

**Testimony of David R. Boxley, Councilmember and Chairman of the Finance Committee
for the Metlakatla Indian Community**

"Public Witness Testimony: FY 2024 Appropriations"

House Appropriations Subcommittee on Interior, Environment, and Related Agencies

Filed March 3, 2023

Recommendations:

- 1) Support increased overall funding and advance appropriations for the Bureau of Indian Affairs (BIA)
- 2) Provide full funding and continued advance appropriations for the Indian Health Service (IHS)
- 3) Fund critical infrastructure investments for the Indian health system (IHS)
- 4) Ensure mandatory funding for Contract Support Costs and 105(I) lease payments
- 5) Amend Indian Self-Determination and Education Assistance Act (ISDEAA) to clarify CSC provisions
- 6) Increase funding and authorize a self-governance funding mechanism option for the Special Diabetes Program for Indians (IHS)
- 7) Support for Tribal Hatcheries at the Bureau of Indian Affairs (BIA)
- 8) Support for U.S. Canada Pacific Salmon Treaty (BIA)
- 9) Support for Tribal Court Assistance for tribes subject to PL 83-280 (BIA)
- 10) Support funding to address the impacts of climate change (BIA)
- 11) Continue increases for Native language programs (BIA)
- 12) Reduce dependence on competitive grants for Indian Country (all agencies)

Thank you Chairperson Simpson, Ranking Member Pingree, and Members of the Subcommittee for the opportunity to share our funding priorities for the FY 2024 federal budget. The Metlakatla Indian Community (MIC) is located on the Annette Islands Reserve in southeast Alaska, a land base of 87,000 acres which includes significant fish and forestry resources. Through our Annette Island Service Unit we provide primary health services at our outpatient facility through funding from the IHS as a co-signer to the Alaska Tribal Health Compact under ISDEAA. The following testimony provides recommendations on FY 2024 BIA and IHS priorities.

Increased Funding and Advance Appropriations for the BIA

In FY 2024, we recommend a substantial increase for the Operation of Indian Programs at the BIA. This base funding is critical in the functioning of our government and our survival as a Tribal Nation. As noted by the National Congress of American Indians "Tribal nations are resilient and have demonstrated their resolve and dedication since time immemorial, yet are uniquely reliant on their federal partner to fulfill the promises made in exchange for the land that created the foundation of the United States." These funds are essential as they provide for social services, law enforcement, court services, child care services, public health and safety, and other essential government functions.

Unfortunately, year after year, we experience large funding shortfalls across all BIA-funded programs, causing government services in our community to constantly depend on an inconsistent patchwork of federal funding. For example, we have been forced to choose between meeting water quality standards or providing scholarships to our students. In some cases, these shortfalls force us to cut services altogether. The programs that have been impacted are really, higher education, tribal scholarships, social services, and limiting services from the fire department.

Additionally, we request that BIA appropriations be funded on an advance appropriations cycle. It has sadly become the norm that the Tribe does not receive its full yearly appropriation until several months (sometimes longer) after the start of the fiscal year. These funding delays make it impossible for the Tribe to plan and manage their annual budgets. Congress recognized these challenges when it provided the Veterans Administration with advance appropriations over a decade ago and then last year in a historic step, finally provided advance appropriations for key IHS accounts. However, when it comes to our critical BIA accounts, Tribes still remain vulnerable while awaiting funding. The practical implication of this is that the Tribe does not have the ability to plan our finances even weeks ahead due to the uncertainty as to the level of funding. It is nearly impossible to Tribes to plan, grow, or achieve self-sufficiency. Advance appropriations for the BIA would lead to better stability for Tribal self-governance, reduce dependence on uncertain grant funding, and improve practices over all.

Improving the Indian Health System

Full Funding for the IHS: Appropriations are essential to this effort and in fulfilling the federal government's trust and treaty obligations by ensuring critical programs and services receive adequate funding to fulfill their intended purpose. We support the IHS Tribal Budget Formulation Workgroup calculated need of \$51.4 billion for full funding in FY 2024.

Continuing Advance Appropriations for the IHS: For many years, tribes have requested that the IHS be funded on an advance appropriations cycle, a position championed by the Biden Administration and many on this Subcommittee. In the FY 2023 Consolidated Appropriations Act, Congress in a historic move, finally provided advance appropriations for the IHS for FY 2024. We thank this Subcommittee for your decisive leadership of this effort and applaud the 117th Congress for supporting this. Going forward, we urge the Subcommittee to take the necessary steps to continue advance appropriations for the IHS for FY 2025 and beyond.

Fully Fund Critical Infrastructure Investments: We would like to thank the Subcommittee for funding Electronic Health Record modernization at \$217 million for FY 2023, which was an increase of \$72.5 million (50%) over FY 2022. For FY 2024, we ask that the Subcommittee continue robust funding for full implementation of interoperable Electronic Health Records (EHR) and tele-health. This will ensure that IHS can provide services that are similar to other health providers. For tribes and Tribal health organizations who have committed their own resources to move away from RPMS and making their systems functional, IHS should take this into consideration with any new resources and ensure these programs are not only interoperable, but compensated accordingly. We were thrilled to see that the Sanitation Facilities Construction program received \$3.5 billion in appropriations in the Infrastructure Investment and Jobs Act (P.L. 117-58). That said, it is critical that Congress make still significant investments in Tribal health facilities construction. IHS and tribal facilities are some of the oldest in the nation, meaning that facilities are out of date, or not appropriate for the size of the patient populations they serve. Therefore, consistent with the Budget Formulation Workgroup's request, we recommend \$9.6 billion for Facilities in FY 2024.

Mandatory Funding for Contract Support Costs and 105(l) Lease Payments: We appreciate the Subcommittee's commitment to ensuring that Contract Support Costs (CSC) and 105(l) lease costs are fully funded by including an indefinite discretionary appropriation in recent years for both of these accounts. We support the Biden Administration's request to transition these accounts to mandatory funding. This change would bring appropriations process into line with

the clear legal requirements of the authorizing statute. CSC and 105(l) lease funds are already an entitlement under substantive law for the ISDEAA to function as intended by Congress. It is contradictory and problematic to appropriate funding for CSC on a discretionary basis. A simple amendment to a permanent appropriations statute could solve this challenge.

Amend Indian Self-Determination and Education Assistance Act to Clarify CSC Provisions: We also request that the committee consider amending the Indian Self-Determination and Education Assistance Act (ISDEAA) to clarify that when agency funding paid to a tribe for program operations is insufficient for contract and compact administration, contract support costs will remain available to cover the difference. In the recent court decision *Cook Inlet Tribal Council, Inc. v. Dotomain*, a federal appeals court held that costs for activities normally carried out by IHS are ineligible for payment as CSC—even if IHS transfers insufficient, or even no, funding for these activities in the Secretarial amount. Under this new ruling, if facility costs are higher for a tribe than for IHS, the Tribe is forced to cover the difference by diverting scarce program dollars. Recently, this serious misinterpretation of the ISDEAA that has been applied to one tribal organization resulting in a 90% reduction of contract support costs reimbursement threatens tribal self-governance and self-determination. Therefore, we call upon Congress to provide a legislative fix to clarify the intent on Congress for this matter, and ensure consistency with precedent.

Extend Self-Governance Funding Options to the Special Diabetes Program for Indians (SDPI) and Increase Funding to \$250 million/year: While we understand that SDPI is not under the jurisdiction of the Subcommittee, we appreciate that Congress included a three-year reauthorization of SDPI in the Consolidated Appropriations Act, 2021 (P.L. 116-260). SDPI's success rests in the flexibility of its program structure that allows for the incorporation of culture and local needs into its services. Congress should authorize SDPI participants the option of receiving their federal funds through either a grant (as currently used) or self-governance funding mechanisms under ISDEAA. Additionally, SDPI has not had an increase in funding since FY 2004. We recommend permanent reauthorization for SDPI at a minimum of \$250 million per year with annual adjustments for inflationary increases.

Tribal Hatcheries: We deeply appreciate the \$1 million increase for the operation of fish hatcheries in the *Fish, Wildlife, and Parks* sub-activity within the BIA Trust-Natural Resources Management budget in FY 2023 and are asking the Subcommittees to continue increased funding levels FY 2024.

U.S./Canada Pacific Salmon Treaty: Pacific salmon migrate through a broad geographic range that includes rivers, streams and the coastal waters of both the United States and Canada. Recognizing this reality, the Pacific Salmon Treaty was negotiated between the U.S. and Canada in 1985 to prevent overfishing and provide optimum production and fair sharing of the salmon harvest. In the U.S., salmon fisheries governed by the Treaty provide nearly 27,000 full time jobs and add nearly \$2 billion annually to the gross domestic product. Funding to carry out different elements of the Treaty is appropriated through the Departments of Interior, State and Commerce. In the Department of Interior's budget, this funding is appropriated through the BIA Trust-Natural Resources *Rights Protection Implementation* sub-activity and the U.S. Fish and Wildlife Service's *Pacific Marine Fisheries Commission*. We thank the Subcommittee for your continued support for this program in FY 2023, including the \$3.5 million increase for *Rights Protection Implementation*, and encourage further investments in FY 2024.

Tribal Court Assistance for Tribes Subject to PL 83-280: We appreciate the much-needed support for tribes who are affected by Public Law 83-280 and who are striving to serve our communities with competent and appropriate judiciary systems. Specifically, under the BIA Public Safety and Justice *Law Enforcement-Tribal Justice Support* program element we appreciate the helpful report language continued from the FY 2021 Senate Appropriations Committee report (116-123) that outlined additional support for BIA to work with “Indian Tribes and Tribal organizations to consider options that promote, design, or pilot Tribal court systems for Tribal communities subject to full or partial State jurisdiction under Public Law 83–280.” We also appreciate the \$2 million increase for this program in FY 2023 and ask that in FY 2024, the Subcommittees continue to include PL 280-specific funding under this program element and continue to reference the Senate Appropriations Committee report (116-123).

Increased Funding to Address the Impacts of Climate Change: Like many tribal communities we continue to be impacted by the growing challenge of climate change on our environment. Threats such as flooding, erosion, sea level rise, ocean acidification, increased wildfires, extended drought, and changes in seasons all contribute to the serious challenges that tribal communities currently face. We are forced to reduce emissions, mitigate and adapt, but to be successful we need additional support. We appreciate the \$216 million provided to the BIA through the Infrastructure Investment and Jobs Act (P.L. 117-58). We also appreciate the Subcommittee’s inclusion of \$34.9 million for *Tribal Climate Resilience* in FY 2023 appropriations, but request significantly more investment in this account, specifically to implement mitigation actions identified through Climate Resilience plans. Tribal Nations throughout the United States, and especially in Alaska, are increasingly impacted by the threats of climate change.

Continue Increases for Native Language Programs: As we have seen in the news everyday, through wars, plague, famine, and climate change, our health and wellbeing is under threat from many directions. While we urgently need the federal government to support our efforts to face these often existential challenges, there is also an invisible threat lurking all around us. Honorable Members of this Subcommittee, the heritage language of my people is dying. Those in academia refer to the Tsimshian language as "critically endangered." Just as our ocean coastline is eroding away, so too is the Sm'algyax, the Tsimshian language. There are only a few dozen speakers remaining in the entire world. We must impart the grave seriousness to every Member of this Subcommittee. With permanent reoccurring annual funding as part of our compact, we can, in partnership with Congress, meet this challenge, and hold back the coming storm. We would like to thank to the Subcommittee for the \$2 million increase to the *Community Development Central Oversight* sub-activity under the Community and Economic Development activity directed towards supporting Native language instruction and immersion programs to Native students not enrolled at Bureau of Indian Education schools, including those Tribes and organizations in states without Bureau-funded schools.

Reduce Dependence on Federal Grants: In addition to the critical funding needs that are outlined above, we also support moving away from competitive grants for federal funding mechanisms across all departments. The federal trust responsibility does not require that we jump through a myriad of hoops and onerous applications and compete against other tribes to see that services are provided to our people. Tribes must also be granted the flexibility needed to respond to the specific needs of our own communities, not those prescribed by federal grants. This also means providing enough resources so that funds are provided in meaningful amounts to all tribes.