



NATIONAL CONGRESS OF AMERICAN INDIANS

Written Testimony of Larry Wright, Jr. Executive Director of the National Congress of American Indians For the U.S. House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies March 8, 2023

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinalt Indian Nation

1ST VICE PRESIDENT
Mark Macarro
Pechanga Band of Luiseño Indians

RECORDING SECRETARY
Stephen Roe Lewis
Gila River Indian Community

TREASURER
Shannon Holsey
Stockbridge-Munsee Band of Mohican Indians

REGIONAL VICE PRESIDENTS

ALASKA
Mike Williams
Akiak Native Community

EASTERN OKLAHOMA
Norman Hildebrand
Wyandotte Nation

GREAT PLAINS
VACANT

MIDWEST
Rebecca Crooks-Stratton
Shakopee Mdewakanton Sioux Community

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Melvin Sheldon, Jr.
Tulalip Tribes of Washington

PACIFIC
Jack Potter
Redding Rancheria

ROCKY MOUNTAIN
Jennifer Finley
Confederated Salish & Kootenai Tribes

SOUTHEAST
Reggie Tupponce
Upper Mattaponi Indian Tribe

SOUTHERN PLAINS
Gonzo Flores
Lipan Apache Tribe of Texas

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bernadine Burnette
Fort McDowell Yavapai Nation

EXECUTIVE DIRECTOR
Larry Wright, Jr.
Ponca Tribe of Nebraska

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 this opportunity to provide testimony on FY 2024 funding for the Department of the Interior (DOI), the Indian Health Service (IHS), and the Environmental Protection Agency (EPA). Founded in 1944, NCAI is the oldest and largest national organization composed of American Indian and Alaska Native tribal nations.

The funding requests in this testimony are rooted in the promises made by the U.S. Government in treaties and agreements with tribal nations. The 2018 *Broken Promises Report* from the U.S. Commission on Civil Rights (USCCR) found that “[f]ederal 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

Congress and the Administration have recently taken some initial steps toward making good on the federal government’s promises to tribal nations. For example, NCAI commends Congress for providing advance appropriations for certain IHS accounts. This change in how funding is budgeted and appropriated for Indian Health programs will help prevent negative impacts on health care services in our tribal communities that result from uncertainty in the federal budget process (*e.g.*, continuing resolutions and government shutdowns).

Additionally, the President’s FY 2023 Budget Request to Congress called for a historic shift in the paradigm of nation-to-nation relations that seeks to restore the promises made between our ancestors and the United States in several key programs. It included requesting mandatory funding for: IHS, DOI Contract Support Costs, and Section 105(1) Tribal Leases; along with a myriad of investments in Indian healthcare, education, public safety, natural resource management, and infrastructure. The FY 2023 Budget Request represents the most forward-thinking presidential budget and policy proposal for tribal programs to date.

However, there is much more to be done by the federal government to truly fulfill the promises made to tribal nations. Congress and the Administration must build on these initial steps. Accordingly, NCAI urges Congress to fully fund the U.S. Government’s treaty and trust obligations. It also urges Congress and the Administration to continue to improve how funding is delivered to DOI, IHS and other federal programs that serve Tribal Nations by providing advance appropriations until such time that all trust and treaty obligations are accounted for, and provided as, mandatory spending.

¹ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, at 4, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

I. Department of the Interior - Bureau of Indian Affairs (BIA)

The BIA is one of the primary agencies responsible for providing services throughout Indian Country, either directly or through compacts or contracts with tribal nations. The operation of these programs and services is essential for the health, safety, and social and economic well-being of tribal and surrounding communities. Unfortunately, chronic underfunding of tribal programs perpetuates systemic issues in Indian Country that could be reduced or eliminated by funding tribal programs in amounts that meet the federal government's treaty and trust obligations to Tribal Nations.

NCAI recommends \$20.695 billion for Indian Affairs programs in FY 2024, consistent with the official FY 2024 recommendation of the Tribal/Interior Budget Council (TIBC).² Within TIBC's FY 2024 recommendations are robust increases for all base-funded programs, and additional funding to address public safety and justice in tribal communities; the economic and social wellbeing of our citizens and all those who visit or do business in our communities; the backlog of school, community, and government infrastructure construction and maintenance; taking land into trust; and addressing climate resiliency in tribal communities and on Indian and federal lands.

The following subsections highlight a few of TIBC's FY 2024 recommendations.

A. Public Safety and Justice

Among the fundamental components of the federal government's treaty and trust responsibilities to Tribal Nations is the obligation to protect public safety on tribal lands. Congress has long acknowledged this obligation, which Congress reaffirmed in the Tribal Law and Order Act (TLOA) expressly "acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country."³

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A Department of Justice (DOJ) study found that more than four in five American Indian and Alaska Native (AI/AN) adults have experienced some form of violence in their lifetime.⁴ Among AI/AN women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.⁵ NCAI appreciates Congress' enactment of the Violence Against Women Act ("VAWA") Reauthorization Act of 2022, which will help address violent crime in Indian Country, as it provides resources for the exercise of, and affirms, tribal nations' authority to address crime in their communities. Going forward, robust funding for these VAWA-related programs and tribal police departments and justice systems is absolutely essential for improving public safety on the ground in tribal communities.

The underfunding of tribal law enforcement and justice systems is well-documented. In 2022, BIA submitted a report to Congress (for FY 2019) estimating that to provide a minimum base level of service to all federally recognized tribal nations: \$1.3 billion is needed for Tribal Law Enforcement

² TIBC Tribal Representatives' FY 2024 Budget Submission to the Department of the Interior, May 16, 2022, accessed at: https://res.cloudinary.com/ncai/image/upload/v1661949853/tibc-documents/march2022/004_-_TIBC_FY_2024_Budget_Submission.pdf.

³ Tribal Law and Order Act, 34 U.S.C. § 10381(j).

⁴ U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, 2, (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

⁵ *Id.*

Programs, \$1.2 billion is needed for Tribal Courts, and \$240.6 million is needed to adequately fund existing Detention Centers.⁶ FY 2023 funding levels fall far short of BIA’s estimates.

Due to the inadequacy of BIA base funding, tribal nations often seek short-term, competitive grants to try to make up a portion of the shortfall. This is especially true with regard to funding for the non-incarceration aspects of justice systems, such as tribal courts, which, are even more severely underfunded than policing and detention.

In 2018, the USCCR 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.⁷ Tribal justice systems must have resources so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars. Well-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government — Tribal Nations are no different.

As stated above, NCAI supports TIBC’s FY 2024 recommendations, which include \$2.924 billion for Public Safety and Justice funding, with approximately \$1.766 billion for BIA Law Enforcement and \$1.155 billion for tribal courts.

B. BIA Road Maintenance

Infrastructure remains a critical need in Indian Country. BIA received \$39.19 million for the BIA Road Maintenance Program in FY 2023. BIA has indicated that it has a deferred maintenance backlog in excess of \$300 million. Additionally, the annual funding levels for this program have been relatively flat, especially when compared to the level of deferred maintenance needs. This program is critical to the safety of all those driving on the approximately 29,100 miles of roads and 1,100 bridges in Indian Country that are overseen by BIA. NCAI supports TIBC’s FY 2024 recommendation of \$390 million for the BIA Road Maintenance Program to address deferred maintenance needs in Indian Country.

C. Contract Support Costs and Tribal Leases

NCAI strongly supports accounting for Contract Support Costs and Payments for Tribal Leases as mandatory spending. Inclusion of accounts that are mandatory in nature under discretionary spending caps has resulted in a net reduction on the amount of funding provided for tribal programs and, by extension, the ability of the United States to fulfill its promises to Tribal Nations.

II. Environmental Protection Agency (EPA)

As place-based peoples, Tribal Nations have sacred histories and maintain cultural practices that tie them to their current land bases and ancestral territories. As a result, tribal peoples directly, and often disproportionately, suffer from the impacts of environmental degradation.

50 years after the passage of the Clean Water Act, only 47 of 82 eligible Tribal Nations have EPA-

⁶ U.S. Department of the Interior, *Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2019*, at 5 (Oct. 2021), <https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/2019%20TLOA%20Report%20Final.pdf>.

⁷ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, at 32, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

approved water quality standards,⁸ which are a cornerstone of the Clean Water Act. Given the disparate access of tribal communities to safe, clean water, NCAI recommends a five percent tribal set-aside for each of the National Safe Drinking Water State Revolving Fund (DWSRF) and the National Clean Water Act State Revolving Fund (SRF).

Additionally, NCAI recommends \$100 million be appropriated for the EPA Tribal General Assistance Program and \$30 million for the Tribal Air Quality Management Program.

III. Indian Health Service

Since 2003, tribal leaders, technical advisors, and other policy advisors have met during the annual national Tribal Budget Formulation work session to collaboratively develop an estimate for full IHS funding. The IHS need-based funding aggregate cost estimate for FY 2024 is approximately \$51.4 billion, and the cost estimate for FY 2025 is \$53.8 billion.⁹ NCAI supports the recommendations of the IHS National Tribal Budget Formulation Work Group.

NCAI also strongly urges Congress to ensure IHS funding is provided as mandatory spending, with a mechanism to automatically adjust spending to keep pace with population growth, inflation, and healthcare costs. This will ensure that the funding Congress provides for Indian healthcare can be used efficiently and strategically.

Until such time that IHS is provided mandatory direct appropriations, advance appropriations for the IHS are consistent with the trust and treaty obligations reaffirmed by the United States in the Indian Health Care Improvement Act. The advance appropriation enacted in the FY 2023 omnibus excluded certain accounts in the IHS budget and flat-funded the IHS accounts that it did include. While historic in its inclusion, a flat-funded IHS needs FY 2024 adjustments, at a minimum, for fixed costs and staffing for newly completed facilities and should also include the amounts requested by the IHS National Tribal Budget Formulation Workgroup. As the process begins to normalize, both IHS and tribal nations have the collaborative tools to produce reliable advance appropriation requests. For this appropriations cycle, tribal nations have already provided official input on the FY 2025 budget to IHS with representatives of the Office of Management and Budget in attendance.

IV. Hold Harmless for DOI - Indian Affairs, IHS and Other Programs for the Benefit of Tribal Nations

The DOI – Indian Affairs and IHS budgets are very small when compared to the overall national budget. Spending cuts or other budget control measures that affect tribal programs can have devastating impacts on tribal nations and their citizens but would have little impact on overall federal spending. To the extent Congress considers funding reductions in FY 2024, DOI – Indian Affairs, IHS and other programs for the benefit of Tribal Nations must be held harmless.

⁸ Environmental Protection Agency, *EPA Actions on Tribal Water Quality Standards and Contacts*, <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

⁹ Workgroup publications available at: https://www.nihb.org/legislative/budget_formulation.php.