



**NORTHWEST
PORTLAND
AREA
INDIAN
HEALTH
BOARD**

Burns-Paiute Tribe
Chehalis Tribe
Coeur d'Alene Tribe
Colville Tribe
Coos, Suislaw &
Lower Umpqua Tribe
Coquille Tribe
Cow Creek Tribe
Cowlitz Tribe
Grand Ronde Tribe
Hoh Tribe
Jamestown S'Klallam Tribe
Kalispel Tribe
Klamath Tribe
Kootenai Tribe
Lower Elwha Tribe
Lummi Tribe
Makah Tribe
Muckleshoot Tribe
Nez Perce Tribe
Nisqually Tribe
Nooksack Tribe
NW Band of Shoshone Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Quileute Tribe
Quinault Tribe
Samish Indian Nation
Sauk-Suiattle Tribe
Shoalwater Bay Tribe
Shoshone-Bannock Tribe
Siletz Tribe
Skokomish Tribe
Snoqualmie Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Suquamish Tribe
Swinomish Tribe
Tulalip Tribe
Umatilla Tribe
Upper Skagit Tribe
Warm Springs Tribe
Yakama Nation

DATE: March 15, 2012
TO: Tribal Leaders, Health Directors, Board Delegates
FROM: Jim Roberts, Policy Analyst
SUBJECT: Senate Committee on Indian Affairs Oversight Hearing,
"President's Fiscal Year 2013 Budget for Native Programs"

Last week, the Senate Committee on Indian Affairs (SCIA) conducted an Oversight Hearing on the "President's Fiscal Year 2013 Budget for Native Programs"

The Indian Health Service (IHS) was represented by Yvette Roubideaux, IHS Director; and Randy Grinnel IHS Deputy Director.

The invited Tribal witness panel included Jefferson Keel, President, National Congress of American Indians; Fawn Sharp, President Quinault Nation and Chair of Affiliated Tribes of Northwest Indians; Michell Hicks, Principal Chief, Eastern Band of Cherokee on behalf of United South and Eastern Tribes; and Robert Shepherd, Chairman, Sisseton Wahpeton Oyate, on behalf of Great Plains Tribal Chairman's Association.

The Board has submitted a statement for the record on the IHS FY 2013 appropriation request and I have also included copies of the witness testimony with this memorandum.

The record for the hearing will be held open for two weeks, which means you have until March 22, 2012 to submit any comments on the hearing or recommendations on the 2013 budget request.

You may view the hearing and download testimony at:
<http://www.indian.senate.gov/hearings/hearing.cfm?hearingID=f14e6e2889a80b6b53be6d4e415649d2>

Please contact me if you should have any questions at (503) 228-4185; or by email at jroberts@npaihb.org.

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**Statement of the Northwest Portland Area Indian Health Board
Regarding the President's FY 2013 IHS Budget**

Before:

**Senate Indian Affairs Committee
Oversight Hearing on the President's Fiscal Year
2013 Budget for Native Programs**

Held Thursday, March 8, 2012
2:15 p.m.
Senate Dirksen Building 628

On behalf of the 43 Federally-recognized Tribes that the Northwest Portland Area Indian Health Board represents, we thank you for this opportunity to provide this statement on the President's FY 2013 budget request for the Indian Health Service (IHS).

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

Indian Health Disparities

The Indian Health Care Improvement Act (IHCIA) declares our Nation's policy is to elevate the health status of the AI/AN people to a level at parity with the general U.S. population. Over the last thirty years the IHS and Tribes have made great strides to improve the health status of Indian people through the development of preventative, primary-care, and community-based public health services. Examples are seen in the reductions of certain health problems between 1972-74 and 2000-2002: gastrointestinal disease mortality reduced 91 percent, tuberculosis mortality reduced 80 percent, cervical cancer reduced 76 percent, and maternal mortality reduced 64 percent; with the average death rate from all causes dropping 29 percent.¹

While Tribes have been successful at reducing the burden of certain health problems, there is strong evidence that other types of diseases are on the rise for Indian people. For example, national data for Indian people compared to the U.S. all races rates indicate they are 638 percent more likely to die from alcoholism,

¹ FY 2000-2001 Regional Differences Report, Indian Health Service, available: www.ihs.gov.

400 percent greater to die from tuberculosis, 291 percent greater to die from diabetes complications, 91 percent greater to die from suicide, and 67 percent more likely to die from pneumonia and influenza.² In the Northwest, stagnation in the data indicates a growing gap between the AI/AN death rate and that for the general population might be widening in recent years. These data document the fact that despite the considerable gains that Tribes have made at addressing health disparities, that in some instances these gains are reversing themselves that the health of Indian people could be getting worse.³

Recommendation: Maintain Current Services

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

Our analysis of the IHS budget indicates it will take at least \$304 million in FY 2013 to maintain the current levels of health care provided by the Indian health system. Anything less will result in Indian health programs having to absorb the mandatory costs of inflation, population growth and increased administrative costs. Add to this the accumulated amounts of past year's Contract Support Costs (CSC) shortfall of \$99.3 million, means that at least \$403 million is needed to fund current services. The President's request in FY 2013 (an increase of \$115.9 million) is simply not adequate to fund mandatory costs of current services.

The IHS Congressional Justification reports that the President's budget provides a \$115.9 million to support activities identified by the Tribes as budget priorities including increasing resources for the Contract Health Services (CHS) program; funding Contract Support Costs (CSC) shortfall; funding for health information technology activities, and; providing routine facility maintenance. The IHS Congressional Justification further explains that the overall increase is adequate to "sustain the Indian health system, expand access to care, and continue to improve oversight and accountability." This simply is not the case when the costs of maintaining current services are evaluated.

NPAIHB projections indicate that an additional \$287 million will be needed to maintain the program at the current levels of care. Inflation and population growth alone using actual rates of medical inflation extrapolated from the Consumer Price Index (CPI) and IHS user population growth predict that at least \$304 million will be needed to maintain current services. Compound this with the fact that nearly half of the proposed increase is for staffing and operation of six new facilities (\$49 million), which will only leave \$66 million to cover current services. Estimates

² Ibid.

³ Please note findings in, *The Health of Washington State: A Statewide Assessment of Health Status, Health Risks, and Health Care Services*, December 2007. Available: <http://www.doh.wa.gov/hws/HWS2007.htm>.

developed by the IHS during the FY 2013 budget formulation process and used during Tribal Consultation to develop Tribal recommendations on the FY 2013 budget, estimate current services at \$136.8 million for pay act costs, inflation and population growth. These are IHS estimates and not Tribal estimates, thus there should be no question about the reliability of these projections since they were developed by IHS. Thus, using IHS own estimates from their budget development process reveals that the President's request is not sufficient to "sustain the Indian health system or expand access to care."

The Administration's proposal does not provide any funding increases for inflationary costs except for the CHS program. The \$54 million increase for the CHS program is respectable but will fall short by \$10 million to maintain current services. Aside from this request for CHS, there is absolutely no additional funding requested for inflation, population growth or civilian and Tribal pay cost increases. NPAIHB estimates that at least \$213.4 million is needed to fund inflationary costs and an additional \$90.4 million is needed to cover population growth. Add to this the accumulated past year's CSC shortfall of \$99.3 million, means that there is at least \$403.1million in mandatory costs that will have to be absorbed by IHS programs—most likely by cutting services to Indian people.

Unfortunately, IHS and Tribal health programs will now suffer the consequences of the current budget debate despite the duty and obligation of the United States to provide health services. Despite these challenges, NPAIHB recognizes the difficult fiscal environment that our country is experiencing. The current budget debate to curtail discretionary spending will have a severe effect on IHS and Tribal programs if they are not adequately funded. Respectfully we request that the Committee recommend that IHS and Tribal health programs receive a budget increase adequate to meet current services. We also recommend that the IHS appropriation be exempt from any reductions in discretionary spending. This request should be honored in recognition of the duty and obligation that the United States has to provide health care to Indian people. It is further compelling when one considers the severe health disparities that AI/AN people suffer.

Per Capita Spending Comparisons

The most significant trend in the financing of Indian health over the past ten years has been the stagnation of the IHS budget. With exception of a notable increase of 9.2% in FY 2001 and last year's 14% increase, the IHS budget has not received adequate increases to maintain the costs of current services (inflation, population growth, and pay act increases). The consequence of this is that the IHS budget is diminished and its purchasing power has continually been eroded over the years.

The IHS Federal Disparity Index (FDI) is often used to cite the level of funding for the Indian health system relative to its total need. The FDI compares actual health care costs for an IHS beneficiary to those costs of a beneficiary served in mainstream America. The FDI uses actuarial methods that control for age, sex, and health status to price health benefits for Indian people using the Federal Employee Health Benefits (FEHB) plan, which is then used to make per capita

health expenditure comparisons. It is estimated by the FDI, that the IHS system is funded at less than 60 percent of its total need.⁴

Conclusion

We understand that our recommendations may seem unreasonable in current fiscal environment, however when you consider the significant health needs of Indian Country they are realistic. NPAIHB recognizes that in these challenging and difficult budget times, that we all must make sacrifices for the well-being of our country. Northwest Tribes however are among over 565 Federally-recognized Tribes that have made significant sacrifices for the good of all Americans, and the historic record on health disparities demonstrates that no one has sacrificed more than Native Americans. Thank you for this opportunity to provide our testimony on the FY 2013 IHS budget. Please do not hesitate to contact NPAIHB if we may be of further assistance.

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⁴ Level of Need Workgroup Report, Indian Health Service, available: www.ihs.gov.



NATIONAL CONGRESS OF AMERICAN INDIANS

OVERSIGHT HEARING on the President's Fiscal Year 2013 Budget for Native Programs

Thursday, March 8, 2012
2:15PM
Senate Dirksen Building 628

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Introduction

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 2013 budget. Full funding of the federal government's trust, treaty and statutory obligations to tribes remains a bipartisan goal for Indian Country. Tribal leaders and NCAI urge investments in the programs that promote government efficiency and more program flexibility for tribes, in addition to low- and no-cost solutions for strengthening tribal and rural economies in this period of fiscal challenges. Congress must sustain funding for tribal self-determination, which is critical to the economic foundation of Indian Country. That fact that most tribal programs fall into the category of discretionary domestic funding has no bearing on the United States' trust responsibility to tribes and should not stop Congress from adequately funding them.

In preparation for the President's budget, some agencies have consulted with tribes about programs in the budget. Recommendations from Indian Country that were included in the President's FY 2013 proposal include increases for contract support costs, some natural resource and environmental protection programs, public safety initiatives, and contract health services. While the Administration's budget proposal maintains support for many critical programs, some cuts proposed represent significant setbacks to progress in Indian Country, such as for education construction.

NCAI looks forward to working with this Committee to ensure that the federal programs that fulfill the trust responsibilities to tribes receive bipartisan support in the appropriations process. Tribes look forward to contributing to the economic recovery, but to do so, tribes must assume their rightful place as full partners in the American family of governments. Given the historic disparity in resources for tribal governments compared to similarly situated governments, now is not the time to retreat from fulfilling the promises made to tribes.

Overarching Recommendations

Indian Country recognizes the state of the economy, the pressures on government at all levels, and the related challenges for job seekers. Tribes have been doing more with less for generations. We take over responsibility to manage federal funds as seriously as we do the federal trust responsibility to provide them, and we propose the following general recommendations for the FY 2013 budget.

- 1) Continue to promote the successful and efficient initiatives in Indian Country that work, such as Self-Determination programs. Critical to implementing these policies are the Bureau of Indian Affairs (BIA) funding streams for Tribal Priority Allocations, Contract Support Costs at BIA and the Indian Health Service (IHS), and Tribal Grant Support Costs for tribal schools.
- 2) NCAI urges support for programs that maximize the federal tax dollar, such as the 477 program. In the administration of the 477 Act, tribes urge the continuation of funding through Indian Self-Determination and Education Assistance Act agreements and contracts and relief from the reporting obligations instituted by the Office of Management and Budget Circular A-133.
- 3) Tribes urge Congress to support legislation that will fully restore the Secretary of the Interior's authority to take land into trust for tribes.

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 2013 appropriations process and exempted from across-the-board rescissions. NCAI also requests that the Indian Country FY 2013 Budget Request document be entered into the record.

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 made 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

Although they have taken various forms, the public safety problems that plague tribal communities are not new. They are the result of decades of gross underfunding for tribal criminal justice systems, a painfully complex jurisdictional scheme, and a centuries-old failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. In recent years, tribal leaders from across the nation have highlighted the shortcomings in the current justice system in numerous formal consultations, informal dialogues, conference calls, meetings, and Congressional hearings surrounding issues of public safety and justice in Indian Country. At every turn, they have emphasized that the current lack of resources for law enforcement on tribal lands poses a direct threat to Native citizens and the future of Indian Country. However, these words seem to have fallen on deaf ears. Even the 2010 passage of the Tribal Law & Order Act (TLOA) has not prompted Congress to invest more money in public safety on reservations. In fact, in the recently passed FY 2012 Consolidated and Further Continuing Appropriations Act, making appropriations for Agriculture, Commerce, Justice, Science (CJS) and Transportation-Housing and Urban Development, lawmakers not only removed the proposed 7 percent tribal set-aside from discretionary Office of Justice Programs (OJP) programs—which has previously been supported by both the House and Senate CJS Committees—but they slashed funding for tribal justice programs across the board.

Department of Justice

The President's FY 2013 Budget requests approximately \$345 million for public safety initiatives in Indian Country, with a total of \$156.8 million set aside for tribal grant programs within the Department of Justice (DOJ). While this is a significant overall decrease compared to the President's FY 2012 DOJ request, the tribal grant program funding numbers are still more than the approximate \$123.9 million FY 2012 enacted level, demonstrating the Administration's continued commitment to improving the criminal justice system on tribal lands.

Similar to last year's request, the Department again proposes bill language for a **7 percent tribal set-aside** from all discretionary **Office of Justice Programs (OJP)** programs to address Indian country public safety and tribal criminal justice needs. Under the FY 2013 request, the 7 percent set-aside totals \$81,375,000—more than a \$20 million decrease from last year's request. Although the details of how these funds will be administered are yet to be determined, the goal is to provide a more flexible grant structure for tribes. The Department proposes to eliminate bill language contained in prior years' Appropriations Acts that outlined 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 percent 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.**

Approximately \$40.5 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 women for the crimes of domestic violence, sexual assault, dating violence, and stalking on tribal lands. Of these funds, \$35,320,000 (a \$50,000 increase over FY 2012 enacted levels) is requested for disbursement through the VAWA Tribal Government Grants Program, while \$3,605,000 would 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 an Indian Country Sexual Assault Clearinghouse that will offer a one-stop shop for tribes to request free on-site training and technical assistance. The FY 2013 budget request also sustains funding for Analysis and Research on Violence Against Indian Women at \$1 million.

Unfortunately, the FY 2013 budget request for tribes under the **Community Oriented Policing Services (COPS)** program to fund tribal law enforcement expenses is funded at \$20 million, the same as the FY 2012 enacted amount but much lower than it was just two years ago. Moreover, the \$42 million that the President requested for tribes under the COPS Hiring Program in FY 2012 has been reduced to just \$15 million for FY 2013. These funds are critical for the hiring and retention of tribal law enforcement officers.

While the DOJ FY 2013 Budget Request may total less than last year's request, it still provides tribes with more flexibility in how they spend their DOJ grant dollars. **NCAI commends the Justice Department's continued commitment to tribal self-determination and the improved administration of justice on Indian lands.**

Public Safety Resources at the Department of Interior

NCAI also supports the Department of Interior's Protecting Indian Country Initiative and the Priority Goal to reduce violent crime in Indian communities. Last year, the Department of the Interior launched the Safe Indian Communities Initiative, a two-year program that included targeted community policing on four reservations, and the program has achieved successful and encouraging results. Since its inception, there has been a 35 percent overall decrease in violent crime across the four tribal communities. With an initial target of reducing violent crime by at least 5 percent, the initiative far exceeded this goal, achieving a 68 percent decrease in violent crime at the Mescalero Reservation in New Mexico, a 40 percent reduction at Rocky Boy in Montana, and a 27 percent reduction in violent crime at Standing Rock in North and South Dakota. The successful program is now being expanded to two additional reservations: the Rosebud Sioux Reservation in South Dakota and the San Carlos Apache Reservation in Arizona. Indian Country would like to see it expanded even further—to reach even more tribes—and we would like to see Congress appropriate adequate funding to ensure the Initiative's continued success. **This Initiative has been a proven success, and these are the types of efforts that can make a real difference on the ground level, provided there is funding available to pursue them.**

Law enforcement infrastructure, including basic police protection and tribal courts on tribal lands, is a fundamental function of government, and if they are not provided at the highest quality, no one will be willing to invest in tribal economies. Tribes have some of the most valuable resources in the nation— natural and human—and tribal lands are prime locations for new business ventures and economic development. Yet, issues of perceived safety on the reservation continue to hinder successful growth of tribal economies. Increased and targeted funding in tribal law enforcement and tribal court development will not only have a huge impact on safety in tribal communities, it will help attract new business to tribal lands and will ensure that tribal law enforcement officers, emergency responders, and justice personnel are able to find work in the communities that most need their services.

Department of Homeland Security

Tribes have daunting responsibilities to protect their lands and people from homeland security threats and initiate protective measures similar to the states. Although the states have received billions of federal program dollars, tribes have only in the last 4 years made progress in accessing bare minimum grants. The Department of Homeland Security (CHS) Tribal Homeland Security Grant Program (THSGP) administered by the Federal Emergency Management Agency (FEMA) was created to provide tribal direct funding to implement preparedness initiatives to help strengthen the nation against risk associated with potential terrorist attacks and other hazards.

The enacted FY 2012 budget for the DHS Tribal Homeland Security Grant Program (THSGP) was cut 40 percent and the level of funding proposed for FY 2013 THSGP is unclear as this grant is proposed to be part of a National Preparedness Grant Program (NPGP). NCAI also is concerned as the NPGP was developed without tribal consultation and will use revised grant criteria which is more favorable to states. **The NCAI recommends that no further action be taken on the proposed FY 2013 National Preparedness Grant Strategy until DHS has provided, under Executive Order 13175, outreach and consultation with tribal governments.**

The FY 2013 budget proposes to eradicate the THSGP and there are no other grants that specifically acknowledge tribal government eligibility in any DHS programs. Previous grant programs for which tribes have been eligible will be absorbed into the National Preparedness Grant Program (NPGP) and contain state-favored criteria and a state-managed process. THSGP grant criteria is more focused on Threat Hazard Identification Risk Assessment (THIRA) and hazard specific assessments on a regional basis. The administration's FY 2013 budget strategy and the accompanying grant eligibility criteria was developed in consultation with state governors and state emergency managers to the exclusion of tribal leaders and tribal emergency managers. The proposed changes are an affront to tribal sovereignty and even more detrimental to tribes as the states also will be administering the grants.

FEMA will base funding allocations on prioritized core capabilities. The tribes have not had the same opportunities to increase homeland security capacity-building that the states have had through several years of DHS funding to increase and enhance their homeland security program infrastructure. Another portion of DHS funding that will be competitive states that all jurisdictions applying for these funds must affirm membership in the Emergency Management Assistance Compacts (EMAC). Few tribes are signatories of these compacts created by and primarily for states. Although forming EMAC-like collaborative partnerships are beneficial in providing resources and assistance which governments can use during emergencies the majority of tribes have yet to enter into these compacts for various reasons related to capacity, jurisdiction and sovereignty.

Human Services

Indian Health Service

The President's budget request demonstrates the Administration's ongoing commitment to Indian Country – and in the case of health care – the recognition of the trust responsibility for providing health care in perpetuity to all American Indian and Alaska Native people. The increase of \$116 million in the Indian Health Service (IHS) budget request was a confirmation of that commitment.

Tribal leaders annually, through the National IHS Tribal Budget Formulation Workgroup, provide IHS with tribal leader priorities for the upcoming Fiscal Year. We applaud the Administration for including targeted funding increases that have long been a priority for the Workgroup. For example:

- \$20 million increase in Contract Health Services. Contract Health Services funds are necessary to purchase health care services where direct IHS and tribal health care is non-existent or unavailable and supplemental funds are needed to provide comprehensive care. IHS estimates that this increase will provide an additional 848 inpatient admissions, 31,705 outpatient visits, and 1,116 one-way transportation services.
- \$49 million increase in Staffing and Operating Costs for New Facilities. This request will fund the staffing and operating costs for six newly constructed health centers scheduled to open in FY 2013, including three Joint Venture projects. In addition, the request will complete the funding requirements to staff and operate two Joint Venture projects scheduled to open in FY 2012.

- \$5 million increase in Contract Support Costs. The increase will be applied to the Contract Support Costs shortfall associated with ongoing contracts and compacts with tribes and tribal organizations under the Indian Self Determination and Educational Assistance Act. A recent estimate of the shortfall for Contract Support Costs at IHS is between \$70 and 80 million. Tribes and NCAI continue to urge the agency to provide the full amount required to pay these costs.

While these increases are much needed, we must be clear that the IHS budget remains woefully short of providing full funding to the IHS system; and only full funding will ensure that parity is achieved in our healthcare system. Providing funding increases that takes into account population growth and inflation so that current services can still be provided is an important budget principle.

Tribal leaders provided Congress and the Administration a blueprint to bring parity to Indian people. The Indian Health Care Improvement Act (IHCIA) includes programs and services designed to bring the IHS into the 21st century. However, as we all know, authorization only creates the program, appropriations are needed to fulfill its promise. Currently, there are twenty-three unfunded provisions in the IHCIA. Provisions that will provide opportunities for tribes to build tribal capacity, infrastructure, and most importantly – access to health care services.

Bureau of Indian Education

The FY 2013 budget request for the Construction program is a reduction of \$17.7 million below FY 2012. The request cuts \$17.8 million, eliminating new school construction funding. Indian Affairs will focus on improving existing school facilities as part of the Department's strategic approach to not fund new construction in FY 2013. The total FY 2013 request for Education Construction is \$52.9 million. NCAI urges this Committee to help us restore funding for new school construction.

All students in America deserve a safe, secure, and culturally appropriate environment in which to attend school. As cited in the draft No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee Report, numerous research studies have noted the link between inadequate facility conditions and poor performance by students and teachers. The Report also underscored the fact that the quality of the school environment impacts student behavior, test scores, and teacher retention, among other issues.

As of December 31, 2009, an estimated \$1.34 billion was needed to bring 64 schools ranked in "poor" condition, meaning in significant need of repair, up to "fair" condition. Continued inadequate support for school facilities will cause the unmet need for construction and repair funds to balloon. Equally disconcerting is that the FY 2013 budget directives could result in the continued elimination of funding for replacement school and replacement facilities. Delaying the replacement and repair of existing facilities not only jeopardizes student and staff safety, but also increases the amount of school funds that must be diverted to emergency repairs and other facilities maintenance—accounts which are also extremely underfunded. **NCAI urges this Committee to help us restore funding for new school construction.**

Natural Resources

The vitality and sustainability of natural resources is integral to the health of American Indian and Alaska Native peoples, communities, cultures, and economies. It also has demonstrable positive impacts on surrounding communities. The ecological practices tribal peoples have cultivated for millennia are inherently sustainable and practical.

Environmental Protection Agency

Although the Environmental Protection Agency's (EPA) FY 2013 budget decreased approximately \$105 million overall from FY 2012, much of the tribal set asides received increased funding. Recognizing tribes and states as the primary implementers of environmental programs the EPA continued funding its State and Tribal Assistance Grants program, which accounts for 40 percent of the EPA's budget request and is the largest percentage of the EPA's budget request. Tribes received an increase of approximately \$29 million over FY 2012 appropriations to the Tribal General Assistance Program. These additional funds will assist tribes in capacity building and promote protections for the environment and human health. **NCAI strongly supports the increase proposed for the Tribal General Assistance Program.**

Bureau of Indian Affairs, Natural Resources

Tribes have voiced support for increased funding for natural resources programs in the Bureau of Indian Affairs through the Tribal Interior Budget Council, which provides input to the Department of Interior on tribal budget concerns. The President's FY 2013 budget includes some of the recommendations for natural resources. Under trust land management, the FY 2013 budget would provide increases in Trust Natural Resources of \$3.5 million for the Rights Protection Implementation program and \$2 million for the Tribal Management and Development program to support fishing, hunting, and gathering rights on and off reservations. The budget request would provide program increases of \$1 million for the Forestry program and \$500,000 for the Invasive Species program. An increase of \$800,000 supports greater BIA and tribal participation in the Landscape Conservation Cooperatives, for a total of \$1 million. **NCAI urges Congress to retain these proposed increases in the final FY 2013 appropriations bill.**

Supporting Tribal Governments

The best illustrations of tribal innovation and efficiency came with the passage of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) in 1975, which unleashed the power of tribal control and revolutionized the delivery of Indian services. Program flexibility has allowed tribes to determine internal priorities, redesign programs, and reallocate financial resources to effectively and efficiently address the needs of their respective communities. In this time of a constrained federal budget, NCAI notes that many recommendations from tribes during tribal budget consultations have been considered in the FY 2013 President's budget. The President's budget does not provide the amounts required to meet the full need for Indian programs, but the proposal does address important funding areas for tribal governments, outlined below.

Bureau of Indian Affairs

The FY 2013 President's budget includes \$2.5 billion in current appropriations for Indian Affairs, which is \$4.6 million or 0.2 percent below the FY 2012 enacted level. The budget proposes a total of \$897.4 million in Tribal Priority Allocations. Critical to implementing the Indian Self-Determination policy is the Bureau of Indian Affairs (BIA) funding streams for Tribal Priority Allocations, Contract Support Costs at BIA, and Tribal Grant Support Costs for tribal schools. NCAI supports the programmatic increases in Indian Affairs, which follow the recommendations from tribes. However, NCAI would note that the President's budget includes rather large reductions due to streamlining measures in the BIA. These reductions include \$19.7 million in streamlining measures and \$13.8 million in administrative savings. Although tribes appreciate that the Administration is proposing increases to programs, NCAI would urge caution when cutting so deeply into BIA functions – administrative and streamlining reductions that are larger than proposed for most other bureaus and agencies. **NCAI would encourage the BIA to consult with tribes on the how the proposed streamlining and administrative reductions would impact the delivery and operation of Indian programs.**

Office of Special Trustee for American Indians

The FY 2013 budget request for the Office of Special Trustee (OST) focuses on continuing efforts in trust management reform, oversight, daily operations, and historical accounting. The request for OST totals \$146 million and reflects a \$6.1 million decrease from the FY 2012 enacted.

In past years tribal leadership has been critical of the OST, largely because of the reorganization of traditional Bureau of Indian Affairs (BIA) functions into a separate bureaucracy. At the same time, tribes have seen improvements, particularly in the accounting for trust funds. In general, tribes have supported a plan to sunset the OST, reintegrate its functions with BIA under the high level guidance of a Deputy Secretary for Indian Affairs, the creation of an independent oversight function, and have urged that more resources should be focused at the reservation level to support tribal resource management.

Last week, the new National Commission on Indian Trust Administration and Reform held its first meeting and began its work. At the same time, we began to see some fruit bear from the long efforts at historical accounting, with an announcement that more than 50 tribes have received settlement offers, and offers have been accepted by the Confederated Tribes of the Colville Reservation, the Fort Peck Tribes, and previously the Osage Nation. We expect that more settlements will be finalized in the coming weeks and months.

Given the progress on tribal trust settlements and the newly started work of the Commission, we would strongly encourage Congress to continue its funding of OST at the requested levels. We would also urge Congress to provide additional funds for appraisals because of the significant delays caused by a lack of appraisal services. In addition, there are concerns that the probate caseload is growing and additional resources may be needed.

In the future, we hope to see a diminishing need for historical accounting as tribal trust fund cases are resolved and the Cobell settlement is put to rest. We are optimistic that the Commission will develop a plan for the future of OST that focuses on reservation management of trust resources and will continue to improve the administration of Indian trust land and trust funds.

Economic Development

Department of Energy

The Department of Energy overall FY 2013 budget request of \$27.2 billion is a small increase over the FY 2012 enacted level. Part of this increase requires a significant restructuring of programs to streamline and cut those that are not working or no longer needed. For tribally specific programs, the Department of Energy requested a 25.3 percent increase for the Office of Indian Energy Policy and Programs. This increase brings the OIEPP closer to the statutory maximum of \$20 million, a request included in the NCAI FY 2013 Tribal Budget Request document. The Tribal Energy Program request included a 30 percent cut and will seek to develop tools for leveraging existing public and private financing for deployment of tribal energy projects.

Indian Guaranteed Loan Program

The FY 2013 proposed budget would provide \$5 million for the Indian Guaranteed Loan program, a reduction of \$2.1 million from the 2012 enacted level. The Department of Interior's Office of Indian Energy and Economic Development (OIEED) Division of Capital Investment oversees the Indian Loan Guarantee Program that is the only federal guarantee program that enables eligible borrowers to obtain conventional lender financing to develop Native businesses and eligible construction, while also enabling other companies to obtain supplemental surety bond guarantees. In the last several years, significant tightening of the credit markets made loans more difficult to obtain, reducing demand for loan guarantees. As lending conditions improve, the revolving credit facility of the OIEED Loan Guarantee Program can greatly assist Native borrowers seeking guarantees for lines of credit for: working capital, payrolls for hiring new employees, and assurances sufficient for sureties to provide performance bonds to tribal- and other Native-owned contractors. The OIEED's Loan Guarantee Program is the most appropriate and urgently needed source of financing for business, energy, and other economic development in Indian Country. With the promises of a broadband-enabled economy in Indian Country looming on the horizon, an expanded investment in the OIEED Loan Guarantee Program would enable operating businesses to build their technological capacity as well as to provide seed financing for new businesses to begin operations. **NCAI encourages Congress to restore funding for the Indian Guaranteed Loan Program.**

Transportation

The Indian Reservation Roads (IRR) system comprises over 140,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. Indian Reservation Roads are the most underdeveloped road network in the nation—yet this is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of IRR bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The Department of Transportation (DOT) President's budget request for FY 2013 envisions critical investments in infrastructure that are vital to the nation's economic success. Included in the budget is a new six-year \$476 billion surface transportation reauthorization proposal to improve the nation's transportation infrastructure. The President's budget also seeks to fully pay

for the transportation investment through gas tax and other revenues and from the savings from the Overseas Contingency Operation reductions, a decrease of military operations.

Additional changes included in the DOT's FY 2013 budget is the consolidation of 55 surface transportation programs within the Federal Highway Administration to five core programs: (1) Highway Safety Improvement Program; (2) National Highway Program; (3) Livable Communities Program; (4) Federal Allocation Program; and (5) Research, Technology and Education Program. A major change has also been to rename the Indian Reservation Roads Program (IRR) and has been changed to the **Tribal Transportation Program (TTP)**, this will encompass the former IRR Bridge Program, planning, and a new safety program for TTP roads. The amount requested for FY 2013 for Tribal Transportation Program is \$600 million with gradual step increases for each fiscal year up to \$785 million for FY 2018.

NCAI supports the increase to \$600 million for the Tribal Transportation Program, however NCAI would want to ensure that the consolidation of these TTP funds for tribal transportation infrastructure adequately addresses construction and maintenance needs for roads and bridges.

NCAI also urges an increase for the BIA roads maintenance program in FY 2013, which services 29,000 miles of Indian Affairs-owned roads. As of 2011, the backlog in deferred maintenance was approximated to be \$285 million, yet the funding level for BIA roads maintenance has been at about \$25 million for the last ten years.

Conclusion

Thank you for inviting NCAI to share our views with you today and thank you for making Indian nations a priority. We look forward to working with the Committee to continue to build upon our successes. Tribal leaders urge Congress to uphold its solemn promises to tribes, even as policymakers seek to reduce the deficit through spending reductions and revenue generation. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between tribes and the United States in exchange for land and resources, known as the trust responsibility. The fulfillment of this trust responsibility is a solemn historic and legal duty.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

YVETTE ROUBIDEAUX, M.D., M.P.H.

DIRECTOR

INDIAN HEALTH SERVICE

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING

ON

THE PRESIDENT'S FY 2013 BUDGET REQUEST

FOR THE

INDIAN HEALTH SERVICE

March 8, 2012

STATEMENT OF THE INDIAN HEALTH SERVICE

Mr. Chairman and Members of the Subcommittee:

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 2013 budget request for the Indian Health Service (IHS).

INDIAN HEALTH SYSTEM – ACCOMPLISHMENTS AND PROGRESS

First I would like to review what the IHS has accomplished with the funding the Congress appropriated over the past few years. Since FY 2008, the IHS budget has increased 29 percent and this funding has helped IHS make significant progress in our efforts to change and improve the organization, as well as in addressing the four priorities that guide our work. These priorities are: 1) to renew and strengthen our partnership with Tribes; 2) to reform the IHS; 3) to improve the quality of and access to care; and 4) to make all our work transparent, accountable, fair, and inclusive.

Our partnership with Tribes is fundamental to improving the health of our communities, and in partnership, we have consulted with Tribes in various formats and have made improvements based on their priority recommendations. We have improved consultation at the national level, consulted on a variety of Tribal priorities, held over 350 Tribal delegation meetings and held Tribal listening sessions by phone, videoconference or in person with all 12 IHS Areas each year. We regularly meet with Tribal advisory groups and workgroups, attend Tribal meetings and conferences and have established a website where we post letters sent to Tribes. We have also been working on Area and local improvements in consultation and partnership, and Tribes are mentioning that they see improvements. Tribal consultation is fundamental to our budget formulation process and each year we incorporate Tribal priorities into our budget requests.

We are also making progress on reforming the IHS with an emphasis on improving the way we do business and how we lead and manage our staff. Setting a strong tone at the top that we must change and improve has been important to our progress. We have improved fiscal controls and have found more efficient and effective ways to conduct our business matters and provide quality health care. We have worked with our Area Directors to make our business practices more consistent and effective, and have implemented better management controls throughout the system. Performance management and accountability, starting with our Senior leadership, has brought about needed changes at all levels of the agency.

Another very important area where we have made significant improvements is in how we manage and monitor our budgets. By requiring IHS Area Offices and service units to implement more financial controls, return third-party collections to the IHS facility of

origin, regularly monitor performance targets, and make improvements in the use of the Unified Financial Management System, our accounting system, IHS was able to demonstrate its best performance ever as a part of the HHS CFO audit. And even though we have improved, we continue to focus on using resources efficiently and effectively; for example, since 2010, we have reduced agency-wide travel by 24 percent.

We have continued our work to address the issues that were raised in the Senate Committee on Indian Affairs Investigation of the Aberdeen Area and the corrective actions that were implemented are resulting in improvements. Pre-employment suitability assessments and background checks are being conducted, providers are required to be credentialed and privileged to provide care, the use of administrative leave has decreased, pharmacy security has improved and financial management has improved. In addition to improvements in the Aberdeen Area, we are conducting reviews of all twelve IHS Areas to ensure these problems are not occurring elsewhere. So far, we have completed reviews in seven Areas: Albuquerque, Billings, Navajo, Oklahoma City, Phoenix, Aberdeen, and Tucson Areas. Overall, we are finding that we have appropriate policies in place, and we are making improvements to ensure consistent implementation of those policies across the system.

To improve how we lead and manage staff, we have made the hiring process more efficient and less time-consuming. And we have made progress by reducing our average hiring time from 140 days to 81 days! We are focused on implementing standard Position Descriptions, with the goal of more timely and effective advertisement that results in the right candidates. We have also been working on improving pay disparities in selected healthcare provider positions. These steps should help greatly with our recruitment and retention efforts.

The Contract Health Services program has demonstrated accomplishments in IHS reform through improved business practices and improving access to care. The CHS budget has increased 46 percent since 2008; as a result some CHS programs are able to pay for more than priority-one referrals and services. While the overall need is still significant, the increases are making a difference. With this 46 percent increase in funding, an additional 7,400 inpatient admissions, 278,000 outpatient visits and 10,000 one-way transportations have been purchased.

Regarding business practices, IHS has negotiated lower rates with the Fiscal Intermediary (FI) that pays the claims for health services provided in the private sector programs. By reducing the rates from \$30.31 to \$28.00 per claim, the IHS estimates it will save almost \$1 million based on the estimated 468,000 claims processed in FY 2011. The IHS Director's Workgroup for Improving CHS has recommended specific activities to improve the business of the CHS Program, to better estimate the need, and to provide better education about the program to staff, Tribes, patients and our outside providers. We are also notifying outside providers that the recent reauthorization of the Indian Health Care Improvement Act contains a provision that prevents providers from holding patients responsible for medical bills when the referral was approved by IHS for payment. We are working with outside providers to ensure better coordination of

referrals and their payment.

We have also made significant progress in improving quality and access to health care. We have focused on improvements in customer service with many new activities throughout our Areas. The IHS Improving Patient Care (IPC) initiative is an important part of that progress. The IPC initiative is our patient-centered medical home initiative that is focused on improving how we deliver care that is centered on what our patients want and need. It also is about working better as a team in the care of the patient. We have expanded the IPC initiative to 90 sites in the Indian health system and plan to expand this initiative throughout our system.

The Special Diabetes Program for Indians (SDPI) continues its successful activities to prevent and treat diabetes. The grantees have shown that in partnership with our communities, we can reduce diabetes and cardiovascular disease risk factors in Indian country with innovative and culturally appropriate activities. For example, the Diabetes Prevention Program, designed as a demonstration project to translate research findings into real world settings, achieved the same level of weight loss as the original Diabetes Prevention Program Research study funded by the National Institutes of Health. The SDPI is authorized through 2013.

Our Methamphetamine and Suicide Prevention Initiative is also reporting some impressive accomplishments for 2011. During the first year of this congressionally-funded initiative:

- 4,370 individuals were identified with a methamphetamine addiction;
- 1,240 people entered a methamphetamine treatment program;
- Over 4,000 people participated in suicide prevention activities;
- 42,895 youth participated in prevention or intervention programs; and
- 647 people were trained in suicide crisis response.

And in 2011 our Domestic Violence Prevention Initiative:

- Developed 21 interdisciplinary Sexual Assault Response Teams;
- Served over 2,100 victims of domestic violence and/or sexual assault;
- Screened over 9,100 patients for domestic violence;
- Made over 3,300 referrals for mostly domestic violence services;
- Reached nearly 9,500 community members through community and educational events; and
- Provided 37 trainings events for approximately 442 participants on domestic violence, mandated reporting for abuse, child maltreatment, dating violence, and bullying.

Quality of care is being improved through the use of health information technology in our system. With the help of Recovery Act funds, IHS was the first large federal healthcare system to have a certified electronic health record (EHR). And we are working hard to implement the meaningful use of electronic health records in the Indian health system. This is an important first step in the process for IHS, Tribal, and urban Indian health sites that use our Resource and Patient Management System (RPMS) to qualify for

and receive the new EHR Incentive Payments from Medicare and Medicaid. This could help bring valuable new resources to the Indian health care system. It is also important for Tribes that do not use RPMS, because they can still qualify for incentive payments by using a certified electronic health record.

Performance improvement through GPRA measures indicates that the Indian health system is making progress in addressing health disparities. In FY 2011, for the first time ever, we met all of our clinical GPRA measurement goals. Several GPRA measures have demonstrated significant increases from 2008 to 2011, as follows:

- 12,606 additional diabetic patients received nephropathy assessments for a relative 26% increase.
- Dental sealants placed have increased by 35,686 for a relative 15% increase.
- 24,860 additional patients were screened for colorectal cancer for a 57% relative increase.
- 23,585 additional smokers received tobacco cessation intervention for a relative increase of 54%.
- 32,161 additional patients were screened for depression for a relative increase of 66%.

The GPRA measure for cardiovascular disease (CVD) is a comprehensive assessment for five CVD-related risk factors (blood pressure, LDL, tobacco use, BMI, and lifestyle counseling).

- 4,767 additional patients were screened for a 48% relative increase.
- Additional 5,269 women received mammography screening for a relative 23% increase.

The IHS Health Care Facilities Construction (HCFC) Program has contributed to IHS increasing access to care and improving its partnership with Tribes. HCFC funding has increased by more than \$45 million since FY 2008 and is helping us complete the hospital in Barrow, Alaska, and continue construction in Kayenta and San Carlos, AZ, and begin the design of the Southern California Youth Regional Treatment Center. Recovery Act funds have helped complete the health care facilities in Eagle Butte, South Dakota last year and Nome, Alaska this year.

Collaborations with other agencies also are important in our efforts to improve the quality of and access to care. We are implementing our Memorandum of Understanding with the Department of Veterans Affairs (VA) and working with Tribes at the Area and local levels to help improve coordination of care for Native veterans who are eligible for the VA and the IHS.

In addition, our collaboration with the Health Resources and Services Administration has resulted in designations of all IHS, Tribal, and urban Indian health sites as eligible for the National Health Service Corps loan repayment and scholarship programs. This will have a positive impact on our workforce development goals as more physicians, dentists and behavioral health providers will now be eligible to work in our underserved communities.

So far, 490 IHS, Tribal, and urban Indian health program sites are approved for provider placement and 221 additional providers have signed on to work in Indian health sites through this program.

The principles of transparency, accountability, fairness and inclusiveness guide our work and decision-making. The decisions that we make need to benefit all the patients we serve, whether they are served by our direct service, Tribally-managed or urban Indian health programs. We understand that in order to get the support we need, we have to demonstrate that our activities result in improved outcomes – for local programs and for the system as a whole. We are working to communicate more about our activities and reform efforts and their outcomes.

INDIAN HEALTH SYSTEM – CHALLENGES REMAIN

When I was first appointed the IHS Director, I heard input from Tribes, patients and staff that we needed to change and improve the IHS in many ways. Although we have made significant progress in addressing the agency priorities, much work remains to be done. The population we serve continues to grow, and the challenges of providing health care in rural settings are ever present. The rise in chronic diseases such as diabetes, cancer and heart disease require more coordinated approaches to care over the lifetime of a patient. Along with the rest of the country, we face challenges in recruiting and retaining primary care providers. As reforms in the nation's health care system are implemented, our system needs to adapt to many changes, including delivery system and payment reforms. Our data continue to show the incredible need for services by the patients we serve, and we continue to struggle to meet our mission with available resources. Tribal consultation continues to identify areas for improvement and areas of need. The increases in IHS funding over the past few years have helped us make progress, but we still have much to do.

For example, the estimated need for the CHS program, defined as denied and deferred services, remains high. Reduced increases for inflation and population growth in recent appropriations results in less buying power. While vacancy rates have improved for dentists, pharmacists, and optometrists, physician and nurse vacancies continue to be high at 21 percent and 15 percent, respectively. After this year, implementation of the Electronic Dental Record is still needed in 118 sites. The Backlog of Essential Maintenance Alterations and Repair for Indian health facilities is currently \$427 million. The total Sanitation Deficiency System need is approximately \$3 billion. And the amount of funding needed to complete all facilities on our current priority construction list is \$2.2 billion. We are grateful for the funding we have received in the past few years because it has helped us make progress in the face of these significant needs and challenges.

FY 2013 BUDGET REQUEST – WHERE WE WANT TO GO

The FY 2013 President's Budget request for IHS will help the agency address these challenges and make progress on our agency priorities through targeted investments to

increase access to care, improve the quality of care, support our oversight and accountability functions, and address Tribal management support costs. The budget request is \$4.422 billion, an increase of \$115.9 million over the FY 2012 enacted level. The request includes funds to support activities identified by the Tribes as budget priorities, including the following:

Current Services

The request includes \$2.4 million in increases for pay costs for federal Commissioned Corps personnel and \$34 million for inflation costs to cover the rising costs of contract health care, which is spent on purchasing health care from private sector providers outside the Indian health system. These increases impact access to care through supporting retention of health care providers and enabling IHS and Tribal programs to maintain the level of services purchased through the CHS program. An increase of \$49 million is included to staff 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 reflects the effectiveness of our partnership with Tribes in reducing the \$2.2 billion backlog of health facility construction projects and staffing needs.

Funding Increases to Continue Improving Quality of and Access to Care

The IHS proposed budget includes a \$30.3 million increase for programs that will increase access to care and strengthen the capacity of the Indian health system to provide clinical and preventive care. The budget request includes a program increase of \$20 million for the CHS program, the top Tribal priority for program increases. This increase will expand the number of referrals for medical services in the private sector that IHS and Tribal CHS programs are able to fund. A \$5 million increase is included for Contract Support Costs for Tribes that have assumed the management of health programs previously managed by the Federal government. A \$1 million increase in Direct Operations will help the agency continue its reforms and to provide accountability and oversight in key administrative areas.

In this budget request we also target an important funding increase to the Agency's HIT systems, which are an increasingly critical and necessary component for the delivery of patient care services at the numerous IHS and Tribal hospitals and ambulatory clinics, and Urban Indian Health Programs. The HIT systems capture patient and performance data for statistical reporting and decision-making, and comprise the billing and collection system for third party reimbursements. The \$6 million HIT increase will support mandatory ICD-10 (International Classification of Diseases) implementation and provide \$1 million in support for the Electronic Dental Record (EDR) program.

For the Facilities appropriation, the overall request is \$443.5 million. Within this increase, the total Health Care Facilities Construction budget is \$81.5 million to continue construction of the San Carlos Health Center in Arizona, and the Kayenta Health Center on the Navajo Reservation. An increase of \$1.7 million will help address routine

maintenance and improvement needs of our aging facilities.

CLOSING

The IHS is a predominantly 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 and to improve the way it does business with the resources we receive. IHS has shown notable progress, accomplishments, and outcomes over the past few years. We will continue to move forward in partnerships with Tribes to make needed improvements and to improve the quality of and access to care for the American Indian and Alaska Native people we serve. The President's budget request will help us make progress in changing and improving the IHS.

Thank you for this opportunity to present the President's FY 2013 budget request for the Indian Health Service.



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**Testimony of Principal Chief Michell Hicks
Eastern Band of Cherokee Indians
On behalf of the
United South and Eastern Tribes, Inc.
Before the
Senate Committee on Indian Affairs
On the President's FY 2013 Budget for Native Programs**

Thursday, March 8, 2012

Introduction. Chairman Akaka, Vice Chairman Barrasso and members of the Committee, my name is Michell Hicks. I serve as Principal Chief of the Eastern Band of Cherokee Indians, one of the four founding tribes of the United South and Eastern Tribes, Inc. (USET). Thank you for this opportunity to testify on the President's FY 2013 Budget and the budget priorities of USET.

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), covering a large expanse of land and area compared to the Tribes in other BIA Regions. Due to this large geographic area, the tribes in the Eastern Region have great diversity. From an economic standpoint, some of our member tribes have highly developed economies, while others remain mired in poverty. All of our tribes, however, look to the United States to live up to its trust responsibility, to support Tribal sovereignty, and to work with us on a government-to-government basis, especially on a matter as central to the trust responsibility as Federal budget policy.

This written testimony is divided into three sections. The first section briefly addresses the Constitutional context for the Federal government's relationship with Tribes. The second section reviews the President's proposed budget for Indian programs, focusing principally on the BIA and the Indian Health Service (IHS). The third section takes up the challenge put forth by the President and the Congress to propose other measures, most of which would be no-cost, that will create jobs and grow tribal economies to the benefit of the United States, as a whole. In this third section, we set forth recommendations USET made to the Joint Committee on Deficit Reduction regarding legal changes that should be made to unleash tribal economies. We also address the urgent need to pass the *Carcieri*

Fix, which this Committee has strongly supported, which the President has included in his budget, and which would immediately allow a number of projects across Indian country to spring forward.

I. 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 those relationships into the Constitution (*e.g.*, Art. I, Section 8, Cl. 3 (Indian Commerce Clause); Article II, Section 2, Cl. 2 (Treaty Clause)).

Natives influenced the Founders in the development of the Constitution as recognized by the 100th Congress, when the Senate and the House passed a concurrent resolution acknowledging the "historical debt" the United States owes to Indian tribes.

[O]n the occasion of the 200th 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, 100th Congress. One has only to walk the halls of the Capitol to see many works of art and sculpture that depict 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 erode Native territories, learning, and cultures. Out of those injustices, and from other legal sources, there has arisen a Federal trust obligation to support Native governments and Native peoples.

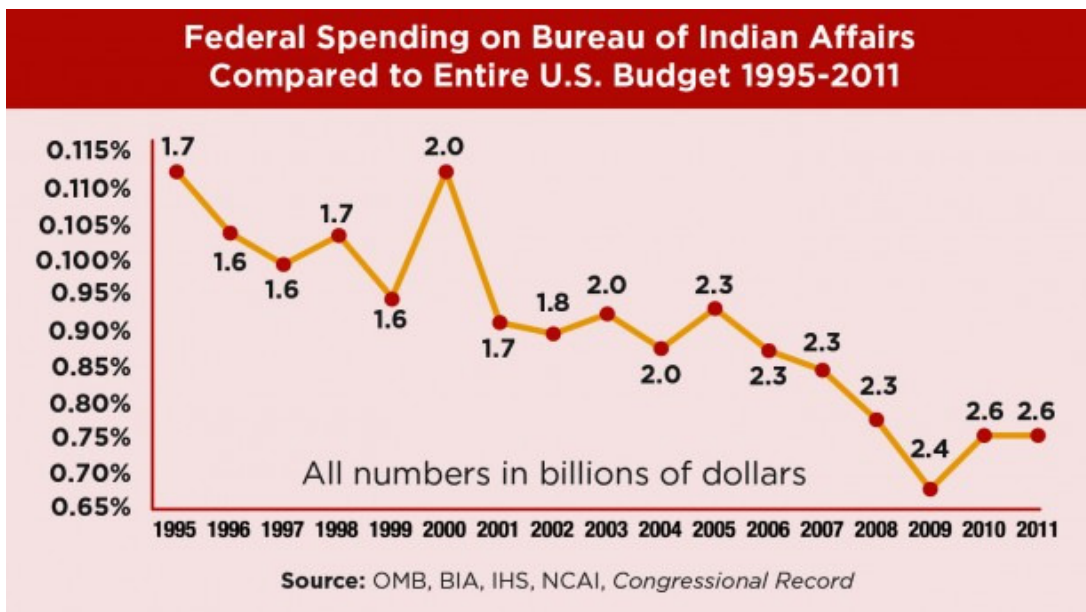
The Indian provisions in the Constitution were given immediate life in treaties that the United States entered into with Indian nations beginning with the Treaty with the Delaware in 1778 and continuing through another 373 treaties. Additionally, in the first decades of the United States, numerous laws 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 engaged in many actions that betrayed 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. 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. Regrettably, these laws are rarely funded to the level necessary to achieve their intended purposes.

Because of this history, the Trust obligation of the Federal government to Native peoples, as reflected in the Federal budget, is fundamentally different from ordinary discretionary spending. As a 1977 U.S. Congress/American Indian Policy Review Commission Report stated:

The purpose behind the trust is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs that are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.

II. President’s FY 2013 Budget for Indian Programs. In evaluating whether the Federal budget fulfills the Trust responsibility, USET believes that it is critical to take into account the affects of inflation. From FY 2002 through FY 2008, despite annual increases, after taking into account the affect of inflation, most Federal domestic programs, including the Indian programs, saw a purchase power decrease of approximately 14%. The large budget increase in FY 2009, including ARRA funding, was approximately enough to make up for this effective cut and bring the purchase power of Indian programs back to FY 2002 levels, but in the intervening 10 years, Indian country needs have grown substantially.

In a very real way, the budget of the United States government reflects the values of the American people. Courtesy of the National Congress of American Indians (NCAI), set forth below is a chart that depicts the percentage of the Federal budget dedicated to funding the BIA. As you can see, as a percentage of the overall budget, the BIA budget has declined from .115% in FY 1995 to .075% (correcting chart typo) in FY 2011, approximately a one-third decline as a percentage of the overall budget (despite a small bump up in FY 2010).



The President's FY 2013 budget proposes an increase of 2.6% in the Indian Health Service budget, which is \$116 million over the FY 2012 enacted level. Although USET recognizes that in these difficult budgetary times any increase should be celebrated – and we are appreciative that health care is getting this increase – we must note that the general rate of inflation in 2011 is over 3%. Moreover, it is common for the medical rate of inflation to exceed the general rate of inflation by as much as double. Meanwhile, the President has proposed a modest \$4 million cut in the budget of the BIA, but in light of inflation this must be understood to be potentially a 3% cut in purchase power. Overall, both agencies lose purchase power from FY 2012, even if some individual programs receive funding in excess of the inflation rate.

Of course, the Budget Control Act of 2011 provides for an 7-10% across-the-board cut for nearly all domestic and defense programs starting January 2, 2013. When you add the effects of sequestration to inflation, Indian country programs, which have always been sparely funded, could be effectively cut by as much as 11-14%! This would be devastating to Native communities across the land.

Federal budget problems should not be addressed on the back of Native peoples. We respectfully ask the Committee to support the concept that funding increases should consistently exceed the relevant rate of inflation in order to achieve real progress in closing the services gap for Natives. At a minimum, Federal Indian programs should be held harmless from any reductions coming from sequestration or similar future draconian cuts, just as other low income programs are held harmless in the Budget Control Act of 2011 (*e.g.*, Child Care Entitlement to States; Child Health Insurance Fund; Family Support Programs and Temporary Assistance for Needy Families).

USET does strongly support the President's proposal for \$345 million for public safety initiatives in Indian Country, with a total of \$156.8 million set aside for tribal grant programs within the Department of Justice. This latter amount is less than what was proposed for FY 2012, but still represents a significant step up from current funding levels and will have a tremendously positive impact on public safety in Indian Country.

USET is discouraged by the proposed \$52.8 million cut in the Bureau of Indian Education construction account. Although less of an impact on the USET area than other areas, USET strongly believes that the investment in Native education is the one investment that is sure to make a positive difference in Indian Country for the long-term.

General Budget Considerations. While USET believes that *all* Indian programs are vital to creating strong Tribal Governments and healthy Tribal communities, and that Congress should protect and improve current base funding levels for all programs and provide for increases in excess of the inflation rate, the USET priority programs are: Tribal Priority Allocations, Contract Support, Tribal Court, Scholarships and Cultural Resources.

- **Tribal Priority Allocations (TPA).** Funding for the Eastern Region Tribes TPA needs to increase by at least \$10 million, even without considering our unmet historical needs.

- **Tribal Courts.** Currently, in the Eastern Region only 46% of the tribes receive BIA funding for the operation of their tribal courts. There should be sufficient funding for any tribe that needs to establish a court.
- **Scholarships.** Over the last several years, funding for BIA's post-secondary education programs has remained largely stagnant. This area should see increased funding.
- **Contract Support Costs.** There should be sufficient funding to assure that the BIA is able to meet 100% of its contract support 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.
- **Cultural Resources.** Adequate funding for Tribal cultural resource programs is essential to the spiritual, health, social, and economic wellbeing of Tribal communities.

Indian Health Service. USET would like to reemphasize the need to maintain the recent gains IHS and tribes have made. USET firmly believes that the IHS budget should be held harmless in terms of budget reductions, including across-the-board rescissions and sequestration. Health care is not something that can be reduced, delayed, or withheld without real damage to people. Congress and the public have rightly supported maintaining health care funding for members of the military and veterans, and USET believes the same should be true of the Indian health care system. IHS and tribal budgets are suffering the consequences of the past two years' lack of funding for inflation and population growth.

With regard to the President's FY 2013 budget, of particular interest to USET are Contract Health Services, built-in costs, and contract support costs.

Contract Health Services. USET appreciates the recognition by Congress and the Administration of the importance of the Contract Health Services program, as evidenced by the FY 2012 increase in appropriations and the Administration's request for a \$54 million increase in FY 2013. While even this amount would not fully meet the need for Contract Health Services, we recognize the difficult fiscal environment, and urge Congress to appropriate at least the amount requested. The CHS program is of particular importance to the USET tribes, as much of our health care is done on a referral basis.

Built-In Costs. USET is very concerned about the cumulative effects of deficiencies in the past several years for built-in costs – namely, population growth, inflation, and required pay increases. The Administration and Congress do consistently request and provide funding for staffing and operation of new facilities, although not always in the amount the tribal health care providers feel is needed. In FY 2010 Congress provided \$169 million for built-in costs for pay raises, inflation, population growth, and staffing for new facilities. But in *FY 2011*, the only increases enacted were for a pay increase to Commissioned Officers and staffing of new facilities. The Administration had also requested \$60

million for inflation and \$52 million for population growth and funding for civilian pay increases for that year. And in *FY 2012* the Administration requested \$255 million for pay costs, inflation and population growth, none of which was appropriated. All of these costs must be absorbed by health programs. In *FY 2013* there is no request for funding for population growth, inflation (except for Contract Health Services) or pay increases. Funding is requested for staffing and operation of new facilities.

Contract Support Costs. USET and its tribes appreciate the steps Congress has taken in the last few years to reduce the crippling contract support cost shortfalls suffered by tribal health care providers. Contract support costs are the administrative and overhead expenses tribes and tribal organizations incur in providing health care under Indian Self-Determination Act agreements. When contract support costs are not fully funded, as has been the case for almost twenty years, tribes are forced to slash administrative capacity, divert program resources to cover administrative expenses, subsidize federal programs with their own scant tribal resources, and/or curtail or forgo self-determination and self-governance altogether. In effect, tribes are shortchanged and treated as second-class government contractors.

Substantial increases in CSC appropriations in fiscal years 2010 and 2012 have reduced the shortfalls significantly, saving and creating jobs in tribal health care. More progress needs to be made, however. Underfunding of contract support costs continues to impose major hardships on tribal health care providers and patients around the nation, including USET's member tribes. Last year, in H.R. 2584, the House proposed funding IHS for contract support costs at \$574,761,000, which would have reduced the CSC shortfall dramatically. Ultimately, however, Congress appropriated just over \$471 million, requiring tribes to divert close to \$100 million from health care services to fixed administrative expenses.

USET urges this Committee to continue to press for full funding of contract support costs. The requested increase of \$5 million is not sufficient. Given the increase in program funding requested, we estimate that a CSC appropriation of at least \$580 million would come close to eliminating the shortfall, allowing USET's tribes and other tribal providers to use all health care program funds for the purposes Congress intended.

A word of appreciation is due to IHS for its advocacy and approach to contract support cost issues. During this Administration, IHS has engaged in good faith negotiations resulting in the settlement of many claims for past CSC shortfalls. Recently IHS initiated tribal consultation on the agency's CSC policy, convening a workgroup of tribal leaders and technical experts. The process had gotten off to a rocky start due to IHS's refusal to share CSC data for the last three years. Once IHS releases this data, however, we anticipate that the tribal consultation will help the agency strengthen its contract support cost policy.

Timely Funding. We feel the time is ripe for a serious discussion about whether IHS funding should be put on an advance appropriations or biennial basis. As you know, in FY 2010, three of the Veterans Administration's medical accounts were put on an advance appropriations basis – those are very large accounts totaling approximately \$50 billion. Going back to 1998, the only year in which an Interior

and Related Agencies appropriations bill has been enacted prior to the beginning of the fiscal year was FY 2006. Even if an appropriations bill is enacted just prior to October 1, it still takes time for OMB and IHS to apportion and allocate the funds. Receiving funds under a series of Continuing Resolutions, without knowing how much funding will be available in the fiscal year, makes planning and delivery of services very difficult.

USET and its member tribes appreciate this Committee's leadership in securing recent appropriations increases for IHS, and urge that this progress be continued. We also appreciate IHS's recent efforts to work with tribes on contract support costs and other issues. We look forward to working with Congress and the Administration to improve health care services to Indian peoples.

III. Changes to Federal Law that would Create Jobs and Promote Indian Country Economic Development. USET would also like to present the Committee with a number of specific legislative proposals that the Committee could adopt which would have the effect of unleashing tribal economic potential and thereby addressing national deficit concerns.

***Carciari* Fix.** Foremost, USET would like to see passage of the *Carciari* Fix, which the President included in his budget (and the previous two, as well) and which this Committee has marked up and referred out as S. 676. The *Carciari* Fix would provide that the Secretary of the Interior could, in accordance with rigorous guidelines, take land into trust for all Federally recognized tribes. This bill is in response to the Supreme Court's decision in *Carciari v. Salazar*, handed down in February 2009, which overturned 75 years of agency practice when it held that the Indian Reorganization Act (IRA) only allows the Secretary of the Interior to take land into trust for tribes that were "under federal jurisdiction" as of 1934. No one knows what the Court meant by "under federal jurisdiction" as of 1934 as we had understood that all tribes, pursuant to the Constitutional provisions set forth above, ultimately are under federal jurisdiction. Indeed, since 1934, the Department of the Interior (DOI) has construed the IRA to authorize the Secretary to place land into trust for **all** federally recognized tribes. From 1934 to 2009, DOI has restored lands to enable tribal governments to build schools, health clinics, hospitals, housing, community centers, farms and other economic development enterprises to serve their people. The Secretary has approved trust acquisitions for approximately 5 million acres of former tribal homelands, far short of the more than 100 million acres of lands lost through the Federal policies of removal, allotment, and assimilation. The Court's decision threatens tribal sovereignty, economic self-sufficiency and self-determination. The IRA is a comprehensive federal law that provides not only the authority of the Secretary of the Interior to take lands into trust for tribes, but also for the establishment of tribal constitutions and tribal business structures. Disorder in these areas of the law threatens all types of economic development opportunities, loans and financing, contracts and loans, and tribal reservations and lands. The decision also has the potential to create chaos in public safety and criminal jurisdiction on Indian reservations. The *Carciari* decision has already resulted in costly, protracted litigation on a broad range of issues with the United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. In addition, a number of Indian Country projects have slowed or been put on hold while Tribes and investors alike try to puzzle out the

implications of the Supreme Court's holding. Notably, the Congress amended the IRA in 1994 to clarify that all federal agencies must provide equal treatment to all Indian tribes regardless of how or when they received federal recognition.¹

Also, Congress needs to permanently resolve this issue to end needless challenges against the United States and tribes. Although DOI may continue to acquire land in trust for tribes, any decisions to do so remain under the threat of *Carciere*-based administrative and court challenges. Those who oppose tribal sovereignty will use *Carciere* 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. Each Tribe is obliged to comb through years and volumes of historical records to meet a standard – “under federal jurisdiction” – that remains a moving target. This uncertainty undermines the very purpose of the IRA. Congress must provide Indian country certainty by enacting the proposed legislative fix.

Repeal the "essential governmental functions" test. Repeal of this test is ripe for congressional action. If repealed, the new law would open the door to lower cost financing for tribal government development programs, to more cost-efficient pension plan management, and to greater parity between tribal governments and state and local governments.

An issue that has been brought to the Congress's attention in recent years has been the disparity in the Tax Code's treatment of tax exempt bonds issued by Indian tribal governments and those issued by state and local governments. Unlike state and local governments, tribal governments may only issue tax-exempt bonds to finance projects that are deemed "essential governmental functions" of the tribe. Based on its interpretation of the essential government functions language in the Tax Code, the IRS has challenged tribal tax-exempt bond financing for the development of hotels, RV parks, water systems and other tribal projects to generate on-reservation revenues on the ground that those bonds serve a commercial, rather than governmental function. The imposition of the essential governmental functions test suggests that tribal revenue generating activities that are necessary to meet budget needs to provide for the welfare of tribal citizens when carried out by tribes are commercial rather than governmental activities and limits the opportunities tribes might otherwise have for low-interest financing. Meanwhile, State and local governments *routinely* use this kind of tax-exempt financing for hotels, golf courses, and convention centers on the ground that those development projects will generate governmental revenues.

USET applauds Congressional action in the Recovery Act that introduced a new Tribal Economic Development Bond authority that did not limit bond activity to "essential governmental functions." We further welcome Congress's request in that Act to require the Treasury Department to make recommendations as to the whether Congress should reconsider the "essential government functions" test currently applicable to tax-exempt bonds. As you know, in December 2011, Treasury issued recommendations calling on Congress to repeal the essential governmental functions limitation for tax-exempt bonds. Treasury urged that Congress further explore the complex issues associated with tribal

¹ See 25 U.S.C. §476(f)-(g).

access to credit markets. USET urges that Congress act upon the Treasury Department's recommendations to eliminate the essential governmental functions restriction on the issuance of tax-exempt bonds. USET calls on Congress to hold hearings on obstacles to credit finance markets and identify legislative mechanisms to help address credit challenges in Indian Country.

USET further urges that the essential governmental functions limitation also be repealed in section 414(d) of the Tax Code, with respect to governmental pension plans. The essential governmental functions limitation in that context impedes efficient tribal governmental administration and employee retention. In the Pensions context, tribal employees are eligible to participate in a tribe's "Governmental" Plan *only if* they perform "essential governmental functions." Employees of tribal casinos, tribal gas stations, marinas, and other enterprise must be segregated to exclude them from participation in the tribe's Governmental Plan. For states and local governments, "Governmental Plan" status is based on whether the entity is an agency or instrumentality of a government and includes *all* employees regardless of what functions they perform. For Tribes, however, because of the "essential functions limitation" in Section 414(d), the IRS looks at the functions and activities being carried out by the employees – if IRS deems their activities to serve "commercial" functions, those employees are not eligible to participate in a Governmental pension plan. As a result, a tribe must administer two separate plans – one for governmental employees and another as a "Commercial" plan with the burden of administering duplicative plans with different sets of rules that are considerably more costly than that of their state and local government counterparts. Congress should tackle the essential governmental functions language in both contexts in order to remove barriers to economic development and efficient tribal governmental employment benefit administration as well as to establish greater parity between tribal governments and state and local governments.

Unlock Vast Tribal Energy Resources – Adopt S.1684, Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. It is estimated that 10% of the Nation's energy reserves are located on tribal lands, including large fossil fuel, wind, solar and biomass resources. However, it has become very difficult for tribes to develop these resources. S. 1684 provides a range of measures to assist tribes in getting these resources developed and power to the market place - creating jobs, reducing our dependence on foreign sources of energy, and generating revenue to Tribal, Federal and state coffers.

Accelerate the Process for Indian Land Leasing to Allow More Efficient Development of Tribal Lands – Adopt S. 703, Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2011. This legislation would allow tribes to administer their own land leasing process, rather than continuing the paternal practice of control by the Bureau of Indian Affairs. This legislation not only respects tribal sovereignty, but virtually guarantees a more efficient process, which will encourage development of tribal lands in accordance with tribal decisions. USET thanks the Committee for advancing this legislation.

Transformational Proposals to Unleash Tribal Economic Development. USET and its members have developed legislative proposals, not yet introduced into the Congress, but which we believe would (1) have a tremendously beneficial impact for tribal economies, (2) be consistent with the

Federal government's trust obligation to Tribes, (3) be respectful of tribal sovereignty, and (4) generate jobs and revenues for the Tribal, Federal and State governments. These proposals would address the many tangled and twisted Federal Indian policies and programs, would address barriers to Indian economic development by removing those barriers, and would establish pilot projects in certain areas that we believe have the potential to generate tremendous economic activity, but which are largely untried.

- **Restoring Tribal Land Leasing Authority.** The authority of Indian nations and tribes to lease land they occupy that is held in trust is limited by statute to varying lengths of time, from 25 years to 99 years. This approach perpetuates the paternalism inherent in federal trusteeship law that results in uneconomic delays and public citizen procedures. This bill would authorize up to fifty requesting Indian nations and tribes, as a demonstration project, to declare tribal leasing authority over specifically identified lands without federal involvement or approval and the accompanying public citizen procedures.
- **Restoring Tribal Restricted Fee Land Title.** Tribes who occupy tribal restricted fee lands (for which they hold fee title subject to a federal restriction against taxation and alienation) are able to mortgage, lease, and develop without the federal government involvement and interference that accompanies development of land held in trust for the tribe by the federal government. This bill would authorize up to fifty requesting Indian nations and tribes, as a demonstration project, to convert some portion of their tribal trust land into tribal restricted fee land. The bill would clarify that all tribal restricted fee lands, however authorized, are Indian Country over which an Indian nation or tribe may exercise leasing and other land use authority without federal involvement or approval and the accompanying public citizen procedures. The bill would not diminish the federal trust responsibility nor would it amend the Indian Reorganization Act (IRA) nor affect the I.R.A. regulations.
- **Establishing Tribal Tax-Free Zones.** In order to jump start economies in Indian Country and create real financial incentives for the creation of private sector jobs, this far-reaching proposal would, on a demonstration basis, declare all Indian reservations choosing to participate to be tax-free zones. All economic activity occurring upon these Indian zones would be declared to be exempt from federal and state tax of every kind. This should cause private sector commerce and trade to move into relatively impoverished Indian Country bringing with it jobs and investment that benefit reservations and their neighbors. The demonstration project would limit the number of participating Indian nations and tribes to fifty in order to contain the federal budget cost score. The bill also would authorize an Indian nation or tribe to raise tribal governmental revenue from non-Indians who conduct otherwise tax-free activity on Indian lands with the nation or tribe's permission.
- **Restoring a Tribal Lands General Tax Credit.** This bill would provide a 100% tax credit against all taxes otherwise imposed by the federal, state and local governments on certain qualified business activity occurring on certain portions of Indian Country with the permission of, and under fee and other terms established by, the governing Indian nation or tribe. The

taxes against which this general credit would be applied include all sales, payroll, income, excise, transfer and severance taxes imposed by the United States, the various states, or subdivisions thereof. The demonstration project would limit the number of participating Indian nations or tribes to fifty in order to contain the federal budget cost score. It would be available in those portions of Indian Country suffering unemployment rates higher than twice the national average. To qualify for the credit, a taxpayer must adhere to Indian preference in employment related to the qualified business activity.

- **Establishing a Tribal Lands Investment Credit.** This bill would provide a 100% investment tax credit against the income tax liability of any taxpayer equal to the amount that taxpayer invests in certain new equipment and facilities placed in service in certain portions of Indian Country with the permission of, and under fee and other terms established by, the governing Indian nation or tribe. The demonstration project would limit the number of participating Indian nations or tribes to fifty in order to contain the federal budget cost score. It would be available in those portions of Indian Country suffering unemployment rates higher than twice the national average. To qualify for the credit, a taxpayer must adhere to Indian preference in employment related to the investment property.
- **Restoring Tribal Jurisdiction and Sovereignty.** This far-reaching legislation would take the 1968 Act which stopped Pub.L. 83-280 cessions and turn it on its head, allowing an Indian nation or tribe to vote to reject continuing applicability of Pub.L. 83-280, returning at tribal option all criminal and civil jurisdiction within the Indian Country of that Indian nation or tribe to the exclusive control of the Indian nation or tribe and the United States. The bill also would authorize an Indian nation or tribe to enter into a federally-approved Compact of Criminal Jurisdiction with a state government to govern, based on the mutual agreement of the Indian nation or tribe and a state, transfers of jurisdiction, whether reciprocal or otherwise, between them.

Conclusion. USET recognizes that in challenging times, all Americans must be called upon to sacrifice for the common good of all. USET suggests, however, that when it comes to sacrificing for the good of all Americans, the historic record demonstrates that nobody has sacrificed more than Native Americans. Thank you for this opportunity to provide testimony on how the budget concerns of the United States, rather than being addressed on the back of Indian tribes, could be addressed by freeing Indian tribes to realize their maximum economic potential.

The work of this Committee is very important to Indian Country. Please do not hesitate to contact me if you should have any questions or if USET can be of any further assistance.

“Because there is Strength in Unity”

OVERSIGHT HEARING

The President's Fiscal Year 2013 Budget for Native Programs

United States Senate Committee on Indian Affairs (SCIA)

Thursday, March 8 2012

2:15PM

Senate Dirksen Building 628

The Honorable Robert Shepherd, Chairman

Sisseton Wahpeton Oyate, on behalf of Great Plains Tribal Chairman's Association,
Rapid City, SD

Good afternoon, to the Distinguished Chairman, Senator Daniel Akaka and Vice-Chairman, Senator Barrasso and to our own South Dakota Senator Tim Johnson. I am honored to be here to represent testimony for our 16 Sovereign tribal nations from North Dakota, South Dakota and Nebraska who comprise the Great Plains Tribal Chairman's Association. (GPTCA) As Chairman of the Sisseton Wahpeton Oyate, I am pleased to share on views on various budget policy matters vital to our communities' and our Oyate/People.

The Great Plains Tribal Chairman's Association was formed to promote the common interests of the 16 sovereign tribes and nations of the Great Plains region. The Great Plains tribes have the largest geographical land base of any region in the United States. The total acreage within all Indian reservations and tribal lands in the Great Plains region is over 11,036,490 acres. Further, the Great Plains tribes hold over one-third of the country's trust allotments and tribal trust land tracts. The Great Plains tribes have a total population of over 189,000 people, second only to the Navajo Nation.

All of the member tribes of the GPTCA have all entered into solemn treaties with the United States. Many of our member tribes are constituent bands of the Great Sioux Nation, which entered the Fort Laramie Treaty of 1868, in this treaty and others, our tribes formed nation-to-nation alliances with the United States. In these treaties, the United States recognized and secured our native homelands and our preexisting rights of self-government and self-determination. The Tribe's have fulfilled their treaty obligations, but the United States Government has not.

Today, we are proud of our Nations because they carry out true sovereignty and self-governance even if we are not adequately funded. As fully functioning units of government and Direct Service tribes, we operate our own schools, Colleges, law enforcement, courts, land and fire protection programs, Hospitals and governmental offices which require adequate, predictable funding which is available every day of the fiscal year. The Oglala Sioux Tribe is larger than the states of Connecticut and Rhode Island. No unit of government can, or should ever be, asked to operate any of these services on competitive grants. We therefore call upon the Congress to maintain the BIA and the IHS budgets to the level necessary to allow them to play their proper roles as the principal providers of funding for tribal governmental services. This will allow the Indian programs operated by agencies like DOJ, DOT and the Department of Energy to play the supplemental funding roles that they were intended to play when their Indian programs or Indian funding eligibility criteria were created.

The federal budgets provided to the Bureau of Indian Affairs and the Indian Health Service has never come close to meeting the actual needs of our Great Plains Tribes and their members.

To make matters worse, over the course of the last 20 years, the BIA's and the IHS' already underfunded budgets have not kept pace with inflation, nor have they been increased to adequately address the increases in service populations. Instead of increasing the BIA's or the IHS' budget to address these problems, OMB and the Congress have chosen instead to encourage the Tribes to apply for competitive grants from federal agencies to make up for this serious shortfall. Most of these grants are short-term funding opportunities. Tribes are forced to design their programs around the grant requirements, instead of focusing on their actual needs. The overall result is half funded efforts difficult to administer, and fail to bring the results. Add to this the fact that tribes often have to wait until well into the second or third quarter of the fiscal year to learn if these grant dollars will be awarded, how much they will receive, and what those funds can be used for. No government should be asked to operate its core programs under these conditions.

The only way to achieve sustainable gains in education, health, and public safety on our Reservations is to eliminate the hodge-podge of federal grants and grant requirements and return to base funding for each Tribe. OMB and federal agencies should be directed to streamline their programming to Indian country; In particular this is necessary for those Regions with Large & Needy Tribes. The poverty that is reinforced by the larger society, economy and political system, permeates our tribal nations. This has everything to do with forces that are largely outside of the control of tribal governments or even individual families. Four of the most impoverished Counties in the United States are in the Great Plains region.

We would like to see funding streams consolidated, reporting requirements simplified and streamlined, and all federal agencies, especially the BIA and I H S should be directed to stop the creation of massive sub-agencies in cities, and to start returning funding and decision making authority to the regional and reservation level.

Until the United States returns to its treaty obligations and provides base non-competitive funding to Tribal governments for education, health care, and public safety, improvements in these areas will continue to be limited. Tribal Nations know what our problems are. We know what our needs are. We can solve these problems, but it requires restoration of the base funding necessary to exercise self-determination and restoration of local control with line authority from the reservation/agency to D.C., rather than from the top down.

More Specific recommendations:

Education

The Great Plains Region has approximately one-third of all tribal schools in the United States and 10 of the Tribal Colleges. Tribal education in the Great Plains region is at the center of this region's tribal Priorities and we are proud of our practice of Self-determination and Administering Tribal Schools.

- Develop a comprehensive national Indian education agenda to allow tribes to develop education systems from cradle to grave.
- Adequately Fund Tribal Education Departments as State Education Agencies under Department of Education funding sources and stop providing funds to BIE to act as the State Educational Agency for all tribes nationwide.
- Promote Tribal Education Department Development of Curriculum. Each Region is different, we are not all the same and the same is not equal
- The GPTCA requests full consideration for cultural, political and economic differences
- Fund the Schools before you fund BIE initiatives at the national level.
- Forward Funding under the TCSA and ESEA Should be Held at the Tribal Education Department Level and Reservation Level for investment and not within BIE.

- Enforce 25 U.S.C. § 2011 Government-to-Government “Meaningful” Consultation Requirements in Developing a New or revised MOU between the Department of Education and the Bureau of Indian Education
- Fully Fund Tribal Colleges and Set Aside Funds from TRIO for tribal colleges.
- Halt Efforts to Apply NCLB to TCSA schools and permit immediate waivers of requirements. The Tribally Controlled Schools Act provides for Tribes to operate schools and receive single grants for all purposes. Yet, the BIE funds school operations and maintenance at less than seventy percent of the need, all the while creating new administrative positions in Washington, D.C. and Albuquerque, New Mexico.
- Restore functions & authority of Indian Education to the Bureau of Indian Affairs & Indian Affairs, to allow improved cost effectiveness and in keeping with consolidation. This would improve communication at the local reservation level.
- Restore funding for Construction so all of our tribal schools can be repaired or replaced over the course of the next five years.

Tribal Position on Process

The Great Plains Treaty Tribes are opposed to ranking and prioritizing programs in Indian Country. All programs are basic life, critical necessities that, historically, have not been fully funded. All TPA programs are a priority and essential to the overall livelihood of the Tribal members and the operation of the Great Plains Tribal governments. However, as the budget process requires a program prioritization these needs have never been met.

It is illustrative that the 2012 and 2013 budget cuts will impact future budgets. We ask Congress to protect the budgets that are the very life for the First Nations, especially our Large & Needy Tribes. As it stands, The President’s commitment to Indian Country and the Bureau of Indian Affairs Mission Statement are not supported in any previous budgets and to support further budget cuts in the proposed 2013 budget is sending the wrong message to Indian Country.

BIA programs are being decreased or eliminated based on the assumption that other Federal departments or agencies are fulfilling those roles and responsibilities to Tribes and their membership. The Great Plains tribes have consistently opposed the reorganizing of line authority and funding away from the BIA.

Tribal Priority Programs

Tribal Priority Allocations (TPA) funding, base and non-base, Agency or Tribal, must be excluded from all reductions or any proposed freezes. The FY 2012 Administrative Savings Reduction, when applied to Agency TPA Programs, unfairly and disproportionately impacts Direct Service, Large Land Based Tribes and to a greater extent than Self-Governance Tribes.

Office of Justice Services programs need to be funded at an adequate funding level for all Tribal and agency operated programs (law enforcement, Tribal Court and corrections) to fully implement and comply with the 2009 Tribal Law and Order Act.

Transportation funding is crucial in order for Tribes and agencies to provide safe roads and bridges for all who utilize them. Funding is not at a level to support the Federal responsibility in this area.

Housing

Home Improvement Program (HIP). Increase the Federal Income Poverty guideline eligibility from 125% to 225%. HIP is very important to the GPTCA.

The 2012 need for the Large Land based Great Plains Tribes is \$228.5 million vs. the current minimal amount of \$25 million Bureau-wide.

Many of our houses are dilapidated and have Black Mold, creating health issues. Funding needs to be available for maintenance or replacement. Tribes have turned to Trailers which don't last, now we have "Trailer Graveyards"

In the Great Plains, The waiting list for a home is 5+ years with no guarantee even then.

The housing need is great, but it is impossible to capture an actual assessment of need as many will not come forward to be counted. Many are homeless so they reside with a family member who then fears eviction because of stringent federal guidelines.

Trust and Natural Resources

The protection of land and natural resources is critical to maintaining the Great Plains tribal land base. The Region has one of the largest land bases in Indian Country, and the most fractionated interests. Limited funding resources have not allowed the BIA to fulfill its trust obligation in protecting and enhancing these resources for the 1.7 million land owner and tribal interests. When OST was separated (Stove piped) services and authorities were reduced.

The Great Plains region has the responsibility for managing and protecting 6.1 million acres of Tribal and allotted lands for approximately 90,000 individual land owners. The annual value of grazing to the Indian landowners and Tribes is approximately \$18 million. \$14 million for farm pasture and farm leases. 25 CFR 166 requires the development of reservation-specific Agricultural Resource Management Plans (ARMP) and Range Unit-specific Conservation plans to protect the trust resources of the Indian Landowner.

Lease Compliance and Unresolved Rights funding must be restored. These activities continue to operate but at the expense of other TPA programs.

The GPTCA is in favor of a Sunset to OST, but believe some strides have been made so we support a merger of functions and authorities back to the Bureau of Indian Affairs. This will allow the Tribes to have essential and meaningful communication and service at the local agency and regional level rather than expending scarce dollars to go to Albq. or Washington DC. In the Great Plains we have a back log of land appraisals which is unacceptable given the large land base we manage. Some Tribes have been waiting from 3-5 years for an appraisal because functions are distributed among BIA, OST, Minerals & Energy and various offices and there is no hurry by staff.

Economic Development

The 2010 National Census data revealed the following South Dakota counties as four of the ten poorest in the nation: Ziebach (Cheyenne River Sioux Tribe), Todd (Rosebud Sioux Tribe), Shannon (Oglala Sioux Tribe), and Corson (Standing Rock Sioux Tribe). It is an epidemic that needs Congressional attention to aid the Tribes in moving toward reducing poverty levels that plague the Great Plains Region. The average unemployment rate on reservations in the Great Plains Region is 77%. Economic Development is imperative to improving the quality of life for tribal members through job creation. The GPTCA requests a special category/consideration for Large & Needy Tribes

Tribes within the Great Plains Region lack the economic resources and infrastructure to jump start their economies and to fully implement the Department's initiatives for alternative and/or renewable energy projects. Establish a category for Large & Needy Tribes to concentrate services to the Treaty Tribes who have the greatest challenges.

Restore full funding to the Indian Guaranteed Loan Program of at least \$3 Million and return Credit to the Regional Offices.

Complete and Publish annually the Labor Force report & statistics, this will assist Tribes in obtaining formula based funding.

Restore all the programs, functions & authorities to Indian Affairs and the Bureau of Indian Affairs. The reorganization that created the super agency called Office of Indian Energy and Economic Development Office was not supported and the Tribes have been proven correct by the lack of service and sheer distance from the Reservations and ineffectiveness to work with the Tribes in successful economic development. This would restore funding and administrative authority back to the Regional Office and Agency level where the Tribes would have full access.

The Great Plains Tribes support the increased funding for contract support costs and opposes any cuts.

Welfare Assistance

General Assistance provides monetary grants to eligible clients. Of the 167,000 service population, approximately 44,205 people are served annually and provided with an average sole source income of \$218 per month. The GPTCA requests no cuts and full continuation of GA.

Child Assistance provides for the care of abandoned or neglected children placed in foster homes, private or group or residential homes designed to provide special care. Approximately 2,134 children have been placed in special care. Child Assistance had come under fire in the Great Plains and the GPTCA requests full compliance with the Indian Child Welfare Act.

The *Indigent Burial Program* provides burial grants to eligible members. The GPTCA requests full funding for Burial Assistance.

Emergency Assistance is provided directly to individuals who suffered extensive loss to homes and personal property due to fire, flood or other calamities and is used for essential needs of food, shelter and utilities. The GPTCA requests full funding for Emergency Assistance. In 2011, \$53,057 was expended to provide assistance to 198 victims at an average of \$268.

Indian Healthcare

The GPTCA appreciates the overall increases to I.H.S it is very positive and much appreciated.

Funding is still requested for Facilities Construction, Renovation & Maintenance.

The GPTCA requests Reauthorization for the Special Program for Indian Diabetes (SPID).

The GPTCA supports the continuation of this program.

The GPTCA supports and urges efforts to initiate new funding in order to make the promises a reality for IHCIA Implementation. Indian Health Care Improvement Act (IHCIA) Amendments require DHHS and the Indian Health Service (IHS) support and funding

The GPTCA supports improved funding for the following:

- VA-IHS Partnership Initiative
- Improved Billing & Collection.
- ND and SD state-wide CHS Designation (CHSDA)
- Long-term Care – new authority, funds to HIS

The GPTCA opposes Transfer of IHS. There has been discussion of transferring our Indian Health Service agency budget and appropriation accounts to the DHHS-Labor-Education

account. We are strongly opposed to this initiative. The GPTCA adopted a resolution on this matter and we share this with you today.

Office of Justice Services

Request full transparency from OJS with Improved Communication and Cooperation.

Transfer Line Authority and functions back to BIA. Again, service is far away and Tribes want service at the agency and regional level. This would improve the slow hiring process.

Fair and Equitable Funding between Direct Service and 638 Programs in all areas including equipment, vehicles, salaries, participating in workshops & training etc.

Congress should make housing available for Officers who reside in very rural areas.

Complete development and fully fund the Police Officer training center at UTTC.

Law Enforcement

Provide adequate funding for OJS at the local agency/Tribal level and not at the top.

There is an additional need of approximately \$15.3 million dollars in the Great Plains Region to support additional police officers to both the Bureau and Tribes; provide for Emergency Response Teams; Training; ensure each program has K-9 Teams; provide or update equipment and vehicles; and to conduct required community assessments for the 16 tribes in the Region.

With the opening of 4 new facilities in the Region, The Great Plains Tribes are requesting additional funding to support the operations, staffing and administration of these facilities.

\$4.7 million is expended annually for commercially contracted bed space for those tribes and agencies who do not have their own facilities. The new facilities when open will reduce the need for contracted bed space.

Historically, funding for O&M of Facilities has been constrained to 47%. The Great Plains Tribes are requesting 100% of O&M funding for not only the new facilities, but the current facilities.

Tribal Courts

The GPTCA requests Congress adequately fund the 2009 Tribal Law and Order Act; currently it is an unfunded mandate requiring tribes to implement additional services.

While we are pleased for the slight increase for Tribal Courts, it isn't enough. Increase Tribal Court Funding

The tribes in the Great Plains Region would like to see funding for an Office & point-of-contact at the regional level to provide technical expertise in updating individual law and order codes, court processes and corrective action plans.

Transportation

Increase the Road Maintenance Funding to at least \$5.Million with consideration of Large & Needy tribes. In 1991, the Great Plains Road Maintenance program was funded at \$3.8 million. Twenty years later in 2011, the program was funded at \$3.6 million.

The *final* 2012 Great Plains Road Maintenance program is funded at \$3.4 million, \$200,000 less than 2011. The President's 2013 Budget is proposing a further Bureau-wide cut of \$320,000. This is not acceptable.

We estimate the Great Plains Region is funded at less than 15% of what is needed to provide required road maintenance.

Indian Reservation Road funding, must be limited for use on the interior Reservation Roads only. The Great Plains Tribal Chairman's Association supports the new manager amendments to the MAP 21 Highway bill, that allows for a more equitable distribution of Transportation funding to large land based tribes with more needs and higher inventories. But the funding in the legislation is barely maintaining current funding levels for the Indian Reservation Roads program and needs to be increased to at least \$500,000.00.

Direct funding to large land based tribe for emergency preparedness. The Great Plains specifically requests the Administration to work with the Great Plains Tribes on developing a direct funding and technical assistance program for the Great Plains. This should include funding for emergency preparedness and long-term recovery plans for those Tribes who are in need of such plans.

Thank you for allowing me to present Testimony and I will answer any questions or if I can't I will furnish the response in writing to you later.

Chairman Robert Shepherd