

**Written Testimony of Kitcki Carroll, Executive Director  
United South and Eastern Tribes, Inc.  
House Interior, Environment and Related Agencies Appropriations Subcommittee  
Hearing on the FY 2015 Federal Indian Program Budget  
Monday, April 7, 2014**

**Introduction.** Chairman Calvert, Ranking Member Moran and members of the Committee, my name is Kitcki Carroll. I serve as the executive director of the United South and Eastern Tribes, Inc. (USET). Thank you for this Committee's consistent support for increased funding for Federal Indian programs.

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 compared to 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 Tribes have highly developed economies, while others remain mired in poverty.

**The Role of this Committee – Defending American Values, such as the Trust Responsibility.** The role of this Committee, or that of any of the Congressional committees, 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 was 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. However, it is not an American value that the Indian Health Service was 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 Committee can and should demand that the IHS and, indeed, all Federal Indian programs be funded in a manner consistent with an important American value – our Nation's commitment to its First Peoples.

**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 100<sup>th</sup> 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 200<sup>th</sup> 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, 100<sup>th</sup> 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.

**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 and should be considered mandatory in nature.** 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.

**The Spectre of Sequestration Remains.** The budget sequestration of FY 2013 was devastating to Federal Indian programs and to the tribal communities they serve. While Congress has provided an alternative budget structure for FY 2014 and FY 2015, sequestration could be re-imposed in FY 2016. Although this may seem early to raise this concern, USET urges the Committee to educate other members of the House that the application of sequestration to Indian programs violates the trust responsibility, does not make economic sense, and should not be countenanced going forward. For example, when some Federal health programs were rightfully exempted from sequestration, it was morally wrong that the Indian Health Service was not. That should not happen again.

**Contract Support Costs – Robbing Peter to Pay Paul.** Congress provided that the Indian Health Service and the Bureau of Indian Affairs must pay the full amount of contract support costs in FY 2014, as they are contractually obligated to do anyway! However, Congress, while fully funding CSC in FY14, did so principally through restoration of pre-sequestration funding. This meant that fully funding CSC was at the expense of other Federal Indian programs. Full funding for CSC must not come with a penalty – namely, a reduction in program funding or effective permanent sequestration of Indian program funds. Additionally, the settlement of past CSC claims must be prioritized and resolved expeditiously.

**Fundamental Philosophical Flaw in the Tribal Interior Budget Council (TBIC) Format.** The TBIC is structured in a fashion that results in a warping of Tribal views. Federal representatives to TBIC urge Tribal leaders to prioritize areas of need, a virtually impossible task for many Tribal communities where deficiencies are found in all areas of development and social need. Although this is pointed out, Federal officials respond that

in the absence of Tribal guidance the officials themselves will set the priorities. At that point Tribal leaders, reluctantly, attempt to prioritize the needs of their communities. Setting such priorities should not be used against important Tribal interests. For example, when a Tribal leader brings up a “non-prioritized” need, Federal officials should not use as an excuse for not supporting that need that Tribal leaders did not prioritize it. The bottom line: while the Federal-Tribal Nation relationship is understood to be “special” and “unique”, the budget process currently utilized does not allow for the United States to fulfill its fiduciary trust responsibilities and obligations. The process needs to move away from a “needs based” understanding to a “fulfilling obligations” understanding.

**Advancing the Appropriations Process by Providing for Advance Appropriations.**

Advance appropriations are enacted a year before the funds become available, thus allowing the federal agency knowledge of its funding level a year in advance. For example, if IHS was receiving funding on an advance appropriations schedule, its FY 2014 appropriations would have been enacted as part of a FY 2013 appropriations act and the IHS and tribal health care providers would not have entered FY 2014 with no knowledge of what amount of funding to expect. Instead, the IHS had to furlough some employees and had others working on an unpaid status. Tribal health care providers were similarly affected. USET urges the adoption of Advance Appropriations for the IHS.

**Medicare-Like Rate Caps – Stretching Precious Federal Health Care Dollars.**

In 2003, Congress amended XVIII of the Social Security Act to require Medicare-participating hospitals to accept patients referred from the Indian Health Service and Tribal Purchased/Referred Care programs and to accept payment at no more than Medicare rates – the Medicare-Like Rate cap – for the services provided. However, unlike other federal health care programs, the IHS and Tribal Purchased/Referred Care programs routinely continue to pay full billed charges for non-hospital services, resulting in needless waste of scarce federal Purchased/Referred Care funds. Because Purchased/Referred programs continue to pay full billed charges for non-hospital services, in many cases the Indian Health Service may only treat the most desperate “Life” or “Limb” cases, leading to many undesirable health outcomes for American Indians and Alaska Natives, and ultimately increasing costs to the Purchased/Referred Care programs. In the near future, legislation will be introduced to provide for the application of the Medicare-Like Rate cap to all IHS Medicare-participating providers and suppliers. In April 2013, GAO recommended that Congress enact such legislation, and HHS concurred in that recommendation. USET urges this Committee to strongly endorse such legislation and support its rapid advancement.

**Carriers Fix – Include in the Appropriations Bill.** This Committee has previously included *Carriers* fix language in its appropriations legislation. In doing so, this Committee has sought to overturn the unjust Supreme Court decision in *Carriers 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. Further, this holding has severely hampered economic development in Indian Country and created a public safety risk through jurisdictional confusion. In an era of Tribal Nation rebuilding and the pursuit of

economic success and prosperity, the confusion and chaos that has resulted from this decision serves as one of our most significant barriers and challenges to this pursuit.

**Fair Funding for Newly Recognized Tribes.** Federal recognition obligates the government to provide for the health and welfare of Tribal nations. Yet, two recently recognized Tribes in the Nashville Area, the Shinnecock and Tonawanda Nations are forced to operate without the appropriated funds for health care services to which they are legally entitled. This has gone on for several years, in spite of previous requests for funding from the IHS. While other Tribes have access to their apportionment of IHS dollars, these Tribes have only a small amount of “bridge” funding through the Purchased and Referred Care program.

**Definition of “Indian” – Support the Indian Definition of “Indian”!** USET joins other Tribes and Tribal Organizations in calling for a fix to inconsistencies in the definition of “Indian” in the Affordable Care Act (ACA) that have resulted in an uneven application of the law to IHS beneficiaries. In addition to a fix through regulation, USET fully supports passage of S. 1575, which would streamline the definitions of Indian in the ACA to reflect the statutory definition of Indian used to determine eligibility for IHS services. While working to favorably report S. 1575, we ask that Congress clarify its intent to the Department of Health and Human Services (HHS) that the special benefits and protections for AI/ANs in the ACA are intended to apply all IHS beneficiaries.

**Health Information Technology – Renew Funding for FY 2015 for the Successful Nashville Area Program.** The IHS has been providing USET with funding to assist Tribes in taking full advantage of their RPMS systems in an attempt to increase GPRA reporting. For FY15, USET was disappointed to learn that IHS does not plan to renew funding for the GPRA program in the Nashville Area. These funds have been vital to the success of USET Tribes, and the IHS in meeting health indicators that are reported to Congress each year. Over time, this data has shown the efficacy of increased funding to the Indian Health Service. We urge Congress to consider additional funds to assist I/T/U in advancing their HIT needs.

**The World has its Eyes upon the United States and its Leadership – the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).** As a sovereign nation, the United States exercises jurisdiction within its boundaries. However, the United States is also part of a community of nations that has come together through the United Nations to develop common principles for the benefit of all mankind. Federal Indian program funding should be measured against international standards as represented in UNDRIP.

**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 Committee continue to support and advocate for a budget based on American values that reflects the trust responsibility and fair dealing with Indian Tribes.