

JOHN MCCAIN, ARIZONA
LISA MURKOWSKI, ALASKA
JOHN HOEVEN, NORTH DAKOTA
JAMES LANKFORD, OKLAHOMA
STEVE DAINES, MONTANA
MIKE CRAPO, IDAHO
JERRY MORAN, KANSAS

MARIA CANTWELL, WASHINGTON
TOM UDALL, NEW MEXICO
AL FRANKEN, MINNESOTA
BRIAN SCHATZ, HAWAII
HEIDI HEITKAMP, NORTH DAKOTA

MIKE ANDREWS, MAJORITY STAFF DIRECTOR
ANTHONY WALTERS, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

March 2, 2015

The Honorable Mike Enzi
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Bernie Sanders
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Enzi and Ranking Member Sanders:

This letter is in response to the Budget Committee's request for the views and estimates of the Committee on Indian Affairs (Committee). The Committee has reviewed the President's FY 2016 Budget Request and prepared a views and estimates letter for the Budget Committee to consider when preparing the FY 2016 Budget Resolution. We appreciate the opportunity for the Committee to express its views.

INTRODUCTION AND BACKGROUND

The Committee understands the budgetary concerns of the Federal deficit and limited budgets that are facing our Nation, and more specifically in Indian country. The Committee continues to exercise its oversight and legislative duties to ensure that the agencies and applicable programs are achieving the greatest possible efficiencies and investments when utilizing Federal resources.

As the Budget Committee moves forward with its FY 2016 Budget Resolution, it is important that the Committee highlight the significance of the United States duty to carry out its trust, treaty, and other responsibilities to the 566 Federally recognized tribes through various Federal departments and agencies. These unique obligations are rooted in American history and based on the Constitution, treaties, Federal laws, and Supreme Court decisions.

Indeed, the U.S. Constitution recognizes the government-to-government relationship between the United States and Indian tribes. Acting in a government-to-government capacity, the Federal government is able to fund tribal programs and

services, similar to how the United States interacts with and funds a state or local government.

In addition to the government-to-government relationship, the United States and tribal governments have a special relationship, described by many as a trust relationship between the trustee and the beneficiary. This special relationship stems from tribes ceding hundreds of millions of acres of their homelands to the United States in exchange for promises to maintain public safety, protect tribal sovereignty, and provide a variety of programs and services to Indian people.

The Snyder Act of 1921, the Indian Reorganization Act of 1934, the Indian Self-Determination and Education Assistance Act of 1975, the Indian Education Amendments Act of 1978, the No Child Left Behind Act of 2001 (which includes the Native American Education Improvement Act of 2001), and the Tribal Law and Order Act of 2010, are just a few of the Federal laws that have defined the obligations for the United States to provide various programs and services to Indian country.

Tribal governments have continued their efforts to grow and prosper, yet many of their communities face significant disparities. Tribal communities experience various socio-economic ills, where they rank well below the national average in measures for health care, education, income, housing, and public safety. Services such as basic infrastructure, access to clean drinking water, and telecommunications and broadband capabilities, are severely lacking in Indian country.

This letter sets forth recommendations for addressing some of the disparities experienced in Indian country by helping them move closer to self-governance and self-determination.

ACHIEVING SELF-DETERMINATION

For more than forty years, the Federal government has empowered tribes through self-determination. The Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) empowered tribes, through contracts or self-governance compacts, to assume the operation of critical Federal programs that are intended for the benefit of Indian tribes and their members.

Every one of the 566 tribes in the Nation is a party to at least one ISDEAA contract or self-governance compact with the Indian Health Service (IHS) in the Department of Health and Human Services and/or the Bureau of Indian Affairs (BIA) in the Department of the Interior. Through these contracts and self-governance compacts, tribes are able to operate programs for health care, social services, schools,

public safety, and irrigation, to name a few. The tribal communities are better able to operate these programs because they know the specific needs and understand what their members want for these programs.

A critical component of the self-determination policy is the Federal government's 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. The administrative costs are also known as "contract support costs," and includes auditing, accounting, and insurance. Three Supreme Court decisions have confirmed the Federal government's obligation to fully fund contract support costs.

Based on estimates from the Administration, fully funding contract support costs for FY 2016 will require approximately \$718 million for the IHS and \$277 million for the BIA. Since there is no basis in the law for treating tribal contractors any differently from other government contractors, the Committee believes the budget should fully accommodate the payment of contract support costs.

The Budget Request proposes to reclassify contract support costs as mandatory funding for a period of three years beginning in FY 2017 to address the ever-growing amount of claims against the Federal government for failing to fully fund the costs. The President would propose that these mandatory costs be off-set by reducing the IHS discretionary funding for contract supports costs. However, any reductions to any IHS discretionary funding should not result in any reductions to or otherwise affect any services or programs for Indian tribes and people served directly by the IHS.

ECONOMIC DEVELOPMENT

Tribal economic development has provided a foundation for tribal communities to create a strong and growing economy for its members. While tribal communities continue to experience high levels of unemployment, creating jobs and building a strong workforce has motivated tribes to start businesses such as financial services firms, construction companies, and other businesses. Tribes have invested their resources from economic development into their land and people to overcome the obstacles of living in poverty. Some of the Indian reservations are among the poorest counties in the United States.

The Committee supports the continuance of funding programs like the Indian Loan Guarantee Program within the BIA, the Workforce Innovation and Opportunity Act Indian and Native American Program within the Department of

Labor, and the Indian Incentive Program within the Department of Defense. These programs provides opportunities for American Indian and Alaska Natives to learn a new craft, work and earn an income, and in some cases create tribal economic development on their reservations.

In addition to the various programs available to tribal communities, energy development on Indian lands offers significant opportunities to enhance and grow tribal economies. The Committee recognizes the importance of developing affordable, reliable energy in Indian Country to improve tribal economies and the standard of living.

The Department of Energy aims to promote Indian tribal energy development; enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; reduce or stabilize energy costs; and bring electrical power and service to Indian country. The funding request for FY 2016 for all combined DOE Indian energy programs amounts to \$31 million, which the Committee supports. Furthermore, the Committee supports the request for the Tribal Energy Loan Guarantee Program, which was enacted as part of the Energy Policy Act of 2005. The Committee supports helping tribes gain loans to build energy projects on Indian lands but has questions about how this program will be implemented and who could qualify for these limited funds.

TRIBAL PUBLIC SAFETY AND JUSTICE PROGRAMS

The Department of Justice (DOJ) provides engagement, coordination, and action on public safety in Indian country. The DOJ requests \$417.4 million in total resources for public safety initiatives for tribes to combat the high rates of serious crimes within many tribal communities that rival the rates of major metropolitan cities. It has been reported that 39% of Native women are victims of domestic violence.

The BIA provides programs that cover the range of Federal, state, and local government services, including law enforcement, detention services, and administration of tribal courts, for the 566 Federally recognized tribes. The BIA's request for public safety in Indian country is \$364,423,000.

While funding is not the only issue for public safety in Indian country, low levels of staffing are a significant contributing factor to the high rates of crime. The Federal Bureau of Investigation has federal law enforcement responsibility on nearly 200 Indian reservations. There may only be one or two 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 Department of Justice and the BIA that will enhance public safety programs in Indian country.

EDUCATION

The Bureau of Indian Education (BIE), a division of the Department of the Interior (DOI) under the Assistant Secretary for Indian Affairs, is responsible for educating approximately 48,000 Indian children at 183 elementary and secondary schools on 64 reservations in twenty-three states.

The FY 2016 Budget Request for the BIE activities is \$904.4 million – this includes an increase of \$87.1 million. In addition to educational programs and service activities, the BIE is requesting an increase of \$58.7 million for education construction which brings the construction request to \$133.2 million. The deteriorating and dangerous conditions of some of these schools have been the subject of more than one Governmental Accountability Office study.

In June 2014, the DOI issued Secretarial Order 3334 that began the major restructuring of the BIE. The budget should continue to reflect and assist tribes that need technical support, when transferring the administration of a BIE-operated school to tribal control. The Committee supports also funding the BIA Replacement School & Facility Construction at a level that is sufficient to address the school construction needs in Indian Country.

HEALTH CARE SERVICES

The Indian Health Service (IHS) is responsible for providing health care services to 2.2 million American Indian and Alaska Natives through a network of over 650 hospitals, clinics, and health stations on or near Indian reservations in 35 states. Facilities are predominantly located in rural primary care settings and are managed by the IHS, tribal, or urban Indian health programs.

The FY 2016 Budget Request seeks an increase of \$460.6 million for current services (inflation, population growth, pay costs), contract support costs, facilities (both construction and staffing), and certain program expansions. Those program expansions include hospital and clinic management, services for alcohol and substance abuse, mental health care, and assistance with the costs of purchased/referred care (previously named contract health services).

Most notably, the Budget Request seeks an additional \$100 million to complete construction or significant phases of construction for four facilities (three in Arizona

and one in South Dakota). The Budget Request also seeks an additional \$55 million for contract support costs which are costs (e.g., for personnel and financial management) to support tribal administration of programs.

In addition, the Budget Request seeks an increase of \$10 million to improve third party collections and an additional \$22 million to fund 200 Indian health care programs to hire behavioral health providers focused on youth services. Both of these requests are intended to address in small measure the gaps in services due to vacancies. Vacancies remain an issue with the IHS, in part, due to the lack of competitive salaries and the rural nature of the Indian health system.

American Indian and Alaska Natives continue to face devastating health disparities, like chronic liver disease and cirrhosis, diabetes mellitus, assault and homicide, intentional self-harm and suicide, and chronic lower respiratory diseases. American Indian and Alaska Native people have long experienced lower health ranks when compared to other Americans, such as a life expectancy that is 4.2 years less than the U.S. all race population. One of the more disturbing statistics in Indian country is that suicide is the second leading cause of death among American Indian and Alaska Natives.

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

The Committee supports efforts to address these issues as well as medical inflation, population growth, pay costs, maintenance and construction. In addition, the Committee supports the reauthorization for the Special Diabetes Program for Indians (SDPI), which is set to expire on September 30, 2015. The SDPI is a successful diabetes prevention and treatment program for American Indian and Alaska Natives.

TREATY PROTECTED NATURAL RESOURCES

Access to land and its natural resources is the foundation of all tribal communities. This right is guaranteed to tribes through numerous treaties and Federal laws. The protection and enhancement of these natural resources are critical to the future of tribes, but they are also an obligation of the United States to protect.

Access to stable and secure water rights and supplies has long been acknowledged as a basic component of maintaining a tribe's reservation homelands. The Budget Request proposes \$46 million to strengthen the BIA's capacity to meet its trust responsibilities and more effectively partner with tribes on water issues. The request includes \$14 million to increase support for settlement negotiations and sustainable water management, and provides \$32 million for implementation of enacted settlements and meeting enforcement dates. By resolving tribal water rights throughout the west, the tribal communities can utilize water for economic development endeavors.

Many tribal communities are living in areas with outdated irrigation systems, where tribes lose water that has been protected for them. There is estimated to be at a minimum \$600 million in deferred maintenance costs for Indian reservations in ten states.

These costs will continue to grow as long as the deferred maintenance is not completed. The failure to properly maintain this critical Federally-owned infrastructure negatively impacts these communities that rely so heavily on agriculture. The Committee supports efforts to address these important components of tribal economies.

HOUSING AND INFRASTRUCTURE

This Congress, the Committee plans to consider a reauthorization of the Native American Housing and Self-Determination Assistance Act (NAHASDA). There is a clear need for new housing and renovations throughout Indian country as many homes lack infrastructure, including complete plumbing facilities and telecommunications. Moreover, many tribal on-reservation homes are considered to be inadequate when compared to the nationwide average. The Committee supports efforts to increase in the Indian Housing Block Grant Program and the increase for much needed teacher housing.

The programs within the NAHASDA reauthorization are intended to improve management and efficiency in the delivery of housing services to American Indian and Alaska Natives. Consequently, the Committee supports the reauthorization of the NAHASDA. In addition, the Committee supports the funding within the Department of Agriculture for continued rural housing development.

CONCLUSION

We appreciate the Budget Committee's consideration of the Committee's views on these important matters and your efforts to ensure the Federal government is fulfilling its trust and treaty responsibilities to tribal governments and its members across the Nation.

Sincerely,


John Barrasso, M.D., Chairman


Jon Tester, Vice-Chairman