



# The Beat *in DC*

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*A publication of the USET Sovereignty  
Protection Fund*

## *Budget*

### **Interior Appropriations Bills Advance out of Committee in Both Chambers**

Both the House and Senate Appropriations Subcommittees on Interior, Environment, and Related Agencies have successfully reported out Fiscal Year (FY) 2016 funding bills. The topline spending of both Subcommittees was restricted by the House and Senate Budget resolutions, which cut topline spending in accordance with the Budget Control Act of 2011.

On June 16th, the full House Appropriations Committee advanced an appropriations bill that provides \$4.78 billion in funding for the Indian Health Service (IHS), including \$936 million for Purchased/Referred Care and \$466 million for facilities. Overall, this is an increase of \$145 million, but \$315 million less than the President's request of \$5.1 billion. Additionally, the bill funds the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) at \$2.76 billion, including \$2.5 billion for Indian Programs and \$133 million for BIE school construction. Overall this is an increase of \$165 million over FY 2015 levels, but \$159 million below the President's request. Many BIA/BIE budget line items would be funded at the fiscal year 2015 enacted level, except contract support costs, road maintenance, tribal grant support costs, elementary and secondary programs, tribal courts, the Indian Energy Service Center which all received increases. BIE school construction also received a \$58 million increase in line with the President's request.

At press time, the House of Representatives was considering the FY 2016 Interior, Environment, and Related Agencies Appropriations bill on the floor.

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On June 18<sup>th</sup>, the full Senate Appropriations Committee approved its version of the Interior, Environment, and Related Agencies bill. The bill includes \$4.78 billion for IHS, \$324 million less than the President's request. It also includes \$2.69 billion for BIA and BIE, which is \$232 million less than the President's request. USET will provide additional details on the Senate bill as they become available.

- [USET Testimony to House Interior Appropriations on FY 2016 Funding](#)
- [Detailed Table of House Funding Recommendations](#)
- [House Bill](#)
- [House Summary](#)
- [Senate Summary](#)

### **Contract Support Costs Update**

The House and Senate FY 2016 Interior Appropriations bills differ in their treatment of Contract Support Costs (CSC) for IHS and BIA. The House bill fully funds CSC for both IHS and BIA, at \$718 million and \$272 million, respectively. However, this effectively reintroduces the caps on the line items that were previously responsible for shortfalls. The bill also designates CSC as no-year funding, allowing any unspent funds to carry over from year to year.

The Senate bill, however, contains language establishing an indefinite appropriation for IHS and BIA CSC funds. For each agency, the bill would establish a separate CSC budget account and make available "such sums as may be necessary." The indefinite amount would ensure full funding, and the new account walls off CSC from program funds, protecting against reprogramming.

In its FY 2016 Budget Request, the Administration had proposed moving the CSC line item for both agencies from the discretionary (subject to annual appropriations) side of the federal budget to the mandatory (entitlement) side for 3 years starting in FY 2017. Tribes and Tribal organizations, including USET, have been advocating for the CSC line item to be made mandatory on a permanent, indefinite basis in order to stabilize funding, protect funding appropriated to other line items, and help to avoid funding shortfalls.

Though the Senate proposal does not provide mandatory funding for CSC, it big step toward the permanent, indefinite, mandatory appropriation that is our ultimate goal.

- [HSDW CSC Update](#)
- [USET Resolution](#)
- [Joint Comments on Administration's Proposal](#)
- [CSC White Paper](#)

### **Tester, Udall Introduce Legislation Exempting IHS, BIA, NAHASDA from Sequestration**

On June 3<sup>rd</sup>, Senators Jon Tester (D-MT) and Tom Udall (D-NM) introduced S. 1497, legislation that would exempt the Indian Health Service (IHS), the Bureau of Indian

Affairs, and the Native American Housing Assistance and Self-Determination Act (NAHASDA) from sequestration. Under the Budget Control Act of 2011, the across-the-board cuts of sequestration were triggered when a bi-partisan, bi-cameral group of Congressional leaders could not agree on a plan to cut \$1.2 trillion from the federal budget in order to lower the deficit. In spite of the nation's trust obligation to Tribes, Indian programs were not spared from these cuts. S. 1497 would ensure these funds are exempt from any future sequestration.

- [Bill text](#)
- [USET Resolution](#)

## *Child Welfare*

### **USET Submits Comments Supporting Revised ICWA Regs**

On May 19<sup>th</sup>, USET submitted comments to the Bureau of Indian Affairs in support of its strengthened and revised regulations promoting state compliance with the Indian Child Welfare Act (ICWA). In response to strong advocacy from Tribes, the BIA issued the proposed regulations, which are intended to support the revised Guidelines for State Courts and Agencies in Indian Child Custody Proceedings that the BIA released in February. Both the guidelines and the regulations seek to address a number of issues experienced by states, as well as public and private agencies, since the passage of ICWA in 1978.

- [Proposed Regulations](#)
- [Guidelines for State Courts and Agencies in Indian Child Custody Proceedings](#)
- [USET Comments](#)

### **USET Submits Comments on Sen. Wyden Draft Child Welfare Legislation**

On June 12<sup>th</sup>, USET submitted comments on draft legislation released by Sen. Ron Wyden (D-OR) that would provide new funding for child welfare services through Title IV-E of the Social Security Act. USET supports legislation that seeks to provide sorely needed supports to families in need, rather than devote more resources to the removal of children into foster care. Outcomes for all children, including Native children, are improved when they are able to safely remain in or return to their homes and their communities. Unfortunately, the small amount of federal preventive and family services funding that is currently available does not reach all Tribal nations. Often, Tribes are not eligible to receive the funds or available amounts funding are so small that they only cover program administrative requirements, without any remaining to support actual services. Sen. Wyden's legislative proposal would ensure that Tribal child welfare programs, as well as state child welfare programs, have access to new streams of funding for family services and reunification.

- [USET Comments](#)

# *Federal Recognition*

## **USET Submits Inter-Tribal Testimony in House Natural Resources Part 83 Hearing**

On April 22nd, the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs hosted an oversight hearing entitled, “The Obama Administration’s Part 83 Revisions and How They May Allow the Interior Department to Create Tribes, not Recognize Them.” While USET has not taken a position on the BIA’s revised regulations, Subcommittee Leadership the Subcommittee invited as a witness Don Mitchell, a lawyer who believes that Tribes recognized via BIA’s current part 83 process have been recognized unlawfully. In his testimony Mr. Mitchell used a flimsy legal argument to advance this claim, one that failed recognize decades of legal precedent upholding the Secretary of the Interior’s authority to recognize Tribes through the administrative process. Further, the hearing memo produced by majority staff in advance of the hearing to brief and guide Subcommittee members seemed to adopt Mr. Mitchell’s basic premises. Of the 17 Tribes that have been recognized under Part 83, 8 of those Tribes are USET Member Tribes. In addition, 4 other USET Tribes have been federally recognized through other administrative (and not Congressional) processes.

On May 7<sup>th</sup>, USET submitted a statement for the hearing record refuting Mr. Mitchell’s argument by citing extensive case law, policy, and Congressional action that clearly upholds the Secretary of the Interior’s authority to recognize Tribes. USET was joined on the statement by the Jamestown S’Klallam Tribe, the Affiliated Tribes of Northwest Indians, the California Association of Tribal Governments, the Council of Athabascan Tribal Governments, the Inter Tribal Association of Arizona, the Maniilaq Association, the Midwest Alliance of Sovereign Tribes, and the Native American Rights Fund.

- [USET Statement](#)
- [Hearing Memo](#)
- [Don Mitchell Testimony](#)
- [Don Mitchell Response to USET Statement](#)

# *Health*

## **USET Submits Comments on Electronic Health Record Proposed Meaningful Use Changes**

On June 12<sup>th</sup>, USET submitted comments to the Centers for Medicare and Medicaid Services (CMS) regarding a Proposed Rule that would make changes to Stage 1 and Stage 2 of the Medicare and Medicaid Electronic Health Records (EHR) Incentive Programs. USET has previously commented to CMS on the importance of simplifying the EHR Incentive Program, which has encouraged the adoption of EHR but which has also risked losing participants due to the complexity of the requirements. While USET supports the flexibility that CMS has proposed in its changes to Stage 1 and Stage 2 of the EHR Incentive Program, our comments urge a permanent exception to the reporting

rules for Indian Health Providers. The comments continue by providing important modifications should an exception not be possible.

- [USET comments](#)

## **USET, NPAIHB Send Letter to CMS Requesting Consultation on CMS Managed Care Regulations**

On April 15<sup>th</sup>, USET and the Northwest Portland Area Indian Health Board (NPAIHB) sent a letter to the Centers for Medicare and Medicaid Services (CMS) requesting Tribal consultation in advance of the expected release of a proposed rule on Medicaid managed care regulations. The letter expresses concern that CMS had not meaningfully consulted with Tribes during the development of the proposed rule. In addition, USET and NPAIHB provide recommendations on revisions to managed care regulations that would ensure that laws intended to protect American Indians and Indian Health Providers from forced enrollment in managed care are followed. In spite of the protections that appear in the Social Security Act and the American Recovery and Reinvestment Act, American Indians and Indian Health providers routinely encounter difficulties when attempting to access Medicaid in a managed care environment.

On May 26<sup>th</sup>, CMS issued proposed rules on Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions related to Third Party Liability (CMS -2390-P) to modernize Medicaid and the Children's Health Insurance Program (CHIP) managed care regulations. USET will be submitting comments on the proposed rules that focus on American Indian protections by the comment deadline on July 27<sup>th</sup>.

- [USET/NPAIHB Letter](#)
- [CMS Managed Care Proposed Rules](#)

## *Keepseagle*

### **USET Sends Letter in Response to Supplemental Cy Pres Notice in *Keepseagle v. Vilsack***

On June 15<sup>th</sup>, USET sent a letter to Judge Emmet Sullivan, the DC District Court judge charged with determining how the remaining \$380 million in *Keepseagle* settlement funding is distributed.

In 2011, an historic settlement in the *Keepseagle v. Vilsack* lawsuit, known as the *Keepseagle* Settlement, was reached between Indian farmers and ranchers and the USDA that required the USDA to pay \$680 million in damages and \$80 million in farm loan debt forgiveness to redress discrimination experienced by Indian farmers and ranchers by the USDA farm loan program. The deadline for submitting claims was December 27, 2011, but some \$380 million remains undistributed.

Although there are differing views regarding how the remaining dollars should be distributed, plaintiff counsel recommended that they be awarded to a new foundation that would be managed by Tribal leaders from Indian Country. The USET letter supports

that the funds be a single endowment, provided there is meaningful engagement of Tribal leaders in the USET region, and further that the endowment managers address USET regional needs in an inclusive and equitable manner. In addition, USET encourages that endowment funds be used to compensate the plaintiffs who were not able to perfect claims requiring a higher burden of proof via a process requiring a lower burden of proof. The letter submitted to Judge Sullivan reflects a resolution passed by the USET Board of Directors in 2014.

- [USET Letter](#)
- [Cy Pres Supplemental Notice](#)
- [USET Resolution](#)

## Labor

### **Tribal Labor Sovereignty Act Approved by SCIA, Hearing in the House**

The Senate Committee on Indian Affairs (SCIA) held a mark-up and approved S. 248, the *Tribal Labor Sovereignty Act of 2015* by voice vote on June 10<sup>th</sup>. The legislation would confirm that all Tribal enterprises, like the enterprises of state and local governments, are exempt from the National Labor Relations Act.

In 2004, the National Labor Relations Board (NLRB) reversed decades of its own precedent and established “a new standard for determining the circumstances under which the Board will assert jurisdiction over Indian owned and operated enterprises.” The NLRB ruled that Tribal governments are subject to the NLRA when acting more “commercially” than “governmentally.” The NLRB has never applied this standard to the enterprises of state or local governments, which are explicitly exempt from the NLRA.

Meanwhile on June 16<sup>th</sup>, the House Education and Workforce Subcommittee on Health, Employment, Labor, and Pensions held a hearing on the House version of the bill, H.R. 511. Witnesses included, Mashantucket Pequot Chairman, Rodney Butler, who testified that the NLRB’s 2004 decision, “suggests that Indian Tribes are incapable of developing laws and institutions to protect the rights of employees who work on our reservations...[when] nothing could be further from the truth.”

In addition to Committee action, both the House and Senate Labor, Health & Human Services, and Education Appropriations bills contain provisions that would prevent NLRB from exercising jurisdiction over Tribes.

USET continues to sign onto Inter-Tribal letters circulated by the U.S. Chamber of Commerce’s Native American Enterprise Initiative, advocate on Capitol Hill, and provide information, as well as template support letters to member Tribes.

- [US Chamber Letter to the Senate](#)
- [US Chamber Letter to the House](#)
- [USET Template Letter](#)
- [USET Resolution 2015:019 Support for Tribal Parity in NLRA](#)
- [USET President Brian Patterson ICT Statement](#)

# Land

## **USET VP, Randy Noka, Testifies during House Natural Resources Land into Trust Hearing**

On May 14<sup>th</sup>, the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held an oversight hearing entitled, “*Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934.*” Vice President Randy Noka testified on behalf of USET during this hearing. USET’s testimony focused on the history and intent of the Indian Reorganization Act (IRA) and the land-into-trust process, and improvements that could be made to make the process less burdensome for Tribes, rather than providing increased influence for counties. Additionally, we identify a clean Carcieri fix as the only amendment to the IRA being requested by Tribes.

The announcement for the hearing was accompanied by a hearing memo that Indian Country and others found troubling. The hearing memo characterized allotment policy as “humane” and otherwise mischaracterizes the intent and current status of the IRA.

A number of Members of Congress provided testimony in support of the IRA and its continued relevance, including Native American Caucus Co-Chairs Reps. Tom Cole (R-OK) and Betty McCollum (D-MN), who are not members of the Subcommittee. USET continues to work with Congressional allies, as well as communicate with Committee Leadership, regarding the nature and tone of recent Subcommittee hearings.

- [IIANA Subcommittee Hearing Webcast](#)
- [IIANA Subcommittee Hearing Memo](#)
- [USET Testimony](#)
- [Cole, McCollum Written Testimony](#)
- [USET Thank You Letter to Rep. Norma Torres](#)

## **9<sup>th</sup> Circuit En Banc Decision in Big Lagoon Rancheria v. State of CA**

On June 4<sup>th</sup>, the 9<sup>th</sup> Circuit issued a crucial decision protecting Tribal trust lands in *Big Lagoon Rancheria v. State of California*. In a unanimous decision, the eleven member en banc Court upheld the district court’s decision that the State of California had failed to negotiate a gaming compact in good faith. In January, a 3-judge panel of the 9<sup>th</sup> Circuit had reversed the district court’s decision arguing that in accordance with the *Carcieri* decision the State of California was not obligated to enter into a gaming compact with Big Lagoon because the Tribe was not “under federal jurisdiction” in 1934. Following this decision, the Tribe petitioned the Court for rehearing.

In the more recent decision, the Court held that the State could not collaterally attack the acquisition of trust lands for Big Lagoon Rancheria by the United States in 1997, or the United States’ recognition of the Rancheria as an Indian Tribe, and that in any event the six-year statute of limitations would have barred any such attack. The decision will protect trust acquisitions and Tribal recognition decisions from collateral attack, and will

subject any direct action challenging any such decision to the 6-year statute of limitations applicable to Administrative Procedure Act claims.

USET, along with NCAI and the Navajo Nation, had filed an Amicus Brief in support of Big Lagoon Rancheria in this case.

- [HSDW Memo on Big Lagoon En Banc Decision](#)
- [USET-NCAI-Navajo Amicus Brief](#)

## Sacred Sites

### Grijalva Introduces Legislation to Repeal Apache Sacred Site Giveaway

On June 17<sup>th</sup>, Rep. Raul Grijalva (D-AZ) introduced H.R. 2811, the *Save Oak Flat Act*, legislation which would repeal Section 3003 of the 2015 National Defense Authorization Act (NDAA). Section 3003 directs the Secretary of Agriculture to convey over 2,400 acres of U.S. Forest Service land in southeast Arizona in an area known as Oak Flat to a mining company called Resolution Copper. The area has been of cultural significance to the San Carlos Apache Tribe and Yavapai-Apache Nation for centuries.

At the request of the San Carlos Apache Tribe, USET advocated for the removal of section 3003 during debate on the NDAA. We continue to support San Carlos' efforts to restore its sacred site.

- [Bill Text](#)
- [USET Resolution](#)

## SCOTUS

### Supreme Court Grants Cert in Dollar General v. Mississippi Band of Choctaw Indians

On June 15, 2015, the Supreme Court agreed to review Dollar General Corp. v. Mississippi Band of Choctaw Indians (MBCI), a Fifth Circuit opinion upholding Tribal court jurisdiction over tort claims against a non-Indian corporation. The case could have significant and wide-ranging repercussions for Tribal court jurisdiction over non-members in civil cases and will be closely watched by Indian Country advocates.

The case concerns the alleged molestation of a MBCI youth by the general manager of a Dollar General store operated on MBCI's reservation. When the Tribal member and his family brought suit against Dollar General and its employee in Tribal court, the Choctaw Supreme Court ruled that Tribal court had jurisdiction over the case. Dollar General is challenging this jurisdiction.

- [HSDW Memo to USET Leadership](#)

# Taxation

## **USET Submits Comments on Treasury NPRM Regarding Winnings Reporting**

This March, the Internal Revenue Service (IRS), released a Notice of Proposed Rulemaking (NPRM) regarding federal tax reporting of winnings from bingo, keno, and slot machines. Although both Executive Order 13175 and Treasury's own Consultation Policy require the engagement of Tribes early in the regulatory process, this NPRM was developed and released without Tribal consultation. And yet, the NPRM does have significant implications for Tribal gaming operations.

While the NPRM contains the current winnings reporting threshold of \$1200, it requests comments on lowering that threshold to \$600. That is, all gaming patrons who win greater than \$600 at bingo, keno, or slots would be required to report their winnings to the IRS and the gaming facility would be required to provide them with the proper form. Further, the NPRM proposes to add new regulations to account for "electronically tracked slot machine play", including the tracking of Tribal government players' rewards programs, adds to existing requirements for information contained in required tax reports, and would establish an alternative method for reporting aggregate bingo, keno, or slot machine winnings. In sum, it would significantly change the reporting methods and requirements for winnings from bingo, keno, and slot machines, and impose financial and administrative burdens on Tribal government gaming operations.

During USET's Semi-Annual Meeting this May, the Board passed a resolution urging Treasury to delay action on the NPRM until it has fulfilled its consultative duty to Tribes. In addition, USET submitted comments on the NPRM on June 2<sup>nd</sup>.

- [USET Comments](#)
- [USET Resolution](#)
- [IRS DTLL](#)

# Trust Modernization

## **Rep. Gosar (R-AZ) Reintroduces American Indian Trust Responsibility Act**

On June 12, Rep. Paul Gosar (R-AZ) reintroduced H.R. 2760, the *American Indian Trust Responsibility Act*. The legislation would establish an American Indian Trust Review Commission charged with conducting a comprehensive review of the unique trust relationship and Indian Tribes over a period of two years. The Commission will then present both findings and recommendations in a report to the President of the United States.

In 2013, the USET Board of Directors passed a resolution calling for this legislation and supported its initial introduction in the 113<sup>th</sup> Congress.

- [USET Resolution](#)
- [Bill Text](#)

For more information on these and other USET Policy and Legislative Affairs initiatives, please contact Liz Malerba, USET Policy and Legislative Affairs Director, at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).