

Contract Support Costs – Past, Present and Future

As a Self-Governance Tribe, Lower Elwha has been impacted by the Federal government's refusal to pay full contract support costs (CSC) to Tribes for contracted and compacted programs for the past two decades. In 2014 and 2015, the Supreme Court determined that Tribes were entitled to CSC. The IHS and BIA began to settle past claims with Tribes. In addition Congress directed the agencies to find a long-term solution to CSC as well as directed them to pay full CSC for 2014 and 2015. The game-changer going forward was the groundbreaking decision by Congress in P.L. 114-113, Consolidated Appropriations Act, 2016 to support the Administration's proposal to create a new account in the appropriations bill specifically for CSC in 2016 and 2017. While we are truly grateful for the progress to date in paying past, present and future CSC to Tribes, there is a proviso in the FY 2017 budget proposal which counters current law. The proviso states that "CSC amounts that are not expended by a Tribe or Tribal organization in the current fiscal year be applied to contract support costs otherwise due in subsequent fiscal years." This language should be removed because the Indian Self-Determination Education and Assistance Act (ISDEAA) already address use and disposition of unexpended contract and compact funds. Therefore, Lower Elwha requests that the Committee deem this provision unnecessary and discontinue it.

We also support the Administration's proposal to fully fund CSC on a mandatory basis in FY 2018-2020, though we would prefer that it begin in FY 2017 and, of course, that it be a permanent, indefinite appropriation.

The Lower Elwha Klallam Tribe

The Lower Elwha Indian Reservation is located at the mouth of the Elwha River where it empties into the Strait of Juan de Fuca on the North Coast of the Olympic Peninsula, about 8 miles west of the City of Port Angeles, Washington. We are a small Tribe, with roughly 1,000 members, and a total land base—Reservation and adjacent trust lands—of about 1,000 acres. To date, our economic development opportunities have been limited and we believe our long-term prospects are tied to natural resources restoration and preservation in an ecologically rich region where an extraction-based economy is well past its prime.

\$5.43 Million - Bureau of Indian Affairs Elwha

1. **\$4.972 Million - Dam Removal and Fisheries Restoration** - Lower Elwha is a salmon people with fishing rights reserved in the 1855 Treaty of Point No Point. We fish in marine waters and in the rivers and streams throughout our usual and accustomed treaty fishing area, including the Elwha River. We are strongly committed to the restoration of fisheries, fish habitat, streams and rivers, and the Port Angeles Harbor. We are the leading advocate for the removal of the two hydro-electric dams on the Elwha River—which is now nearly complete—and in accordance with Congress's direction in the Elwha River Ecosystem and Fisheries Restoration Act of 1992 (Elwha Act), P.L. 102-495, we are working closely with the National Park Service and other agencies to remove the dams, and restore the once famously abundant Elwha River runs of salmon and steelhead. Unfortunately, removal of the dams caused a short term threat to the salmon runs (due to sediment released from behind the former dam sites) and has adversely impacted our small Tribal land base and our Tribal budgets. We urgently need increased Self-Governance funds to support the operation of dam removal mitigation and restoration features and to revive our other Self-Governance activities from which we have been forced to transfer funds to support dam removal mitigation.

a. \$702,000 - Salmon Hatchery O&M Costs - Fish Hatchery Operations Budget for the ongoing operation and maintenance (O&M) of our state-of-the-art hatchery, which went online in 2011. This is a significant increase of \$601,929 annually, but one that is amply justified by the crucial role that our hatchery serves in dam removal and fishery restoration. Our hatchery is a genetic preserve for native Elwha salmonids, which have been on the verge of extirpation from the impacts of the dams and which have been further threatened by the enormous sediment load unleashed by the removal of the dams. The National Marine Fisheries Service (NMFS) would not have approved dam removal under the Endangered Species Act without the hatchery's native salmonid programs. The Tribe should not have to bear the O&M cost of this important restoration facility that in fact benefits the entire region.

b. \$270,000 - Flood Control Levee O&M Costs - The levee on our lands had to be expanded prior to dam removal in order to protect Tribal lands from the newly unleashed Elwha River and to conform to post-Hurricane Katrina standards—clearly it is a mitigation feature of the dam removal project. In passing the Elwha Act in 1992, Congress intended that courts should not be asked to address problems where legislative solutions would be far superior in covering all the bases. Factoring in the inflation rate since 1992 compared to 2016, it is not fathomable that we currently receive only \$10,400 annually to operate this levee.

c. \$4 million for Land Acquisition - The Elwha people have struggled for a century from the harm to their culture and economies caused by the Elwha River dams. We had to endure the delays in starting the dam removal process, we watched the destruction of not only the fisheries but the treaty fishers themselves with the loss of our traditional and cultural livelihood, and we have lost an opportunity—which will only return after another generation—to teach our children the ways of their ancestors and the Elwha life as designed by the Creator. We struggle every day to maintain a lifestyle that has been altered forever because of the impact this has had on our community. Section 7(b) of the Elwha Act authorized the appropriation of \$4 million so that the Secretary could acquire trust lands for the Tribe in Reservation status in Clallam County, Washington, for economic development and housing. These funds have not yet been appropriated and the lands they could provide are desperately needed to revive the lives of the Elwha people.

In 1934, an Interior Department report concluded that the Reservation should be 4,000 acres (for far fewer tribal members than we have today), but currently we have only 1,000 acres, several hundred of which (on the river's side of the levee) have to be maintained in undeveloped state as floodplain habitat. In addition, we need legislative direction to ensure that former hydro-project lands are transferred to the Tribe as contemplated in Section 3(c)(3) of the Elwha Act.

2. \$267,000 – Funding for Tribal Court Enhancement and to implement TLOA and VAWA. Although the Interior Department and the Tribe have identified Tribal Court enhancement as a high priority, Lower Elwha has been unable to adopt the enhanced sentencing provisions authorized by the 2010 Tribal Law and Order Act of 2010 or to exercise expanded Domestic Violence Criminal Jurisdiction under the 2013 Violence Against Women Act because of the lack of adequate base funding for its Tribal Court development. Requested funding will enable our Tribe to do so by providing for: (a) mandatory criminal defense representation (including basic legal assistance for domestic violence victims and representation for parents); (b) detention services; (c) probation services that focus on solutions and restorative justice by sharing coordinated case management and re-entry referrals; and (d) basic court security. Fully funding of TLOA mandated provisions and increased base funding for our Tribal Court will enable

Elwha to benefit from: BIA regional assessments using the Trial Court Program Standards; specific technical assistance and training identified through assessments; targeted training initiatives for specific tribal court personnel (judges; prosecutors; public defenders); development of Tribal Court bench books; identification of funding sources for pilot court programs; captured data covering criminal pre-trial matters to post-conviction issues, and including, any collateral civil legal issues.

3. \$191,000 - Funding for ICW-related services from BIA's Tiwahe (Family) Initiative.

Lower Elwha is facing a community crisis with the increasing number of child abuse/neglect cases, which stem from inordinately high rates of drug/substance abuse by parents or caregivers. Services in all facets of Tribal government are severely impacted by this reality. A coordinated community response must be based on multi-disciplinary, culturally informed case planning and service delivery, coupled with a strong commitment to restorative justice ideals and solutions-based sentencing (in criminal cases). A major obstacle to implementing this approach is our lack of infrastructure to assume jurisdiction over all local cases clearly arising under the Indian Child Welfare Act; in addition, because we are dependent on an inadequate State system for licensing foster care providers, we are often unable to make proper placements to assist our families. The Tribe currently receives only **\$45,000** in Self-Governance for Indian Child Welfare matters. We seek **\$191,000** additional annual funding from the BIA's Tiwahe (Family) Initiative, which would enable the Tribe to assert jurisdiction in its own court system over all cases arising under the ICWA and to become a licensing agency for foster homes.

Indian Health Service Elwha Tribal-Specific Funding Requests – \$500,000 for Elwha Health Department Programs.

Lower Elwha faces a drug abuse and mental health crisis of epidemic proportions that threatens to destroy the potential and the cultural connections of many tribal members. In FY 2015, the Tribe's Mental Health and Chemical Dependency programs served 272 American Indian or Alaskan Native patients and have the potential to reach approximately 1,500 AI/AN beneficiaries within Clallam and Jefferson County. The Tribe currently subsidizes its chemical dependency program with third-party revenue and gaming revenue to fund prevention health initiatives and chemical dependency programs, leaving these critical health epidemics severely underfunded. To remedy this, the Center for Medicare and Medicaid Services formula must be expanded to inpatient chemical dependency treatment programs at the current encounter rate of \$350 per day, with annual increases.

Conclusion

The Lower Elwha Tribe has unique needs arising from our leading role in fisheries restoration, which will provide long-term economic benefit to the entire North Olympic Coast region. We have been a strong partner with numerous Federal agencies but the agencies have not fully addressed the unique impacts on our Tribe of the dams and their removal.

Thank you for your consideration.