

**Testimony of Brian Patterson, President
United South and Eastern Tribes, Inc.
Before the
House Interior Appropriations Subcommittee
On the FY 2014 Budget for Native Programs**

Thursday, April 25, 2013

Introduction. Chairman Simpson, Ranking Member Moran and members of the Committee, my name is Brian Patterson. I serve as president of the United South and Eastern Tribes, Inc. (USET), as well as on the Men's Council of the Oneida Nation of New York. Thank you for this opportunity to testify regarding 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 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.

The Role of this Subcommittee – Defending American Values. The role of this Subcommittee, or that of any of the Appropriations subcommittee, is ultimately not about dividing up money and power, but rather determining, deciding and defending American values. For example, under budget sequestration the Veterans Administration's hospital system is exempt. That demonstrates a great American value – fulfilling the commitment to honor our obligations to those who put their lives on the line to defend American freedom. I think we can be confident that the VA subcommittee will defend this exempt status in the VA budget. However, it is not an American value that the Indian Health Service is not exempted, putting the life, health and well-being of generations of Native peoples at risk in a system that already strains to deliver basic healthcare. This Subcommittee can and should fund the IHS at a level that would offset the sequester amount and in doing this defend another great American value – our Nation's commitment to its First Peoples.

Similarly, the sequestration exempted many low-income programs (*e.g.*, Child Care Entitlement to States; Child Health Insurance Fund; Family Support Programs and Temporary Assistance for Needy Families) demonstrating the great American value that we will leave nobody behind when it comes to basic needs.

And yet, the sequestration applies fully to virtually all Federal Indian programs, even though many Native communities suffer the worst social and economic statistics in the country, largely due to Federal action and policies in place over the last two hundred years. The application of sequestration to Native programs is not an American value. Federal budget problems should not be addressed on the back of Native peoples. USET respectfully asks that this Subcommittee support funding increases for Federal Indian programs that 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. As described below, Federal Indian program should not be deemed discretionary, but rather mandatory.

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:

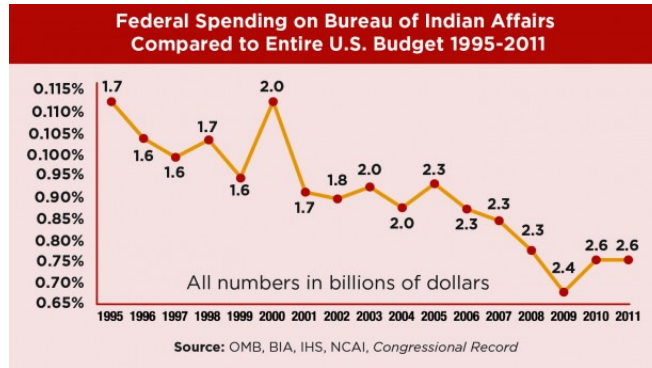
The purpose behind the trust is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs 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.

Carcieri and Patchak Fixes. Several years ago, this Subcommittee included *Carcieri* fix language in its appropriations bill. In doing so, this Subcommittee was seeking to overturn the unjust Supreme Court decision in *Carcieri v. Salazar* which has led to two classes of Tribes – those that can take land into trust and build up their communities and those that cannot. Such distinctions do not reflect American values. USET asks that this Subcommittee take up the fight for fair and equal treatment of all Tribal nations and, once again, advance a *Carcieri* fix. We also ask that the Subcommittee support a *Patchak* fix, a ruling which affects every Tribe by providing that even up to six years after land has been taken into trust a suit can be brought challenging that decision. *Both of these holdings are severely hampering economic development in Indian Country*

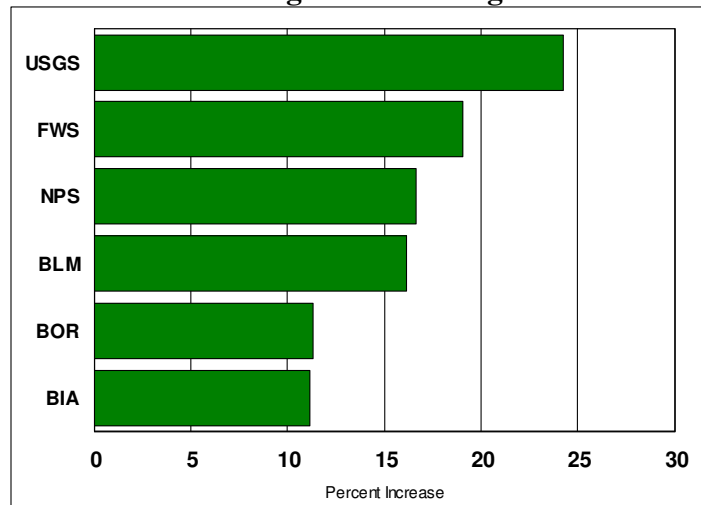
Inflation and the Budget for Federal Indian Programs. In evaluating whether the Federal budget fulfills the Trust responsibility, USET believes that it is critical to take into account the affects of inflation. From FY 2002 through FY 2008, despite annual increases, after taking into account the affect 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 12 years, Indian country needs have grown substantially. And, of course, the FY 2002 levels were inadequate to address the needs of Indian country or to fulfill the Federal government's trust obligation.

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). Below that chart is another which demonstrates that over the last ten years, when funding increases have come to the Department of the Interior they have been greater for other major agencies within the Department than for the Bureau of Indian Affairs.



Budget Increases for the 6 Largest Interior Agencies FY2004 to FY 2014



Support Tribal Sovereignty in the Area of Taxation. With the stress on the Federal budget, Tribal tax rights become more important, both for economic reasons of self-sufficiency and as a matter of sovereignty. USET is working on proposed tax legislation that will address a number of inequities in the tax system, including a lack of parity for tribal governments. We ask that this Subcommittee be supportive of this effort as we work on addressing the larger budget picture for all of Indian Country.

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. We ask that this Subcommittee create a budget based on American values that reflects the trust responsibility and fair dealing for Indian Tribes.