

**Testimony of Carri Jones, Chairwoman, Leech Lake Band of Ojibwe
House Interior Appropriations Subcommittee
April 25, 2013**

My name is Carri Jones, and I am the Chairwoman of the Leech Lake Band of Ojibwe (Band). Our Band is located on the Leech Lake Reservation in northern Minnesota. I want to thank Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee for holding this *American Indian and Alaskan Native Public and Outside Witness* hearing to examine the critical funding needs of Indian country. I would like to especially thank Representative McCollum for her tireless efforts to assist the Band in addressing our priorities. We are deeply grateful for her support.

My testimony is focused on the Band's long struggle to replace the Bug O Nay Ge Shig School High School (High School) facility, which is administered and funded by the Bureau of Indian Affairs' (BIA) Bureau of Indian Education (BIE).

U.S Responsibility to Provide for the Education of American Indian Students

Before discussing the specific needs of the High School, I want to touch on the history of Indian education in the United States. Several federal laws, treaties, and policies acknowledge the federal government's obligation to provide for the education of American Indian children. The Band's Reservation was established through a series of treaties with the U.S. and presidential executive orders. *See* Treaties of February 22, 1855 (10 Stat. 1165) and March 19, 1867 (Article I, 16 Stat. 719); Executive Orders of October 29, 1873; November 4, 1873; and May 26, 1874.

Through these treaties and executive orders, our ancestors ceded to the United States significant tracts of our homelands. In return, the U.S. promised to provide for school buildings, teachers, and the education of our youth. Hundreds of thousands of additional acres of our homelands were taken from us pursuant to the land allotment mandates of the federal Nelson Act in 1889, which is the Minnesota version of the General Allotment Act. As with the various treaty promises made to our people, one focus of the Nelson Act was to dedicate funds generated from these lands for "the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit." These treaty promises have no expiration dates and remain the law of the land. Sadly, these promises have not been kept.

Dire Need to Replace High School Facility at Bug O Nay Ge Shig School

The Bug O Nay Ge Shig School (School) is located in Bena, Minnesota, operated by the Band and governed by its School Board. It is named in honor of Bug-O-Nay-Ge-Shig (Hole in the Day), an Ojibwe man who lived in the area at the turn of the century. He is revered for his commitment to fight for our land, our people, and for our children. The School serves nearly 300 Indian children in grades K-12. Some of the kids ride school buses for 2 hours one-way everyday to attend school. Founded in 1975, the School started modestly with 35 Ojibwe students from the Reservation in response to parental concerns that public schools were not meeting the academic and cultural needs of our students. Since that time, the School has transformed itself into a magnet school, teaching state-approved curricula with Ojibwe cultural components. The existing enrollment is a testament to the passion of the students, parents and teachers who are committed to strong academic achievement despite the significant deficiencies

and health and safety hazards present at our High School.

The High School is in dire need of replacement. Unlike other schools in the BIE inventory, the High School facility was not originally built for use as academic space. It is a metal-clad pole barn originally built to house an auto mechanic school and bus garage. When the building was transformed into the High School, the intention was that it would only be a temporary space. However, generations of students have attended school in this makeshift building. The facility has serious structural and mechanical deficiencies and lacks proper insulation. The facility does not meet basic safety, fire, and security standards due to the flimsiness of the construction materials, electrical problems, and lack of alarm systems. Further, the building lacks a communication intercom system, telecommunication technology, and safe zones, which puts students, teachers, and staff at great risk in emergency situations. The police and emergency responders have dubbed the high school building as “Killer Hall” because an emergency would likely have tragic results. In addition, in high wind situations over 40 mph, the students must evacuate outside into the winds because of the structural flaws with the flat metal building.

The High School facility presents a continuing threat to the health and safety of our students and faculty due to poor indoor air quality that contains mold, fungus, and a faulty HVAC system. The facility also suffers from rodent and bat infestation, roof leaks and sagging roofs, holes in the roofs from ice, uneven floors, exposed wiring, poor lighting, sewer problems, lack of handicap access, and lack of classroom and other space. These are just a few of the facility’s numerous deficiencies. Due to the unsafe surroundings, many students have withdrawn from our High School and have transferred to public high school. Students report being embarrassed about the condition of the High School, which results in a negative image of the School and a lower matriculation rate. Despite these challenging conditions, the students perform well. For example, the School has won many awards for its language immersion program and our students are successful compared to their performance at other area schools.

BIA Acknowledges that the High School is in Urgent Need of Replacement

The High School is on the BIA’s list of schools in need of replacement. The BIA also categorizes the high school facility as being in “poor” condition. In 2007, the BIA Midwest Regional Office for the Office of Indian Education Programs issued a report expressing strong concerns about the electrical problems, potential fire issues, and student safety. The BIA Office of Facilities, Environmental, Safety, and Cultural Management had documented the numerous and serious deficiencies of the High School.

In a February 28, 2011, letter responding to Ranking Member Moran’s inquiry about the High School, former Interior Assistant Secretary for Indian Affairs Larry EchoHawk stated:

The Bug O Nay Ge Shig High School shows evidence of continuing deterioration . . . Due to the type of construction of the Bug O Nay Ge Shig High School, improvements to the school such as expansion or construction of one building for classrooms or administrative space is not an optimum solution. **Preliminary evaluations indicate that the building should be replaced** (emphasis added). The estimated date of replacement will depend on the priority ranking of the high school and amount of funds available to correct school facility deficiencies through education construction

appropriations.

The High School is among the more than 63 schools funded by the BIE that are in poor condition. There exists a more than \$1.3 billion BIE construction backlog. However, the BIA's FY14 budget request proposes to eliminate funding for replacing BIE school facilities and focuses instead on facilities improvement and repair. This is unacceptable. The High School is in such sub-standard condition that no amount of repairs or improvements will turn it into an adequate school facility. The High School is beyond band-aid repairs.

Working collaboratively with our community and with architects, we have developed construction and design plans for a new High School that will serve as a local anchor for cultural, environmental and economic sustainability. To meet these objectives, we must first provide our children with a learning environment conducive to academic achievement. We are ready to move forward but we need the Subcommittee's help. The BIA estimates that the cost to replace the High School facility is approximately \$25 million, which includes a 42% BIA administrative cost of \$7.4 million. We are well aware of the difficult funding decisions that this Subcommittee faces. However, the long overdue replacement of this dangerous building is a small price to pay given the great sacrifices made by the Leech Lake people to help shape this Nation.

Federal Laws and Policies Support Addressing the BIE Construction Backlog

The solemn commitment to improve the educational opportunities of Indian children is embodied in a number of federal laws, regulations, policies, and executive orders. A core aspect of implementing these directives is the requirement that the federal agencies consult with Indian country pursuant to Executive Order 13175. For example, section 7101 of Title VII of the No Child Left Behind Act (NCLB) states:

It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. **The Federal Government will continue to work with . . . Indian tribes** (emphasis added) . . . toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.

On December 5, 2011, President Obama signed Executive Order 13592, "Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities", which established the White House Initiative on American Indian and Alaska Native Education" to help improve educational opportunities of Indian children. On December 3, 2012, the Departments of Interior and Education entered into a MOU to implement the Executive Order, which allows both Departments to work together to coordinate "expertise, resources, and facilities" and requires the Departments to consult regularly. In accordance with these legal and policy obligations, the United States must work with us to seek a solution to ensure that our children go to school in adequate facilities.

Unfortunately, the BIA's FY14 budget request does not align with its legal and policy obligations. By eliminating funding to replace school facilities to instead focus solely on facilities repair and improvement, we believe the Administration has changed its policies

altogether. In effect, the Administration's actions operate as a moratorium on BIE school construction. We are alarmed by the Administration's policy shift and we are concerned that the Office of Management and Budget (OMB), who appears to be dictating this approach, has a clandestine long-term goal to terminate BIE schools despite its trust responsibilities. The Administration has not consulted with Indian country on this proposed policy change in direct violation of its own policy requiring government-to-government consultation.

In the past decade, funding for school construction has dramatically decreased. For example, the President's FY14 budget request solely for school improvement and repair is \$52.3 million, which is a proposed cut of \$18.5 million from the FY12 enacted level and a cut of \$88 million from the FY11 actual level – both of which had included proposed funding for school and facility replacement in addition to school improvement and repair. The FY05 enacted level for Indian school construction was \$263.3 million, the FY06 enacted level was \$208.9 million, the FY07 level was \$204.9 million, the FY08 level was \$142.9 million, the FY09 level was \$128.8 million, the FY10 level was \$113 million, the FY11 level was \$140.509 million, the FY12 level was \$70.826, and, as noted above, the proposed level for FY14 is a dismal \$52.3 million, which is limited to school improvement and repair.

The Administration's failure to request and Congress' failure to appropriate sufficient funding for BIE school construction is unconscionable. Recent DOI Office of Inspector General reports find "severe deficiencies" at BIE schools that "have the potential to **seriously injure or kill students and faculty** and require immediate attention to mitigate the problems." Department of the Interior Office of Inspector General Flash Report, *Bureau of Indian Affairs and Bureau of Indian Education: Schools in Need of Immediate Action*, C-IN-BIA-0008-2007 (May 2007) (emphasis added). In addition, in December of 2012, Assistant Secretary Washburn sent to Congress a 2011 report titled, *Report of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee*, (Committee) which makes recommendations for "improving the process for prioritizing the repair and replacement of school facilities maintained" by the BIA. The Department of the Interior established the Committee pursuant to the requirements of the NCLB. Included in the Committee's recommendations for the BIA to consider is a funding request to bring "all Bureau-funded schools into acceptable condition." Further, the Committee finds that 1/3 of the 183 BIE schools are in poor condition and in significant need of repair or replacement. Of the 4,495 education buildings in the BIA inventory, half are more than 30 years old and more than 20% are older than 50 years. On average, BIA education buildings are 60 years old, while the industry standard for public schools is 40 years. Despite these shortcomings, the BIA's FY14 budget request fails to meet its treaty and trust obligations to tribes and ignores Indian country's request and its own Committee's recommendation for school construction funding.

Conclusion

Our students deserve the opportunity to attend school in an environment where they can focus on learning first, and not on their health or safety. We urge the Subcommittee to work with DOI and the Band to develop a plan of action to quickly identify the funding to address the construction needs at the High School. Thank you for your time and consideration of our request for funding to replace the High School at the Bug O Nay Ge Shig School.