resources to cover any shortfalls or they are at risk of entering into a “downward cycle” and the tribe’s ability to effectively and efficiently manage federal programs is greatly impaired. This proposed increase, coupled with previous years’ increases, brings the BIA to 94% level of achieving this obligation. Other Bureaus within the Department of Interior, as with other federal agencies, have achieved their obligation of paying a 100% contract support costs to their non-native contractors; this obligation cannot be ignored when it involves tribal 638 contractors.

**USET Budget Resolutions.** USET has passed a series of resolutions addressing various FY 2012 funding priorities. In these resolutions, USET notes that the United States has a special trust responsibility to Indian tribes that is confirmed through numerous laws, treaties, regulations, court rulings and executive orders and that this special relationship must be considered when analyzing budget priorities. A reduction to FY 2008 levels, as has been proposed by some in the Congress, would equate to a drastic reduction to already severely underfunded Indian programs. Therefore USET calls for the exemption of all Indian programs from any mandatory budget reduction imposed for FY 2012 and beyond. USET further puts forward the following funding priorities:

**Cultural Resources** – Adequate funding for Tribal cultural resource programs is essential to the spiritual, health, social, and economic wellbeing of Tribal communities. USET Priorities:

1. Native American Graves Protection and Repatriation Act (NAGPRA)
2. Tribal Historic Preservation office Program
3. Adequately fund all federal agencies so that they can fulfill their obligations under all historic preservation statutes

**Emergency Services** – Federal funding and support is essential for Tribes to enhance their emergency services preparation, response and recovery capabilities. USET Priorities:

1. Federal Emergency Management Agency (FEMA) Emergency Management Operations Center Grant
2. FEMA Assistance to Firefighter Grant Program, including
  - a. Assistance to Fire Fighter (AFG) Grant
  - b. Staffing for Adequate Fire and Emergency Responders (SAFER) Grant
  - c. Fire Prevention and Safety (FP&S) Grant
3. FEMA Interoperable Emergency Communications Grant (IECG)
4. FEMA Tribal Homeland Security Grant

**Housing** – Adequate funding for Tribal housing programs is essential to the health, social and economic well-being of Tribal communities. USET Priorities:

1. Indian Housing Block Grant
2. Indian Community Development Block Grant
3. Title VI Loan Guarantee Program
4. Section 184 Indian Home Loan Guarantee Program
5. Native American Housing Assistance and Self-Determination Act Training & Technical Assistance

**Social Service Programs** – Adequate funding for child welfare services is essential to the health, social and economic well being of tribal children, adults, and the community. USET Priorities:

1. Indian Child Welfare Act (ICWA)
2. Bureau of Indian Affairs Child Welfare Assistance
3. Administration of Children and Families Title IV-B, Subpart 1
4. Administration of Children and Families Title IV-B, Subpart 2
5. Title II, Community-Based Grants for Prevention of Child Abuse and neglect of Child Abuse Prevention and Treatment Act

**Health** – adequate funding for Indian Tribal and Urban Health programs is essential to the health, social and economic well being of tribal communities. USET Priorities:

1. Hold harmless IHS funding increases from FY 2008, 2009 and 2010
2. Contract Health Service Program
3. Contract Support Costs

**Natural Resources** – Adequate funding for Tribal energy, natural resources and environmental programs is essential to the health, social and economic well being of Tribal communities. USET Priorities:

1. Environmental Protection Agency Indian Environmental General Assistance Program
2. Indian Health Service Operation and Maintenance funding for Tribal Public Water Systems
3. Department of Energy Capacity Development and Implementation Bureau of Indian Affairs Water Management, Planning and Pre-Development Programs
4. Environmental Protection Agency Multimedia Tribal Implementation Grants Program.

#### CONCLUSION

The proposed FY 2012 budget puts important considerations before this Committee for Indian Country. We urge the Committee to take swift action to address the *Carciari* decision as proposed by the President. Restoring the Secretary of Interior's authority to acquire lands in trust under the IRA for all federally recognized tribes is as important as any funding-related provisions that have been proposed. Indeed, all Indian programs are important and interconnected in the broad effort of bringing parity and progress to Indian country. To the extent that some areas may receive greater increases than others, USET would ask that base funding be protected for all programs but that additional funding go to the priority areas described above. USET also asks that any additional funding go directly to the program/Tribal level and not be held for administration use at the central level. There is a responsibility to ensure that federal agencies are funded appropriately to fulfill the trust responsibilities that they have been tasked with. However, this agency funding should be separate and non-impacting to the direct support dollars that go to tribes.

Native peoples are very aware that we were once self-sufficient and we seek to become fully so again. We are proud of our histories and our cultures and want it taught to our children, and indeed to all Americans. We are proud of the sovereign status of our governments, as recognized by the Constitution. We are also proud of America in many ways, and serve in the military in greater number than any other ethnic group. But we ask that America remember its obligation to its Native peoples. We ask that that obligation take a concrete form in the 112<sup>th</sup> Congress in the form of a strong budget for tribal programs.

The work of this Committee is very important to Indian Country. Thank you for this opportunity to provide testimony. Please do not hesitate to contact me if you should have any questions.

The CHAIRMAN. Thank you very much, Mr. Barbry.  
Now, I will call on Mr. Steele for your statement.

**STATEMENT OF HON. JAMES STEELE, JR., FIRST VICE-PRESIDENT, AFFILIATED TRIBES OF NORTHWEST INDIANS; COUNCIL MEMBER, CONFEDERATED SALISH AND KOOTENAI TRIBES**

Mr. STEELE. [greeting in native language]. Good morning, Chairman and Committee Members. I especially want to congratulate Senator Akaka on his new Chairmanship of the Committee.

Also, I would like to thank Senator Tester for the warm greeting and welcome earlier. I very much appreciate it and appreciate his work on behalf of us in Montana and Indian Country.

My name is James Steele, Jr. I am the First Vice President of Affiliated Tribes of Northwest Indians, and I am also Council Member of the Confederated Salish and Kootenai Tribes.

ATNI appreciates the opportunity to testify on the President's 2012 budget affecting Indian tribes in the Northwest. As of course many of you may know or many may not that the tribes in Montana, Wyoming, Oregon, Idaho, the Northwest are a diverse bunch, a diverse group of tribes that rely on a variety of natural resources from timber, agriculture. Some of our tribes are involved in mining, hydroelectric projects and such.

A variety of our tribes have their founding relationships with the United States Government based on treaties, and it is from that responsibility of the United States Government that we in the Northwest believe that our relationships starts with the Federal Government.

I want to mention a little bit about the Honorable Congressman Mike Simpson from Idaho, the Chairman of the House Interior Appropriations Subcommittee in which he committed to try and protect BIA and IHS funding. And he indicated the desire to, "hold programs within the Bureau of Indian Affairs and IHS harmless." He wrote that the Federal Government has the responsibility to help tribes meet needs and solve problems in Indian Country. We hope his views are shared by others.

Due to the diversity of our economies in the Northwest, it is difficult to suggest what top priorities within the Federal budget might be as well varied from tribe to tribe. The responsibilities and

the priorities are different from tribe to tribe. And to determine what should be cut is difficult.

I will say one thing about the Federal budget that is going through Congress right now. The talk of shutdowns and radical budget cuts scares our people. Due to the tremendous influence of the Federal Government that it has on our Indian reservations and the people of our Indian Reservations, a shutdown would hit us harder than any other segment of the American population.

Our BIA-funded schools, our IHS-funded clinics would apparently close down very quickly. It really is a large concern and I hope Congress, particularly your colleagues in the House, really consider the consequences of their action.

Mr. Chairman, we understand about budget deficits and the need to reduce them, and I believe the Indian people would be willing to contribute their fair share of reductions needed. But first, we need to get to the point where we have something even resembling parity with the rest of the population.

No more clear example of this can be found in what the Federal Government spends on health care for various Federal beneficiaries. The Indian Health Service spends \$1,900 per tribal member. The Federal Government spends \$3,700 on Federal employees for health care, \$3,800 for Federal prisoners for health care, and almost \$6,000 for veterans for health care.

Are we really worth half of a Federal prisoner and a third of a veteran, even when so many of our tribal people have bravely fought for this Country? What other explanation is there.

There are similar comparative figures relative to law enforcement and natural resource management. Please point these horrible disparities out to your colleagues on the Budget and Appropriations Committees and ask them if they can be cutting these funds for our people.

One of the things I want to just real quickly mention off of my prepared statement here is that one thing we really need in Indian Country in terms of self-determination and self-governance is that we need regional offices and directors of the Bureau of Indian Affairs to come alongside and help the tribes. Recently, the Confederated Salish and Kootenai Tribes converted more than 37,000 fee-acres to trust, more than any region in the Country in a Bureau of Indian Affairs region.

How was that accomplished? One, we had a Regional Director named Stan Speaks that came along with tribes and helped us get it accomplished. Two, we compacted and ran our own tribal plan. And with that, you have to have a partnership between the Bureau of Indian Affairs and the tribe to get things done.

Many times in many regions, the tribe wants to do something, but the Bureau of Indian Affairs does not want them to do it. Our tribe is an example. We were in the Billings area region. We were a self-governance tribe. The Billings area didn't want to help us in the 1980s. We moved to the Northwest region because the Northwest region was willing to help our tribe be self-sufficient and self-determining.

Mr. Chairman, we had a good example this morning from Senator Tester's questions to the Bureau of Indian Affairs. That is an example of what tribes go through every day when we ask the Bu-

reau of Indian Affairs for a straight question. You can't get it. And with all due respect to Mr. Echo Hawk and Dr. Roubideaux, they are trying very hard, but you have an entrenched anti-progressiveness in the Bureau of Indian Affairs that doesn't want Indians to prosper and be successful. Some regions, yes; in a lot of regions, no.

With that, Mr. Chairman, thank you.

[The prepared statement of Mr. Steele follows:]

PREPARED STATEMENT OF HON. JAMES STEELE, JR., FIRST VICE-PRESIDENT, AFFILIATED TRIBES OF NORTHWEST INDIANS; COUNCIL MEMBER, CONFEDERATED SALISH AND KOOTENAI TRIBES

Good morning Chairman Daniel Kahinina and Committee members. First, I would like to congratulate Senator Daniel Kahikina Akaka as the new Chairman of the Senate Indian Affairs Committee. On behalf of the northwest region we deeply respect and honor your leadership as America's first Senator of Native Hawaiian ancestry, and the only Chinese American member of the United States Senate.

My name is James Steele, I am the First Vice-President of the Affiliated Tribes of Northwest Indians ("ATNI") and the serve as councilman to the Confederated Salish and Kootenai Tribes of the Flathead Nation in Montana State. ATNI appreciates the opportunity to testify on the President's Fiscal Year 2012 Budget for Tribal Programs affecting Indian tribes in the northwest.

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, western Montana, Alaska, northern California, and Nevada. Today, I am proud to be able to highlight for the Committee some issues affecting northwest tribes. The northwest tribes are very diverse. The northwest is home to tribes with large reservations and natural resource based economies and others with very little, if any, land. Despite our ranging differences northwest tribes stand strong together under

ATNI to face the challenges of ensuring our communities are healthy, safe and sustainable.

Today's hearing provides us an opportunity to share recommendations for programs that flow through the President's Fiscal Year 2012 Budget. Our deliberations today will not only share our top three priorities for the Self Governance Budget that is presently being discussed by the Tribal Interior Budget Council (TIBC) this week but we will also expand our discussion today to include how the budget and actions of this Congress will impact our capacity to fully address unmet needs to improve governmental services and economic development.

Let me start with a few thoughts that have guided the leadership for the northwest tribes. Our region, like many others, has diverse economies that consist of natural resources in salmon, timber and agriculture; gaming tribes with small and large venues; business ventures that stretch from 8a contracts to the ports in the northwest and most recently the investment and infrastructure building for renewable energy.

We, as northwest tribes, are learning more as we progress. We have learned that distributing income from casinos is not the answer. Indeed, just as would be imagined for any other community, free, windfall money is more likely to reduce motivation, destroy self-esteem, and aggravates the long endured and reinforced symptoms of poverty than it is to solve them. We have learned that job creation alone is not the solution. People accustomed to living outdoors, to whom hunting and fishing remain among the most valued possible human endeavors aren't necessarily drawn to windowless, smoke filled rooms lit with flashing lights or corporate style offices.

Gaming has enabled many northwest tribes to provide basic health care, education, and housing. We address many of those by-products of poverty with childcare, provide for law and justice, care for the elders, and drug and alcohol programs. We provide these social services not only to ourselves, but to our neighbors as well. In many cases, we are the only providers of these services and make them available to surrounding communities.

Increasingly, the northwest tribes have been leaders in assuming direct managing of our natural resources. According to Bureau of Indian Affairs statistics, the northwest tribes and their enterprises support 40,000 jobs and buy over a billion dollars a year in supplies and services, much of which supports our larger local communities. We deliver a full range of government services of a complexity unsurpassed in the US except by the federal government. And we operate businesses of a size and scale on par with almost any private business. Yet we typically do so with the human resources of a small town. The largest Tribes in our region seldom exceed 10,000 in total population and smallest tribes go as low as 700 in population.

With these observations in mind, below are some issues, concerns, and opportunities that ATNI sees with respect to economic and social issues for its membership. Let me start with the Self Governance Legislative and Budget needs for 2012. As we all know

there are many answers that begin and end with the Department of Interior and the Office of Self Governance. Today I will share a few top priorities and goals, as you will be receiving more outcomes from the TBIC, which is meeting in DC throughout the week.

Expanding Self Determination and Self Governance opportunities is a key to the future of many ATNI Tribes. Many ATNI Tribes seek to continue to restore their resources so that they can once again be contributors to their spiritual, physical, and economic health. We ask that the federal government actively pursue with us our lead role under the directives of the Indian Self Determination Act (PL 93-638). This would include making the policy of self-determination a proactive element of the Congress and the Federal Government, not just a consequence of the Tribes' insistence. In order for Self Governance tribes to be successful they need the full support and cooperation of their regional office. We want to thank our regional director, Stanley Speaks for assisting our member tribes to take full advantage of the Indian Self Determination Act (PL 93-638).

#### Background on Self Governance Budget

Self-Governance is a tribally-driven, congressional legislative option, whereby tribal governments are authorized to negotiate annual appropriated funding and assume management and control of programs, services, functions and activities (or portions thereof) that were previously managed by the federal government. Self-Governance represents the expansion and growth of the historical legislation, P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), in that it allows tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them to best fit the needs of their citizens and tribal communities.

Since initiation of the first Self-Governance agreement more than two decades ago, the number of Tribes and the amount of programs and funding managed under this legislation has steadily increased. As of 2011, there are 260 Self-Governance (SG) Tribes within the Department of the Interior – Indian Affairs – Office of Self-Governance (DOI-IA-OSG). There are 104 compacts funded through 104 annual funding agreements totaling \$450 million. Within the Department of Health and Human Services - Indian Health Service – Office of Tribal Self-Governance (DHHS –IHS-OTSG), there are 78 Title V compacts, funded through 100 Funding Agreements, totaling approximately \$1.4 billion. These compacts represent 332 Tribes – more than half of all the federally recognized Tribes. Throughout this period, the Self-Governance Tribal leadership and representatives have held on-going meetings with the Administration and Congress to discuss how to improve and advance Self-Governance. Further, the Self-Governance Tribes conduct an Annual Conference and meet each fall for a Strategic Planning Session to discuss and identify goals and priorities.

Established in 1994, the DOI Self-Governance Advisory Committee (SGAC) provides information and advice to the Assistant Secretary-Indian Affairs and the Director of the Office of Self-Governance (OSG) regarding all Self-Governance programs, federal laws, regulations, policies and budget issues within Indian Affairs.

Established in 1996, the Tribal Self-Governance Advisory Committee (TSGAC) provides information dissemination, education, advocacy and policy guidance for implementation of Self-Governance within the Indian Health Service. The passage of Title V, The Tribal Self-Governance Amendments of 2000 (P.L. 106-260) and the subsequent promulgation of the Title V regulations, published in the Federal Register on May 17, 2002, further strengthen the role of the TSGAC in implementing this Act. Self-Governance Tribes are doing a great job as managers and administrators of programs on and off the reservation. We are the most qualified to share best practices and to guide the future of Self-Governance. The physical and mental health of our people has improved under Self-Governance and will continue to do so as long as we are allowed to operate programs as we deem appropriate and most beneficial to our local communities and Tribal citizens. Department of the Interior & Indian Affairs Policy, Budget and Legislative Priorities: Goals, Strategies and Actions

#### BUDGET PRIORITIES

##### Self Governance: Top Three Budget Goals

Goal #1: Restore Self-Governance Base Budgets, Protect from Further Erosion and Provide Equitable Funding

Goal #2:  
Fully fund Contract Support Costs (CSC)

Goal #3:  
Provide Funding Increase for Tribal Priority Allocations, Public Safety and Justice, Indian Reservation Roads, and Education Programs

##### Detailed Information for Goal's listed below:

##### Goal #1: Restore Self-Governance Base Budgets, Protect from Further Erosion and Provide Equitable Funding

Faulty budget decision making occurs in two predominant variations. First, the lack of data results in the application of existing funding formulas without accurate, consistent and verifiable formula variables. Without accurate data, funding formulas have the appearance of fairness and objectivity while masking the underlying inequities embedded within the distribution. The application of the Indian Reservation Roads (IRR) formula is one such example. While the IRR formula attempts to provide a fair distribution of funds using the variables of population, cost to construct, and vehicle miles traveled, data inaccuracies regarding Tribal road inventories and the condition of the roads therein, leads to inequitable funding distributions. Formula variables must be supported by data that is readily obtainable, quantifiable, and verifiable.

The second variation of faulty budget decision making occurs when there is simply no objectively defined funding distribution formula at all. Without a defined funding formula, BIA personnel make allocation decisions based upon personal knowledge and preferences. For example, in the Law Enforcement Program, BIA personnel make funding allocation decisions based upon personal knowledge of Tribal needs. This knowledge is obtained inconsistently and idiosyncratically and too often relies almost exclusively on who knows whom and results in decisions that cannot be reasonably predicted or justified.

Another strategy utilized by the Agency for the distribution of funds without a clearly defined formula, is prioritizing need on the individual recipient basis rather than at the Tribal level. Such is the case with the Housing Improvement Program (HIP). The allocation of funds from Central Office to respective Tribes is not efficient or effective. Tribal distributions have the advantage of strengthening and empowering Tribal governments while allowing for more accurate and timely decision making at the local level.

While the development and consistent application of clearly defined funding formulas could maximize program service delivery throughout Indian Country, the most logical solution to this problem is to identify those programs that have been arbitrarily removed from Tribal administration (Law Enforcement, Housing Improvement Program, General Assistance, etc.) and return them to the Tribal Priority Allocations (TPA) account. It has been demonstrated time and time again, that programs administered at the local level are more efficient and effective in meeting the identified needs of Tribal communities.

Goal #2:  
Fully fund Contract Support Costs (CSC)

The lack of CSC dollars diminishes the administrative capacity of Indian Tribes to deliver quality programs and services to our members. It undermines our ability to recruit, train, and retain qualified, professional employees. The Tribal administrative personnel hired with CSC dollars help ensure accountability and transparency in our administration of federal programs. Contract support cost shortfalls force Tribal governments to subsidize those costs by using program funds or tribal dollars. The Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, mandates that Indian Tribes be paid full contract support costs. There is no other government contractor that is forced to subsidize federal contracts. The consistent failure to pay full contract support costs results in a de facto moratorium on Self-Determination and Self-Governance compacting while penalizing Tribes in the exercise of their Self-Determination rights under the law.

Goal #3:  
Provide Funding Increase for Tribal Priority Allocations, Public Safety and Justice, Indian Reservation Roads, and Education Programs

Tribal Priority Allocations (TPA)

TPA is one of the most important funding areas for Tribal governments. It covers such needs as economic development, general assistance, and natural resource management. Since Tribes have the flexibility to use TPA funds to meet the unique needs of their individual communities, these are the main resources for Tribes to exercise their powers of Self-Governance. However, from 1998 through 2004, BIA's funding for Tribal Priority Allocations declined from 42% of BIA's budget to only 33.3%. In 2000, TPA funding was so inadequate that the estimated need was \$2.8 billion. According to the budget statistics compiled by the National Congress of American Indians (NCAI), inadequate TPA funding reaches back two decades and has prevented Tribes from fully exercising Self-Governance.

Tribal Public Safety and Justice Programs

Tribal governments, through Tribal law enforcement agencies, are the front line for crime control and prevention in Indian Country. According to the BIA, Indian Country has a 42% unmet staffing need for police departments. Most Indian communities have 2-3 officers charged with patrolling an area the size of Delaware (2044 square miles). This severe understaffing contributes to an unacceptable high crime rate: 1 in 10 American Indians become victims of violent crime annually and 1 in 3 Indian women will be raped in her lifetime. To make matters even worse, more often than not, U.S. Attorneys decline to prosecute cases originating in Indian Country.

Indian Reservation Roads (IRR)

Interior Department officials have recognized that transportation systems serving Tribal communities suffer from a nearly \$40 billion construction backlog. Although Tribal roads represent 9.18% of the combined total of federal-aid for highways and federally owned roads, the IRR program receives only 1.4% of funds authorized to be appropriated under Title I of the Safe, Accountable, Flexible Transportation Equity Act – A Legacy for Users (SAFETEA-LU). Tribes with significant acreage have the most backlog which significantly impacts safety.

Tribal Education Programs

Native American children lag significantly behind the general population in educational attainment. For example, Native people are twice as likely to have less than a ninth-grade education and only 12% of American Indians residing on reservations have college degrees compared to over 30% for the entire U.S. population. Effective and culturally relevant education is critical for nurturing strong, prosperous Tribal youth and laying the foundation for healthy communities. Without significant resources to develop effective educational programs, tribes in the northwest are opening their own schools and funding the needs from tribal taxed revenue dollars.

Renewable Energy Development and Climate Change: ATNI member tribes are very interested in energy development because it is a key to economic development for many northwest Tribes, many of which are impoverished and have unemployment rates that are much higher than other areas of the country. ATNI members tribes are exploring wind, biomass, solar, geothermal, and hydroelectric energy opportunities,

among others. While some Tribes have experience in those areas, most do not and seek help in building expertise and knowledge. To this end, the ability of northwest Tribes to obtain capacity building grants to allow them to create the infrastructure to diversify away from a reliance on casino gaming will be critical to ensuring that these projects progress and become successful.

Streamlining the fee-to-trust process so lands reacquired by Tribes can become productive for them more quickly is also important to ATNI. This includes breaking down unnecessary barriers and expenses that the Bureau of Indian Affairs requires of Tribes to put even on-reservation land into trust status. In 2010 my own tribe, the Confederated Salish and Kootenai Tribes converted 37,000 fee acres to trust, far more than similar land conversions for all the tribes in the BIAs' Southwest Region, Great Plains Region Midwest Regions combined. We were the first tribe in the US to have our own title plant and because we take on much work ourselves, instead of relying in the BIA, we can innovate and accomplish much. We want to be proactive and we want the BIA to help tribes be proactive and to not hinder tribal development with unnecessarily bureaucratic responses to everything.

The enactment of a *Carcieri* "fix" to ensure that all federally recognized Tribes can avail themselves of the opportunity to have land taken into trust for economic development or other purposes is a critical issue for ATNI. Although opponents have attempted to make this a gaming issue, the case negatively affects northwest Tribes at the most fundamental levels. ATNI acknowledges the commitment from our Congressional members to find a remedy soon. There have been many targeted examples of why this is an important issue for Indian Country, and for ATNI here is our example. The uncertainty caused by the decision has indefinitely delayed a fee-to-trust application submitted by ATNI member tribe, Sauk-Suiattle for 1.5 acres for a housing development. A number of other Tribes in the northwest are potentially affected by the decision. We seek adequate time and funding to ensure we come to a decision on this bill.

Trust reform is an area where ATNI has been a national leader for several years. With much respect, I wanted to share an informational fact before I go on with the recommendations for Trust Reform. Last week we heard from a few Senators who discussed trust reform as relieving the federal government of their trust responsibility under their treaties. Trust reform is not the same as Trust Responsibility. Trust reform is to fulfill governmental services provided under our federal agreements with the United States of America.

*Tribal Services are not Earmarks:*

As many of you know the President took a stand to cut earmarks, and we are looking to work with our Congressional members to advocate for funding to support our federal programs that fall under the definition of earmarks. We see the tribal funding being

tossed around under earmarks as a threat to the trust responsibility and the government's responsibility to fulfill federal agreements such as treaties. Let us work together to redefine tribal earmarks and state a legal fact out of the Constitution, and make a bold statement. "Tribal funds are not earmarks." The United States government under the Constitution must fund our programs at a level that fulfills trust responsibility and federal agreements. This is an old fight, but considering our economic crisis, we need to advance on it.

I have seen a very positive statement by Congressman Mike Simpson of Idaho, the Chairman of the House Interior Appropriations Subcommittee in which he has committed to try and protect BIA and IHS funding. He indicated a desire to "hold programs within BIA and IHS harmless" and he wrote that "the federal government has a responsibility to help tribes meet needs and solve problems in Indian Country . . ." We hope his views are shared by others.

ATNI's commitment to this issue is grounded in maintaining the integrity of the United States' trust responsibility that is, as you know, based upon the historical cession of millions of acres of ancestral lands by the tribes. In return for these lands, the United States government committed itself to protecting the tribes in the possession and occupancy of their remaining homelands. ATNI believes strongly that Congress should consider a comprehensive approach to trust management. ATNI and other tribal organizations spent significant time and energy in working with both this Committee in recent years on these issues, specifically developing Title III of the Indian Trust Reform Act of 2005 (introduced as H.R. 4322 in the 109th Congress) and transitioning the Office of the Special Trustee back to the Bureau of Indian Affairs. Looking ahead, we hope that the Committee will consider these views as it considers other bills and related to the administration of Indian trust assets.

We need to focus on true trust reform as our goal for the next two years. We need our congressional parties to work together and address the need to breakdown the bureaucratic hoops existing in agencies such as BIA. This is a vital priority for Indian Country, as these barriers are hindering many of our opportunities. For example, it hinders our investors from working with us to implement renewable energy and economic development.

A solid example of breaking down barriers has been provided by our own, ATNI President, Chairman Cladoosby of the Swinomish Tribe as well as the Puyallup and Kalispel tribes most recently passed a bill amending the federal leasing law, [25 USC (United States Code) Section 415] which allows these three tribes to lease land up to 99 years without BIA approval to lease land, a process that would sometimes take months if not years. For Swinomish this was a devastating regulation that deeply impacted their economic development plans. A few years ago Swinomish had the opportunity to lease land to a big box developer, Wal-Mart. However the lease was held up in BIA for months, and by then the market had turned and Wal-Mart could not wait and pulled their agreement. Now with this new amendment, we can determine and approve our own leases up to 75 years. We recommend the Senate Committee review this bill and

provide an opportunity for Tribes nationally to have this same opportunity with an opt-in and opt-out clause, as recognize not all tribes have the same capacities.

Federal and state taxation of Indian land and property is another area of concern and interest to ATNI and its member tribes. For too long, Indian tribes have been at a disadvantage in the area of taxation. For example, Thurston County, in southern Washington, is attempting to impose personal property taxes on permanent buildings on tribal trust land on the Chehalis Tribe's Reservation. Under a joint venture, the Tribe and its minority-interest non-Indian business partner use the buildings to operate a \$170-million hotel, convention center, and water park known as the Great Wolf Lodge. The Tribe has invested in upwards of \$86 million of its own cash, credit and sweat equity in the Great Wolf Lodge project and project is a sterling example of the benefits of non-gaming economic development to tribal and surrounding communities.

For more than 100 years, Indian lands and property have been tax exempt. Because there is no federal statute that expressly preempts property taxes in this context, however, the Chehalis Tribe has been forced to defend its rights through expensive and burdensome litigation. This problem is not confined to the Northwest. Renewable energy projects on Indian lands, which necessarily require non-Indian partners to be viable, have also been targeted by state and local governments in the Great Plains and the Southwest for personal property taxes.

The Committee can help Tribes address these issues through legislative reforms that will bring more substantial private investment and in turn economic opportunity to Indian Country. In this regard, ATNI encourages the Committee, together with the Senate Committee on Finance, to explore opportunities to clarify that (1) Tribal majority-owned businesses should be treated like other Tribal businesses and not taxed locally; and (2) improvements to Indian Trust Land should be treated like the underlying real property for state and local tax purposes. Given the potential benefits of these clarifications for renewable energy development in Indian country, ATNI suggests that they would be candidates for inclusion in the energy package that the Senate is expected to consider next month. Unless Congress clarifies existing law in this manner, Tribes will continue to face obstacles in moving away from casinos and into green energy, hospitality, and countless other areas of non-gaming economic development.

Housing continues to be substandard in comparison to the rest of the country. An estimated 200,000 housing units are needed immediately in Indian Country and approximately 90,000 Native families are homeless or under-housed. Overcrowding on tribal lands is almost 15 percent, and 11 percent of Indian homes lack complete plumbing and kitchen facilities. Although Economic Development produces much needed jobs it is slow to improve the housing conditions of Native Americans. ATNI urges Congress to maintain the levels of housing funding for budget year 2012.

Natural Resources. Is at the center of our cultures for northwest Tribes, a fact no less true today than when many of our tribes signed agreements with the U.S. government. These resources are essential for our spiritual, economic and cultural survival as Indian

people. The tribes of the northwest depend economically on healthy salmon, wildlife, forests as well as on optimal water and air quality. Habitat destruction, pollution, unregulated water withdrawals, poor land-use planning, and many other environmental issues today threaten to make meaningless our reserved rights. Congress needs to provide adequate funding related to natural resource management programs, projects and agreements.

Fawn Sharp, Quinault Chairwoman has testified that "Flat funding levels and inflation have stripped us of buying power, leaving us with real funding equal to that we received 30 years ago. Management responsibilities have grown..... in water resources management, hatcheries, habitat restoration, timber and wildlife management. Our reserved rights are dependent on healthy natural resources, which in turn depend on a healthy environment. Healthy environments lead to healthy communities and healthy economies." These sentiments are shared by ATNI member tribes.

---

Let me close with recognition of a few of our Northwest elected law makers.

We are looking forward to working with the new era of elected law makers and seek to continue to strengthen our relationship with our stoic law makers who have committed much of their time to Indian Country. In this time of need we support our entire elected official to continue their bipartisan efforts so we may all survive this tough economic time.

We understand the urgency for our Country to seek remedies to address economic development and we will commit to work with newly appointed members of various committees to reach common goals for all. Congratulations to Congressman Doc Hastings, Chairman of the House Natural Resource Committee, Congressman Don Young, Chairman of the House Natural Resource Subcommittee on Alaska Native and American Indian Affairs Committee, as well as Congressman Jay Inslee, Vice-Chair of the bipartisan Congressional Native American Caucus, and our Montana Senator Max Baucus, Chairman of the Senate Finance Committee who has committed to improving the economy through job development, Tribal New Market Tax Credits, and Tribal School Bonds. Montana Senator Jon Tester, member of the Indian Affairs Committee who has been a strong advocate for our native people.

The last week of the National Congress of American Indians we had the privilege of discussing with law makers an opportunity to bring forth an economic bill that will provide us opportunity to breakdown barriers that hinder economic development. We commend our senior Congressman Doc Hastings for committing the new Subcommittee on Alaska Native and American Indian Affairs to one of the toughest tasks for the next two years. We support our Congressman and will be working closely with his office, and those committees involved in this monumental bill that will help First Americans strive for a prosperous and sustainable economy.

We have many respected Senators and Congressional members who have stood with us to improve and protect the First Americans of the United States, and through this continued relationship we hope to continue to provide a healthy and prosperous Indian Country.

I appreciate the opportunity to provide this testimony before the Committee.

The CHAIRMAN. Thank you very much, Mr. Steele, for your statement.

Mr. Allen and Mr. Barbry, as you know, unfortunately we were unable to pass the *Carciari* fix last year. My question to you is this fix a priority in Indian Country?

Mr. Allen?

Mr. ALLEN. Mr. Chairman, unequivocally yes, it is a high priority for the tribes. Reacquiring our homelands is a high priority for multiple reasons, culturally, housing, economic development and so forth. And *Carcieri* unfortunately created two sets of tribes and created a very complex process for the Bureau of Indian Affairs.

To the credit of the Bureau, it is breaking through in creating a process for many tribes, but not all tribes. And it is simply not providing a fair process for all tribes. And a clean, simple fix to *Carcieri* is an essential priority for Indian Country.

The CHAIRMAN. Thank you.

Mr. Barbry?

Mr. BARBRY. Mr. Chairman, it is the top priority. I have served my people for 33 years this month. This is the most vicious attack on tribal sovereignty that I have witnessed since I have been serving. Every year, there is someone chipping away at our sovereignty, but this is the worst attack I have ever witnessed.

And it seems like it would be a fairly simple fix. Why create two classes of federally recognized tribes? I don't think that question ever came up when the white man was taking our lands. They didn't care whether we were under Federal jurisdiction or not. They took it anyway.

The CHAIRMAN. Thank you for your response.

Ms. Oatman-Wak Wak, the President's budget includes an increase of \$29.5 million for contract support costs for those tribes who choose to take over government functions for tribal programs. I commend the Administration for this increase because I know this has been a priority for tribes for many, many years.

However, as a former educator, I notice that there is only a small increase proposed for tribal grant support costs for those tribes who take over the operation of their Bureau of Indian Education schools.

My question to you, what is NIEA's position on why there is not a larger increase requested for the tribal grant support costs program for tribal schools?

Ms. OATMAN-WAK WAK. At the current spending level request, that is only about 65 percent of the amount required by law. NIEA, again, when we were picking and choosing on some of the areas where we were going to be really ambitious, and some of our increases are areas where we were going to look at maintaining level funding.

NIEA would definitely like to see tribal grant support costs fully funded, but that would take \$72.3 million to fully fund. And again, this is just kind of one of those areas where we felt like, not necessarily an area of sacrifice within the budget, but as we were really combing through with a fine-toothed comb, we realized that tribal grant support costs, it is an area where tribes are definitely stepping up to the plate and filling that void and that need within their own tribal budget through other means.

But NIEA, as an organization, supports fully funding tribal grant support costs.

The CHAIRMAN. Thank you for the response.

Mr. Steele, the President's budget proposes a \$5.1 million decrease in the Indian Loan Guarantee Program at the Department

of Interior. Can you describe some of the projects that ATNI members have been able to fund with this program? And what impact will it be if this program funding is decreased?

Mr. STEELE. Mr. Chairman, thank you for the question. Some of the programs that I am aware of I know from ATNI's perspective and maybe some of the other members. I know our tribe has used the funding for startup of our resort-casino years ago. And so it is a variety of things from different tribes. Some of it is resorts. Some of it is small businesses, larger businesses.

I think the impact is basic avenues of funding for tribes to do small business or entrepreneurial things is limited. And so anytime you are decreasing a pot of money, particularly loan programs, for the tribes, it is troubling.

And I appreciate Senator Tester's questions earlier because there is money that the tribes aren't using and in my personal opinion it is the red tape to be able to use those funds that is in the way.

The CHAIRMAN. Thank you very much.

Let me ask Senator Udall for his questions.

Senator Udall?

Senator UDALL. Thank you, Chairman Akaka. Thank you very much.

First of all to this panel, I just want to thank you for your advocacy. I think that it has been an excellent panel. I think the more that we have advocacy from Indian Country like yours, the more we have a better chance here in Washington to do what we have to do to fulfill trust responsibilities. And so I would just encourage you to keep it up.

I am going to submit my questions for the record because I have a commitment I have to go to. But I did want to just thank you for your excellent advocacy.

I also want to apologize to Governor Dasheno who is here from New Mexico representing the Santa Clara Pueblo.

Governor Dasheno, the most important thing for you to know about this hearing is that Larry Echo Hawk stayed here the whole time and I was going to encourage you in my questioning when you came forward to talk about self-governance, because I think the Santa Clara Pueblo has a remarkable record in terms of self-governance and how you do that under the laws that are in place right now.

And so my question was going to focus on that. I know either in your opening statement or answering questions, you will be able to do that.

And I would just tell all of you that the thing that is encouraging to me about the Department is having somebody like Larry Echo Hawk there. And when he comes to these hearings, it isn't unusual, in fact it is almost the routine, that he stays here. He listens to all the panels. He keeps people here so that he can assign things and jump on them.

So I once again thank you, Larry, for being here and thank you. I know the commitment that you have.

Thank you, Mr. Chairman. I very much appreciate these hearings, these oversight hearings, and for your commitment to indigenous people around the world.

Thank you.

The CHAIRMAN. Thank you very much, Senator Udall, for your remarks. And I thank you for your work with the Committee.

I want to thank this panel very much for your statements and your responses as well. And without question, it will help us do our work legislatively as well, but we have to do this together. And we will keep in contact with you and your staff, and continue to work to improve the conditions of the indigenous people of our Country.

Thank you very much for being here.

Now, I would like to welcome our third panel to the witness table. I understand you may be pressed for time. First, we will hear from the Honorable Michael Finley of the Confederated Tribes of the Colville Reservation from Washington; the Honorable John Blackhawk, who is Chairman of the Winnebago Tribe of Nebraska. And finally, we will hear testimony from the Honorable Walter Dasheno from the Pueblo of Santa Clara of New Mexico.

I want to thank you very much for being here, and let me call on Mr. Finley to proceed with your statement.

**STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN,  
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

Mr. FINLEY. [greeting in native language] Thank you, Chairman Akaka, for calling this hearing today and allowing me the opportunity to provide testimony. I did submit mine in writing and I will highlight a few of those areas right now.

The Colville Confederated Tribes which I am Chairman of is located in northeast Washington State, at the size of about 1.4 million acres. On a side note, let me back up. I also serve as Chairman to the Intertribal Monitoring Association on Indian trust funds. It is a consortium of 65 tribes based out of Albuquerque, but I am testifying on behalf of Colville today.

The Colville Reservation is in northeast Washington State, the size of about 1.4 million acres. We are a timber resource tribe. We are rich in natural resources, and so obviously a lot of the things that we look to do are economic endeavors include things that we can use in our natural resources.

Having said that, we have had difficulty converting some of our lands into trust under the 151 fee-to-trust regs. And thankfully, with the new Administration, we have been able to work through some of those problem areas on the components of the 151 regulations.

And so when the President's budget was unveiled, we were saddened to see that \$7.5 million that was used to address the cadastral surveys and the fee-to-trust process was cut from the budget entirely in the process of pushing that responsibility down to tribes. In many of our fee-to-trust applications, that was one of the things that was holding up a lot of our applications on the fee-to-trust. And many of those areas are the same areas where we do our timber resources management activities and the process for economic development, as well as the ag leases, to name a few.

We are also looking at energy economic development opportunities in the way of wind farms, as well as our biomass demonstration project.

So I will just state that if this is cut from the budget, it will severely curtail all fee-to-trust applications across the Country, not

just at Colville. So that in itself I think is something that I hope is reconsidered as this process moves forward because it is going to continue to stifle economic development for larger land-based tribes who have fee-to-trust applications.

We are also concerned about the \$2.1 million that is cut from the attorneys fees in the litigation program. The \$2.1 million isn't a whole lot, but for us at Colville, it has helped us out with our Teck Cominco litigation. The largest lead, zinc and copper smelter in the world is located just north of the 49th parallel in Canada, who for 100 years have been dumping contamination into the Columbia River, which in the process floats down the river down to the Colville Reservation and further downstream.

The Colville Tribes have been actively pursuing a cleanup of that area and we have actually sued Teck Cominco in court to get them to be accountable to the contamination that they have put into the river over the years. And it has been in large part the Colville Tribe has been doing this on our own with a little bit of help from Washington State. Although we have asked the Federal Government for assistance, we are yet to see that in the way of litigation support from DOJ or any other entity under the Federal Government.

Lake Roosevelt has stated that this same contamination is being dumped into this area that borders our reservation. We currently patrol about 161 miles of riverfront property that bounds our reservation. And right now, we receive about \$560,000 to do that that we split with the Spokane Tribe. Together, we manage and we patrol about 45 percent of the shoreline of Lake Roosevelt.

But in stark contrast, you have National Park Service who is also charged to do the very same thing that within the President's budget, they have an allocation of \$5.83 million to carry out some of the same activities.

However, I would argue that the Colville Tribes, as well as the Spokane Tribe, do the lion's share of the patrol at Lake Roosevelt. We are the only entity that responds to calls after dark. We get over 1.5 million visitors to Lake Roosevelt annually, and obviously their well being and their safety are of utmost importance to us because they are visiting our homelands and that is a responsibility we take very seriously.

The increases that we have seen within the BIA law enforcement is welcoming. We are happy to see increases. However, I have difficulty seeing where a lot of that money is hitting the ground. I have talked to many other tribes, other Chairmen, and they are expressing some of the same concerns. With the huge increase of over \$58 million over the last budget cycle, I thought we would have seen a larger increase. At Colville, unfortunately, we have only seen \$22,000. On that list, there are about 17 other tribes who have increases that are listed as low crime and no staffing and need, they received about \$20,000, and there is even one that received over \$100,000.

As I state, we are Colville, we usually have one or two officers on a land-base of 1.5 million. And as I reminded Vice President Biden, that our reservation is bigger than his State of Delaware. You know that is a large task for our law enforcement to take on. And with limited resources, as it stands, the tribe supplements

that to a tune of about \$1 million a year and sometimes it is more than that based on need.

And I would also like to point out that we have a lot of problems with smuggling on Lake Roosevelt as well. That is a difficulty that our natural resources officers face on a yearly basis, trying to get a better handle on that because of the ruralness of the Colville Reservation. It is a hot spot for planes coming in and out of British Columbia.

And we also have marijuana groves that we have had several busts over the last three or four years. A lot of those have ties to the Mexican cartels which, again, are finding our reservation in a rural area an ideal place to carry out these activities. Again, we try to combat this with limited resources.

Lastly, I would like to talk about the Indian Land Consolidation Program and \$1.9 billion that is slated to be allocated through that program through the Claims Resolution Act. And I would like to share the sentiment of my colleague, Jim Steele. I found it almost ironic witnessing the field of questions that Senator Tester was asking relative to the progress that is being made and the direction it is going in, whether or not there is a plan in place and whether or not the Colville Tribes, as well as the ATNI Tribes and the NCAI Tribes passed resolutions as this legislation was moving through Congress asking for certain things to be included in the settlement before it was given final consideration.

And unfortunately, many of those terms that were proposed on the House side by Doc Hastings, on the Senate side by Senator Barrasso, went largely ignored. And the tribes echoed those same concerns and wanted some of the same terms in there.

So I found it ironic now that the tribes voiced that through resolutions to ATNI and NCAI, that certain people are now asking the same questions that the tribes were asking the whole time. And we want transparency. We want to be involved. We have concerns that if there is no plan in place now after the 10-year window elapses that the money is going to go back to Treasury.

For all the problems I expressed earlier of the fee-to-trust, we see the same problem happening now. Are there things that are going to be done to ensure that this money doesn't go back to Treasury? That it is going to be used in an effective, meaningful manner that the tribes hope it will be? But at the same time, a lot of tribes have some insight and some discussion on how this money is going to be expended. I think the tribes know best how the money should be spent to deal with fractionated interests on their own lands.

But unfortunately, during this process when the tribes were asking questions when they were trying to push this through the House and Senate side, we were told that this wasn't about individuals. I beg to differ. I think it is apparent now and it was apparent the whole time that this deals with Indian tribes, particularly on the \$1.9 billion that is going to deal with the fractionated lands that are on our reservations.

I hope that now that this is even more apparent to the people who will be administering the Indian Lands Consolidation Program and that they do reach out to tribes.

And lastly, I would like to make a comment on a statement that was made earlier by Mr. Joseph who said there are monthly calls

to tribal leaders on the settlement. I am a Chairman of my tribe. I also serve as Chairman of the Intertribal Monitoring Association. I am not aware of these monthly calls. I haven't been asked. I haven't been notified. I haven't seen any e-mail or propaganda on that. So I have concerns about that and I would like to be included on it because it is something that is of utmost importance to us on Colville.

So with that, I stand for questions and I appreciate the opportunity. Thank you.

[The prepared statement of Mr. Finley follows:]

PREPARED STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN, CONFEDERATED  
TRIBES OF THE COLVILLE RESERVATION

Good morning Chairman Akaka, Vice-Chairman Barrasso, and members of the Committee. On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "Tribes"), I would like to thank the Committee for convening this hearing on the FY 2012 Budget Request for tribal programs and allowing me to testify. My name is Michael Finley and I am the Chairman of the Colville Tribes and am testifying today in that capacity. In addition, I also serve as the Chairman for the Intertribal Monitoring Association on Indian Trust, a national organization comprised of 65 federally recognized tribes from all regions of the country.

Today, I am pleased to share the Colville Tribes' views on the President's 2012 budget request for Tribal programs. As a rural, land-based Indian tribe, the Colville Tribes and similarly situated Indian tribes rely heavily on the Bureau of Indian Affairs' land and natural resources programs. My remarks today will focus on these and other programs of interest to land-based Indian tribes.

**Background on the Colville Tribes**

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 aboriginal tribes and bands from all across eastern Washington State. The present-day Colville Reservation is located in north-central Washington State and was established by Executive Order in 1872. At that time, the Colville Reservation consisted of all lands within the United States bounded by the Columbia and Okanogan Rivers, roughly 3 million acres. In 1891, the North Half of the 1872 Reservation was opened to the public domain. The North Half consists of approximately 1.5 million acres between the Canadian border and the northern boundary of the present-day Reservation. Colville tribal members exercise reserved hunting, fishing, and gathering rights on the North Half and the Colville Tribes maintains strong political and economic interests in this area.

Today, the Colville Tribes has nearly 9,400 enrolled members, making it one of the largest Indian tribes in the Northwest. About half of the Tribes' members live on or near the Colville Reservation. Between the tribal government and the Tribes' enterprise division, the Colville Tribes collectively accounts for more than 1,700 jobs—making it one of the largest employers in north-central Washington.

**Trust and Natural Resources Management Programs**

For land-based Indian tribes like the Colville Tribes that are not near major highways or interstates, our natural resources are our primary source of revenue. Our ability to generate economic development opportunities is closely tied to our ability to have fee-to-trust applications, timber sales, grazing permits, and other land transactions processed and approved in a cost efficient and timely manner. Most of these programs are funded in the Bureau of Indian Affairs' Natural Resources Management and Real Estate accounts.

With the funding that Indian tribes receive for these activities, tribes have proven that they are superior land managers and use the funds far more efficiently than comparable activities on other federal lands. For example, it often takes the U.S. Forest Service many months to procure a salvage log sale after a forest fire. The Colville Tribes and other tribes with timber resources, however, are usually able to complete this process in as little as two weeks—with a per acre forest management budget that is a fraction of what the U.S. Forest Service has traditionally enjoyed.

Similarly, the Colville Tribes' Natural Resource Officers jointly patrol the 161 shoreline miles of Lake Roosevelt, the reservoir of the Grand Coulee Dam and a National Recreation Area with more than 1.5 million visitors annually. Although the

National Parks Service also conducts patrols, the Colville Tribes' officers have exclusive responsibility for 35 percent of Lake Roosevelt and are the most visible presence on the Lake. The FY 2012 Budget contains a total of \$560,000 for both Colville Tribes and the Spokane Tribe for these activities. In stark contrast, the President's Budget for FY 2012 for the National Park Service for Lake Roosevelt is *\$5.83 million*.

As these examples illustrate, Indian tribes have demonstrated time and time again that they can do more with less. It is therefore understandable that the Colville Tribes is disappointed that decreases are proposed for several of the natural resource programs in the FY 2012 Budget. Significantly, a \$7.5 million cut is proposed for cadastral surveys. Cadastral surveys are often required for routine on-reservation fee-to-trust applications, and where they are not required, these funds pay for other associated survey requirements. It appears that these costs will now be passed down to tribal governments and individual Indians, which will further delay land into trust and associated economic development endeavors.

The FY 2012 Budget also proposes the elimination of the attorney's fees and litigation support program (-\$2.1 million). Although this program may seem like a small amount of money against the backdrop of the total Indian Affairs budget, tribes nationwide rely on it to protect their trust resources. The Colville Tribes is a case study in this regard.

For at least 100 years, through the mid-1990's, the largest lead-zinc-copper smelter in the world dumped hundreds of thousands of tons of "slag" directly into the Columbia River from a location 10 miles north of the U.S./Canadian border. These contaminants traveled downstream, across the international border, and settled in not only the Colville Tribes' on-reservation trust lands, but also federal lands administered by the National Park Service, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service.

Despite the obvious interests of the Department of the Interior and its federal land management agencies to ensure that these federal lands are safe for the public at large, *only the Colville Tribes* (and later, the State of Washington) stepped forward to file suit in order to compel the company to clean up the contamination it caused. The Department of the Interior has never been a party to the litigation despite the Colville Tribes' formal request that it intervene. The Colville Tribes' efforts to protect this critical watershed for all U.S. citizens would not have been possible without funding from the attorney's fees and litigation support program.

#### **Law Enforcement**

The Colville Tribes and other large land-based tribes are pleased that funding for BIA law enforcement activities is again proposed for a significant increase in the President's Budget. While these increases are always welcome, what is needed, in the Colville Tribes' view, is transparency in how these increases are allocated to Indian tribes.

As the Committee is well aware, large land-based tribes usually lack a sufficient number of police officers, which leads to response times often in excess of two hours. There are occasions when the Colville Tribes has only a single officer on duty for the entire 1.4 million acre reservation. To make matters worse, the Colville Tribes has seen a rash of gang violence and drug smuggling activity in recent years, including airborne drug smuggling and trafficking activity with ties to Mexican cartels. Other Indian tribes have similar or even more harrowing stories.

The Colville Tribes was, therefore, understandably surprised to learn that for FY 2010—a year that BIA law enforcement received a nearly \$59 million increase over FY 2009 enacted levels—the Colville Tribes received only a \$22,000 increase. We were even more surprised to learn that the same year, 17 Indian tribes that the BIA identified as having "Low Crime" and "No Staffing Need" received increases of at least \$20,000, with one receiving a six figure increase. A rational explanation of why the BIA distributed these increases in this manner may well exist, but neither the Colville Tribes nor any other Indian tribes that we have communicated with have heard one. The Colville Tribes hopes the Committee will direct the BIA to ensure that these and other law enforcement funding methodologies are transparent, adequately explained, and made readily available to Indian tribes and to the Committee.

#### **Indian Land Consolidation**

Indian country is understandably very interested in the \$1.9 billion that was appropriated last year for the Indian Land Consolidation program (ILCP) as part of the Claims Resolution Act of 2010. This may be the largest sum of money ever appropriated for a single Indian program in the Department of the Interior. Tribal interest in the ILCP, however, is tempered by an overriding concern that the Depart-

ment may not be equipped to spend all of this money within the 10-year period after which the funds revert back to the U.S. Treasury. It is also tempered by a frustrating lack of information from the Department on the planning processes and timeframes for tribal consultation on the program.

The sooner information is disseminated the sooner tribes can provide meaningful input and assist in getting the program ready. Tribes are weary that the costs of appraisals, surveys, environmental site assessments, and other requirements that the Department may deem necessary prior to acquiring fractionated interests will result in a slow moving logjam that consumes the bulk of the ILCP funds. Final approval of the *Cobell* settlement could be years away if appeals are lodged, so it makes little sense to delay tackling these important issues now.

The Colville Tribes appreciates the Committee convening this hearing and is grateful of its consideration of these and other issues. We very much look forward to working with the Committee on these issues in the 112th Congress.

The CHAIRMAN. Thank you very much, Mr. Finley.  
Let me call on Chairman Blackhawk for your statement.

**STATEMENT OF HON. JOHN BLACKHAWK, CHAIRMAN,  
WINNEBAGO TRIBE OF NEBRASKA**

Mr. BLACKHAWK. Thank you, Mr. Chairman.

To begin with, I want to thank you for this opportunity to speak before the Committee, but I must confess that it was a little bit short notice and today I kind of looking at my colleagues, I feel a little bit better, but I was called last Thursday to testify and my initial reaction was no.

When there is a budget battle that claims we are going to eliminate \$100 billion from the budget and you don't touch defense spending, that sounds like a train wreck that is waiting to happen.

So initially, my response was no. But thankfully to your staff, they insisted that I come here. And so today, I decided to come because as we were talking about the budget, one of the things that occurred to me is that I have testified a number of years. I have been serving my tribe for about 26 years, and you come in and you have the fancy charts and you do this and that, and you show. And they are all very, very good, but as I talked with your staffer, I said, you know, it is going to take me all of five seconds to testify because I am the same as everyone else. We need more money.

But the more I thought about it, and to the credit of your staffer, I thought I might add just a little bit more to that because what we talked about is, and it has been mentioned here today so it is very, very appropriate in terms of how this discussion goes on. Because we all know the budgets are fair and they are a little bit better, and we think we win when we lose less.

I remember the Reagan years when we lost 10 percent across the board. I remember that decimated our CHRs. For Winnebago, it meant losing about seven and retaining about seven. So actually it was half.

But in thinking of all of that, I thought there are some ways that we need to really collectively plan because when we lose dollars in terms of our own budgets and the things that we are doing for economic development, we have to come back to the drawing board.

There are some things that I think warrant some consideration. First of all, the idea of prevention. I had this discussion with Dr. Grimm many years ago when he first became the IHS Director. And I shared with him that I wanted to see us move into the area of prevention a little bit more because actually there are no real

dollars in prevention, but that is something that has to happen because when you look at the prevention efforts and what they can save, it does make some sense to do those kind of things. So that is one.

The other is that the Law and Order Act which is something that is very, very positive. But within all of that, the discussion that I have not participated in and have not heard us talk any more about is this thing that we went through line authority some years ago. It was called line authority because this was a new structure that was supposed to make law enforcement better.

And quite honestly, Mr. Chairman, it has not. It has caused a bottleneck. It has caused our area, District One, serves seven States. And just within our own Aberdeen area, there are over 150,000 people that you are talking about. There are millions and millions of miles to cover, which can't be done. So I think the idea of line authority needs to be revisited.

And then I guess lastly, in terms of what Mr. Allen was saying, we do need more of the agencies to participate. Right now, we have a battle of sorts with the Corps of Engineers. We litigated against the Corps in the early 1970s and gained some line back and lost some. But one of the things was there was a section of land that the Corps was supposed to return to the tribe, but they have not. Their idea is, and I can't figure this out because I have seen at least three different Colonels with the Corps of Engineers. Initially, they said sure, and the 25 years that comes up in March, actually the end of this month.

So we are scrambling to try and do something about that because the Corps has changed their mind and I am not sure why. So I think they have to be within the context of this consultation with us as tribes. And that is something we are sharing with the Administration.

And lastly, the testimony that was prepared for me, very quickly I want to commend my staff and Winnebago for doing that. I am very, very proud of the fact that one of the people that participated is the CEO of our Economic Development Branch, and that is something we launched in 1994. We are looking at approximately \$200 million in revenue since that creation. So I am very, very proud of that, as well as my Health Director who has very recently received her doctorate and is native and we are very, very proud of that fact.

So with that, Mr. Chairman, thank you very much for your time.  
[The prepared statement of Mr. Blackhawk follows:]

PREPARED STATEMENT OF HON. JOHN BLACKHAWK, CHAIRMAN, WINNEBAGO TRIBE OF NEBRASKA

Over the years, numerous accounts of testimony have been provided by Tribal leaders and organizations representing Native people. Many have provided statistics on well documented health disparities for American Indians. Government officials have also recognized these inequalities in services. We all know, without a doubt, many of these disparities are a direct result of inadequate funding: inadequate funding that continues to be jeopardized as a result of discretionary funds status. The inequitable allocation of funds is not based on population or need. Formulas for appropriations should be based on the trends of population growth and medical inflation. The negative effects of the insufficient funds appropriated continue to disrupt the well-being of Native American Nations.

Although American Indians are reported to have a shorter lifespan, the populations on reservations continue to rise not only due to the increase in number of births, but also on the number of tribal members returning to reservations to receive appropriate healthcare that is unfortunately operating with limited resources and high demand. The domino effect from this quagmire perpetuates a cycle of inadequacy. The process begins with poor funding which leads to poor delivery, frustrated employees and therefore, horrendous outcomes that can and have resulted in death. Patients experience the turmoil of prolonged hiring processes, executive vacancies and territorial behaviors of programs. This unfortunate cyclical pattern of inadequacy is perpetuated by the failure to increase funding or modify the formula in which appropriations are determined.

This severe lack of funding also strengthens the resistance to collaboration with Tribal Programs and the deleterious effects of such institutionalized oppression are witnessed and experienced through poor patient care. Contract Health Services is an excellent example of how this takes place as a territorial nature ensues when the inability to provide expected services is questioned.

In addition to the limited funding for CHS, systemic issues erode the possibility of efficacious referrals. And although the Federal Government recognizes the importance of prevention services we have not experienced adequately funded efforts. Major efforts for prevention programs are neglected and providers are spending enormous amounts of time on acute issues. Contract Health Services does not fund prevention services such as colonoscopies, mammograms or routine screenings. By covering prevention services, we can decrease the cost of long term chronic care by addressing these concerns before they become chronic.

The stagnant nature of funding has resulted in losing quality employees and providers. Retention and recruitment of quality care professionals also continues to be an unmet need for our facilities. We are often limited to physician assistants who must refer out for appropriate medical attention. Having adequate staff would reduce the number of referrals and increase the appropriateness of service. Staffing should therefore be based on population and need.

There are two more important points I want to make while I have the opportunity. Our goal is to figure out short term ways to fund Indian Health Care, but I must remind you that the best way to address the long term problem is for tribes to break out of their grinding poverty and develop their emerging economies. Instead of asking for a bigger budget, our goal would be for our people to have employer provider health care insurance. If given the choice, I would rather complain about the cost of health insurance than declining federal support of IHS.

The Federal Government has created a system that makes it incredibly difficult to develop our reservations economically. The legal system is universally feared by tribes and going to the U.S. Supreme Court is the last thing any tribal leader wants to do. The states are growing increasingly aggressive in fighting tribal growth of all kinds, especially land acquisition and taxation issues.

Within this context, tribes are trying to develop their economies. The four largest industries in Indian Country are Natural Resources, Gaming, Government Contracting and Native American Tobacco. There are several systemic problems to be dealt with, but Federal Government is doing everything it can to help us develop our natural resources. Gaming has provided a much needed capital injection into tribes, but it has reached a plateau and the Indian Gaming Industry declined last year for the first time in its 25 year history.

The third largest industry is Government Contracting, primarily driven by the SBA 8a business development program. The Federal Government placed a restriction on tribes last year, called Section 811, which requires burdensome and highly unlikely approval requirements on tribal contracts over \$20 million. Twenty million dollars sounds like a lot, but it isn't when you consider most large contracts are for multiple years. Section 811 was developed behind closed doors and passed without any input from tribes. This law hasn't even been fully implemented yet and is already having a stifling effect on tribes.

Senator McCaskill has also introduced a bill to eliminate the tribal specific provisions for Alaska Native Corporations and has publically stated she will do the same to tribes as soon as she can find evidence she knows must exist proving tribal malfeasance. When questioned by an Alaska newspaper about this hurting individual tribal people, she callously referred the tribal people to the federal and state welfare system—something we are already familiar with.

The SBA 8a program has been one of the most successful economic development programs in tribal history. The 8a program is a prime contracting program, not a sub-contracting program. It has allowed tribes to transform themselves over the last 30 years from being the low cost, low value added sub-contractor with low paid em-

ployees toiling with mundane tasks, to become prime contractors that can compete with larger companies on a head to head basis.

The program's very success is why it is under criticism. New regulations just published should go a long way towards addressing the criticisms raised, ironically, by our competitors. I ask that you support the SBA 8a program's tribal provisions because it has been one of the primary ways for tribes to break out of the negative economic cycle and begin providing for ourselves.

The Native Tobacco industry is the fourth largest industry in Indian Country and the recent passage of the much despised Pact Act has put that entire industry in jeopardy. The PACT Act was supposed to stop the internet tobacco mail order business and it did just that. I realize it is hard to defend the mail order tobacco business, but I do strongly believe that tribes should have the right to manufacture, distribute and sell their own tobacco products on their own land without state interference.

The 12 year old Master Settlement Agreement (MSA) between the States and Big Tobacco has dramatically complicated the regulatory and tax issues between the states and tribes. Big Tobacco has threatened the states with the withholding of settlement payments if the states do not aggressively enforce the terms of the settlement on the tribes. The tribes were not part of the lawsuit, nor do we receive any settlement funds. There is no legal or logical reason we should be subject to its terms.

The Pact Act ended the mail order business, but the on-going threats from Big Tobacco has now resulted in the reservation business is coming under assault too. The states also want tribes to collect state taxes and MSA fees for non-Indians sales on our reservations. We refuse to use race to determine price in our own stores in our territory to create a price advantage for a non-Indian company. Such a system is completely out of date and offensive to us as sovereign governmental entities.

The states working with Big Tobacco have already introduced "model legislation" in multiple states to use the information required to be reported to states by the Pact Act to figure out ways to isolate and control tribes. The Pact Act should now rightly be called the MSA Enforcement Act. The Pact Act purported to have protections for tribes, such as protecting our sovereign immunity. But one state introduced legislation which stated that if a tribe exercised its legal right by claiming sovereign immunity to an MSA enforcement action, then that tribe would be put on a "list" and it would be illegal for anyone to sell them any tobacco products or tobacco manufacturing products. These "economic sanction" bills and the arrogance of their introduction is astounding.

These are direct attempts to circumvent the protections provided to tribes under the Pact Act and the Department of Justice and Bureau of Alcohol, Tobacco and Firearms are complicit in this problem by interpreting the Pact Act, under heaving lobbying from states, to help them achieve their goals. We have asked the Department of Justice and the ATF for another consultation to explain what is happening to tribes, but we have yet to get a response and would appreciate your help in being heard.

Thank you for your time.

The CHAIRMAN. Thank you very much, Chairman Blackhawk, for your testimony.

Now, I will call on Governor Dasheno for your statement. Please proceed.

**STATEMENT OF HON. WALTER DASHENO, GOVERNOR, PUEBLO OF SANTA CLARA**

Mr. DASHENO. Aloha, Chairman Akaka.

The CHAIRMAN. Aloha.

Mr. DASHENO. I extend greeting from the tribal elders to the youngest. It is so important for us to be here in the great hall to present to you our concerns that we have. And obviously, every tribal leader that has come before us has eloquently so stated. And so I am here to follow in their footsteps, and certainly your position as the Chairman is going to provide us the direction where we go in regards to Indian issues.

My name is Governor Walter Dasheno from the Pueblo of Santa Clara, and certainly what every individual has said prior to myself is important. I certainly recognize all of the things that are being done. And I am here to give you my story as a tribe and the experience in the self-governance that mirrors what many of our self-governance tribes overall have done and been so successful with.

Self-governance works, Mr. Chairman, and I hope that self-governance is just a step in the direction that other tribes will go. My question is, what comes after self-governance? I think it is going to be important for us as tribes to begin to formulate where we go after this next step that we take.

Self-governance has provided accountability. It has strengthened tribal planning and management capacities. It invests in our local resources. It strengthens our reservation economies. It allows for flexibility in a firm sovereignty.

I think the last key message is it affirms sovereignty. This is the partnership that we have with the United States Federal Government and it should always be upheld as far as I see and as far as our tribal leaders have provided for times past.

Santa Clara Pueblo is happy to see that the President's budget proposal continues investment in self-governance. In the IHS budget, the President has proposed an increase of \$363,000 to the \$6,323,000 funds from the fiscal year 2011 Continuing Resolution levels, which covers the administrative costs. And of course, far more than that is actually awarded to tribes under HHS self-governance.

For the self-governance line in the BIA budget, the President has proposed an increase of \$7.3 million for a total of \$155 million from the fiscal year 2010–2011 Continuing Resolution level, and this is an increase of approximately 5 percent.

Overall, the President obligates \$425 million to some 225 federally recognized tribes self-governance compacts, and this is just the beginning, Mr Chairman. I see that more tribes are going to pursue the issue of self-governance. It allows for flexibility and it allows for the true government-to-government relationship that we seek and so direly need.

Now, we are starting to increase the self-governance program. In reality, overall funding for self-governance tribes does not keep pace with non-self-governance tribes. It has been the experience of the self-governance tribes that when Indian Affairs has received funding increases, self-governance tribes do not receive their relative fair share. I would urge this Committee to examine closely this issue.

I would also urge this Committee to support the reintroduction and passage of the proposed Self-Governance Amendment legislation, H.R. 4347 in the last Congress. H.R. 4347 contains several proposed amendments to Title IV of the Indian Self-Determination and Education Act that advance important purposes. Most significantly, they create a consistency between Title IV self-governance in DOI and Title V self-governance in the Department of Health and Human Services.

I understand that in the last Congress, there was some concern that there were no offsets for the estimated \$5 million cost of implementing the legislation. In fact, we believe that the \$5 million

estimate is essentially a fiction, and to the extent that there is any significant cost, some officials have said it could be absorbed by the BIA's own budget for this year's funds, so no offset is necessary.

Our request from Santa Clara Pueblo is illustrative of national concerns. Santa Clara Pueblo is submitting grant applications to fund various feasibility studies for a range of energy projects. Both the Department of Energy Office of Tribal Affairs and the BIA Office of Indian Energy and Economic Development have been very helpful and their programs should receive more funding.

Santa Clara desperately needs a new and expanded health clinic. Santa Clara does not believe that the Indian Health Service has the funds to pay the costs for construction of a new facility and so it plans to finance its own facility if necessary.

Still, Congress should support funding for more hospital construction and also continue to support and provide favorable grants and loan guarantees for tribes that seek to construct their own facilities.

Investments in irrigation infrastructure. Rio Grande Pueblo Infrastructure Improvement Act funding. This Act authorizes the funding of projects to correct deficiencies identified by a secretarial study. The implementation of this Act will favorably affect the Pueblo's traditional lifestyle and culture, which for hundreds of years has been based on agriculture and irrigating lands. So far, almost no money has been spent implementing this Act.

In the late 2009, the Santa Clara Pueblo completed construction of a 10,800 regional adult daycare center that will be able to serve a growing population of tribal seniors from the Eight Northern Pueblos. Although the Center has been completed, the adult daycare program has not been completed or implemented due to severe funding restraints. Congress needs to expend funding for programs that serve Indian elders.

And the Santa Clara Pueblo wastewater system is in an advanced state of decay and threatens community health and the quality of water of the Rio Grande. The system was largely constructed in the 1960s and 1970s and has served out its useful life. The need to upgrade wastewater and water facilities is common throughout Indian Country.

Thank you for this opportunity to present the budget perspective of Santa Clara Pueblo.

And Mr. Chairman, I also want to say that the Southwest Regional Office, Mr. Walker, Mr. Riley and in particular Ms. Janet Blacker have been very, very helpful to our Pueblo. We just need to partner more strongly with the bureau agency staff and the bureau regional offices. They have the resources. They have the personnel. We need to put them out into the field. They need to work with tribal governments and they need to be more accountable and more effective.

And so with that, I want to extend my appreciation to you, to your staff. God bless you, God bless America, and we look forward to working with each and every one of you, particularly in Indian Country. We have suffered long enough. We need your assistance. We need your blessing and we need your money.

Thank you. Mahalo.

[The prepared statement of Mr. Dasheno follows:]

## PREPARED STATEMENT OF HON. WALTER DASHENO, GOVERNOR, PUEBLO OF SANTA CLARA

**Chairman Akaka, Vice Chairman Barrasso and members of the Committee, my name is Walter Dasheno.** I am the Governor of the Pueblo of Santa Clara. Thank you for this opportunity to present to you on the President's FY 2012 Budget. The Santa Clara Pueblo is a federally recognized Indian tribe, located about 25 miles north of Santa Fe, New Mexico. We are one of only two tribes in New Mexico that have entered into self-governance compacts with the Bureau of Indian Affairs. I will focus the majority of my testimony on the funding of the Self-Governance tribes, but will also use other budget concerns of Santa Clara to highlight other funding needs in Indian country.

**Self Governance Program.** Santa Clara's experience as a self-governance tribe mirrors that of many other self-governance tribes – overall, the program has been a great success. Self-governance works because it promotes self-sufficiency and accountability; strengthens Tribal planning and management capacities; invests in our local resources to strengthen reservation economies; allows for flexibility; and affirms sovereignty. Approximately 50-60% of all Federally recognized Tribes are Self-Governance Tribes, and the interest shown by other Tribes is continuing to grow.

**The President's FY 2012 budget nicely summarizes the Self Governance program:** "Self-Governance Compacts implement the Tribal Self-Governance Act of 1994 (P.L. 103-413), by providing resources to new and existing self-governance Tribes, enabling them to plan, conduct, consolidate, and administer programs, services, functions, and

activities for tribal citizens according to priorities established by their tribal governments. Under tribal self-governance, Tribes have greater control and flexibility in the use of these funds, reduced reporting requirements, and the authority to redesign or consolidate programs, services, functions, and activities. In addition, self-governance Tribes can reallocate funds during the year and carry over unexpended funds into the next fiscal year without Secretarial approval. As a result, these funds can be used with more flexibility to address each Tribe's unique condition. They are also subject to annual audits pursuant to the Single Audit Act Amendments (P.L. 104-156) and OMB Circular A-133. In addition, most self-governance Tribes have included language in their funding agreements indicating that they will work with Indian Affairs to provide applicable data and information pursuant to the Government Performance and Results Act of 1993.

"Tribal participation in self-governance has progressed from seven Tribes and total obligations of \$27.1 million in 1991 to an expected 105 agreements including 255 Federally recognized Tribes and obligations in excess of \$425 million. These funds are negotiated on the same basis as funds provided to Tribes contracting under Title I of P.L. 93-638, as amended. Self-governance Tribes are subject to the same incremental adjustments of base funding as non-compacting Tribes. Also included in compacts are funds from other Federal programs allocated or awarded to self-governance Tribes such as funds from the Department of Transportation (Federal Highway Administration), Bureau of Land Management, and additional training funds under the Integration of Employment, Training, and Related Services Demonstration Act (P.L. 102-477) from the Department of Labor and the Department of Health and Human Services and other BIA Program Funding."

**Proposed Self-Governance Funding in the President's FY 2012 BIA and IHS Budgets.** The President has proposed increases in FY 2012 for the funding that supports the Self-Governance program. In the IHS budget, the President has proposed an increase of \$263,000 to \$6,329,000 from the FY 2010/2011 CR levels. This is an increase of 4.3%. For the Self-Governance line in the BIA budget, the President has proposed an increase of \$7.322 million for a total of \$155.084 million from the FY 2010/2011 CR level. This is an increase of approximately 5%. Santa Clara is happy to see this continued investment in the Self-Governance program, which returns far more in value to Indian country and America than is spent on it.

**Notwithstanding the increases in the Self-Governance program line item, overall funding for Self-Governance Tribes does not keep pace with non-Self-Governance Tribes.** While the self-governance regulations require that Self-Governance Tribes share equally in Congressional appropriation increases, in his testimony before this Committee on November 18, 2010 regarding the proposed Self-Governance amendments (H.R. 4347, 111<sup>th</sup> Congress), Ron Allen, Chairman of the Board of the Self-Governance Communication and Education Tribal Consortium (SGCETC) noted that it has been the experience of the Self-Governance Tribes that when Indian Affairs has received funding increases, oftentimes Self-Governance Tribes did not consistently receive their relative fair share.

Chairman Allen presented an analysis of Self-Governance funding. This analysis noted that “over the past 5-8 years, Self-Governance Tribes have voiced concern over the failure to receive their fair share of subsequent BIA funding increases. As identified during the TBAC presentation at the SG Conference held in May 2010:

- Allocation of Self-Governance Increases has **NOT** been transparent.
- Clearly, BIA has been making allocation decisions without Tribal (TBAC) Input.
- Increases have **NOT** been shared equally with Self-Governance Tribes (e.g. Law Enforcement).
- Tribes do **NOT** know the allocation results (or methodology) for most other BIA Programmatic increases: Education, Natural Resources, Economic Development. (CSC is known).
- Allocation of Carryover funds is **NOT** transparent and *MAY* be inequitable as well.
- Rescissions, on the other hand, have always been shared across the board.

Many Tribes have compact language stating that the Tribe “shall be eligible for increases and new programs on the same basis as other tribes”. If Self-Governance Tribes have not been eligible on the same basis as 638 tribes, this is in non-compliance with these Agreements. Further, it is difficult—if not impossible—for a Tribe to determine if it has been treated equitably when the Department has not been transparent on what “basis” funds have been allocated.

The analysis presented by Chairman Allen made several recommendations for discussion, including:

**“ REDEFINE REGIONAL/TRIBAL RELATIONSHIP TO MAINTAIN PROGRAM INTEGRITY, SHARE IN PROGRAM INCREASES, AND TO SHARE IN YEAR END CARRYOVER FUNDS.** It is important that a relationship between Self-Governance Tribes and the Regional Offices/Agencies be maintained relative to program funds. Self-Governance Tribes are running programs on behalf of the federal government. Too often, the longstanding culture at the BIA has left Self-Governance Tribes out of program increases as well as carryover because BIA staff have stated that “the Tribe has received full funding and the BIA is „finished” with it.” When program fund increases and carryover are not shared equally with the Self-Governance Tribes, SG Tribal citizens do not receive the benefit of funding provided by Congress on their behalf.

**“ EASE FUND TRANSFER THROUGH OSG—REDESIGN PROCESSES, ESTABLISH “FAST TRACK” TRANSFER PROCESS, INCREASED STAFFING.** Carryover funds must move quickly or they will be lost. Therefore, fund transfers through the Office of Self-Governance must be timely. At the regional level, funding is added to an open 638 contract. A similar method should be available through Self-Governance. Most likely, a combination of process

redesign or "a fast track system" will need to be developed along with increased staffing. Self-Governance Tribes have been requesting additional staffing for OSG to effectively move IRR and fire funds.

**"STRONGER SELF-GOVERNANCE ADVOCACY IN TBAC.** The BIA looks to the Tribal Budget Advisory Committee (TBAC) for direction and priorities on budgets. Without Self-Governance representation on the Committee, it is easy to overlook the specific issues faced by Self-Governance Tribes. The TBAC generally assumes that funding increases and carryover is distributed equally between direct, contracting, and Self-Governance compacting Tribes. However, history has demonstrated that technical barriers such as difficulty in transfer of funds have resulted in unequal distribution of funds.

**"PROGRAMMATIC FORMULAS FOR NEW FUNDS.** Consultation with Tribes is paramount in the development of programmatic funding formulas. Consistent, objective, and readily available variables should be used in a straightforward formula that is relatively simple to implement. Data collection is the key. Presently, even where there are formulas, the data used to calculate the distributions is inconsistent and unreliable, and often there is no formula, in which case distributions are made on a discretionary basis that is not predictable and often based on the limited personal knowledge of the Federal official. Examples of complex formulas/data collection can be seen in the allocation of IRR funds and the implementation of the CSC policy. While these two examples have been fraught with complications, (IRR and CSC funding formulas), at least Self-Governance Tribes share in funds on an equal footing.

**"Self-Governance Tribes recommend that BIA:**

- " Make information regarding its decision making process for each category of funding available to all Tribes, including all formulas upon which it relies, the methods for obtaining all data relied upon in the formulas, and the factors relied upon for any decision making that is not formula based;
- " Consult annually with Tribes regarding the formulas and other decision-making processes relied upon by BIA;
- " provide opportunities for Tribes to evaluate and comment on the accuracy of all data relied upon in any formula that BIA uses; and
- " Routinely update all information relied upon for making funding decisions and provide reasonable opportunities for Tribes to verify the data."

**Reintroduction and Passage of Self-Governance Legislation.** Santa Clara supports amendments proposed in the last Congress to the Indian Self-Determination and Education Assistance Act that would improve upon current self-governance law. That legislation (H.R. 4347) contained several proposed amendments to Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) that advance important purposes. Most significantly, they create consistency between Title IV Self-Governance in DOI and Title V

**Self-Governance in the Department of Health and Human Services (DHHS).** Tribal, Congressional and Federal representatives have met dozens of times to discuss the provisions and have spent hundreds of hours negotiating the details of H.R. 4347's provisions. The Title IV Tribal Team has been especially active in meeting with DOI and Bureau of Indian Affairs (BIA) officials over the last few months. Significant agreement has been reached on the vast majority of the provisions in this bill. Tribes have made significant concessions in order to ensure that this important legislation is enacted in this session of Congress. H.R. 4347 passed the House of Representatives on September 22, 2010 and was the subject of a hearing before the Senate Committee on Indian Affairs on November 18, 2010, but the Congress adjourned before it could be moved through the Senate.

**Santa Clara Budget Matters Illustrative of National Concerns.** The following budget issues are specific to Santa Clara Pueblo, but are representative of budget issues that are faced by many other tribes.

- **Investing in Indian Country Energy Development - Energy and Transmission Development at Santa Clara.** Santa Clara has been approached by a number of companies with regard to proposed transmission and energy development projects. Santa Clara is now submitting grant applications to fund various feasibility studies for these projects, which include possible expansion of an existing transmission corridor, as well as such energy generation projects as geothermal, waste to energy, solar and biomass. Santa Clara has recently met with both the Department of Energy Office of Tribal Affairs and the BIA Office of Indian Energy and Economic Development. Santa Clara found both offices to be very helpful and encourages increased funding for these programs. As is well-known, Indian country has vast energy reserves that could serve America well, but we need the capital and infrastructure development to harness these resources.
- **Investing in Health Facilities - Planning for a new Santa Clara Health Clinic.** Santa Clara desperately needs a new and expanded health clinic. The health care crisis that afflicts many Native populations throughout the United States is particularly severe in New Mexico. Of 20 indicators of health disparities among racial and ethnic groups in the state, American Indians in New Mexico have the highest (worst) disparities in many areas, including rates of death two or more times higher than other groups related to alcohol, diabetes, late or no prenatal care, motor vehicles, youth obesity, and youth suicide. American Indians in New Mexico also have higher rates than other groups for pneumonia and influenza. Ironically, overall funding for the Albuquerque Area is 1/3 less than the national IHS average. Essentially, the Albuquerque Area is at the bottom of funding both as a percentage and in terms of dollars, even as it tops many of the categories for health disparities. Severe overcrowding is further compromising care at the Santa Clara Health Center. In recent years, annual patient visits to the Health Center have surged from 14,878 to 27,884, or 87%. Such a dramatic increase in patient visits has pushed the Health Center well beyond its capacity to serve effectively its clients. With health care reform adding even more patients into the national health care system, overcrowding at Santa Clara's existing facility will not improve. A partial list of the effect of this overcrowding includes: treatment rooms used as triage rooms; the nurses' station also stores the autoclave, refrigerator and supplies, and serves as the clean room for preparing injections; the pharmacy area is designed for

a single pharmacist but houses two pharmacists and a pharmacy technician; the one blood-draw station is easily visible to waiting patients and does not readily accommodate larger patients or those with wheelchairs; the Optometry/Behavioral Health Office is located in a renovated storage closet; the dental clinic program was originally designed to provide 50,000 to 60,000 service minutes, but now labors to produce 80,000 to 90,000 service minutes to meet only basic dental needs; and many office areas are open carrels, making it difficult to keep patient information private. A new facility will cost many millions of dollars. Santa Clara does not believe that the Indian Health Service has the funding to pay the cost for constructing a new facility and so it plans to finance its own facility if necessary. However, Santa Clara needs development funding for planning and design. Congress should support funding for more hospital construction and also continue to support and provide favorable grants and loan and loan guarantees for tribes that seek to construct their own facilities.

- **Investing in Irrigation Infrastructure - Rio Grande Pueblos Irrigation**

**Infrastructure Improvement Act Funding.** Congress enacted the Pueblo Irrigation Infrastructure Act as Section 9106 of the Omnibus Public Land Management Act of 2009, Pub. L. 111-11. That Act directs the Secretary of the Interior to conduct a study of the irrigation infrastructure of the Rio Grande Pueblos. It also authorized the funding of projects to correct deficiencies identified by that study. Notably, the Bureau of Reclamation and Bureau of Indian Affairs already compiled a Year 2000 Report entitled, "Pueblo Irrigation Facilities Rehabilitation Report" on the desperate deterioration of the ancient systems of the Rio Grande Pueblos. Santa Clara Pueblo's Irrigation System consists of 14 miles of earthen and concrete-lined canals that have continued to be in operation since the early 1300's. The implementation of this Act will favorably affect Pueblo traditional lifestyle and culture, which for hundreds of years has been based on agriculture and irrigated lands. Santa Clara is currently looking at the redesign of the first four (4) miles of our main canal that supplies irrigation water to the majority of our farm lands. The design is complete; however, we lack the resources to complete the project in its entirety until Congress funds this Act.

- **Investing in Elder Care - Completion of the Santa Clara Pueblo Adult Day Care Center.**

There is a rapidly growing elder Indian population. In late 2009, the Santa Clara Pueblo completed construction of a 10,800 sq. foot regional adult day care center that will be able to serve a growing population of tribal seniors from the Eight Northern Pueblos, as well as local residents who may be afflicted with anything from dementia, Alzheimer's, mental illnesses or other frailties. For Pueblo residents and local community members, the center holds out the promise that they will not have to leave the reservation (or local community) for treatment, experiencing separation from their families and friends and sometimes culturally inappropriate care. For the larger Pueblo community, it is the next step in assuring that Pueblo values regarding respect for elders are met in the context of modern health care and social services structures. The Santa Clara Adult Day Care program will provide a secure environment for elders, where they can engage in stimulating activities that promote optimal physical and mental health. Through this program, Santa Clara seeks to delay or prevent the need for nursing home placement and to assure culturally appropriate care, while also diminishing cases of elder abuse, neglect and exploitation. A typical day at the Center would include providing program participants with a healthy snack in the morning and afternoon, as

well as a noon-time meal that would provide at least 1/3 of an adult's daily nutritional requirement. There would be a wide range of activities within the center, but also elders would have the opportunity to participate in carefully supervised outside activities, such as field trips, visits to museums, visits to other Adult Day Care Centers, movies, restaurants, etc. Although the Center has been completed, the Adult Day Care Program has not yet been implemented due to severe funding restraints. To get the program operational, the Santa Clara Pueblo would need the following multi-year funding (all inclusive of salaries, utilities, furnishings, supplies, training, travel, etc.): Year One: \$305,033; Year Two: \$331,158; Year Three: \$360,750.

- **Investing in Wastewater and Water Infrastructure Improvements - The Pueblo of Santa Clara Wastewater Systems are in an Advanced State of Decay and threaten community health and the water quality of the Rio Grande.** The majority of the Santa Clara Pueblo is served by a wastewater collection system comprised of old 4" terra-cotta sewer pipes, which convey wastewater to a series of lagoons located south of the Main and South Villages, north of the Rio Grande. This system was largely constructed in the 1960s and 1970s. Additionally, some residents are only served by aging septic systems. Notably, the lagoon "treatment system" has been a long-time source of problems. Liners are frequently damaged and are costly to replace. Sampling and analysis of ground water from monitoring wells has revealed contamination due to leaching of wastewater through the lagoons. Groundwater impacts in this area will likely also impact the surface water quality of the Rio Grande. Secondary and advanced treatment of wastewater via a modern wastewater treatment facility is needed for the health of both the Pueblo and the surrounding environment. The Pueblo has completed a preliminary engineering report. This report confirmed the continued deterioration of the community wastewater collection system and indications that the major cause of the problem was root intrusion from Chinese elms, which require our Public Works Department to frequently remove roots sometimes resulting in damage to the brittle clay sewer pipes. This is a major contributor to leaks in the collection system. The Pueblo is seeking resources for the design and subsequent construction of the Wastewater Collection System and Treatment Facility Improvements. These improvements would incorporate removal and replacement of existing vitrified clay sewer pipe with PVC pipe, removal and replacement of existing manholes, installation of new collection sewer lines, manholes, lift stations and force mains, and installation of a new state-of-the-art wastewater treatment facility. The collection system improvements can be divided into two phases: Phase I for the Main, East, West and Guachupangue Areas and Phase II for system extensions and interconnection of the South Areas. *With regard to water systems, the Pueblo is in Phase II of a three-phase project to replace our antiquated water systems.* The Pueblo has received over \$2.2 million from the State of New Mexico and has contributed tribal matching funds. The Pueblo is seeking Federal resources for this project, and is approaching the USDA Rural Development program.
- **Espanola Valley Watershed Feasibility Study Funding and WRDA Cost-Share Waiver.** The purpose of the Espanola Valley Feasibility Study is to address ecosystem restoration and critical health and human safety concerns specifically flood protection and flood reduction measures along all of Espanola River Valley from southern border of San Ildefonso Pueblo to

northern border of Ohkay Owingeh including Santa Cruz River up to Santa Clara Boundary and Santa Clara Creek up to irrigation inlet (7 miles Santa Clara Creek). The project includes Santa Clara, Ohkay Owingeh, & San Ildefonso Pueblo. The partnership for this study is unique as it is the first time in the history of the United States that three Tribal Governments have joined together. The sponsors are not only working to accomplish their own shared health and human safety concerns (flood protection/flood reduction) and environmental restoration goals, but are addressing the health and safety and environmental restoration for all communities in the project area. The project was started in 2005 and is scheduled to be completed in 2013 or 2014 depending on funding and US Congress Construction Authorization. This date can be significantly changed if US Congress allows for Preauthorization of Espanola Valley Feasibility, which is a possibility due to importance of the project. To date the Pueblo sponsors and US Army Corps of Engineers have completed work on an existing conditions report that includes: Comprehensive hydrologic, hydraulic, and geomorphic modeling, detailed mapping of the project area, analysis existing conditions for: flood hazards, soils, geology, channel stability/instability, sediment generation/deposition, infrastructure/property, habitat, wetlands, land use, and environmental studies to characterize the project area and develop the baseline data for any potential ecosystem restoration. The estimate project cost of the Espanola Valley GI Feasibility Study is approximately \$4.3 million with 50 percent federal and 50 percent non-federal. To date the Pueblos have met their cost share obligations with in-kind and cash contributions. The Project has been well received by the US Army Corps of Engineers and US Congressional Delegation and has been identified as a priority project for funding. In a related matter, the three Tribal Sponsors are requesting amending the Water Resources Development Act to waive or reduce cost share to 25% for all watershed study projects on Tribal lands.

**Conclusion.** Thank you for this opportunity to present the Budget perspective of the Santa Clara Pueblo. Please do not hesitate to contact me if the Committee should require any further information.

The CHAIRMAN. Thank you, Governor, for your statement. And I think that is an excellent statement to close the hearing today.

I want to thank all of the witnesses for testifying here today. And I want to thank Secretary Echo Hawk for staying throughout the entire hearing. We really appreciate that.

We will submit written questions to witnesses and we will keep the record open for one week for any Member to submit statements or questions as well.

And I want to say mahalo nui loa for your time and your contributions to the hearing today.

I look forward to continuing to work with you and let's keep in close contact.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12:30 p.m., the Committee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. CHARLES W. MURPHY, CHAIRMAN, STANDING ROCK SIOUX TRIBE

On behalf of the Standing Rock Sioux Tribe, I am pleased to submit testimony concerning the President's FY 2012 budget for the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS). I want to express my appreciation to the Senate Committee on Indian Affairs for its strong support of Indian tribes. I would like to focus my remarks on education, public safety, health care, and infrastructure.

The Standing Rock Sioux Tribe is situated in North and South Dakota. The Reservation comprises 2.3 million acres, including 1.4 million acres of trust land owned by the Tribe or Tribal members. About 10,000 Tribal members and non-members reside on the Reservation in eight communities and in smaller towns. The Tribe's primary industry is cattle ranching and farming. We are remote, rural Indian reservation.

As Congress addresses the needs of the Indian country in light of the Budget deficit, I would urge you to consider three fundamental questions. *First*, what is the impact of funding Indian programs on jobs? While Indian tribes like Standing Rock are often among the largest employers in their areas, unemployment in Indian country remains at levels that are unimaginable elsewhere. Federal investments in education, public safety, and infrastructure in Indian country are crucial to providing jobs in these chronically high unemployment areas.

*Second*, what kind of country are we? The federal government has a special trust obligation to tribes, arising from the Constitution, treaties and other documents. Much has been promised to Indian tribes in return for the loss of our lands. Are we a country that keeps its promises? Maintaining needed funding for programs aiding Indian country is one way to demonstrate the integrity of the United States in honoring its commitments.

*Third*, is it fair to limit the debate on the Budget to only discretionary spending? Certainly not. The only way to fairly address the Budget deficit is to put everything on the table. Social security, Medicare, tax reform and other key issues need to be included. It is simply not right to undermine necessary programs for Indian country, while the major reasons for the Budget deficit remain unaddressed. With these questions in mind, we turn to Standing Rock's specific recommendations.

The Sioux Nation ceded millions of acres of land to the United States. As recently as the 1950's, the United States Army Corps of Engineers flooded more than 56,000 acres of prime Tribal farmland on the Standing Rock Sioux Reservation to create the Oahe Dam to increase navigation along the lower Missouri River and to provide cheap hydro-electric power to the north-central United States. Millions of Americans benefit from the Oahe Dam, but it brought great hardship to our Tribe. These hardships continue to this day.

The Oahe Dam devastated our Tribe, displacing more than 25 percent of our reservation's population. We lost our best farmland and are still working to reclaim irrigable lands on our reservation. The creation of Lake Oahe further isolated our reservation. It established over a 100 mile transportation barrier from Bismarck, North Dakota to Mobridge, South Dakota, where the first bridge crossing over the Missouri River south of Bismarck is located. Our rural location and lack of infrastructure (roads, safe drinking water, sewers, and electricity) contribute to the economic challenges our Tribe faces. But working in partnership with the United States and our neighbors, we can turn challenges into opportunities for economic growth and job creation on our Reservation.

The Tribe is working steadily to expand opportunities for economic development to provide jobs for our members and improve the standard of living on our Reservation. We operate the Standing Rock Farms, a Parts-on-Demand operation, two modest Tribal casinos, and a sand and gravel operation which helps us supplement services and programs for our more than 14,000 enrolled members. Despite the measures we are taking at the local level to improve living conditions on our reservation, we have persistent unemployment above 50 percent, and a high dropout rate among

our high school students. Over 40 percent of Indian families on our reservation live in poverty. Yet, the Administration has proposed cutting discretionary spending for the BIA by \$118.9 million or 4.5 percent over the FY 2010 enacted level.

### **Education**

Native Americans are poorly represented in colleges across the country. Investment in Indian education—at every level—is critical to the future success of our children.

*Scholarships and Adult Education* (+\$32.0 mil.)—I recommend that Congress double the funding for the BIA Scholarship and Adult Education Program by \$32 million. Our Tribe has provided \$3 million in Tribal funds over three years to support a scholarship program to provide over 300 students with grants of between \$3,000–\$3,500/semester which allow them to pursue degrees from accredited colleges, universities and vocational schools. BIA financed scholarships total about \$500,000 per year. This meets 25 percent of our need. More of our members are seeking advanced degrees and job training. Scholarships help offset costs of attending accredited colleges. The Adult Education component enables adults to obtain their GED or the required skills needed to transition to a community college or job placement. Job training and improved literacy are key skills our members require to secure competitive jobs.

*Johnson O'Malley Act* (+\$11.0 mil.)—I urge Congress to Increase funding for the Johnson O'Malley Act program to \$24.3 million to address the unique educational and cultural needs of Native children attending public schools (an increase of \$11 million above the Administration's request). JOM was funded at \$24 million in 1994. JOM is a critical program that fully involves local communities and Native parents in the education of our children.

### **Public Safety Needs**

Living conditions on Standing Rock are difficult. According to most recent statistics of the Department of Housing and Urban Development (HUD), in 2010, over 1,163 reservation households on Standing Rock had family incomes between 30 percent–80 percent of median family income in the area. On the North Dakota portion of our reservation (Sioux County, ND), the median family income is only \$27,473. This figure is 57 percent of North Dakota's overall median family income of \$47,898. On the South Dakota portion of our reservation (Corson County, SD), the median family income is only \$27,591. This figure is about 59 percent of the South Dakota average median family income of \$46,244. On Standing Rock, 485 households, or 42 percent of our least well off households, earn 30 percent of median family income.

We have far too few BIA public safety officers patrolling our eight districts and small communities on our 2.3 million acre reservation. Police officers in Indian country are our primary first responders. BIA equipment and technology are outdated, including police cruisers, radios and communications infrastructure. We do not have access to computerized law enforcement statistics.

In the spring and summer of 2008, following the deaths of several Tribal members, at our request and with the help of our Congressional delegation, the BIA began "Operation Dakota Peacekeeper" as part of the Interior Department's Safe Indian Communities initiative to reduce crime, target illegal drug activities and provide much needed investigative support to prosecute domestic violence and crimes against children. A total of 56 BIA officers were detailed from their reservations to Standing Rock over a seven month period.

Operation Dakota Peacekeeper more than quadrupled our normal BIA Police force. Before the surge, we had only ten BIA public safety officer positions filled. This was enough for only two officers per 24-hour shift to patrol a 2.3 million acre reservation encompassing four towns, eight separate communities, 2,500 miles of roads, and a population of 10,000 residents. The public safety surge was an overwhelming success. Tribal elders felt safe in their homes and began to leave their doors unlocked and windows open at night. It also highlighted the glaring need for greater numbers of patrol and other public safety personnel on our reservation. Congress enacted and President Obama signed the Tribal Law and Order Act (TLOA) in law which creates a number of important mandates to strengthen tribal courts and justice systems.

*Criminal Investigations and Police Services* (+25 mil.)—In order for the Administration to fully implement the TLOA and to address the shortfall of more than 1,800 police officers in Indian country cited in a 2006 GAP report, we encourage the Congress to increase funding for Criminal Investigations and Police Services to \$215 million, or \$25 million above the 2.2 percent increase (\$4.2 mil.) proposed by the Administration above the FY 2010 enacted level of \$185 million.

*Detention/Corrects* (+15 mil.)—Until the BIA addresses the shortages of corrections officers cited in the 2006 GAP report and to implement requirements of the TLOA, we recommend that Congress increase funding for BIA-funded detention/corrections by \$15 million above the Administration's proposed budget of \$85 million.

*Tribal Courts* (\$+20 mil.)—We urge Congress to increase the modest funding of \$25 million appropriated for the Tribal Courts Program. Our Tribe cannot effectively carry out criminal proceedings, let alone civil cases, with our small BIA allocation, even when heavily subsidized by the Tribe. Our Tribal courts are crowded, cramped and outdated and limit our ability to administer a comprehensive criminal justice system on the Reservation.

*Facilities, Operation and Maintenance* (+\$5.0 mil.)—We urge Congress to add an additional \$5 million to the BIA-funded Public Safety and Justice's Facility, Operation and Maintenance budget of \$13.7 million. Adequate maintenance and repair is essential to extend the useful life of facility infrastructure and make needed repairs until Indian tribes can invest in adequate infrastructure for Tribal Courts, Police Stations, and detention facilities.

### **Health Care**

The majority of our Tribal elders continue to suffer from diabetes, heart disease and hypertension. Accidents are the leading cause of death among our members. On the North Dakota portion of our reservation, 6.6 percent of our tribal members are age 65 and older. In North Dakota generally, 14.7 percent are age 65 and older (more than double our figure). On the South Dakota portion of our reservation, 9.6 percent of our tribal members are age 65 and older. In South Dakota generally, this figure is 14.5 percent, more than fifty percent higher than on our reservation. More is needed to serve our elders properly. Our Tribal members deserve the opportunity to live full and productive lives and compete successfully in today's global economy.

We are pleased to see the Administration acknowledge the large health disparity that exists between Native Americans and the rest of the population. The FY 2012 funding of \$4.166 billion for IHS Services is recognition that Indian country still has a long way to go to improve the health of our members. Far too many of our members live with debilitating diseases and illnesses that shorten their lives. We urge the Committee to protect the Administration's proposed increase of \$508 million above the FY 2010 enacted level for IHS Services, which includes an increase of \$89 million for Contract Health Services (CHS) and \$63 million for Contract Support Costs. On Standing Rock, many members go without needed health care services each year because of inadequate CHS dollars. The proposed increases will better enable tribes and the IHS to implement provisions in the permanent extension of the Indian Health Care Improvement Act (IHCA) that are designed to redress health disparities in Indian country.

### **Taking Care of Existing Infrastructure Needs**

(+\$75 mil.)—I strongly oppose the \$1.0 million cut the Administration proposes for the BIA Road Maintenance Program and flat line funding this program has received over the last 20 years. The decision to underfund this program will cost taxpayers millions of dollars as tribes and the BIA must reconstruct roads far sooner due to poor maintenance. With inadequate maintenance, roads which should last 20 years, last only 7–10 years. Limited to \$25 million, Tribes operating the Road Maintenance Program cannot hope to tackle the large backlog of deferred road maintenance needs that make our roads and bridges unsafe and impede travel on our reservations. Our Tribe invested \$26.5 million, which we borrowed from Wells Fargo Bank, to reconstruct nearly 20 miles of community streets. We installed sidewalks, curbs, gutters and street lights throughout the reservation for the first time. We are struggling to maintain our investment because we expend most of our Road Maintenance funds during the winter months to pay for snow removal (labor, fuel, salt, sand, truck repairs and truck rentals, etc.) and to respond to other road emergencies such as floods.

Lack of adequate funding for Road Maintenance and new construction (IRR Program) undermine our ability to achieve every major program priority we have (public safety, health care, education, housing, and economic development). All of these programs depend on and require a modern infrastructure. Road maintenance is a public safety program. Poor road conditions contribute to the unacceptably high levels of serious injury and death on Indian Reservation Roads each year. We urge Congress to appropriate \$100 million annually for the Road Maintenance Program so that we can better maintain our BIA and Tribal road systems as we reconstruct them.

### **Economic Development**

We urge the Congress to appropriate \$5 million for the BIA's Office of Indian Energy and Economic Development to help tribes build their reservation economies. Increased appropriations will allow this program to serve more reservations. Thank you for providing our Tribe the opportunity to present testimony.

PREPARED STATEMENT OF HON. CHERYL A. CAUSLEY, CHAIRWOMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

### **Introduction**

Good morning Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Senate Committee on Indian Affairs. My name is Cheryl Causley and I am the Chairwoman of the National American Indian Housing Council (NAIHC), the only national tribal non-profit organization dedicated to advancing housing, physical infrastructure, and economic development in tribal communities in the United States. I am also the Executive Director of the Bay Mills Housing Authority and an enrolled member of the Bay Mills Indian Community. I want to thank the Committee for the opportunity to submit testimony regarding the President's FY 2012 Budget Request.

At the outset, NAIHC would like to thank Housing and Urban Development Secretary Donovan for his commitment to Indian Country, not only in the form of support for reasonable funding levels for tribal programs, but in the form of consistent outreach to tribal communities and his stated commitment to reaching out to other federal agencies to enhance communications at the federal level so that tribes may best use and leverage their limited federal funds. We have enjoyed building our relationship with Secretary Donovan's office during the past year and a half and look forward to continued collaboration.

### **Background on the National American Indian Housing Council (NAIHC)**

The NAIHC was founded in 1974 and has, for 37 years, served its members by providing valuable training and technical assistance (T&TA) to all tribes and tribal housing entities; providing information to Congress regarding the issues and challenges that tribes face in terms of housing, infrastructure, and community and economic development; and working with key federal agencies in an attempt to address such issues and meet such challenges. The membership of NAIHC is expansive, comprised of approximately 271 members representing 463<sup>1</sup> tribes and tribal housing organizations. The primary goal of NAIHC is to support tribal housing entities in their efforts to provide safe, quality, affordable, and culturally relevant housing to native people.

### **Brief Summary of the Problems Regarding Housing in Indian Country**

While the country has been experiencing an economic downturn in general, this trend is greatly magnified in tribal communities. The national unemployment rate has risen and has hopefully passed its peak at an alarming rate of nearly 10 percent;<sup>2</sup> however, that rate does not compare to the unemployment rates in Indian Country, which average 49 percent.<sup>3</sup> The highest unemployment rates are on the Plains reservations, where the average rate is 77 percent.<sup>4</sup> Because of the remote locations of many reservations, there is a lack of basic infrastructure and economic development opportunities are difficult to identify and pursue. As a result, the poverty rate in Indian Country is exceedingly high at 25.3 percent, nearly three times the national average.<sup>5</sup> There is no question that tribal members are among the nation's most vulnerable citizens.

The above-stated employment and economic development challenges exacerbate the deplorable housing conditions in Indian Country. Our first Americans face some of the most distressing housing and living conditions in the country, and the avail-

<sup>1</sup> There are approximately 565 federally-recognized Indian tribes and Alaska Native villages in the United States, all of whom are eligible for membership in NAIHC. Other NAIHC members include state-recognized tribes that were deemed eligible for housing assistance under the 1937 Act and grandfathered in to the Native American Housing Assistance and Self-Determination Act.

<sup>2</sup> See <http://www.bls.gov/news.release/empsit.nr0.htm>.

<sup>3</sup> Bureau of Indian Affairs Labor Force Report (2005).

<sup>4</sup> Many of these reservations are in the State of South Dakota, which has one of the lowest unemployment rates in the nation. However, on some SD reservations, the unemployment rate exceeds 80 percent.

<sup>5</sup> U.S. Census Bureau, *American Indian and Alaska Native Heritage Month: November 2008*. See <http://www.census.gov>.

ability of affordable, adequate, safe housing in Indian Country falls far below that of the general U.S. population. Consider the following:

- According to the 2000 U.S. Census, nearly 12 percent of Native American households lack plumbing compared to 1.2 percent of the general U.S. population;
- According to 2002 statistics, 90,000 Indian families were homeless or underhoused;
- On tribal lands, 28 percent of Indian households were found to be over-crowded or to lack adequate plumbing and kitchen facilities. The national average is 5.4 percent;
- When structures that lack heating and electrical equipment are included, roughly 40 percent of reservation housing is considered inadequate, compared to 5.9 percent of national households;
- Seventy percent of the existing housing stock in Indian Country is in need of upgrades and repairs, many of them extensive; and
- Less than half of all reservation homes are connected to a sewer system.

There is already a consensus among many members of Congress, HUD, tribal leaders, and tribal organizations that there is a severe housing shortage in tribal communities; that many homes are, as a result, overcrowded; that many of the existing homes are in need of repairs, some of them substantial; that many homes lack basic amenities that many of us take for granted, such as full kitchens and plumbing; and that at least 200,000 new housing units are needed in Indian Country.

These issues are further complicated by Indian land title status. Most Indian lands are held in trust or restricted-fee status; therefore, private financial institutions will not recognize tribal homes as collateral to make improvements or for individuals to finance new homes. Private investment in the real estate market in Indian Country is nearly non-existent. Tribes are almost wholly dependent on the Federal Government for financial assistance to meet their growing housing needs, and the provision of such assistance is consistent with the federal government's centuries-old, Constitutionally-based trust responsibility to American Indian tribes and Alaska Native villages.

#### **The Native American Housing Assistance and Self-Determination Act**

In 1996, Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA) to provide federal statutory authority to address the above-mentioned housing disparities in Indian Country. NAHASDA is the cornerstone for providing housing assistance to low-income Native American families on Indian reservations, in Alaska Native villages, and on the native Hawaiian Home Lands. The Indian Housing Block Grant (IHBG) is the funding component of NAHASDA. Since NAHASDA was first funded in 1998, it has been *the single largest source* of funding for tribal housing. IHBG funds support new housing development, acquisition, rehabilitation, and other housing services that are critical for tribal communities, as well as essential planning and operating expenses for tribal housing programs.

#### **American Recovery and Reinvestment Act (ARRA) and FY 2010 Indian Housing Funds**

NAIHC would like to thank Congress for its increased investment in Indian housing in FY 2010. ARRA provided over \$500 million for the IHBG program. This additional investment in Indian Country supported hundreds of jobs, allowed some tribes to start on new construction projects, and assisted other tribes in completing essential infrastructure for housing projects that they could not have otherwise afforded with their IHBG allocations. Tribes have complied with the mandate to obligate and expend funds in an expedient manner, thus helping stimulate tribal and the national economies. In addition to ARRA funding, Congress appropriated \$700 million for the IHBG in FY 2010, the first significant increase in funding since the inception of NAHASDA. This positive step reversed a decade of stagnate funding levels that neither kept pace with inflation nor addressed the acute housing needs in tribal communities, and NAIHC is thankful for this powerful step in the right direction.

#### **The President's FY 2012 Budget Request for the Indian Housing Block Grant**

NAIHC supports the President's FY 2012 Budget Request, which maintains the FY 2010 level of funding of \$700 million for the IHBG program. While NAIHC believes that the IHBG needs to be funded, at a minimum, at \$875 million just to keep

pace with increasing costs for housing development, energy efficiency initiatives, and other inflationary factors, we recognize that the current budget situation requires some difficult choices on the part of the Administration and the Congress. We ask that Congress support funding for the IHBG program in an amount not less than the President's request of \$700 million.

NAIHC also supports the inclusion of \$65 million in the President's FY 2012 Budget Request for the Indian Community Development Block Grant (ICDBG) program. This program provides funds for essential infrastructure for tribal communities. As the ICDBG program is one of the few sources of funds that tribes can access for the purpose of infrastructure development, NAIHC consistently requests \$100 million per fiscal year be made available for this program.

#### **Training and Technical Assistance (T&TA)**

The President's FY 2012 Budget Request does not include the much-needed, exceptional T&TA that has been provided by NAIHC since NAHASDA was implemented. The provision of T&TA is critical for tribes to build their capacity to effectively plan, implement, and manage tribal housing programs. Eliminating funding for T&TA would be disastrous for tribal housing authorities and would be a huge step in the wrong direction. Tribes need more assistance in building capacity, not less. Since NAIHC's funding for T&TA was restored in 2008, requests for T&TA have steadily grown. The funding that NAIHC is currently receiving is insufficient to meet the steady, growing demand for T&TA. Therefore, we are forced to make difficult decisions regarding how to provide the most effective T&TA to our membership. The NAIHC membership has repeatedly taken the position that a portion of the Indian Housing Block Grant funding should be made available to NAIHC for T&TA, therefore, NAIHC and its member tribes recommend that \$4.8 million be provided to a national organization for T&TA.

#### **Conclusion**

NAHASDA was enacted to provide tribal communities with new and creative tools necessary to develop culturally relevant, safe, decent, and affordable housing. It has been remarkably successful in view of the limited funding over the past 13 years. It is our aspiration that tribes will be able to build on those successes in the future, which requires sufficient funding. NAIHC is thankful for proposed level funding for the IHBG and ICDBG programs, given the current budget climate, and we are hopeful that Congress will protect the IHBG and the ICDBG, programs that help provide the most fundamental of services—housing—to some of the nation's most vulnerable citizens.

Thank you, Chairman Akaka and Vice Chairman Barrasso, and the members of the Senate Committee on Indian Affairs, for giving us the opportunity to express our views about the President's FY 2012 Budget Request. Your continued support of tribal communities is acknowledged and truly appreciated. The NAIHC is eager to work with you and your professional staff on any and all issues pertaining to tribal housing programs and living conditions for America's indigenous people.

PREPARED STATEMENT OF D'SHANE BARNETT, EXECUTIVE DIRECTOR, NATIONAL  
COUNCIL OF URBAN INDIAN HEALTH

**Introduction:** On behalf of the National Council of Urban Indian Health (NCUIH), its 36 member organizations and the 150,000 urban Indian patients that our programs serve annually, I would like to thank the Senate Committee on Indian Affairs for the opportunity to provide testimony addressing the FY2012 Budget. NCUIH strongly urges the full funding of the Urban Indian Health Program (UIHP).

According to the 2000 United States Census, over 60% of AI/AN population currently lives in urban centers. However, the division between an urban Indian and a non-urban Indians is a false dichotomy. Originally, Native Americans were forced to urban locations during the Termination and Relocation era due to economic pressures and the federal policy of the time; however, now most Native Americans transition between their tribal homes and the urban centers depending upon their needs and the needs of their families<sup>1</sup>. The UIHP is there to provide health care for AI/AN patients when they live in urban settings, thus helping to form a complete circle of care with tribal and IHS health providers. Fulfilling its role in the circle of care for AI/AN patients, UIHPs provide culturally competent, non-duplicative health services to more than 150,000 enrolled members of federally recognized Tribes.

Congress has consistently acknowledged the government's trust responsibility extends to AI/AN patients living in urban settings. From the original Snyder act of 1921 to the Indian Health Care Improvement Act (IHCA) of 1976, and its Amendments, Congress has consistently found that: "The responsibility for the provision of health care, arising from treaties and laws that recognize this responsibility as an exchange for the cession of millions of acres of Indian land *does not end at the borders of an Indian reservation*. Rather, government relocation policies which designated certain urban areas as relocation centers for Indians, have in many instance forced Indian people who did not [want] to leave their reservations to relocate in urban areas, and *the responsibility for the provision of health care services follows them there.*"<sup>2</sup>

**History of Bipartisan Congressional Support:** Congress has overwhelmingly rejected attempts by the previous Administration to zero fund the UIHP line item. Congress restored UIHP funding in the FY07, FY08, and FY09 budgets, and included strong report language in the FY07 and FY08 reports supporting the UIHP<sup>3</sup>. The Obama Administration has expressed a deep

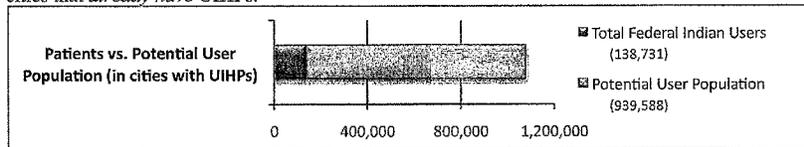
<sup>1</sup> See *United States v. Roszkiewicz*, 196 F.3w 459, 465 7<sup>th</sup> Cir. 1999, stating: "[the] patterns of cross or circular migration on and off the reservations make it misleading to suggest that reservations and urban Indians are two well-defined groups."

<sup>2</sup> Senate Report 100-508, Indian Health Care Amendments of 1987, Sept 14, 1988, p25. Emphasis added

<sup>3</sup> House Report 109-4665; House Report 110-187; H.R. 1106

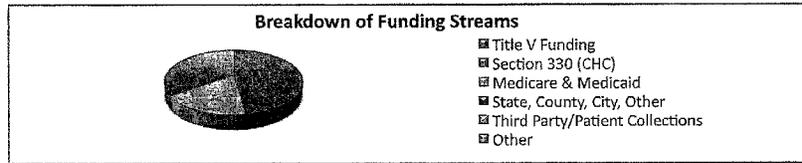
concern on Native American health, as demonstrated by the \$600 million increase to IHS funding in the President’s outline of his FY2012 budget. It is the fervent wish of Native Americans everywhere that Congress support President Obama in fully funding IHS. NCUIH hopes that Congress can again come together in a bipartisan fashion to fully fund not only the Indian Health Service, but also fully fund the UIHP at its full level of need.

**Unmet Needs of Urban Indians:** While the UIHP serves over 150,000 Native Americans annually, there remains a huge unmet need in Urban Indian communities. The last needs assessment for the Urban Indian community was conducted in 1981, nearly 30 years ago. Based on that ancient data, the UIHP is serving approximately 22% of the entire need for the Urban Indian community. Without a doubt the need for the UIHP has grown since 1981. For example, the estimated potential user population of the UIHP is almost 1 million people, and that’s just in cities that *already* have UIHPs.



In light of this data, NCUIH urges the Committee to increase funding to UIHP line item by at least \$9 million dollars over FY2010 levels. Minor increases to the UIHP’s budget by Congress not kept up with ordinary inflation, much less medical inflation. Thus, the purchasing power of UIHP programs and clinics has steadily decreased for most of the past decade. Cuts to Medicaid and Medicare reimbursement rates and CMS regulations limiting reimbursements to outpatient providers have also negatively impacted the UIHP clinics. With an economy struggling to emerge from the recession and unemployment rates at historically high levels, many clinics are reporting increased patient loads that are straining their already tight budgets. Health care costs are one of the primary reasons for individual bankruptcy filings. If AI/AN patients are unable to receive care at UIHP clinics and programs the likelihood that they will be forced into bankruptcy increases, which then increases the likelihood of their return to their home reservations, thus straining tribal budgets and social services.

**Leveraging Funding:** UIHP clinics and programs are adept at leveraging their Title V funding to obtain additional dollars from other federal, state, and local sources. The original investment of IHS’ monies allocated through Title V of IHClA provides the base funding that allows UIHP clinics and programs to build upon their capacity to reach new patients and provide more services. As a general rule the 36 programs and clinics of the UIHP are able to leverage two new dollars for each dollar of original investment. The ability of the program to effectively seek out additional funding by leveraging the base funding from IHS makes the UIHP a sound investment as a social program. Some of the other sources of funding are shown in the chart below:



Although UIHP clinics and programs have been very adept at leveraging their IHS dollars, they are not able to do so without that core funding. The UIHP line item provides the basis of the program; without it the programs would not be able to compete for other private and federal grants. However, when that base funding is insufficient to maintain core services the competitiveness of UIHP clinics and programs for other private and federal grants is badly damaged. When the competitiveness of the UIHP is damaged it is ultimately the patients who suffer.

**Community Health Centers:** For more than 40 years, HRSA-supported Community Health Centers have provided comprehensive, culturally competent, quality primary health care services to medically underserved communities and vulnerable populations. CHCs are community-based and patient-directed organizations that serve populations with limited access to health care. Recent moves to slash funding for CHCs by nearly 60% would have a devastating impact on the most vulnerable at a time when they can least afford it. NCUIH strongly opposes cuts that would have a calamitous impact on the provision of care to medically underserved populations living in areas determined to be health provider shortage areas. Already woefully underfunded, further cuts to CHCs would leave countless individuals with no other health options.

**Health Promotion/Disease Prevention and Sexual Assault/Domestic Violence Grants:** Health Promotion/Disease Prevention grants are an integral part of many UIHP’s infrastructure funding. And for many UIHPs, HP/DP and SA/DV grants provide the only source of funding for mental health and substance abuse services for adults. The proposed elimination of these grants will leave a huge hole in the provision of health care for urban Indians, and would impair the development of “patient centered care teams” as required in the Affordable Care Act. These critical grants must be maintained in order to fulfill UIHP’s obligations to the communities they serve, and NCUIH strenuously recommends their continued availability to UIHPs. Grants such as these are a wise investment in the long-term health of urban Indians – lowering health care costs in the long-term and addressing medical issues before they require more expensive emergency care.

**Top Priorities of the UIHP:** As part of comprehensive survey of the UIHP, NCUIH requested its member programs to submit a list of health priorities for the next fiscal year. Those priorities are listed below:

Service Priority
Traditional Medicine
Behavioral Health
Dental Services
Maternal & Child Health
Women’s Health

Elder Care
Disease/Diabetes Prevention
Nutrition & Dietetics
Telemedicine

In order to provide the services requested and to accommodate the growing demands upon the Urban Indian Health Program, the National Council of Urban Indian Health requests an increase of \$9 million from the FY2010 Congressional budget appropriated amount of \$43 million for a total of \$52 million. This increase will allow the

programs to respond to medical inflation, provide additional services, and cope with the increasing demand as the economy continues to deteriorate. An increase to the base funding of the UIHP will also ensure the continued competitiveness of the programs and clinics for other private and federal funds.

**Conclusion:** In conclusion, I would like to thank the Committee for this opportunity to provide testimony on the appropriations priorities of the UIHP clinics and programs. We are grateful for your commitment and concern for the improvement of the health and well-being of urban Indians. Notwithstanding the difficulties of the past few years, UIHP clinics and programs, working with limited funds, have made a great difference in addressing the unique circumstances and health care needs of the urban Indian population. These small but vital components of the health care system for Native Americans have persevered and developed strong, innovative treatment methods and outreach programs addressing illnesses such as diabetes and chronic disease, substance abuse, and behavioral health disorders. NCUIH hopes that Congress can match President Obama's commitment and fully fund both the Indian Health Service and the Urban Indian Health Program line item. The time has come to address the serious urban Indian health discrepancies as compared to the general population. It is the position of the NCUIH that the UIHP should receive a \$9 million increase to the UIHP line item, Community Health Centers should maintain or increase their FY2010 funding levels, and maintain funding of Domestic Violence/Sexual Assault Grants and Health Promotion/Disease Prevention grants to UIHPs. The time has come to seriously invest in the health of Native Americans.

<b>Budget Request</b>
<p>1.) <b>Full Funding of the Indian Health Service</b> – If the Native American health delivery system is to truly fulfill the trust responsibility between Native peoples and the federal government, the Indian Health Services, and all of its parts, must be fully funded. Current funding is insufficient to provide quality health care.</p>
<p>2.) <b>\$9 Million Increase for the Urban Indian Health Program</b> – In order to meet rising need, medical inflation, and remain competitive for other private grants and services the UIHP requests a much needed increase in base funds after several years of flat funding.</p>
<p>3.) <b>Full funding of Community Health Centers</b> – Community Health Centers were designed to serve patients who live in areas where there is a shortage of available health services. We urge the Committee to maintain funding for these critical components of the health care delivery system. For many individuals, CHCs are the only health care available in their communities.</p>
<p>4.) <b>Maintain funding of Domestic Violence/Sexual Assault Grants and Health Promotion/Disease Prevention grants to UIHPs</b> – NCUIH opposes the proposed elimination of DV/SA and HP/DP grants to UIHPs. These competitively awarded grants provide our communities with dearly needed health services that cannot be duplicated through other means.</p>

PREPARED STATEMENT OF RUSSELL GSCHWIND, DIRECTOR, NATIONAL IRONWORKERS  
TRAINING PROGRAM FOR AMERICAN INDIANS

I am asking for your help to secure funding for the Ironworkers Training Program for American Indians. This program provides training and job placement into the Ironworker trade and has been funded and supported by the Department of Interior Bureau of Indian Affairs since 1972.

At this point we are asking to be put back on the Indian Affairs FY-2011 and 2012 budget.

Through the years, the annual budget line for this program has been placed under community and economic development. The amount has ranged from \$500,000 to \$800,000. This funding allows for state of the art training at a modern training facility, provides students with subsistence stipends, job placement and supplies the tools necessary to start working in the Ironworker trade. The Bureau of Apprenticeship & Training (BAT) has recognized and certified the National Ironworkers Training Program for American Indians allowing graduates direct entry into registered apprenticeship programs.

While all training programs are an attempt to help people become self sufficient and in the process become taxpayers, this program is a true success story. In just 11 weeks our graduates go from unemployed to starting an apprenticeship with above average wages, (\$13.00- \$20.00 per hour) fringe benefits and a future in the construction industry. The fringe benefits include health insurance for the family as well. This gives the graduate great pride in their accomplishments and the ability to take care of their family. On a personal level directing and teaching at this program I get to see that we are truly making a difference. The graduates leave here with the confidence and knowledge necessary to excel in the jobs they are placed in.

While Congress struggles to balance the budget keep in mind these jobs easily offset the training cost by eliminating costs for health care, unemployment and other social services while also collecting taxes on above average wages.

As for duplicative training programs this is the only Ironworkers pre-apprentice program in the United States. The students are exposed to all facets of the Ironworker trade. Welding, torch cutting, print reading, rigging, rebar and structural steel installation and OSHA safety courses are among the subjects taught during the training.

Even though unemployment is high throughout the country it is highest in Indian Country proving job training programs like this one are a necessity. This training is essential if the Native American communities are to rebuild their school, hospitals, roads and bridges using people from their community.

Developing energy resources will need Ironworkers to build the wind generators, solar energy farms, coal to liquids plants and oil refineries. As these projects move forward skilled trades' people will be needed to build them. If they will be Tribal Members training needs to be expanded not cut.

Seeing this program has been in effect for 39 years many of our graduates are now joining the ranks of pensioners after enjoying a career in the Ironworkers trade. Their sons and daughters are following in their footsteps and entering the Ironworker Trade.

As Tribes prepare for upcoming construction projects they send us their members for training. This allows them to supply the contractors with qualified personnel from the community.

Native American Education and Employment Agencies send us Tribal members with the understanding as they finish our training they will be put to work in their community.

Our representative from the Department of Indian Energy and Economic Development has commended this program because of the high pay and benefit opportunities it provides and wants to expand it to other trades.

On behalf of all the program graduates and future students, we urge you to support the funding of the National Ironworkers Training Program for American Indians.

Thank you for your time, consideration and continued support.

## PREPARED STATEMENT OF THE ALASKA FEDERATION OF NATIVES

Chairman Daniel Akaka, Vice Chairman John Barrasso and the honorable members of U. S. Senate Committee on Indian Affairs thank you for the opportunity to submit written testimony commenting on the President's FY2012 federal Indian budget.

The Alaska Federation of Natives is the largest statewide Native organization in Alaska. Its membership includes nearly one-third of the federally recognized tribes in the United States. More specifically, AFN represents 178 villages, both federally recognized tribes and village corporations, 13 regional Native land owning corporations, and 11 regional tribal consortiums that contract and run federal and State programs.

Given the size, and remoteness of the State of Alaska, many of our federally recognized tribes have organized themselves under regional tribal consortiums to advocate for and achieve the economies of scale required to deliver tribal services under the federal trust responsibility of the United States to its first peoples, American Indians, and Alaska Natives. Of the 565 federally recognized tribes in the nation, 231 of them are located within the boundaries of the State of Alaska, and more Native people as a percentage of the total population live within the State of Alaska than any other State in the Union.

Alaska Native communities remain culturally rich and were not forcibly relocated or confined to reservations. Our traditional dependence on animal & plant resources continues to this day. Subsistence hunting and fishing provides not only food security, but supports our very way of life. While culturally vibrant, Alaska Native communities continue to face economic and social challenges that are reflected in concerning statistics.

In 2008, 20 percent of Alaska Natives had income below the poverty level. Rural communities in Alaska consistently experience official rates of unemployment as high as 25 percent, a rate that reflects the number of individuals in the workforce looking for a job. A more accurate picture can be described using "discouraged workers," those in the workforce not looking for a job (because no jobs are available), which the 2000 census estimated roughly at 70 percent. Alaska Native high school students graduate at a rate of 55 percent compared to 71 percent for their non-native counterparts. With approximately 40 percent of the Alaska Native population age 18 and younger there is a huge need for increased training and scholarship funding. Evermore troubling is that the Alaska Native suicide rate is as high as six times the national average in several regions of rural Alaska.

**Bureau of Indian Affairs**

Over the last decade, the BIA budget has increased in areas which tribes and tribal consortia located within the State of Alaska are not eligible to access (School Construction, Law Enforcement, Education funding, etc). For a number of years now, AFN has recommended funding increases to the Tribal Priority Allocation and Small and Needy Tribe line items within the BIA budget. It is only recently that we have begun to see success in our efforts. This last year, the Tribal Budget Advisory Committee (renamed recently to the Tribal Interior Budget Committee) recommended TPA General Increases and Small and Needy Tribes in their FY2012 budget priority recommendations.

We appreciate the President's Budget request of \$870.7 million for Tribal Priority Allocations, \$195 million request for contract support costs, and \$2.9 million dollar request for small and needy tribes. We recommend that the Senate Committee on Indian Affairs support the 1994 BIA Budget Task Force recommendation that small and needy tribes in Alaska receive a base amount of \$200,000. In 1998, the recommendation to bring all Small and Needy tribes nationwide to \$160,000 was implemented. The recommendation (made in 1994) to fund Alaska Small and Needy tribes at the \$200,000 funding level still has not been implemented. We estimate that in order to fully fund the Small and Needy Tribes in the lower 48 at \$160,000 and in Alaska at the \$200,000 level, would cost \$8 million, an increase of \$5.1 million over the President's request.

We urge that the Senate Committee on Indian Affairs support increased TPA funding based on inflation and population adjustments. For example, the regional tribal organization that serves the Bering Straits provided an internal budget analysis over the last 10 years. Between 2000, and 2009, Kawerak found that total BIA funding had decreased by 22.3 % and that the consumer price index for Anchorage, the only CPI index kept in Alaska, increased 22.8% during the same time period. Furthermore, the cost of living differential is often 150 percent higher in rural Alaskan communities than in Anchorage. During that same time period, the Bering Strait Region tribal member service population increased by 10%. The cumulative effects of BIA TPA and Small and Needy tribes decreases leave tribes in our rural villages grossly underfunded in addressing the growing needs of their populations.

#### **Health and Public Health Infrastructure**

The Alaska Federation of Natives urges the Senate Committee on Indian Affairs to support the Denali Commission Health Facilities construction program that continues to build clinics in Alaska Native villages. The President eliminated \$10 million in funding in the FY2012 budget proposal, as well as in his FY2011 budget. Last year, Congress was unable to restore funding to the Denali Commission health facilities construction account putting a halt to addressing the basic health and wellness needs of our Native communities.

Roughly 25% of homes in rural Alaska are without sanitary sewer and water services. AFN is concerned with the President's decrease of \$18 million in the Sanitation Facilities Construction program within the Indian Health Service budget and strongly urges the Senate Committee on Indian Affairs that level funding with the FY2011 CR be requested.

AFN supports the requests of the Alaska Native Tribal Health Consortium that funding be increased for the Village Built Lease Program to fully cover the operating costs of clinics in Alaska Native villages, increased funding for contract support costs, and funding for the implementation of the Child Sexual Abuse Prevention, and Domestic Violence and Sexual Abuse Prevention and Treatment programs authorized by the Indian Health Care Improvement Act, and funding the Indian youth tele-mental Health Demonstration Project.

#### **Energy**

The price of energy in rural Alaska strains the budgets of tribes, tribal organizations, regional and village Native corporations, local municipal governments, state and federal agency field

offices, businesses, and families alike. The price of energy touches every aspect of our lives, from the cost of airline tickets, building construction materials to the price of groceries - dozen eggs, a loaf of bread, a pound of butter, and a gallon of milk.

Roughly 80 percent of power plants in all rural villages run on diesel fuel. High fuel costs increases the cost of electricity to every single consumer. All of the costs associated with power production, including generator fuel, are spread amongst consumers in villages with small populations. Electricity bills for village residents commonly run between \$200 - \$300 per month. Electricity bills for businesses are normally about \$7,000 per month. Residents typically pay about \$3,000 for 500 gallons of home heating fuel which can last up to 2 months during the winter.

A study by the University of Alaska's Institute for Social and Economic Research shows that households in rural Alaska, where low income Native families make up 70-90 percent of a community's population, spend 40 percent of their income on heat and electricity compared to 4 percent in urban areas of Alaska. Fuel for homes and power plants can only be barged in during the summer months before freeze-up, or flown in at exorbitant rates. If low tidal conditions, early river freeze up, and environmental conditions prevent a barge from arriving, fuel must be delivered by air, which can double or triple the cost for consumers.

While AFN appreciates and supports the President's FY2012 budget request of \$10 million for Tribal Energy Activities, and \$320 million for the nation-wide weatherization assistance program, other federal programs that provide direct heating assistance to low income families face immediate threats.

The President's FY2012 budget request eliminates the High Energy Cost Grant program at the United States Department of Agriculture (an \$18 million dollar elimination of funds). Also concerning is the President's reduction of the Low Income Home Energy Assistance program, also known as LIHEAP that helps families at or below the poverty level keep their homes warm during cold temperatures of winter. The families on LIHEAP are generally among the poorest of the poor in rural villages who will not be able to afford to keep their children warm next winter. The President's FY2012 budget request includes \$2 billion for the formula grant program, a \$2.5 billion reduction below FY2010.

Recognizing that these energy priorities are not traditional part of the federal Indian budget, AFN strongly urges the Senate Committee on Indian Affairs to support restoring level funding for Department of Agriculture High Energy Cost Grants and the Low Income Home Energy Assistance program that allows our tribal members and tribal organizations help meet the high energy costs in Alaska Native villages.

#### **Public Safety & Justice**

Roughly 70 Alaska Native villages are without law enforcement. With the enactment of the Tribal Law and Order Act of 2010, tribal organizations that hire and manage village public safety officers or "VPSOs" can use COPS grants to support law enforcement positions. AFN supports the President's request for an additional \$302 million for the Community Oriented Policing

Service Hiring Program, of which \$42 million will be used for hiring and rehiring of law enforcement officials. AFN urges that the Senate Committee on Indian Affairs support this request.

#### **Education**

Nearly 40 percent of the Alaska Native population is under the age of 20. The Alaska Native population grows by roughly 2 percent a year, compared to roughly 1 percent of the overall population. Federal Head Start funds for low income students have not met the needs of the increasing population.

Furthermore, Alaska's public education system is failing Alaska Native children. As mentioned above, Alaska Native students have a 55 percent high school graduation rate. In the past several years, regions with Native enrollments greater than 80 percent often had the lowest proportion of schools meeting the Adequately Yearly Progress benchmarks established under the No Child Left Behind Act.

As the Committee knows, Alaska tribes are not eligible to receive Bureau of Indian Education funds, however programs established under the Alaska Native Education Equity Act and the Strengthening Alaska Native and Native Hawaiian-Serving Institutions Programs support improving the state of Alaska Native education.

AFN supports the president's FY2012 request to increase Administration for Families and Children Head Start \$866 million over FY2011. AFN understands that the President is working to implement key provisions of the Head Start Reauthorization, mainly requiring low performing programs to compete for funds. We urge that the Senate Committee on Indian Affairs ensure that Alaska Native and American Indian students are not inadvertently harmed and continued to be funded.

AFN urges that the Senate Committee on Indian Affairs support the President's budget request of \$33.2 million for FY2012 for the Alaska Native Education equity program and \$15 million for Alaska Native and Native Hawaiian-serving institutions.

Alaska's tribes and tribal organizations are challenged with addressing the social, public safety, and economic issues in an area that is the size of 1/5 of the lower 48 states. It is on behalf of this collective voice that we urge the Senate Committee on Indian Affairs to support the priorities of the federally recognized tribes and tribal organizations located in the State of Alaska in its views and estimates letter to the Senate Budget Committee.

Thank you very much for giving us the opportunity to submit this written testimony regarding the President's Fiscal Year 2012 Budget for Tribal Programs. We ask that this testimony be incorporated in the record of this oversight hearing.