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**TESTIMONY OF THE HONORABLE EDWARD K. THOMAS, PRESIDENT  
CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA  
ON THE FY 2014 BUDGET REQUEST -- HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE  
April 24, 2013**

GREETINGS FROM ALASKA! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit Haida), a federally recognized Indian tribe of 27,000 tribal citizens. I am honored to provide this testimony on the FY 2014 budget request for the Department of the Interior and Indian program funding. I commend Congress, and especially this Subcommittee, for holding this hearing and giving tribal leaders an opportunity to provide you our perspective on federal funding for Native American programs. One of the most important legal principles in defining the relationship between the federal government and the Indian and Alaska Native Tribes is that of the fiduciary responsibility the United States has to Tribal governments. This hearing, and your appropriations decisions, are very important tools for you to (a) strengthen the federal government's Trust relationship to Tribal governments, and (b) bend federal priorities toward Tribal priorities and needs.

**FUNDING IS NOT BASED ON NEEDS, WHICH ARE MUCH GREATER IN RURAL AREAS.** I have been involved in managing federally-funded tribal programs since 1976, and from that experience, I have concluded that the method of formulating federal budgets for the benefit of needy Native Americans is deficient and ineffective. Each year federal budgets are mostly based upon the previous year's funding; this totally disregards the level of unmet needs in Indian Country. This becomes an even bigger problem when it becomes necessary to reduce overall federal funding.

Our nation's poverty level is at the highest level since 1993. 22 million Americans live in poverty. That is 1 in every 6 Americans. 22% of all American children live in poverty. These national poverty levels are much higher in rural, tribal communities. In rural Alaska, higher energy costs have compounded the already depressed economy in these remote areas. The cost of living in certain parts of rural Alaska is nearly twice that of the average cost of living elsewhere in the United States. Electricity costs are often 4 to 5 times higher. Over the past decade funding for Native American programs has not even kept pace with national inflation rates let alone the dramatic inflationary costs in rural Alaska.

**NON-BIA AGENCIES HAVE RECEIVED FUNDING PRIORITY IN THE INTERIOR DEPARTMENT.** Between FY 2004 and 2012 the Bureau of Indian Affairs (BIA) budget grew 8%. Over that same period of time funding for non-BIA programs in the Department of the Interior grew at a much greater rate: Fish & Wildlife by 30%; Park Services by 27%; Geological Surveys by 18%; and Bureau of Land Management by 13%. It stands to reason that funding to needy tribal communities could be increased to meet our shortfalls in the FY 2014 budget if these non-BIA agencies were reduced to the 2004 funding levels plus 8%.

Under sequestration, the federal government insisted that FY 2013 budget cuts be applied “across-the-board” in order to be equitable. But that approach perpetuates the **inequity** of the past decade, when the Executive and Legislative branches have de-prioritized Indian funding in favor of non-Indian programs at the Interior Department. It would have been far more equitable to apply greater sequester cuts to those Interior agencies which enjoyed greater increases during the past decade. BIA and tribal programs did not equitably participate in funding growths but are forced to equally participate in budget cuts.

While President Obama and Secretary Salazar are to be commended for many of their initiatives toward Indian Country, I must say the President's FY 2014 Interior budget request is extremely disappointing and unfair. The FY 2014 Interior budget request turns the President's priorities for Indian Country upside down. While he says he supports tribal governments, President Obama's FY 2014 budget requests an increase of \$455.1 million for **non-Indian** programs at Interior. That's an increase of 5.112% over last year for Interior's non-Indian programs. Compare that to his \$31.3 million increase for **Indian** programs at Interior. That's only a 1.236% increase over last year for Indians. How is this fair? How can this be called equitable? How is this putting the needs of Indian Country first? Our tribal programs provide core governmental services to Indian and Alaska Native families, but we somehow rate less than a fourth of the funding increases that are requested for rocks, critters, fish, water, and parks at Interior? In all fairness, this Subcommittee must correct the Administration's mis-judgment and inequitable budget request.

At the very least, I ask that you increase the Indian tribal budget funding levels to match the Administration's budget request of increases for Interior. But beyond that, I additionally ask that this Subcommittee dramatically reverse the Administration's budget priorities towards vital tribal programs and instead apply catch up increases that make up for the past decade of disproportionately lower funding to tribal programs in the face of growing unmet needs.

**BIA CENTRAL OFFICE HAS GROWN AT THE EXPENSE OF TRIBAL PROGRAMS.** Between FY 2002 and 2008 the BIA Central Office budget grew from \$58 million to \$175 million; a \$117 million (301%) increase. In the same period, funding for Tribal Priority Allocations (TPA) was reduced from \$752 to \$695 million; a \$58 million (7.6%) decrease. I respectfully request that tribal FY 2014 budgets within BIA be increased commensurate to the 5.112% increase in the overall Interior FY 2014 budget request but that you strictly apply the increase to tribal government programs and services and not to BIA administrative operations.

**TLINGIT HAIDA TRIBAL TRUST FUNDS SHOULD NOT HAVE TO PAY FOR FEDERAL RESPONSIBILITIES.** The single biggest factor that financially undermines Tribal Self-Determination and Self-Governance is the federal practice of underfunding or putting caps on indirect costs or Contract Support Costs (CSC). The CSC shortfalls and underfunding have cost my Tribe a total \$4,443,438 from 2006 through 2012; an average of \$555,430 per year. During this same period, my Tribal government provided \$214.7 million (\$26.4 million annually) in contractual program services to assist our needy Tribal citizens. While our people are grateful for the programs designed to help our needy Tribal citizens, we cannot afford to continue to pay this amount of Tribal money to manage these important federal service contracts. Simply put, the difference between the way indirect costs are calculated and the way they are paid by the United States creates an ever-tightening chokehold on my Tribe's ability to administer federal programs. If we follow the law and spend the administrative costs we are required to spend, federal law provides us less and less money to meet these federally-required expenditures. The

more we spend, the less we get. The less we spend, the less we get. Both Congress and the federal agencies have caused this crisis. Together we can solve it.

Federal law specifically states that a tribe who contracts for the management of a federal contract is entitled to the same administrative support as the federal government itself would have were it to retain the management of that contract. Appropriations legislation that underfunds contract support costs violates this provision of federal law and severely undermines the concept of tribal Self-Determination.

Tlingit Haida diligently tries to abide by federal laws that set our indirect cost rates and to live within other federal appropriations laws that provide us much less than the federal government's own audits say we should collect from each agency to manage contracts for them. We were forced to pull more than \$4 million over the past four years out of our modest Trust Fund earnings in order to meet the CSC shortfall costs we were stuck with by the United States. We cannot continue to afford to pay for these federal responsibility costs going into the future. There are no gaming tribes in Alaska; the economy in rural Alaska is weak to non-existent; and unemployment rates in some of our villages often exceed 50%.

**INDIRECT COSTS ARE FIXED COST REQUIREMENTS.** If indirect costs were not primarily "fixed" costs, the recurring problem of a shortfall in BIA CSC funding would, perhaps, be survivable. But most of our actual indirect costs are "fixed". For example, typically the most cost-effective way to acquire facility space or equipment is through a long-term lease with locked-in costs. Similarly, package deals for telephone and some forms of transportation offer significant cost savings over time. And obviously, the salary and benefit costs of accounting, administrative, and management staff must be treated as "fixed" or else we cannot hire or keep employees. When federal agencies do not send us 100% of the funds required by our federally-set indirect cost rate, we have a shortfall associated with our operation of BIA programs and something has to give.

We refer to tribal CSC funding as a "requirement" -- not a "need". CSC costs are requirements because they are derived from audits conducted by the National Business Center (NBC) on behalf of the federal government who sets rates that are used uniformly by all federal agencies with which Tlingit Haida manages a contract or grant. The rates use actual expenditures from prior years to project costs in the future year. Once our federally-established indirect cost rate is set, federal law requires that our Tribe apply that federal rate uniformly to all the programs we administer. In other words, federal law requires us to spend money on administrative costs but will not let us charge all of that spending to the federal grants and contracts.

Another problem is that the Single Audit Act requires a tribal contractor's cognizant agency (e.g., Department of the Interior) to audit the indirect costs of the tribal contractor and establish an indirect cost rate that must be applied to all programs the tribal contractor administers. If that rate is 25%, and a program like Head Start caps administrative cost recovery from its funding at 15%, the law requires the tribal contractor to pay the difference from non-federal funds or through a rate increase the following year that will obtain a higher recovery from BIA's contract support cost fund in future years.

Let me be clear. We would spiral into complete financial disaster as a Tribe if we chose to not spend at the budgeted amounts. Failing to pay certain fixed costs would actually increase our costs (breaking leases, terminating employees, breaching contracts). The P.L. 93-638 language which supposedly protects Tribal contractors against theoretical under-recovery does work with respect to BIA funds, but historical underfunding of CSC has caused our Tribe very serious

difficulties in dealing with shortfalls in non-BIA programs for which we must, by law, use the same indirect cost rate. If in year one we don't spend uniformly on all programs, BIA and non-BIA alike, this will increase the approved rate for the following year because the amounts not collected from the agencies are available to add on to the CSC for the subsequent year. Tlingit Haida, in our efforts to keep our CSC indirect cost rates lower has chosen not to carry all of those costs forward and so has had to pay the shortfalls out of non-federal sources. But Tlingit Haida, and many other tribes, have very few non-federal sources of funding. For these reasons, I ask your consideration of including the following bill language in the FY 2013 Interior appropriations law. It would provide flexibility to Tlingit Haida and other tribes caught by a crushing, unfunded federal mandate.

**PROPOSED NEW FY 2014 BILL LANGUAGE:** "Notwithstanding any otherwise applicable administrative cost limitations, federal funds made available under this or any other appropriations act for fiscal year 2014 to an Indian tribe may, at the option of the tribe, pay for approved indirect costs associated with the administration by the tribe of federal programs under authority other than Pub.L. 93-638, without limiting any claim of the tribe for shortfalls in contract support cost funding pursuant to Pub.L. 93-638, provided that such costs are calculated in conformity with the federally-determined indirect cost rate agreement of that tribe and the relevant OMB circulars." *[Intent and Effect Of Bill Language: The proposed amendment is intended to apply a tribal contractor's uniform indirect cost rate established under the Single Audit Act to recover costs required by that uniform indirect cost rate from each federally-funded award or agreement without regard to any otherwise applicable administrative cost cap limitations otherwise governing those awards or agreements. The proposed amendment would expand existing authority to permit a tribal contractor an additional tribal option -- it would provide tribal authority to use any federally-funded award to meet up to all of a tribe's approved indirect costs that are calculated in conformity with its federally-established indirect cost rate agreement and the relevant OMB circulars without regard to any otherwise applicable administrative cost cap limitations. This would not require any increase in overall federal funding. The funding level of each award would not be affected. It would simply extend flexibility to a tribal contractor to apply its federally-awarded funds to meet federally-required administrative costs. This would be a huge benefit to tribal contractors, like Tlingit Haida, who are providing services in high-cost areas with few or no financial resources other than federal awards and grants.]*

**WE ENDORSE THE NCAI POSITION OPPOSING THE ADMINISTRATION'S REQUEST TO CAP CSC.** We join with NCAI in opposing the President's request to place individual statutory tribal caps on the payment of contract support costs. We ask that you maintain in FY 2014 and FY 2015 the status quo statutory language on CSC enacted in FY 2013, until there is full tribal consultation on the Administration's proposed new language on individual statutory tribal CSC caps.

**CONCLUSION.** I respectfully request that the federal government reimburse the Central Council of the Tlingit and Haida Indian Tribes of Alaska the \$4,163,350 that we spent out of the trust fund pockets of our people to manage federal programs from FY 2006 to FY 2012. This is money that the federal government would have spent on administration had it managed those programs themselves. I very much understand the serious financial challenges facing the federal government. It is vitally important that there be a balanced approach in addressing federal budget deficits. Balancing our nation's budget on the backs of the programs serving the needy will not work. I thank you for the opportunity to share my views with you. I wish you well in your deliberations and I trust you will make the right decisions on the issues of grave concern to our people.

**GUNALCHEESH! HOWA! THANK YOU!**