

The Testimony of United Keetoowah Band of Cherokee Indians in Oklahoma, Chief Jeff Wacoche: House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies (February 25, 2025)

Honorable Chairman Simpson, Ranking Member Pingree, and members of the Committee, it is an honor to be here today. I am Jeff Wacoche, the Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB), a federally recognized Tribe comprising traditional Cherokee People with headquarters on the Cherokee Reservation in northeastern Oklahoma.

Background

The UKB gained Congressional recognition in 1946 and represents the interests of traditional Keetoowah Tribal Members, each of whom possess a minimum of one-fourth degree of Cherokee blood as calculated from the 1906 Dawes Commission Roll and the 1949 Keetoowah Base Roll. Our cultural identity thrives within our traditional full-blood Keetoowah Cherokee communities.

Since the UKB gained Congressional recognition nearly 79 years ago, it has struggled to secure for itself the rights and benefits to which it is entitled as a federally recognized Tribal government, and a successor to the extinct historic Cherokee Nation. We have had to overcome the self-interests of the other successor to the historic Cherokee Nation in Oklahoma, the Cherokee Nation of Oklahoma (CNO), which shares the Oklahoma Cherokee Reservation with the UKB, which has no blood-quantum requirement, and which inexplicably claims nearly 500,000 citizens. Unlike the CNO, the UKB does not allow its members to enroll or to obtain citizenship in any other federally recognized Indian tribe.

The status of both the UKB and CNO as successors to the historic Cherokee Nation, with equal rights to the Oklahoma Cherokee Reservation have been fully detailed in the Memorandum Opinion (M-Opinion 37084) issued by the Interior Solicitor on January 17, 2025, following a multi-year consideration of the issue and legal, historical, and genealogical analyses submitted by both Tribes.

Origin of UKB Health Funding Issue

The Oklahoma Cherokee Reservation is home to the Tahlequah and Claremore IHS Service Units within the IHS Oklahoma City Area Office. In the early 2000s, CNO requested to assume via Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), certain programs, services, functions, and activities (PSFAs) from the Indian Health Service related to the Tahlequah Service Unit. ISDEAA, 25 U.S.C. § 5304(l), and implementing regulations, 25 C.F.R. § 900.8(d)(1), require that where a Tribe proposes to assume a PSFA for a geographic area, all other Tribes within the Service Area must first

provide consent to IHS by Tribal resolution before the PSFA may be transferred to the requesting Tribe. UKB is in the Tahlequah Service Area.

Despite this statutory and regulatory framework, which required that UKB consent to any PSFA for CNO and despite the lack of UKB consent, the IHS unlawfully awarded a 638 contract to the CNO for administration of the Contract Health program (Purchased and Referred Care). The IHS subsequently allowed the CNO to assume operation of W.W. Hastings Indian Hospital within the Tahlequah Service Unit again without the required UKB consent. Since these unlawful transfers of authority, the CNO has denied UKB tribal members services.

The UKB has sought multiple times to secure IHS Clinical Services and Purchased and Referred Care (CS/PRC) funding to which it is entitled. IHS Leadership, after reviewing the history of disparate (and illegal) treatment of the UKB in violation of ISDEAA, determined the UKB was indeed entitled to receive funding through ISDEAA to include CS/PRC. To correct IHS's record of failing the UKB, IHS proposed requesting an appropriation to secure funding for the UKB under the New Tribes Funding budget line. This appropriation would secure, for the first time ever, IHS CS/PRC funding to which the UKB has been entitled for nearly 79 years. The request was in both the FY 2024 and 2025 Budget Requests.

The UKB receives Behavioral Health and Substance Abuse response and prevention funding from the IHS via ISDEAA. UKB's operation of these contracted PSFAs demonstrates that the UKB has both the capacity for and demonstrated track record of operating robust programs effectively and efficiently. Once appropriations are made available for Clinical Services and Purchased and Referred Care PSFAs, the UKB anticipates operating those programs with equal success.

New Tribes Funding

The IHS is responsible for providing services to members of federally recognized Tribes regardless of whether the Tribe has been recognized for one day or for 79 years. The funding mechanism used by IHS to obtain funding for Tribes who have historically not been part of the IHS budget is referred to as the "New or Restored Federally Recognized Tribes" budget line otherwise known as the "New Tribes Funding" budget line.

On May 4, 2009, IHS issued Indian Health Manual (IHM) Part 6, Chapter 4 to revise the policy and procedures for integrating new or restored Federally Recognized Tribes into the Indian Health System. Within that Chapter, IHS defined "New Federally Recognized Tribe" and "Indian Tribe":

New Federally Recognized Tribe. A Tribal entity that has been formally recognized by the United States (U.S.) Government. The Tribal Government is eligible to receive services from the IHS and

other Federal Agencies by virtue of its status as an Indian Tribe or Alaska Native Corporation. The Tribal Government is acknowledged to have the immunities and privileges available to other federally acknowledged Indian Tribes by virtue of its Government-to-Government relationship with the U.S., as well as the responsibilities, powers, limitations, and obligations of such Tribes.

Indian Tribe. Any Federally Recognized Indian Tribe, band, nation, group, Pueblo or community, including any Alaska Native village or Native group eligible for the special programs and services provided by the U.S. Government, to Indians because of their status as American Indians or Alaska Natives. (Reference: Title 42 CFR, Subpart C, Section 136.21(g))

The UKB satisfies both definitions. Neither definition nor anything in the statute, regulation, or agency guidance, establishes a deadline by which a Tribe must either be funded or forfeit the right to funding. The New Tribes Funding budget line is intended to provide a mechanism for the IHS to provide services to all Tribes (in accordance with the 1994 amendments to the Indian Reorganization Act, which prohibit federal departments and agencies from making any decision or determination “with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.” *Technical Amendments: Indians*, PL 103–263, 108 Stat 707 (May 31, 1994)). The need to do so is especially compelling here.

Prior Use of New Tribes Funding

IHS routinely uses the New Tribes Funding budget line to request funding for long-recognized Tribal governments who historically have been excluded from the Indian Health System for whatever reason. For example, in the FY 2010 appropriation, IHS requested and secured funding through the New Tribes Funding budget line for both the Mashpee Wampanoag Tribe, recognized in 2007, and the Tuscarora Nation of New York which has been recognized at least since the Bureau of Indian Affairs began publishing a list of federally recognized Tribes in the 1970s. Next, in 2019, IHS requested and secured funding through the New Tribes Funding budget line for the Paskenta Band of Nomlaki Indians. The Paskenta Band of Nomlaki Indians was federally recognized in 1994. Most recently, in the 2023 appropriations act, IHS secured funding through the New Tribes Funding budget line for the Buena Vista Rancheria of Me-Wuk Indians of California which has been federally recognized since 1985. Other Tribes who have received IHS funding through the New Tribes Funding budget line several decades after appearing on the

Bureau of Indian Affairs' list of federally recognized Tribes include the Onondaga Nation and the Tonawanda Band of Seneca Indians.

Conclusion

The UKB is a federally recognized Tribe and its members are eligible beneficiaries for purposes of Indian Health Service programs. The UKB to date has not received Clinical Services or ongoing Purchased and Referred Care funding from the Indian Health Service for provision of health care. The UKB never provided the consent required to transfer programs to the CNO for administration, but IHS did so anyway. IHS recognizes its error and seeks to correct course. We have demonstrated that IHS routinely uses the New Tribes Funding to fund programs for federally recognized Tribes without regard to time between recognition and funding.

The UKB's need for funding has been compelling for decades but today Congress may correct a moral and legal lapse by the Tribe's trustee. Among other things, M-Opinion 37084 correctly confirmed that federal law prohibits discrimination between two successor tribes in Oklahoma. As between the UKB and the CNO, the M-Opinion found that the 1846 Cherokee Treaty was with the "whole Cherokee people" and that the UKB is a successor in interest to the 1846 Treaty Signatory. Significantly, the M-Opinion 37084 makes it clear that the real and unadulterated Cherokee history has been acknowledged by the United States, as opposed to the contorted version espoused by the CNO, with no serious basis other than boisterous repetition. Thus, the M-Opinion correctly found that the CNO is not the same entity as the 1846 Treaty Signatory and that the UKB has governmental jurisdiction over the Reservation (along with CNO, as equals), and that both tribes have exclusive jurisdiction over their trust lands.

The CNO's desire for a political stronghold has repeatedly created barriers for the UKB. The CNO seeks to block funding to the UKB – not because the CNO would receive the funding – but simply to prevent the UKB from receiving it. The CNO played this same game in 2006 when it sought to block Housing and Urban Development funding for UKB, which ultimately required the Court of Appeals for the Tenth Circuit to restore the UKB funding in 2009, which has had to correct CNO's termination efforts more than once, and will likely be called upon to do so again regarding the fully supportable conclusions contained within the M-Opinion.

We stand ready to defend the rights of the United Keetoowah Band of Cherokee Indians to participate in IHS programs and to administer those programs in accordance with ISDEAA and the Indian Health Care Improvement Act. We urge you to ignore the misleading rhetoric and set aside CNO's misguided attempt to derail the Indian Health Service's request to fund the UKB.