

## **“WRITTEN TESTIMONY FROM WHITE EARTH BAND OF OJIBWE”**

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I will provide testimony on behalf of the White Earth Band of Ojibwe (“the Band”) regarding three areas: 1) White Earth Reservation roads program; 2) Tribal Management/Acquisition of the Tamarac National Wildlife Refuge; and 3) IHS appropriations and Four Walls.

### **White Earth Reservation Roads**

First, I will address the reservation roads program by highlighting funding levels as well as BIA policies. Despite having a very large, rural land base with many reservation roads and isolated communities, the White Earth Nation does not receive anywhere near the necessary funding to build or maintain roads for their citizens, thus jeopardizing public health and safety. We understand that federal funding is limited, but we believe that BIA policies on distributing existing monies also play a key role in these budget shortfalls.

Under the operation and maintenance of BIA roads, transportation facilities located on Indian Reservations and within tribal communities are maintained largely by the tribe. Roads maintenance program funds are administered at the BIA Region offices for the maintenance of roads identified as part of the BIA roads system. The BIA road system is part of the National Tribal Transportation Facility Inventory (NTTFI). As public roads, BIA roads and bridges are often major corridors that provide critical access for tribal communities through which medical, educational, commercial, and recreational services and opportunities are delivered or made available to tribal members and the general public.

The White Earth Reservation has a large land base, and the Band finds it increasingly difficult to maintain the current roads/bridges in the inventory to acceptable standards. While the Band once received about \$5 million (plus) dollars in annual allocation, the amount the Band now receives has decreased to approximately \$1.5 million. This is a 70% reduction in funding yet there is no reduction in the Band’s responsibility or cost. Desperate for adequate funding, the Band often must position the Tribal Road Department to make difficult decisions to choose which projects to fund over others. Typically, the Band must seriously consider whether to convert or revert the Band’s roads back to aggregate with a failing surface type or a failing road bed condition. Either decision has unavoidable risks associated with it.

With the recent increase of construction costs and equipment repair, the needs of the Band have become progressively difficult. The maintenance formula is only pennies to a dollar compared with our local counterparts for cost per mile to maintain. We simply cannot continue to upgrade and maintain our roads under the current system. The allocation system must be fair to all.

## **Potential Tribal Management/Acquisition of the Tamarac National Wildlife Refuge**

My second topic is the Tamarac National Wildlife Refuge. The Collier agreement of 1936 was an agreement between the Biological Service (now the US Fish & Wildlife Service) and the Bureau of Indian Affairs (BIA) to create the Tamarac National Wildlife Refuge within the White Earth Reservation. The White Earth Band of Ojibwe requests to have these lands returned to them, transitioning could include a co-stewardship and co-management agreement between the Band and the USFWS. On January 26, 2023, White Earth sent a letter on this topic to Secretary Deb Haaland and the congressional delegation was briefed. We believe that the White Earth Band of Ojibwe can better administer these lands, many of which contain important cultural and historical heritage areas and patrimony.

The terms of the Collier Agreement have not been fulfilled to the satisfaction of the White Earth Band. The Federal Government bears the burden of protecting the best interests of the Band and its members, however, the Federal Government has failed to meet its obligations with respect to allotments in the Refuge area. Many allotments within the Refuge area were sold by the Federal Government on behalf of the original allottee at values far below the then market rate. For instance, the allotment owner for O-1789 accepted \$280 for her entire 80-acre allotment which is a rate of \$3.50 per acre. Other parcels received a rate of \$10-\$15 per acre. This discrepancy shows that Indian beneficiaries were deprived of their land at below-market value. While White Earth members can hunt, fish, and gather within the Refuge, we believe the Band would be an ideal steward for these lands and welcome that opportunity.

## **IHS Appropriations/Four Walls**

White Earth Band of Ojibwe greatly appreciates the one-year advanced appropriations for Indian Health that occurred in the FY23 budget and we are supportive of the mandatory spending provisions. We would like to voice our appreciation for that, and our support for making IHS spending mandatory spending. The Band believes that funding for IHS is part of the Federal Government's trust responsibility and therefore should not be part of a discretionary budget.

Adequate and complete funding is needed to avoid any reduction or elimination of the Band's health services and programs. These services and programs are critical to health equity for White Earth tribal members. If funding is lacking, it creates uncertainty regarding the longevity of these services and programs while also challenging the Band's efforts to recruit and retain qualified health care workers, such as physicians and nurses. The health and welfare of the Band and its members is of paramount importance and is part of the Federal trust responsibility owed to all American Indians and Alaska Natives. Reliable and sufficient appropriations are needed to ensure this obligation is met.

Without full funding, the White Earth Band of Ojibwe faces significant challenges in eliminating health disparities, and is severely limited in our ability to be proactive and focused on long-term planning.

**Congressional Action:** Pass advance appropriations for a fully funded Indian Health Services' budget including all Contract Support Costs (CSC) and Section 105(l) lease agreements.

Regarding the “Four Walls” rule on health services reimbursement, White Earth views this as a major barrier to effective health care delivery to our many tribal citizens living in remote areas without adequate transportation to get to and from health facilities. Currently, IHS and Tribal facilities enrolled in Medicaid as clinic services providers are not permitted to claim Medicaid reimbursement under 42 C.F.R. § 440.90, including reimbursement at the IHS all-inclusive rate (AIR) for services provided outside of the four walls of the facility. It is unclear about which services (e.g. home health, behavioral health, etc.) are covered as Federally Qualified Health Center (FQHC) services under the state plan.

The Centers for Medicare and Medicaid Services (CMS) extended the grace period for enforcement of the “four walls” requirement which provided additional time to tribes and states to “make [any required] legislative or regulatory policy changes, provide public notice, define services, make system changes, and potentially make programmatic and staffing changes”. It has been suggested by CMS that a State Plan Amendment (SPA) that focuses on tribes “enrolling” as FQHC and adopt IHS’s all-inclusive rate (AIR) as an alternative payment methodology (APM) consistent with section 1902(bb)(6) of the Social Security Act. However, it is still unclear how states will work with tribal nations to identify the appropriate SPA needed to meet the wide variety of needs of the tribal nations within that state. This blurred area is detrimental to tribes with Title I and Title V Self-Determination contracts with the Indian Health Services that are facing uncertainty about the impact of selecting this provider type without broader federal assurances and commitment to Tribal consultation plans.

Home Care submits 3<sup>rd</sup>-party billing for services provided. That includes private insurance if available, which is not usually available. The billing of Medical Assistance if that is the pay source the client has, the fee for service rate from the state is \$75 per visit. As a Tribal agency White Earth is reimbursed the All-Inclusive Rate (AIR) which is presently \$640. Less than 50% of the population served under the Band’s programming have a pay source but services are still provided as needed, regardless of an individual’s ability to pay. All Home Care services must have a physician order and be renewed every 60 days. That is the huge concern with the “four walls” requirement as Tribal health services are requested and utilized in all villages of the Reservation, not just at brick-and-mortar facilities. If the proposed changes are adopted, the services will decrease and will have a disparate impact on the health and wellness of the people. Home and Community based models are effective in maintaining more stability of health issues for the people served at home.

**Congressional Action:** Permanently extend the grace period (or eliminate requirements) the “four walls” requirements for those facilities operated by Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. No. 93-638.