



NATIONAL CONGRESS OF AMERICAN INDIANS

Testimony to the House Appropriations Committee - Subcommittee on Interior, Environment, and Related Agencies

Written Testimony of the National Congress of American Indians

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NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

On behalf of the National Congress of American Indians (NCAI), thank you for holding this American Indian and Alaska Native Public Witness Hearing. NCAI's following requests are rooted in the treaties and agreements that our ancestors made with the US government. When tribal nations agreed to accept smaller land bases, the federal government promised to safeguard our right to govern ourselves, to enable tribal governments to deliver essential services, and provide them adequate resources to do so effectively. However, a recent assessment from the US Civil Rights Commission has found that "federal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide."¹ Tribal leaders and citizens have known this for decades, and we urge Congress to fully fund the US government's treaty and statutory obligations.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of tribal governments and communities. For 75 years NCAI has advocated for tribal governments and communities, serves to remove historic structural impediments to tribal self-determination, works to advance the nation-to-nation relationship between tribes and the federal government, fights to address legal, political, and racial inequities, and promotes healing from past and current injustices.

NCAI thanks the members of this subcommittee who requested the update to *A Quiet Crisis*. The update found that in the past 15 years, efforts undertaken by the federal government have resulted in minor improvements and in some ways has lost ground. While Congress has dealt with a spending environment hampered by an austerity fiscal policy, including sequestration and tight limits on discretionary accounts, the federal trust and treaty obligations were no less imperative. The fact that these solemn agreements that are funded in the federal budget have been subject to political impasses, including a recent 35-day government shutdown, highlights the need for solutions to protect vital tribal governmental services from interruptions.

The Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) provide core governmental services for tribal nations, including hospitals, schools, law enforcement, child welfare programs, social services, and more. For many tribal nations, most tribal governmental services are funded by federal sources as part of the treaty and trust responsibility. This is particularly important because tribal nations lack the tax base and parity in tax authority under federal law to raise governmental revenue to deliver services.

Federal funding remains critical to ensure essential government services are delivered to tribal citizens. In addition to the appropriations requests below, NCAI urges Congress to fund BIA and IHS through advance appropriations to protect tribal governments and citizens from future shutdowns as well as cash flow problems that regularly occur at the start of the fiscal year.

Bureau of Indian Affairs

Along with the IHS, the BIA is one of the primary agencies responsible for providing services throughout Indian Country, either directly or through compacts or contracts with tribal governments. As part of the FY 2020 budget formulation process, tribes from each BIA region completed a survey to outline which ten budget lines they would prefer to provide increased funding to and why. The formulation process provides a window into which program areas tribes would prefer to see increases designated. The results of this process show that BIA Social Services, Indian Child Welfare Act (ICWA), Tribal Courts, Aid to Tribal Government, Scholarships and Adult Education, Criminal Investigations/Policing, Road Maintenance, Housing, Johnson O'Malley, Detentions and Corrections, and Welfare Assistance made up the top eleven.

For **Public Safety and Justice Programs**, one of the most fundamental aspects of the federal government's trust responsibility is the obligation to protect public safety on tribal lands. Congress and the United States Supreme Court have long acknowledged this obligation, which Congress most recently reaffirmed in the Tribal Law and Order Act expressly "acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country." In 2018 the U.S. Commission on Civil Rights found that there continues to be "systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country" that undermine public safety.ⁱⁱ Recent experience demonstrates that addressing the lack of justice funding can make rapid and dramatic strides toward improving public safety.ⁱⁱⁱ Tribal justice systems simply need the resources to put their tools to work so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars.

The underfunding of tribal law enforcement and justice systems is well-documented. Most recently, the BIA submitted a report to Congress in 2017 estimating that to provide a minimum base level of service to all federally-recognized tribes: \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed to adequately fund existing detention centers.^{iv} Based on recent appropriation levels, BIA is generally funding tribal law enforcement at about 20 percent of estimated need, tribal detention at about 40 percent of estimated need, and tribal courts at a dismal 3 percent of estimated need.

NCAI recommends an increase in base funding for tribal courts, for a total of \$83 million, which would include courts in PL 280 jurisdictions. The BIA estimates that full funding for tribal courts would cost \$1 billion. FY 18 funding for tribal courts was \$30.6 million, or 3 percent of the estimated need. NCAI also recommends an increase to BIA Law Enforcement of \$200 million, for a total of \$573 million.

BIA Social Services help to address the underlying conditions such as drug addiction, poverty, and violence that tend to create and perpetuate the circumstances that produce victims. Sub-

activities include services in the areas of family and domestic violence, child abuse and neglect, and protective services. However, many tribes' Social Services departments are understaffed and experience high turnover rates. As an example, in FY 2017, Osage Nation case workers averaged 25-30 cases a month each. This exceeds the standard of one case worker for every 15 cases administered. A lack of increased yearly funding tends to hinder these protective services. NCAI recommends \$55 million for BIA Social Services in FY 2020.

In addition to public safety and human services, infrastructure remains an area of high need. A transportation program that is vital to infrastructure in Indian Country is the **BIA Road Maintenance Program**, which is funded and authorized under the Department of the Interior. The BIA Road Maintenance Program is critical to BIA owned roads and facilities. Currently, BIA is responsible for maintaining approximately 29,400 miles of roads in Indian Country including 900 bridges. The BIA Road Maintenance program received funding of about \$30 million in FY 2018, while deferred maintenance has risen to \$498 million for FY 2018. The condition of these roads is increasingly concerning for tribal citizens and all surrounding communities. The lack of sufficient transportation infrastructure also hampers economic development opportunities for tribal nations and their citizens.

According to a recent GAO Report published in May 2017, *Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies*^v, the report found that BIA did not provide adequate documents on road maintenance and no process exists for tribal nations to properly report on road maintenance. The BIA conducted a road maintenance survey, which found that the cost of road maintenance more than doubled the allocated amount of funding for proper maintenance in FY 2018 and that deferred maintenance had risen to \$498 million. Further data on road maintenance is needed to adequately address the deferred maintenance of roads throughout Indian Country. Increased funding for the BIA Road Maintenance program is needed in order to begin to address public safety and commercial activity concerns that affect all Americans. \$50 million is requested to begin to address the deferred roads maintenance need in Indian Country.

Overall, BIA provides funding for many public safety, education, human services, and natural resource programs that cannot be addressed fully in this testimony. NCAI supports the testimony of other national tribal organizations, such as the National Indian Child Welfare Association, National Indian Education Association, American Indian Higher Education Consortium, and others who have also developed rigorous requests to address the treaty and trust obligations funded in the Interior-Environment spending bill.

Indian Health Service

The federal responsibility for health care is also rooted in the treaty and trust promises. Yet, the federal government has never fully lived up to this responsibility. Appropriations for the IHS have never been adequate to meet basic patient needs, and health care is delivered in mostly third world conditions. The Indian health care delivery system faces significant funding disparities, notably in per capita spending between the IHS and other federal health care programs. The IHS has been and continues to be a critical institution in securing the health and wellness of tribal communities. In FY 2017, the IHS per capita expenditures for patient health services were just \$3,332, compared to \$9,207 per person for health care spending nationally. New health care

insurance opportunities and expanded Medicaid in some states may expand health care resources available to AI/ANs.

NCAI recommends the amount requested by the IHS Tribal Budget Formulation Workgroup for FY 2020, a total of \$7.03 billion for the Indian Health Service in FY 2020. This amount would include an increase to maintain current services and other binding obligations and allow for program expansions, as listed in the Workgroup's FY 2020 report.

Environmental Protection Agency

NCAI requests funding for the Tribal General Assistance Program at \$99.5 million. Program capacity-building is a top environmental priority identified by tribes as part of the EPA National Tribal Operations Committee National Tribal Caucus. The Indian General Assistance Program (IGAP) is unique among federal programs in that it provides a foundation which tribes can leverage to support other greatly-needed programs, such as planning for climate change and natural resource management, energy efficiency activities, and small scale renewable energy projects. GAP funding is particularly critical to Alaska Native villages, where it provides 99 percent of the overall funding to address their fundamental and often dire needs, such as safe drinking water and basic sanitation facilities, and the on-the-ground presence to help confront profound climate change impacts, such as eroding shorelines, thawing permafrost, threats to subsistence resources, and permanent relocation of Alaska Native communities.

This increased collaborative leveraging potential makes GAP a wise investment of federal dollars. However, GAP funding has not kept pace with the growth of tribal environmental programs over the years, forcing tribes to perform the increased duties of maturing programs with fewer funds. Furthermore, the average cost for tribes to sustain a basic environmental program was set at \$110,000 per tribe in 1999 and has not been adjusted for inflation since then. Tribal demand for program implementation across various media includes the pressing need to establish climate change adaptation plans. A \$175,000 per tribe distribution, totaling approximately \$99.5 million, reflects an equitable adjustment.

Conclusion

We look forward to working with this subcommittee on a nonpartisan basis to protect the federal trust and treaty obligations in the budget. Thank you for your consideration of this testimony.

ⁱ US Commission on Civil Rights. (2018). Broken Promises: Continuing Federal Funding Shortfall for Native Americans

ⁱⁱ U.S. Commission on Civil Rights. (2018). *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (p. 32). Received from <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

ⁱⁱⁱ Michael S. Black, Acting Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Testimony, Briefing Transcript, p. 136; see also Dep't of the Interior, press release, March 4, 2014, https://www.bia.gov/sites/bia.gov/files/assets/public/press_release/pdf/idc1-025752.pdf (announcing Tiwahe Initiative to promote the stability and security of Native American families).

^{iv} Bureau of Indian Affairs, Office of Justice Services. "Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country," Aug, 16, 2016, available at <https://www.bia.gov/cs/groups/xojs/documents/document/idc2-051817.pdf>.

^v U.S. Government Accountability Office, 2017, Publication No.GAO-17-423