

programs for the past two decades. In 2014 and 2015, the Supreme Court determined that Tribes were entitled to CSC. The game-changer going forward was the ground-breaking decision by Congress in P.L. 114-113, Consolidated Appropriations Act, 2016, to create a new account in the appropriations bill specifically for CSC in 2016 and 2017 as well as language establishing an indefinite appropriation for CSC in both agencies. Under the new budget structure, the full CSC that Tribes are entitled to will be paid and other programs will not be reduced if payments are underestimated in the President's budget. Tribes agree that this structure achieves the Nation's legal obligation to fully pay CSC without imposing any corresponding reduction in direct services to any Tribe. We also continue to request to fully fund CSC on a mandatory basis in FY 2019-2021 and make it a permanent, indefinite appropriation.

Lower Elwha Klallam Tribe Background

The Lower Elwha Indian Reservation is located at the mouth of the Elwha River along the Strait of Juan de Fuca on the northern Olympic Peninsula, about 8 miles west of the City of Port Angeles, Washington. The Lower Elwha Tribe has roughly 1,000 members and a total land base—Reservation and adjacent trust lands—of about 1,000 acres. We are a salmon people with fishing rights in a large expanse of marine and fresh waters, reserved in the 1855 Treaty of Point No Point. 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.

Lower Elwha Tribal-Specific Funding Requests

\$5.43 Million - Bureau of Indian Affairs

1. \$4.972 Million - Dam Removal and Fisheries Restoration - We were the leading advocate for the removal of the two hydro-electric dams on the Elwha River. 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 last remnants of the dams and restore the once famously abundant runs of native Elwha River 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 dams) and has adversely impacted our small Tribal land base and our Tribal budgets. We are strongly committed to the restoration of fisheries, fish habitat, streams and rivers, and the Port Angeles Harbor. 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 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 new Federal standards—clearly it is a mitigation feature of the dam removal project. In the 1992 Elwha Act, Congress intended that courts not be asked to address problems where legislative solutions would be far more effective in covering all the bases. Twenty-five years of inflation since 1992 more than justifies this increase in the current annual operations allocation of \$10,400.

c. \$4 million for Land Acquisition - Section 7(b) of the Elwha Act authorized \$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. But those funds have never been appropriated. In 1934, an Interior Department report concluded that the Reservation should be 4,000 acres, 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 status 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. 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 destruction of not only the fisheries but the treaty fishers themselves and the attendant loss of our traditional and cultural livelihood; 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.

2. \$267,000 – Funding for Tribal Court Enhancement and to Implement TLOA and VAWA.

Consistent with the Interior Department's and Tribe's high priority on Tribal Court enhancement, Lower Elwha has made progress in adopting the enhanced sentencing provisions authorized by the 2010 Tribal Law and Order Act (TLOA) and in particular the expanded Domestic Violence Criminal Jurisdiction under the 2013 Violence Against Women Act (VAWA). In the past year we have finally retained the first in-house Chief Judge in the Tribe's history and are making progress on upgrading our Court's organization and caseload. But our efforts will be limited due to the lack of adequate base funding for Court development. Requested funding will enable our Tribe to further our progress by providing for: (a) mandatory criminal defense counsel (including basic legal assistance for domestic violence victims); (b) legal counsel for parents in abuse/neglect cases; (c) detention services; (d) probation services that focus on solutions and restorative justice by sharing coordinated case management and re-entry referrals; and (e) basic court security. Full funding for TLOA-mandated provisions and increased base funding for our Tribal Court will enable Elwha to benefit from: BIA regional assessments using Tribal Court Program Standards; specific technical assistance and training identified through these assessments; targeted training for specific Tribal court personnel (judges, prosecutors, public defenders, clerks); development of Tribal Court bench books; identification of funding sources for pilot programs; and captured data covering criminal pre-trial to post-conviction matters, including any collateral civil legal issues.

3. \$191,000 - Funding for ICW-related services from BIA's Tiwahe (Family) Initiative. Lower Elwha faces 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. This crisis severely impacts services in all facets of Tribal government. 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 (in criminal cases) solutions-based sentencing. 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 (ICWA); 65% of our current ICWA cases remain in the State court system (a deceptively *low* percentage due to reduced State court filings resulting from staff turnover). 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. For the past three fiscal years, the Tribe's base Federal funding (BIA Self-Governance ICWA) has remained flat-lined at a mere **\$45,000**. 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

The drug abuse and mental health crisis threatens to destroy the potential and the cultural connections of many Tribal members and families. In FY 2016, the Tribe's Mental Health and Chemical Dependency programs served 275 American Indian/Alaskan Native (AI/AN) patients, with the potential to reach approximately 1,500 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, yet these critical health epidemics remain 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 \$391/per day, with annual increases.

Environmental Protection Agency Elwha Tribal-Specific Funding Requests – \$536,000 for Elwha Tribal Environmental Programs: General Assistance Grant, \$125,000; Clean Water Act § 106 Grant, \$81,000; Puget Sound Partnership (“PSP”) Implementation Grant, \$180,000; and PSP Tribal Capacity Grant: \$150,000.

Lower Elwha's environmental programs have, over the past two decades, developed a strong pragmatic capability to protect human and basic environmental health for not only the Tribal community but also the greater Port Angeles and northern Olympic Peninsula communities. By focusing on collaboration with local governments and other stakeholders, we have maximized the efficiency of our small but skilled staff. This would not be possible without the basic EPA funding that we seek to continue. This funding supports: basic staff salaries, including for our highly experienced program director (General Assistance Grant); water quality monitoring in significant local rivers and lakes (Clean Water Act § 106 Grant); implementation of crucial in-the-field projects consistent with the PSP's Action Agenda (PSP Implementation Grant); Tribal participation and influence in local, State, and Federal environmental planning and review activities (General Assistance and PSP Tribal Capacity Grants). PSP Implementation funding has enabled the Tribe to complete numerous stream restoration projects that support the PSP Action Agenda. EPA funding is critical to our participation in the cleanup of toxic contamination of Port Angeles Harbor, which was nominated for Superfund listing but deferred to State cleanup authority; under this deferral arrangement, the Tribe has a unique and important role as the *sole* local representative working directly with the responsible State agency to ensure that the cleanup will protect the health of all residents of the greater Port Angeles area.

Regional and National Budget Requests - The Tribe supports the FY 2019 *Regional Budget Priorities* of the Northwest Indian Fisheries Commission, Affiliated Tribes of Northwest Indians, and the Northwest Portland Area Indian Health Board, and also the FY 2019 *National Budget Priorities* of the National Congress of American Indians and National Indian Health Board.