

**TESTIMONY OF MAULIAN DANA SMITH
COUNCIL MEMBER, PENOBSCOT NATION**

On behalf of the Penobscot Nation, I want to thank the leadership of the Subcommittee for continuing to hold these public witness hearings. Every tribal nation benefits from federal funding, but we are each unique with different challenges. I believe it is important for the Subcommittee to hear directly from us about how these programs are working. I also want to thank Ms. Chellie Pingree for being a tireless advocate for the tribal nations in Maine. While there are many issues that face the Penobscot Nation, my testimony today will focus on programs within the Bureau of Indian Affairs, Environmental Protection Agency and the Indian Health Service. In addition to receiving testimony, I encourage the Members of the Subcommittee to visit some tribal nations this year so that you can see how these federal programs are working on the ground within our communities. The Penobscot Nation would be happy to host you.

The Penobscot Nation has approximately 2,400 citizens and over 123,000 acres in land holdings, of which nearly 91,000 acres are held in trust by the United States. Within our land holdings are about 200 islands located within approximately 80 miles of the Penobscot River. Indian Island contains our seat of government and our largest housing community.

Combating the Opioid Crisis: Our most critical health and public safety risk is the epidemic of opioid abuse that is creating alarming levels of death, overdoses, crime, juvenile delinquency, unemployment, and family dependence on public assistance within our community. The Penobscot epidemic is a part of the larger statewide opioid epidemic in Maine; in 2016, Maine's tragic total of 378 overdose deaths (313 attributed to opiates) set a third consecutive annual all-time record. The number of EMS NARCAN administrations has quadrupled every year since 2014. One in four deaths in Maine now involve heroin or morphine. Eighty-seven percent of all Penobscot child welfare cases within the last three years involved parental opioid abuse.

Penobscot has been waging a successful battle against this devastating trend through its medically-assisted Suboxone Treatment Program and the Penobscot Court's Healing to Wellness Court Program, the only such tribal programs in the State of Maine. The Healing to Wellness Court has been our most successful tool to combat this epidemic. It involves collaboration between ten tribal departments that work together to develop a holistic treatment and wellness plan for each participant. Participants are referred to the program through our criminal or juvenile justice system or through our child custody or abuse proceedings. None of the graduates of this program have reoffended in the years following their program completion.

So, the program works. The problem is that we only have the resources to serve a portion of those in need. The costs of this program are substantially less than the cost of incarcerating people; and the long-term impacts of trauma within the family and community are significantly reduced. Much of the funding for our Healing to Wellness Court comes from the Department of Justice and the Substance Abuse and Mental Health Services Administration, but we also rely on funding from the following Bureau of Indian Affairs programs (BIA): Public Justice and Safety Programs, including law enforcement and tribal courts; and Human Services programs, including funding for Indian Child Welfare and Social Services. We do our best to cobble together our various programs so that we can develop a comprehensive, coordinated and balanced strategy for combatting the epidemic we are facing. We appreciate that the Omnibus Appropriations bill for FY2017 did not cut these programs and, in fact, provided some small increases. But, we really need some meaningful increases to these programs if we are going to adequately tackle the

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problems and assist these people in becoming productive citizens and contributors to our communities and economy. We encourage the Subcommittee to continue to look to increasing funding for these programs.

I also want to restate a request that was made to the Subcommittee last year: that's the request that the Subcommittee appropriate additional funding for the hiring and assignment of at least one investigator within the Division of Drug Enforcement unit to focus on the tribal communities in Maine. Currently, there are only 47 criminal investigators and 16 school resource officers employed to cover 566 tribal nations throughout the country. The BIA Eastern Region employs 3 drug investigators located in New York and North Carolina to provide drug investigative services for 26 tribes located from Maine to Florida and over to Louisiana. Given the crisis of the situation in Maine, we need a drug investigator specifically designated to our tribal communities and that can work with the State Drug Task Force. The more investigations we can perform, the more people we can get into our Healing to Wellness Court program.

Additionally, the Omnibus Appropriations bill for FY2017 included funding targeted towards tribes affected by Public Law 83-280. We ask that the Subcommittee include tribes, such as the Maine tribes, that are subject to settlements with States in this effort as our tribal courts face similar obstacles of overcoming jurisdictional issues.

Managing Our Natural Resources, Water and Sustenance Rights: The Penobscot Nation is very concerned about the funding cuts being proposed by President Trump for the Environmental Protection Agency (EPA) for FY2018. We rely on funding from the Bureau of Indian Affairs and the EPA to manage our lands and natural resources in an integrated, holistic manner and to develop and protect our natural resources in a sustainable way that protects and enhances the cultural integrity of our community. Our people continue to rely on hunting and fishing as a way of life. Fall moose and deer hunts and fishing throughout the Spring and Summer provide food for our people throughout the year. Thus, we are constantly monitoring for potential contamination of our lands and water, and vigilant about cleaning up any contamination that occurs. The Penobscot Nation is responsible for monitoring the water quality of the 80 miles of the Penobscot River within our jurisdiction. We share the data collected with the State so that they can ensure compliance with the Clean Water Act. We also monitor our lands and water, and animals located on and within, for invasive species and insect and disease problems. We have timber management and harvest programs, which may include clearing areas to enhance browsing for moose and deer.

The base funding for our Natural Resources Department comes from the BIA. This includes funding for general Natural Resources, Forestry, Water Resources, and Fish, Wildlife and Parks. For us, we have two priorities for these BIA programs: that they be increased to cover the costs of inflation and that funding for game wardens be increased. We currently have two full-time game wardens to cover over 120,000 acres of land. We need at least one more.

We supplement our BIA funding with grants from the EPA. We receive funding for a Brownfields Program, which allows us to monitor and clean up slightly contaminated properties for repurposing. One project we are currently working on is cleaning up an old factory site so that it can be turned into a small apartment/condominium building to provide much needed

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housing. We also receive funding from a Performance Partnership Grant. This is where we get most of our funding to monitor, sample and analyze water quality and to reduce and prevent non-point source pollution. We use funding from EPA's Air Quality Program to monitor mercury contamination, which is a problem in our waters and impacts the fish. This funding also is used to monitor and assess indoor air quality, particularly as it relates to mold. We use funding from the EPA's Wetland Program to develop our own wetland program. Any cuts to these programs would have a critical impact on us and our ability to manage our lands, water and natural resources that we rely on.

Indian Health Services: I want to thank the Subcommittee for their efforts to protect funding for the Indian Health Service and for the increase for FY2017 to cover contract support costs and medical inflation. Overall, we continue to believe that the Indian Health Service is underfunded, but I want to focus my testimony on two particular line items that are most impacting us right now: Purchased/Referred Care and Alcohol/Substance Abuse. Our health facility mainly provides primary care and we contract with local non-tribal facilities to provide any secondary care. We have had a substantial increase in the need for secondary care services over the past few years. This includes things such as hip, shoulder, knee and back surgeries. It also includes treatment for cancer, which has become a significant problem within our community. Cancer and opioid abuse are becoming the leading causes of death amongst our people. I am not aware of any family that is not being impacted by these two dangers. Our problem is that we have to use non-tribal facilities to diagnose and treat these and other specialty health issues. The limited funds that we have force us to prioritize those matters that are presently considered life or limb, which cancer and opioid abuse may not be when in their initial phases. Often times, this means patients rely on the use of opiates for pain management until we can treat them or their level of injury/disease gets to the point of life or limb status. The cost of medical supplies, especially lab work, has more than doubled in the last few years. When we are unable to timely treat a patient, it usually results in that patient missing work and can lead to issues such as depression. Our current unmet need just for Purchased/Referred Care services is over \$120,000. This is a significant amount of funding for our facility.

My previous comments about the epidemic of opioid abuse are why we are advocating for an increase in funding for the Alcohol/Substance Abuse line item. It is reaching crisis levels within our community. Our employees (both Indian and non-Indian), citizens and leadership are doing a great job in coming together to try and combat the issue, but we really need some additional resources. We hope this Subcommittee can help identify some additional funding.

Adult Education & Scholarships: There is an increasing need to help our students with higher education scholarships and adult education. We are maxing out our funding each year and assisting tribal members with purchasing books, paying a portion of tuition expenses or certificate programs. But in order to provide assistance to as many people as possible, we find ourselves only able to currently provide \$1,350 per student. This is less than the average amount a student will pay for books in a semester at a four-year institution. We work well with the University of Maine in getting tuition waivers for our students, but are unable to help our students in any meaningful manner with housing costs or tuition at other schools. This leads our students to having to take out large amounts in loans. Loans may be an option for students attending four-year universities, but they are usually not an option for students attending

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vocational institutions such as truck driving school. Our goal is to get as many of our citizens educated in some type of vocation or profession so as to minimize their need for government services and increase their ability to contribute to our community's economy. We ask that the Subcommittee provide some type of increase in this program for FY2018.

Impacts of the Maine Indian Claims Settlement Act: It would be very remiss of me if I failed to inform the Subcommittee that many of the issues that the Penobscot Nation faces today are a result of what we believe to be unintended consequences of the Maine Indian Claims Settlement Act. This federal law was supposed to resolve longstanding land claims by tribal nations in Maine and provide a path forward for productive government-to-government relationships between the tribes and State. Instead, it has resulted in a legal maze whereby we find ourselves in constant litigation spending vital dollars defending our sovereignty and sustenance way of life rather than on critical programs to promote the health, welfare and safety of our citizens and others who live on our lands. Since passage of the Act in 1980, we have spent half of those years in litigation defending our rights against attacks by the State of Maine. All we want and ask for is to be treated the same as any other federally-recognized tribal nation.

In 1972, a lawsuit was initiated against the United States for the wrongful taking of tribal lands that covered a significant portion of what is now the State of Maine. After an initial court decision in favor of the tribes, the White House encouraged the State of Maine, the Passamaquoddy Tribe and the Penobscot Nation to negotiate a settlement. These negotiations led to a Memorandum of Understanding, a State-passed law (the Maine Implementing Act), and the U.S. Congress passing the Maine Indian Claims Settlement Act (MICSA) in 1980 with some changes not agreed to by the tribes. At the time, all interested parties seemed satisfied that the relevant laws and documents provided clarity with respect to the rights of all parties. To the extent that any ambiguities arose, the Maine Implementing Act had established the Maine Indian Tribal-State Commission (Commission) as an inter-governmental entity, comprised of 13 tribal and state appointees, who would be responsible for providing recommendations for resolving disputes. Over the decades, the Commission has consistently made recommendations for improving and modernizing the settlement, only to have the State fail to act on any of them.

The impacts on our people are real. In 2012, the Commission wrote to the Special Rapporteur on the Rights of Indigenous Peoples that the State and Federal laws are in serious nonconformance with the United Nations Declaration on the Rights of Indigenous Peoples and have "resulted in conditions that have risen to the level of human rights violations."

I raise this matter to you because my constituents believe that the federal Maine Indian Claims Settlement Act is becoming like many previous well-intended federal laws; a failed federal policy that is resulting in the degradation of the health and well-being of our community. As was the case with many previous failed federal policies, it may take another law by Congress to fix these unintended consequences that prevent the Penobscot Nation from receiving the same benefits and rights as other federally-recognized tribal nations. In the meantime, we ask that the Subcommittee consider including language in its report for the FY2018 appropriations bill directing the Department of the Interior to work with the tribes in Maine to identify ways in which to address the impacts of this federal law.