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United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

March 7, 2013

The Honorable Patty Murray
Chairwoman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on Budget
United States Senate
Washington, D.C. 20510

Dear Chairwoman Murray and Ranking Member Sessions:

This letter responds to your request for the views and estimates of the Committee on Indian Affairs. In past years, the Committee has had the benefit of reviewing the Administration's Budget proposal as it prepared the Committee's views and estimates letter for the Budget Committee. This year, because the delivery of the Administration's Budget to Congress is delayed, we do not have that document as we seek to assist the Budget Committee in preparing its FY 2014 Budget Resolution. Nevertheless, we appreciate the opportunity to express these views as the Budget Committee prepares the FY 2014 Budget Resolution.

INTRODUCTION AND BACKGROUND

The Committee is well aware of the budgetary issues facing our Nation as a whole and Indian country in particular. The Committee will exercise its oversight and legislative responsibilities to ensure that the agencies and programs within its jurisdiction achieve the greatest possible efficiencies and savings in their use of federal resources.

As the Budget Committee moves forward with its Budget Resolution, it is important that the Committee be guided by the fact that the United States owes a unique legal obligation and trust responsibility to 566 federally recognized tribes based on the Constitution, treaties, federal laws, and Supreme Court decisions. Indian tribes and their members have a relationship to and with the United States that has no counterpart among other governments and communities in the United States. The obligations to tribes and Indian people arise in part from cessions of hundreds of millions of acres of tribal homelands to the United States in exchange for promises to maintain public safety, protect tribal sovereignty and provide a variety of programs and services. This solemn obligation is carried out through the many federal programs operated throughout the federal government, which, when not properly funded, result in a diminution of the federal trust responsibility.

In addition to the unique legal and treaty obligations, the United States has long maintained a government-to-government relationship with Tribes. This relationship guides the process and substance of interaction between the federal government, its agencies and the Nation's federally recognized Tribes. As a result, a number of agencies provide funding to tribes due in part to their status as governments. Just as federal programs supplement state and local government efforts, many federal agencies work with tribes to support tribal government services and programs.

The United States' federal policy on Indian affairs has shifted course several times between the formation of the Union and approximately 1970. In 1970, the Administration signaled the formal repudiation of the policy that sought to terminate the status of Tribes as governments, to a new policy supporting tribal self-determination. That policy has remained consistent for more than 40 years. Tribal self-determination seeks to strengthen tribal governments and tribal economic self-sufficiency.

Nevertheless, despite significant gains over the past forty years, tremendous disparities continue to exist in a wide variety of socioeconomic indicators between American Indian and Alaska Native people and the overall U.S. population, with American Indian and Alaska Native people ranking well below the national average in measures of health care, education, income, housing, and public safety. Furthermore, basic infrastructure, including clean drinking water, safe roads, telecommunications, is either woefully inadequate or sorely missing from many tribal communities. These disparities create serious barriers to fulfilling the Nation's Constitutional, Treaty, and statutory obligations to Tribes and American Indian and Alaska Native people and inhibit or prevent meaningful economic development in their communities.

This letter sets forth recommendations for addressing some of these disparities and moving forward with Tribes as full partners, as we seek to move our Nation forward on a better and sound fiscal path.

SELF-DETERMINATION AND PROSPERITY

The overarching federal policy for more than forty years has been tribal self-determination. The cornerstone of this policy is the Indian Self-Determination and Education Assistance Act (ISDEAA). 25 U.S.C. §§ 450-et seq. The ISDEAA empowers Tribes, as a matter of choice, to assume, pursuant to a contract or self-governance compact, the operation of critical federal programs that are intended for the benefit of Tribes and American Indian and Alaska Native people, and their lands and communities.

Every Tribe in the country is a party to at least one ISDEAA contract or compact with the Indian Health Service (IHS), within the Department of Health and Human Services, and/or the Bureau of Indian Affairs (BIA), within the Department of the Interior. Pursuant to these contracts and compacts, Tribes operate public safety programs, schools, irrigation programs, health care programs, and social welfare programs. The ISDEAA has allowed for these programs to be operated in ways that better meet the needs of tribal communities.

A critical component of the Self-Determination policy is the United States' obligation to provide the full amount of funding to a tribe that the United States would have if it were to continue to operate the program, including the administrative costs associated with operating a federal program. These administrative costs, known as "Contract Support Costs," include items such as auditing, accounting, and insurance. The federal government's obligation to fully fund Contract Support Costs has been confirmed in no less than three Supreme Court decisions. See, *Cherokee v. Leavitt*, 543 U.S. 631 (2005); *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012) and *Arctic Slope Native Ass'n, Ltd. v. Sebelius*, 133 S.Ct. 22 (2012).

The full payment of Contract Support Costs will require an estimated \$615 million for IHS and \$242 million for the BIA for FY 2014. The Committee believes that the budget should fully accommodate the payment of these binding obligations, since (as the Supreme Court has noted) there is no basis in the law for treating tribal contractors any differently from other government contractors. The Committee also believes that both agencies must do more to promptly settle all outstanding claims for these costs from prior years.

ECONOMIC DEVELOPMENT

The Committee believes that sustainable economic development is the best pathway to healthy and vital tribal communities and will help tribes overcome many of the challenges facing Indian country. Despite recent improvements on some reservations, most tribal economies continue to suffer from a lack of revenues and high unemployment. In some places unemployment exceeds 49 percent, and typically, the poorest counties in the United States include Indian reservations.

Thus, the Committee continues to support funding for programs like the BIA Loan Guaranty Program within the BIA and the Native American Community Development Financial Institutions program (NACA Program) within the Department of Treasury. These programs are, in many cases, the only source of capital for Tribal and individual Indian economic development projects.

In addition, energy development on Tribal lands offers significant opportunities to enhance and grow tribal economies. Accordingly, the Committee supports investment in programs within both the Departments of the Interior and Energy that will encourage and support tribal capacity and project development in the area of energy development.

TRIBAL PUBLIC SAFETY AND JUSTICE PROGRAMS

The United States has distinct legal obligations to provide public safety in Indian country. The Major Crimes Act codified the United States' responsibility to investigate and prosecute most crimes committed on Indian lands. See, 18 U.S.C. §§1152, 1152. Yet, the rates of serious crime within many tribal communities are astounding. In some places it exceeds that of major metropolitan communities.

While a lack of funding may not be the only cause of the current state of public safety in Indian country, it is certainly a significant contributing factor. It is impossible to have a safe community when there may be only 1 or 2 officers patrolling land areas sometimes as large as, if not larger than some states, such as Connecticut. The Committee supports sufficient funding in both the BIA and the Department of Justice that will enhance public safety programs across Indian country. For FY 2013 the Administration proposed \$353 million for BIA public safety programs and approximately \$50 million for the Department of Justice's Tribal Justice Programs. This level of funding would at least allow the current level of public safety staffing and services to be maintained.

EDUCATION

The education achievement measurements in the critical areas of reading and math for American Indian and Alaska Native students lag far behind those of the rest of the country. Moreover, only 50 percent of American Indian and Alaska Native students graduate from high school. Thus, it is clear there are many challenges in this area. The responsibility to address these needs lies within the Departments of the Interior and Education. Nearly 90 percent of the 620,000 American Indian and Alaska Native students attend public schools, and the remaining 10 percent attend schools administered by the Department of the Interior's Bureau of Indian Education (BIE), a system of 184 K through 12 schools in 23 states.

In the area of elementary and secondary education, the Committee opposes any cuts to the BIE Individual Student Equalization Funding program, which funds the operation of the BIE K through 12 schools. These schools are responsible for educating almost 50,000 children, and do so with very limited resources, quite often in facilities in need of significant repair or replacement. The Committee also supports restoring funding to provide educational instruction to youth incarcerated in the 24 BIA-funded juvenile facilities. Further, the Committee supports funding the BIA School Construction and Repair Account to a level that is sufficient to begin addressing the ever-growing backlog in replacement school construction needs in Indian country.

In addition, the federal government is responsible for 29 tribal colleges, universities and post-secondary schools. These institutions have an enrollment of approximately 25,000 students and provide a wide array of academic and vocational instruction including business administration, fisheries management, nursing and education. These schools are the incubators for tribal communities' essential employees and service providers. The Committee supports current funding levels for these tribal colleges and universities.

HEALTH CARE SERVICES

The United States has provided health care services to American Indians and Alaska Natives, as part of an obligation under treaties, agreements and laws the United States agreed to and enacted. The IHS is the principal federal agency charged with the mission of raising the health status of American Indians and Alaska Natives. The IHS provides a comprehensive health service delivery system for approximately 1.9 million American Indians and Alaska

Natives from 566 federally recognized tribes in 35 states. This system includes 600 facilities, including 28 hospitals, 58 health centers, 31 health stations, and 34 urban health programs.

Notwithstanding this comprehensive system, American Indian and Alaska Native people continue to face devastating health disparities. American Indian and Alaska Native people have a life expectancy that is more than four years shorter than that of the general population, and the incidence and mortality rates of many illnesses are dramatically higher among American Indian and Alaska Native people. One of most tragic statistics in Indian country is that suicide is the second leading cause of death among American Indian and Alaska Native youth. This means that Indian country is unnecessarily losing a significant portion of its next generation of leaders to suicide, causing some tribal leaders to express concern that tribes' very existence is increasingly at risk with every suicide.

Studies have indicated that there may be three critical factors that impact an Indian person's health status. The first factor is the lack of access to care. The second is the lack of continuity of care from a qualified medical professional. The final factor is the lack of disease prevention and early diagnosis of many conditions.

Consequently, the Committee supports the funding of IHS's Hospital and Clinic funding, to ensure that these important health care institutions have the resources they need to treat their patients. In addition, the Committee supports funding for the Contract Health Care Program, which is the program that funds medical services when patients have to be referred outside an IHS or tribal facility. The Committee further supports efforts to recruit and retain qualified medical professionals. The turnover and low retention rates for medical professionals in Indian country are well documented. Again, it is difficult to properly treat a person if he or she is unable to see the same medical professional on a regular basis. The Committee will examine the IHS's operations and practices to identify savings and efficiencies in the delivery of these services.

Finally, the Committee fully supports efforts across the Department of Health and Human Services that will lead to disease prevention and early detection of diseases and conditions that can have devastating impacts on tribal communities and Indian families. Nowhere is the need more urgent than in the area of mental health, so that we can halt the epidemic of suicide that has plagued far too many tribal communities.

TREATY-PROTECTED NATURAL RESOURCES

The foundation of all tribal communities is their land and natural resources, which were guaranteed to tribes through numerous treaties. See, *Mille Lac Band of Chippewa Indians v. Carlson*, 526 U.S. 172 (1999), *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n.*, 443 U.S. 658 (1979); *U.S. v. Washington*, 384 F.Supp.312 (W.D. Wash), *aff'd* 520 F.2nd 676 (1975). The protection and enhancement of these resources are not only critical to the future of tribes; they are an obligation of the United States.

Funding for tribal natural resources programs has declined significantly over the last two decades. Moreover, the funding inequity vis-a-vis other federal land management programs is profound. For example, the per-acre funding for Forest Service lands is three times the per-acre funding for tribal forest lands, and the Department of the Interior's invasive species program is five times the per-acre funding for the BIA's invasive species program. The Committee recommends the full federal investment in those programs that support and enhance the management of treaty protected resources. This investment will boost tribal economies, ensure greater food security, and protect and revitalize cultural practices throughout the country. This investment will lead to more productive resources and contribute to the overall economy of Indian country and the surrounding communities.

Access to stable and secure water supplies has long been acknowledged as a basic component of maintaining a tribe's reservation homelands. See, *United States v. Winters*, 207 U.S. 564 (1908). Currently, there are five Bureau of Reclamation authorized drinking water projects serving eight Tribes in four states. The longer it takes to complete these projects, the higher the cost is to American taxpayers. Furthermore, there are several recent congressionally enacted water settlements that also must be funded. In this regard, the Committee is aware that the United States has continued to seek to resolve tribes' water rights throughout the west, and that each of these additional settlements will likely require a substantial investment by the federal government.

Finally, there is an estimated \$610 million in deferred maintenance for the 16 irrigation projects serving 16 reservations in 10 states. The failure to properly maintain this critical federally-owned infrastructure negatively impacts these communities that rely so heavily on agriculture as the basis of their economies.

HOUSING AND INFRASTRUCTURE

Finally, in the areas of housing and infrastructure development, the Committee plans to consider the Native American Housing and Self-Determination Assistance Act (NAHASDA) reauthorization this year. It is clear that the need for housing throughout tribal communities is significant. More than 15 percent of reservation households are over-crowded, 11 percent of American Indian and Alaska Native homes lack complete plumbing facilities, and 16 percent of American Indian and Alaska Native homes lack telephones. Finally, approximately 40 percent of on-reservation housing is considered inadequate, compared with 6 percent nationwide.

Consequently, the Committee supports maintaining the current level of NAHASDA funding, as well as maintaining the funding within Department of Agriculture for rural housing development, and the BIA Housing Improvement Program. As part of this reauthorization there are improvements to the Act that will improve program management and efficiency in the delivery of housing services, which should achieve savings in this program.

The Committee also fully supports efforts to improve tribal transportation programs. Finally, the Committee supports efforts across agencies to improve the telecommunication infrastructure in Indian country.

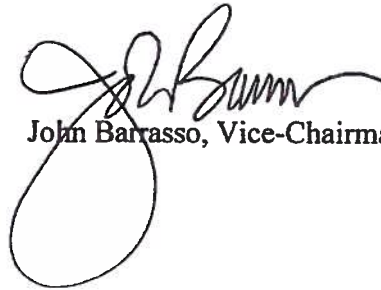
CONCLUSION

We appreciate the Budget Committee's consideration of our views on these very important programs and your efforts to ensure the United States fulfills its treaty and trust obligations to tribal governments and their members.

Sincerely,



Maria Cantwell, Chairwoman



John Barrasso, Vice-Chairman