

**TESTIMONY OF CAROLE LANKFORD, VICE CHAIRMAN, CONFEDERATED
SALISH AND KOOTENAI TRIBES
SUBMITTED TO THE HOUSE APPROPRIATIONS SUBCOMMITTEE FOR THE
INTERIOR, ENVIRONMENT, AND RELATED AGENCIES ON FY 2014
APPROPRIATIONS**

Impact of Forestry and Fire related Budgets on the Tribal Economy

APRIL 25, 2013

Mr. Chairman, I am Carole Lankford, Vice Chairman, of the Confederated Salish and Kootenai Tribes (CSKT) of the 1.3 million acre Flathead Reservation in Western Montana. The CSKT is a large land based Tribe and a participant and proponent of the DOI Self-Governance Initiative. We are proud to be one of the original ten tribes when Self Governance was merely a pilot project. We are also proud to now directly operate every BIA program on our Reservation via Self Governance agreements and are proud that we were the first Tribe in the United States to take over management of a BIA Title Plant. We are honored by the fact that the BIA often suggests to other tribes that they come visit us to see how professionally a federal program can be operated under contract. The CSKT also operate all Indian Health Service programs excluding the Contract Health Service (CHS).

Speaking of visiting Mr. Chairman, we would like to point out that when you are in the northern part of your district, for instance in Gibbonsville in Lemhi County, if you get on I-93, head north and don't get off, you'll end up in Pablo, Montana, our government's headquarters, in less than three hours. We would be so honored if you visited us this summer. We have a greatest respect for your understanding of the legal Federal/Tribal relationship and the many actions you have taken to protect and enhance that relationship.

Mr. Chairman, while there are many issues of importance to us, we have decided to focus on one matter this year – **the BIA and DOI FY 14 Forestry and Fire Related budget** – because the actions of the Administration on this matter are profoundly affecting us.

To summarize:

1) The Tribes respectfully request that this committee firmly direct the Department of the Interior to ensure that programmatic and funding decision they make related to forestry and fire activities on Tribal lands reflect the unique fiduciary trust relationship between the United States and Tribal Nations. We respectfully request that the fiduciary responsibility standard be defined as the highest standard of care and that Interior be directed to ensure its funding decisions reflect that defined fiduciary trust responsibility standard and binding legal relationship. In the historic case of *US. v. Mitchell* (1983), which addressed the issue of the Interior Department's mismanagement of timber on the Quinault Indian Reservation, the Supreme Court noted, in affirming the decision of the Court of Claims, that it is well established that a trustee is liable for damages in cases of a breach of fiduciary duties. The majority wrote that it "naturally follows that the Government should be liable in damages for the breach of its fiduciary duties."

2) Within the DOI Wildland Fire management:

A) We request that this Committee restore **Hazard Fuels Reduction** funding to the \$206 million level it was at in FY 2010, and

B) We ask that you remove BIA/tribal projects from the DOI Hazardous Fuels Priority Allocation System (HFPAS) funding formula and set an annual minimum BIA/tribal allocation at 25% of the DOI hazard fuel allocation but no less than \$50 million;

3) In BIA TPA Forestry, we support the Administration's \$5.1 million increase and the increase by \$5 million to begin moving BIA Forestry toward parity with similar federal forestry budgets;

4) For BIA Cooperative Landscape Conservation, we support the Administration's \$10 million request and direct that those funds serve tribally-based activities;

5) Within BIA Agriculture and Range, we support increased funding to combat invasive species, and support the \$2.4 million proposed among various BIA programs to engage youth in the natural sciences.

HFPAS – A Direct Affront to the Fiduciary Trust Responsibility Owed Federally Recognized Tribes

On a dollar-per-acre basis, BIA funding has long been far below any other Interior land management agency. Estimates provided to the Secretarial Trust Commission in February 2013 put Forest Service land funding at \$7.50 per acre, and BIA per acre land funding at \$3.50 per acre. Tribal governments and individual tribal members depend on their lands and resources for income, jobs and subsistence.

Our experience with the HFPAS model was shocking and will exacerbate the inequity described above. It would appear that not only was no one in the Office of Wildland Fire was familiar with the above referenced *Mitchell* case and the liability that the US accrued as a result but we wonder if the authors of the HFPAS formula were familiar with the more recent Cobell litigation or the 41 more recent Salazar trust mismanagement cases, the latter of which resulted in the US paying out over \$1 billion due to its liability for mismanaging the assets and resources of those 41 tribes. We say this because the HFPAS formula was blatantly biased against BIA and Tribal lands and it was a formula under which Indian country was not consulted. It was only a few weeks ago, after a solid year of complaining by timber tribes, that the BIA held its first consultation with us on the HFPAS formula but this was years after the horse was out of the barn, the formula implemented and our funds were cut. One indication of how skewed the formula is can be seen by the fact that despite having hundreds of thousands of acres of land that are susceptible to fire, and despite having a highly regarded hazardous fuels reduction program, our allocation under the new formula was proposed to decrease by 94%! Other tribes in the northwest, including one that has the largest stand of timber in the country, were scheduled to be reduced by even higher amounts. We objected strongly and via "management considerations" some of our hazardous fuels funds were restored but we and the BIA still suffered reductions at a much higher percentage than did the Department as a whole from reduced appropriations. From FY 2011 to FY 2013 our Hazardous Fuels Project Funding level was reduced by 68%.

The HFPAS formula is extremely complex and we are submitting supplemental material for the Committee to review so that you will have an understanding of it including four letters that we have sent in, as well as letters from the Yakama Nation, the Intertribal Timber Council, Senators Baucus and Tester, and the Northwest Regional Office of the BIA. We are also attaching a power

point presentation that demonstrates how the formula is flawed. But just a few anecdotal examples are that if a tribe's land is surrounded by other DOI land you get extra points because of the concern of fire spread but since much of our land is surrounded by USFS lands (owned by USDA and not DOI), the DOI formula is not concerned with *that* spread. So we lost points because our Fire Planning Unit (FPU) includes the USFS. There is also an emphasis and extra points for "treasured landscapes" but no tribal land may be given treasured status. There were also many clear examples of non-BIA agencies that gamed the system including one that claimed a 99 year benefit by treating grass (without using cement!!) and others that had never hired Indians but claimed they would and got extra points. Points for protecting lands held in trust for tribes by the Federal government were not a part of the formula nor were points for crown fire involving valuable timber when compared to grass..

We understand that this Committee has expressed frustration with the Federal government's Wildland Fire Program and its duplication of efforts across agencies. We also understand that GAO reports have faulted the Wildland Fire Program and that the Interior Department was under pressure to justify its Hazardous Fuels Reduction program. HFPAS was the answer they came up with but it just cannot withstand scrutiny. DOI's own after action review unveiled flaws and while touting transparency, there aren't half a dozen people in the country who can explain it or understand it. We ask this Committee to direct DOI to shelve the HFPAS formula, to read Executive Order 13175 (which explicitly requires the federal government and its agencies "to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes") and to set aside 25% of Hazardous Fuels dollars for the BIA or involve Indian tribes with a new formula that will include tribal trust responsibility and start over again. We think the 25% proposal makes the most sense and will be easiest for DOI to implement.

The HFPAS system has eroded Trust responsibility and placed trust lands in jeopardy for increased fire, invasive species degradation, less employment, and overall reduced productivity. HFPAS incorporated 2 models to identify the so called Highest Priority Projects (the Project Prioritization System, PPS) in the Highest Priority Places (Ecosystem Management Decision Support, EMDS). The attachments showed how the PPS and EMDS components are flawed. Beyond their economic importance, Tribal forests sustain habitats for fish and wildlife, produce foods, medicines, fuel, and materials for shelter. Healthy Tribal forests are essential for a healthy Tribal economy, culture and spiritual wellbeing. The current budget proposal is directly contrary to the goals in the federally sponsored National Cohesive Wildland Fire Management Strategy: Phase II report, namely to "Restore and Maintain Landscapes". The current budget proposes funding runaway suppression costs at the expense of proactive and effective fuel treatments.

We support your past direction that the Department should not emphasize the Wildland Urban Interface (WUI) and we urge that you again include language prohibiting an emphasis on hazardous fuels dollars being directed to the WUI.

Support the \$5.1 million increase for the BIA TPA Forestry program, and the \$5 million increase to begin moving BIA Forestry toward parity with similar federal forestry budgets.

The CSKT urges this Subcommittee to adopt the \$5.1 million FY 2014 increase requested for BIA Forestry, and to further add an additional \$5 million to begin moving BIA Forestry toward

parity with other federal forestry budgets. The independent 1993 and 2003 IFMAT reports documented that the BIA Forestry per-acre management funding is far less than half that provided for National Forests and state and private forests, and we believe the 2013 IFMAT report will update and corroborate those findings. **IFMAT I and II reports also document that Indian forestry is the most productive and innovative on federal lands.** Tribes tend to keep their saw mills open and their forest products workforce engaged. Yet the long-documented underfunding has taken a toll, as demonstrated in the many recent tribal trust fund and resource mismanagement lawsuit settlements. Supporting the proposed \$5.1 million BIA Forestry increase and supplementing that with an additional \$5 million will start to shore-up the eroded federal trust responsibility, make a needed investment in the single most productive federal timber program, and provide jobs and countless social and economic benefits for tribal communities.

Support the Administration's \$10 million request For BIA Cooperative Landscape Conservation and direct that those funds serve tribally-based activities.

We support the FY 2014 requested increase in BIA Cooperative Landscape Conservation (CLC) to \$10 million. As the principal trustee delegate of the United States, the BIA has responsibility to care for 10% of the Interior Department's total 500 million acres. The dependence upon land and resources makes Indian peoples among the most vulnerable to climate change. Yet there has been little or no funding for substantive tribal participation in Interior's previous CLC initiatives. Interior's FY 2014 CLC proposal for BIA finally begins to correct that disparity. In supporting the \$10 million, we also urge the Subcommittee to assure that all or at least most (90%) of that funding be directed to Tribal projects on the ground.

Support increased funding to combat invasive species within BIA Natural Resources Budget

Although specifics for the proposed FY 14 Administration increase for these programs are not available as of this writing, the CSKT supports efforts to reduce adverse impacts of invasive species. There is a direct relationship with land productivity and invasive species. One year, the CSKT received less than \$1,000 in BIA weed funding, to perform weed treatment on over 500,000 acres of Tribal trust lands. Trust property must be protected and nurtured as it provides resources and employment for Tribal economies that are some of the poorest communities in the United States.

Mr. Chairman, funding for Indian programs is a very minor fraction of the overall budget, but the United States has a well-established duty to honor its special relationship to tribes and its fiduciary trust obligations to care for our land and resources. We thank you for your commitment to these historic and enduring responsibilities.

For FY 2014, with the notable exception of Hazardous Fuels, the Administration's proposed BIA budget does support some long-needed improvement in management of our trust resources. Investments in improving the health and productivity of our natural resources will have far-reaching economic and cultural benefits for tribal communities.

Thank you.

Attachments (not for hearing record)