S. HRG. 107–35

GOALS AND PRIORITIES OF THE MEMBER TRIBES OF THE NATIONAL CONGRESS OF AMERICAN INDIANS AND THE UNITED SOUTH AND EASTERN TRIBES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

TO RECEIVE THE VIEWS OF THE NATIONAL CONGRESS OF AMERICAN INDIANS AND THE UNITED SOUTH AND EASTERN TRIBES REGARDING GOALS AND PRIORITIES IN INDIAN COUNTRY

MARCH 22, 2001
APRIL 5, 2001
WASHINGTON, DC



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GOALS AND PRIORITIES OF THE MEMBER TRIBES OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

THURSDAY, MARCH 22, 2001

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs meets this afternoon for the first in a series of hearings on the goals and priorities of Indian county for the 107th session of the Congress.

I wish to underscore that this hearing is the first in a series of hearings because one of the tribal nations has registered an objection to this hearing on the ground that they are not members of the National Congress of American Indians.

I want to make clear that the committee will be soliciting the views and concerns of all of the federally-recognized tribes, Alaska Native communities and native Hawaiian organizations.

The committee decided to begin with the National Congress of American Indians because it is the oldest and largest national organization, having been founded in 1944 and currently representing 250 tribal nations.

On behalf of the committee, I want to welcome the president of the National Congress of American Indians and the chairperson of the Yurok Tribe, Sue Masten.

STATEMENT OF SUSAN MASTEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC, ACCOMPANIED BY THOMAS R. RANFRANZ, PRESIDENT, FLANDREAU SANTEE SIOUX TRIBE, FLANDREAU, SD AND VICE PRESIDENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS [ABERDEEN AREA]; LIEUTENANT GOVERNOR JEFFERSON KEEL, CHICKASAW NATION, ADA, OK; AND JOANN K. CHASE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Ms. MASTEN. [Greetings in native tongue]. My warmest greetings to the Senator and vice chairman of the committee. We are very appreciative of you for calling this session. We are very clear that in our meetings with you in the last several months you have made it clear that you would be holding several hearings. We are appreciative to you for beginning the hearing process with the National Congress of American Indians, being that we are the oldest and largest organization and that we do have 250 tribal government members.

I do want to acknowledge those who are accompanying me today. Chairman Tom Ranfranz and Lieutenant Governor Jefferson Keel and NCAI's executive director, JoAnn Chase.

Since you in your leadership role as the past chairman of this committee and current vice chairman, we have counted on you as a true champion for Indian country and we know that you, on a regular basis, along with your colleagues on this committee, do everything in your power to continue to educate your colleagues about the fundamental principles about tribal sovereignty, self-determination and self-sufficiency.

So, I won't take your time today to reiterate that, but will let my written testimony do that for me.

What I would like to do is focus the attention on those 14 critical issues that we have identified as important issues to Indian country. It was a difficult task, as you know, because you most all of anyone, understand that our issues are great and that there are many issues that Indian country faces and all of them are important to each of us.

So, it was a difficult task to narrow down to the 14 issues that I will be addressing this afternoon.

Starting out with fiscal year 2002 appropriations, this morning I provided testimony to House HUD, VA, Appropriations Subcommittee seeking sufficient Federal funds for programs that assist our Indian veterans and which provide resources for housing and economic development on Indian lands.

Achieving greater levels of annual appropriations for programs that assist our people and Indian tribes remains to be one of the top priorities for NCAI. This goal is especially important because the population growth rate of our people continues to increase, as the latest census count has shown, putting great strains on an already inadequate tribal infrastructure.

While fiscal year 2001 funding levels for Indian programs certainly made great strides toward meeting the basic programmatic needs of tribes, our work is not yet done. As you know, Senator, funding levels still did not begin to address this government's trust obligations to our people.

As you know, we submitted to this committee on March 13, a written statement regarding the President's Fiscal Year 2002 Budget Request. Our statement addressed the proposed funding levels that were available and highlighted those programs that we believe are critical important to Indian nations.

We are grateful for your support. I again ask that this committee ensure that Indian programs are fully funded during the fiscal year 2002 appropriation process.

NCAI looks forward to participating with you and with the committee during the roundtable discussions next week to discuss this issue in further detail. We will be sending a number of our staff over to participate in that discussion.

Recovery of tribal lands is a critical issue for us. We lost a lot of lands, as you are aware, due not to our efforts, but from bad policy by the Federal Government.

There has been a lot of time spent with NCAI and tribal governments in working with the Bureau of Indian Affairs [BIA] to address the regulations. While we had several concerns, not all of them were considered, but we believe the majority of those we did provide was reflected in the current regulations.

I think that it is encouraging to see that when Secretary Norton addressed NCAI recently she indicated that under the Bush administration and its review of the new rules, that she would not allow them to become effective until probably April 16.

We are urging the Secretary to go forward with the new regulations regarding the acquisition of lands into trust. The regulations were the result, you know, of our long, hard effort on our behalf to work out those issues of importance to the tribes.

However, we still have some issues that we continue to be concerned about. They deal with contiguous lands and the fact that they entirely left out the Alaskan Natives. Those are extreme concerns for us. We will continue to work to improve in those areas of the regulations. We urge your help in support of that effort.

Getting on to economic development, I know that you are well aware, Vice Chairman Inouye, that creating and sustaining economic development in Indian country is extremely important to all of us.

I know that you are also aware that in order to be successful with economic development, it is crucial that we have the infrastructure in place that allows us to attract business partners. Without roads, electricity, and telephones, it is difficult for us to attract any business partner to do business in Indian country.

I am looking forward to working closely with you to see how we might be able to make inroads in assuring that the proper infrastructure needs are met for Indian country. We truly will never reach self-sufficiency until we address the infrastructure needs of Indian reservations.

We sincerely appreciate the efforts that this committee has taken to lead the cause of economic development issues and for legislative steps to spur economic development and we thank you for support of those issues.

NCAI supports the development of legislation that the committee may introduce that will promote sustainable economies on Indian

reservations and further alleviate the unemployment and poverty problem.

Futher, NCAI would strongly urge this committee to support funding levels identified in our previously submitted appropriation testimony that would alleviate their problems.

Under Indian Health Service, this committee knows firsthand the quality of health care for tribal members has and continues to be a number one priority for all of us.

NCAI is appreciative of the focus the committee has provided on the reauthorization of the Indian Health Care Improvement Act. We look forward to working with the committee during this Congress to support S. 212.

We also want to reiterate our support for the elevation of the IHS Director to Assistant Secretary of Health and Human Services.

Under Indian Education, last week the National Indian Education Association provided testimony supporting S. 211, the Native American Indian Education Improvement Act of 2001. We also support the several recommendations made that would address the many needs of Indian students in Indian schools.

In our cooperative spirit, we support NIEA and other Indian education organizations in their efforts to bring quality education as well as safe and modern schools to all Indian students.

We also ask the committee to review President Bush's proposed new education strategies and we ask that this committee look at the educational demands placed on Indian schools, which already face limited resources. We truly do hope that this administration will hold true to its promise to ensure that every child receives an education.

Under welfare reform, also due for reauthorization, as you know, this act provided a major change in Federal policy concerning assistance to poor families and children. Unfortunately, tribal committees have particularly and uniquely been affected by welfare reform.

Because of disproportionate poverty rates, rural geography, inaccessibility of services and high cost of service delivery, lack of an economic base, inadequate training, lack of job opportunities and the lack of basic transportation welfare reform continue to be unique challenges for tribal governments.

Tribes administer a variety of programs under welfare reform. Today, 30 tribal TANF plans serve 158 tribes and they have all been approved. While struggling with limited resources and the lack of employment opportunities on reservations, tribes have made great strides in offering coordinated, holistic support services to our tribal members.

We look to this committee and the reauthorization of welfare reform to include the following guiding principles that are essential elements for this legislation:

Provide funding directly to tribes;

Adequate funding to meet tribal needs;

Flexibility to serve the needs of a wide variety of persons on welfare, including education, job creation and economic development opportunities;

Provide a structure to encourage diplomatic relations and constructive cooperation between tribes and States; and, clarify that reduction of poverty is a goal of welfare reform.

Under State taxation, we know this has been an ongoing issue. We suspect that this will continue to be an issue on the table. We anticipate that in the near future there will probably be legislation that is entered again that looks to threaten tribal sovereignty.

We know that the lobbying groups for cigarettes and motor fuel retailers claim that Indian retailers have an unfair advantage in that they are not remitting lawfully imposed State sales taxes on products sold to non–Indians. Their arguments have resonated with certain Members of Congress and numerous pieces of legislation will continue to be introduced because of that mere fact.

Fortunately, none of those extreme measures in the past have succeeded, thanks to members of this committee and your colleagues. We maintain that their claims are overblown and that there will be encouragement from you in your leadership role for the States to continue working with tribal governments to arrange agreements as sovereigns and come up with solutions and not to impose legislation that attempts to address the issue.

I think that that is especially important as this administration looks to have local governments in control of looking at issues, that it is important for this to be one of those issues that reiterate the administration's position.

Under trust funds, we understand the hearing yesterday brought out a lot of issues that needed to be addressed. This issue has been on the table for a long time. If it hadn't been Indian money or trust assets, the issue would have never taken this long to correct or to provide for restitution.

Unfortunately, Indian money or Indian assets seem to not be as important as those assets of individual citizens in the United States. I know that you personally are concerned about this and I know that you have paid attention to this issue closely in the past and that you will continue to do so on our behalf.

I think that in particular they will want to be adequately funded, but also we have to take a look at do we have the expertise within the Bureau of Indian Affairs to correct the situation or to ensure that as we move forward that there are people, in the field, who are able to enter data, to issue requests for payments, to followup on payments not made.

There are a number of other issues that need to be looked at more closely. I am looking forward to working closely with you as we begin to address trust reform.

BIA has been working with NCAI with a work group entitled, "Trust Management Regulations on Trust Funds, Leasing, Grazing and Probate."

We have also worked with the committee on the passage of the Indian Land Consolidation Act amendments of 2000. While we made a lot of progress with the Bureau on a lot of issues for the trust policies, there seemed to be difficult times in getting then to take a responsible approach to trust reform management.

We have had many strained sit-down sessions where we just wanted to have frank discussions about what we could be doing together.

We are still working with them so that we can continue this effort and can focus on those issues that deal with leasing and with providing for an opportunity for the tribes, who are quite sophisticated in this day and time, to be able to provide for the leasing within the tribal government structure. We believe that the BIA should look toward the private sector for trust management systems as a model.

Finally, we would like to note several underlying trust management issues that we would like to work with Congress on at improving the statute.

First, we should address trust fund management and provide clear guidance to the BIA and the Office of Trust Fund on roles and responsibilities for trust as far as management, and in particular, in a number of areas on individual Indian money accounts.

Second, the Indian Land Consolidation Act of 2000 was a big step toward helping move the probate of Indian estates forward. An important next step will be to consider developing a Federal probate code for the probate of Indian estates where the tribe does not have an established code.

Finally, we would like to ask the committee to consider revising the general statute on the surface leasing of Indian lands found in 25 U.S.C. 415 in light of the modern era of tribal self-determination.

Under law enforcement, we continue to be concerned about providing adequate law enforcement. As you know, when you have lack of law enforcement you have an open invitation for those elements to come in that are not desirable in Indian country.

We all face the intrusion of those who are not Indian coming on reservation lands to manufacture metamphetamines and sell and grow marijuana within the reservations.

We also see increased activity of gang-related activities simply because of that lack of enforcement and an opportunity for drug trafficking.

So, we are extremely concerned. The committee knows the public safety crisis in Indian country and I know that you support law enforcement and that the importance of law enforcement on trust lands is urgent.

Just last week the Justice Department released a second report, which confirms that Indians are twice as likely to be victimized as any other race, no matter where they reside.

Tribes are encouraged by Secretary Norton's recent statement regarding her commitment to provide adequate law enforcement resources to Indian country.

We seek the support of this committee to ensure that funding for the joint Department of Justice-Bureau of Indian Affairs law enforcement is continued and expanded.

Under transportation, NCAI appreciates the focus of the community in addressing the enormous need for transportation infrastructure on Indian reservations throughout this country.

We support S. 344, as it would provide a fix to the TEA–21 by removing the obligation limitation and would allow funds to be distributed to tribal governments so that they can be used for the intended purpose of fixing and maintaining roads on Indian reservations.

Regarding consultation, as you have stated yourself, Senator Inouye, there needs to be a greater consultation with tribal governments. NCAI has great hopes that the Executive order on consultation and coordination with tribal governments will compel agencies to consult.

The Executive order was and continues to be viewed by Indian country as a very positive step in the strengthening of the government-to-government relationship.

We look to this committee to support and assist Indian country in ensuring compliance with this policy. In the words of Chairman Robert Chicks, the Cochair of the Tribal Leaders Work Group on Consultation, "Don't make decisions without us."

The census is the next issue that we would like to focus attention on. Under the current Census count, the net undercount for American Indians living on reservation was reduced from a 12.2-percent in 1990 to a 4.7-percent in 2000.

We are encouraged by the significant drop in the undercount rate for the residents of Indian country and we commend the Census Bureau for consulting with tribal governments in its efforts to improve the Census operation.

Nevertheless, we are deeply concerned about the disproportionate undercount of American Indians and Alaskan Natives, both on and off the reservations.

We understand that the Census 2000 missed nearly one in 20 Indians living on reservation, the highest undercount of any group. The undercount of American Indians and Alaska Natives living off reservation was also disproportionately high, 3 percent.

Despite the persistence of this differential undercount of American Indians and other people of color, a committee of Census Bureau experts recommended early this month against the release of statistically adjusted numbers based on the ACE survey.

We cannot fully understand and analyze the apparent substantial undercount of our people without evaluating the adjusted numbers. The Census Bureau's expert committee, while recommending against release of the adjusted data, at this time confirmed the high quality of the coverage evaluation survey and said there is considerable evidence that the adjusted numbers are more accurate than the raw Census counts.

We have called upon the Department of Commerce and the Census Bureau to release the ACE adjusted data as soon as possible to allow for the fullest public scrutiny and evaluation of the Census 2000 and to help policymakers in Congress and Federal agencies make informed decisions about program development and the allocation of funds to those most in need.

We seek support of the committee in bringing about that disclosure in a timely manner.

Concerning the native Hawaiians, Mr. Vice Chairman, as you know, NCAI was organized in 1944 to fight against termination of tribal sovereignty and the assimilation policies promulgated by the Federal government. We are dedicated to the protection of the rights of tribal governments, as well as to working with all native people to achieve self-determination and self-sufficiency.

I was pleased on behalf of NCAI to testify in support of your legislation in your homelands in Hawaii last summer. I thank you for that opportunity.

In this spirit, we strongly support S. 81 and any measure that would provide the recognition of native Hawaiian sovereignty by the Federal Government and the creation of a process that would lead to self-determination for native Hawaiian people.

In conclusion, Senator Inouye, as we continue to urge the Congress to fulfill its fiduciary duty to American Indians and Alaskan Native people, I would like to thank you for this opportunity to present testimony on the goals and priorities of the member tribes of NCAI.

In this Congress, we look to you and the members of this committee for your unwavering support in not only the areas that we have identified, but in all areas that affect the lives of our people. We seek the assistance of Congress in maintaining the Federal trust responsible to Indian country and to continue to assist tribes on the road toward self-determination and self-sufficiency.

I thank you for the opportunity to provide this testimony to you today.

[Prepared statement of Ms. Masten appears in appendix.]

Senator INOUYE. I thank you very much, Madam President. It is always a pleasure to have you appear before the committee.

As I have indicated, this committee looks upon the NCAI as one of the premier voices of the native people of the United States. You represent Indian country.

As such, I am certainly well aware that much of our work here in the committee somehow has to maintain the posture of defense. We spend most of our time countering some of these proposals that would put your sovereignty in jeopardy for one thing, and take away the rights and privileges that arise from your sovereignty.

So, the questions that I have, and I will submit most of them to you in writing because of their technical nature, are geared toward this end. We want to work with you. What we want to have you do is provide us with the information and numbers that we can use in convincing our colleagues.

For example, for the last 15 years there has been at least one proposal per year, if not half dozen of them, on taxing sales made in Indian country, either by a tribal government or by individual Indians, in smoke shops and such.

There have been proposals to have Federal legislation. I agree with you that this should be a matter resolved between the State or the county and the Indian nation.

Do you know how many tribes have tax agreements with the various States?

Ms. MASTEN. We have some numbers and we will be happy to submit them. I am not sure they are hard numbers, but we have an idea of which tribes have agreements with the States.

Senator INOUYE. This is the type of information we would need if we are going to be able to persuade our colleagues that over one-half of the States already have agreements of this nature and we don't need legislation.

Second, do you have any idea as to how much money has been remitted to the States? I do not expect you to have the information readily on hand.

Ms. MASTEN. It has been a significant contribution. I know that we are updating our state-by-state analysis from the past. I know that NIGA has substantial numbers that they have generated through their database.

NCAI will be happy to provide you with what we have. I will encourage the other organizations that also have data to submit that to you to support your arguments.

Senator INOUYE. We will need the data and information if we are to carry on your advocacy in a proper fashion.

Recently Senator McCain introduced S. 558, which provides tax credits for investments on Indian reservations. Does NCAI have any views on that?

Ms. MASTEN. I don't think that at our last session we specifically dealt with this piece of legislation, but in the past NCAI has always been supportive of any measures that helped to alleviate and encourage participation with tribal governments.

Senator INOUYE. I feel certain that this matter will be heard by this committee, so I suggest that you look into this matter.

Whenever we speak of economic development, it is always suggested that we should provide incentives for doing business on Indian land. Do you have any legislative proposals addressing this area that you would like to recommend to us?

Ms. MASTEN. Well, for myself personal, as the President, it is a priority issue for me because of the importance that it plays for Indian country. I know that as a priority for myself that I would gladly step forward to take a lead in the development of legislation in that area.

In fact, because it is a priority for me, I have scheduled it for a presentation at the General Assembly as well as a breakout session to discuss in more detail. So, it is already on the agenda for discussion. I look forward to it. That will be one of the things that I will be sure to present to the body for consideration legislation.

Senator INOUYE. The thrust of my questioning is rather deliberate because I have long advocated legislation affecting Indian country should be made in Indian country by Indians. Much as we think that we are knowledgeable, if you can aid us by providing legislative proposals, we would be very happy to have them considered.

Senator Campbell has introduced a measure which would establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to community business and economic development of Native American communities.

Do you support this measure?

Ms. MASTEN. Yes; we do.

Senator INOUYE. I think we will have a hearing on this shortly.

Ms. MASTEN. I look forward to participating in that hearing.

Senator INOUYE. About 11 years ago, because of my membership on the Defense Appropriations Subcommittee, I thought that it might be well if some of the defense projects could be carried out in Indian country.

In order to facilitate this, I sent an inquiry to all Indian nations, over 500 of them, seeking certain fundamental data and information, such as "What is your population? How many of your citizens are high school graduates? What special skills do your citizens have? What is your infrastructure? Are there major highways near your reservation? Are there any airports? Is there access to full range of utilities?" et cetera, et cetera.

Well, I am sorry to tell you that we received only a 10-percent response.

Now, if we are to provide good, positive assistance, we must know this type of information. Let us say that the Defense Department has a project to make camouflage nets and they would need so many workers. That is very fundamental data that we need, and we have very little.

The matter of logistics becomes very important. Do you have access to any highways so that goods can be picked up and taken out or access to airports to do the same?

So, I would appreciate it if you could explore this and see if something could be done and make it available to the committee because I think we can use this information to good end.

Ms. MASTEN. Well, it doesn't surprise me that you would be looking to Defense to be conducting economic development projects within the reservation boundaries being that, as you point out, every opportunity that you get to let Native Americans serve this country at the highest population of any people, it seems most appropriate that we benefit from the sacrifices that our warriors have made on behalf of our freedom. So, I thank you for that effort.

I think part of the problem of collecting data is the confidentiality of data. That is a major issue of concern to Indian country. I think it is because it is often misconstrued by those who would like to take advantage of it.

I want to commit to you to address this and to try to get the information that you are seeking because I believe that it is an important avenue and we don't want to miss the opportunity. So, I will offer my commitment to assist you in that effort.

Senator INOUYE. Recently, a report was released which indicated that violent crimes against all races of this land have decreased in the last 5 years. However, during the same period it appears that violent crimes against Indians have either increased or stayed the same.

As such, the Government has suggested legislation that would amend section 1441 of title 18 to provide removal authority from tribal courts to Federal courts for cases involving Federal law issues.

Are you in favor of that?

Ms. MASTEN. No; particularly because, as you are quite aware Senator, most violent crimes aren't even investigated or that there is nothing that occurs, no action taken. Cases are closed without even getting the proper due consideration.

So, no, I would not be in favor of it. Crime rates are on the increase in every category in Indian country. It is not acceptable. I encourage the committee to take a look at data that has come forward with these reports and the statistics and to more forward to increase appropriations for law enforcement in tribal courts.

Senator INOUYE. I am certain you know that there is a very serious backlog in construction and renovation, not only of school buildings but also of detention facilities, jailhouses and such. Has NCAI considered any program that will allow outside investment such as bonding or tax credits to address this backlog?

I am concerned that if we leave it up to the Government of the United States, notwithstanding all the effort that is put in, it is going to be a slow process.

Ms. MASTEN. We have begun to have discussions among the tribal leadership regarding this issue. I know there are some tribes who are actively engaged in creative solutions to the problem and we would be in favor, as you know, in order to address the needs in Indian country in this area.

A large appropriation would have to be made. So, anything that helps to address the issue, I know the tribal governments would want to engage in active discussions to look for creative solutions to address the problem.

Senator INOUYE. As you are aware, the taking of land in trust is an important issue. The regulations that were recently published by the Department of the Interior are now under review pursuant to a memorandum issued by the Chief of Staff of the White House.

In the event that these regulations are finalized, have you developed any legislative proposals to address some of the matters that tribes oppose in the regulations?

Ms. MASTEN. Because we have engaged actively with the tribal leadership in our work group and they have been looking at all of the issues very carefully, they are looking currently at suggestions and solutions through legislation and specifically in regard to Alaska.

Senator INOUYE. Speaking of Alaska, has NCAI taken any position on the recent controversy on the Artic National Wildlife Refuge [ANWR]?

Ms. MASTEN. We are on record opposing——

Senator INOUYE. Opposing the President's proposal?

Ms. MASTEN. Correct. And that was voted by the membership.

Senator INOUYE. You mentioned in your testimony that the welfare reform law is due to the reauthorized in this Congress. Because tribes were not involved in the initial drafting, there are a lot of issues affecting Indian country that need to be addressed.

We know that you have been an active advocate. Has the working group identified issues to be addressed in the reauthorization process?

Ms. MASTEN. When I did my testimony in the areas that we have focused on, they have identified them. I think that in the written testimony, I hope that we covered it in detail. If not, we will be happy to do that because that committee has been engaged for a very long time and has had active participation by tribal leadership.

They have been very dedicated and have been very consistent in their meetings to address welfare reform. They did have some specific suggestions. There continue to be extreme challenges to Indian country as we look for creative measures to be able to provide for job opportunities where there are no job opportunities or transportation to job opportunities because individuals who do not have reg-

ular incomes do not have automobiles to get them to job opportunities.

Then for childcare, when you live in rural areas to be able to have childcare, to provide it, there are numerous issues that prohibit us from being able to implement the provisions of welfare reform in all of Indian country.

There are some specifics. If we can work with you to address all of these, we are very committed to continue the work for the amendments.

Senator INOUYE. Your response makes it very clear that if we are to come forth with any sort of welfare reform proposal, we had better work closely with you, and we intend to do that.

The staff of the committee is prepared to work with you on this and all other issues.

Living in this city for many years, with three meals a day, air-conditioned quarters and full transportation facilities, Members of Congress may sometimes forget that that is not the situation elsewhere.

So, we will call upon you for help.

Ms. MASTEN. Good.

Senator INOUYE. My next question relates to a meeting with the President. There was such a meeting not too many years ago where over 200 tribes were represented. The President received countless numbers of gifts and such. It was a beautiful photo opportunity. But I, for one, left the meeting feeling disappointed that the real issues had not been discussed.

Indian country is now suggesting, correctly, that there should be a meeting with the President of the United States to share with him some of the concerns of Indian country. I suggested that it should be made up of a group of people, no more than 15, because otherwise, it may just be another photo opportunity.

I mean it is beautiful to have our leaders in Indian regalia and women dressed up nicely in their gowns. But I don't think you want to go to the White House just for show. Do you think NCAI can help us come up with, say, 12 leaders of Indian country who can sit down with the President and share their concerns with him?

Ms. MASTEN. I thank you for your commitment to assist tribal governments by asking for the meeting to occur with the President. Fortunately, I was actively involved in the last sessions where we had to narrow the number of presenters who would be presenting at the last meeting.

Indian country is quite capable of getting together and selecting individuals to represent them and the interests of Indian country. We would welcome the opportunity to assist you with making that happen, the identification of 15 individuals. Whether they are NCAI members or not, we would be happy to facilitate the selection of those 15.

Senator INOUYE. Well, I hope you will not misunderstand. If Indian country wants 250 leaders to meet with the President, so be it, but personally, I do not think much will be accomplished.

So, I am just hoping for a group of tough, articulate leaders who will tell the President what is good and what is wrong in Indian country.

Ms. MASTEN. I think that is important. I think that as we meet in the smaller group, we could ask for a followup meeting with all of the tribal governmental officials. I think that would be quite appropriate as he meets with all of the Governors or all of the mayors in their different capacities.

I think it is most appropriate that in a briefing session that it be a smaller group where we can articulate the fundamental principles and to get some commitments from the President to support those principles and then follow up with a larger session that would allow for opportunity of all tribal governments to participate would be appropriate.

Senator INOUYE. I wish to apologize at this point. We have been just carrying on a conversation between the two of us and I notice that we have some very distinguished members of Indian country.

If President Ranfranz or Lieutenant Governor Keel have anything to contribute, feel free to speak up.

Mr. RANFRANZ. Thank you, Mr. Vice Chairman. If I may, I would like to focus my testimony this afternoon on the Great Plains area. If I may just read my testimony briefly, if I take too long, I could shorten it, if you prefer. But I would like to start in, if I could.

Senator INOUYE. I can assure you that if you put it in the record I will read every word of it.

STATEMENT OF THOMAS RANFRANZ, PRESIDENT, FLANDREAU SANTEE SIOUX TRIBE, FLANDREAU, SD

Mr. RANFRANZ. Thank you. Mr. Vice Chairman, my name is Tom Ranfranz, President of the Flandreau Santee Sioux Tribe in Flandreau, SD. On behalf of the Great Plains people, I appreciate the opportunity to present our concerns today.

The Great Plains region is comprised of 16 tribes and with a land base of 7 million acres and approximately 200,000 population.

In a united front, we are presenting our needs to be heard and demand that the United States Government uphold its unique legal relationship and trust responsibility as stated in the U.S. Constitution and numerous treaties.

We, the treaty tribes within the Great Plains Region, exercise our rights by holding the Federal Government to its treaty and trust responsibilities, and demand any program increases be distributed in such a manner as to upgrade the quality of life for our Indian people. Historical underfunding has been the main factor contributing to the current economically depressed environment of our people.

The Great Plains tribes' reservations are situated in extremely isolated locations, on lands that the territorial governments and settlers least desired.

According to the Census Bureau, the Great Plains area has three of the poorest counties within the United States. Shannon County, with an average annual wage of $11,630. That is annual. Ziebach County, average annual wage of $12,062, and Todd County with an average wage of $11,197. These counties all are located within the reservation boundaries in the State of South Dakota.

Further, 9 of the poorest 38 counties within the United States are located in South Dakota and North Dakota.

We as Great Plains tribal leaders want an acceptable quality of life for our people. Until the quality of life, that is, poverty, unemployment, education, and housing on the Great Plains reservations are comparable to the rest of the American people, the Federal Government must increase and maintain its funding support to meet its obligations as agreed upon.

The Great Plains tribes want to go on record that we oppose the current budget formulation process of prioritizing our top 10 programs. Each program has equal importance. Each of the 16 tribes in the Great Plains Region has different needs for their unique situations on their reservations. Choosing 10 of the most important programs forces a division among our nations.

Areas of concern in education in the Great Plains area. Of particular importance to achieving this desired quality of life are education programs. TPA programs include: scholarships, Johnson-O'Malley, adult education, and tribally controlled community colleges.

Education is the means by which our tribes will attain self-sufficiency, economic development, sustainability, and most importantly, survival.

We applaud the Bush administration's commitment to provide additional Indian education construction funding. We also appreciate the support of many committee members for your hard work in increasing the funding for school renovations, repairs, and replacements.

This commitment to BIA schools is a very positive sign and we thank you very much.

Education cannot be accomplished in schools that are poorly designed, falling down around them, unsafe and ill equipped. Yet, this is the condition of many of the schools on our reservations in the Great Plains area.

The BIA construction budgets for replacement of old, inadequate and in many cases condemned schools is still a major concern of the Great Plains area. Three tribes in the Great Plains area have expressed their strong need for new schools: The Cheyenne River Sioux Tribe, the Lower Brule Sioux Tribe, and the Crow Creek Sioux Tribe.

I just recently talked with all the chairmen before I came out here to testify.

Base funding for operations, D through 12, must be increased. The Indian Student Equalization Program, the ISEP funding for student transportation, base funding, operation and maintain and the administrative costs have been from 15 to 50 percent below their actual need.

Adult vocational training and job placement is underfunded to the point that many tribes in the Great Plains turn away 40 to 50 percent of their applicants. Many of our adults need training in life skills and job training.

Student transportation in the Great Plains area is in need of additional funding. BIA schools are located primarily in rural and isolated areas, thereby improving the succession of students to each educational level by providing tutoring, counseling and parental involvement programs.

This is the only Bureau program that provides for the culturally related and supplementary academic needs for Indian children attending public schools. In fiscal year 2002, the Great Plains region, the unmet need for the Johnson-O'Malley program alone was $2,124,000. That is the unmet needs.

Tribally controlled community colleges and post-secondary schools are the Indian success story, providing education and job training opportunities to thousands of students who otherwise might fail out of the educational system. The schools offer courses in everything from biology, math to native languages and history to ensure that students not only know about academic subjects, but to cherish their American Indian life and our traditions.

What is most impressive is that the tribal colleges provide a wide range of services on what most would describe as a shoestring budget. Tribal colleges receive less than half the funding per student of other community-based institutions. Between 1989 and 1999, enrollments at the tribal colleges tripled from 10,000 to almost 26,500, according to an article published in the Lincoln Journal Star in Lincoln, NE.

In housing in the Great Plains area, the tribal housing in the Great Plains area is inadequate. There are extremely low-income families who are forced to live with other families or tribal members because they are homeless. There are some cases where 15 people share a three-bedroom home.

We need approximately 10,400 housing units to meet our existing needs on the Great Plains Reservation today. This does not even include the people who want to return to the reservation for economic opportunities. So, it is very important.

Many of our housing units are in substandard condition or are in need or repair. Some of the homes that are substandard are, for example, 1,648 homes on the Cheyenne River Reservation, 1,883 homes on the Pine Ridge Reservation, and 1,555 on the Turtle Mountain Reservation, all in the Great Plains area.

Many reservations in the Great Plains Region simply do not have adequate funding to repair and maintain their substandard aging homes. On our small reservation in Flandreau, South Dakota, we have a single mother with three or four children whose siding on the home is falling off. The windows are 25 years old. There is poor insulation. That is just one example.

Many reservations try to serve the neediest of the needy. They try to prioritize such as living quarters for the elderly and the handicapped families, which are very important. But yet, there still remains to be a desperate need for adequate funding for new homes and for the repair of these older homes.

The past 13 years, funding for just the Great Plains area alone and for housing improvement projects has remained the same with little or no increase. The Great Plains Region is in dire need for more funding for new homes and to repair these aging and existing homes.

In the area of law enforcement, Indian country is very under funded in this area. We desperately need more money just to be able to opportunity at the same level as all other non-tribal and non-Federal agencies.

In the fiscal year 2001, the Great Plains area had a need of $56.3 million. However, we only received $19.8 million, which gave us an unmet need of $36.5 million.

Furthermore, this shortfall of $36.5 million represents a manpower shortage of 170 employees. My reservation in Flandreau, SD, for example, has a huge unmet need. It is huge to us and not across Indian country because we are a small tribe. In fiscal year 2003, we have documented a need for $450,000, yet only receive $112,000 which creates an unmet need of $338,000, and that is just for 1 year.

I would like to quote Roger Trudell, who is the chairman of the Santee Sioux Tribe in Nebraska. Before I came up, I called him and he said, "We have an immediate need for $1.5 million for law enforcement, our court systems and our public safety centers."

Law enforcement funding. We need money that will be there from now on. Programs like the COP grants are important, but they have short duration, usually only a few years. We need to increase our funding that we can always count on, year after year.

Programs like the COP grant are good for meeting initial need. However, we need sources of money that we can use to retain our officers. Frequently, the departments use these funds to hire and train the new officers, but once the money runs out, then the officers leave.

More officers are needed. Like in many areas of the country, there is a huge shortage of properly trained Indian officers. Having more officers could help solve several problems, not just the obvious increase in law enforcement. Safer communities would be more economically inviting for businesses to move into. Having a well trained, quality police force would also assist to break the endless cycle of domestic abuse and many other of the social problems that plague our reservations in the Great Plains area.

Detention centers, I think we briefly talked about detention centers here earlier. While this is a national problem, it is particularly bad on the reservations. Funds are needed to build modern, secure detention facilities. When it is necessary to incarcerate an individual, many reservations have very limited options.

They can either house the prisoner in their own substandard facility, or they take an officer off the street and transport that prisoner to another facility, possibly in another city.

Increased funding for community awareness activities, ours included, are moving toward community-based law enforcement. Our police force is actively participating in and educating the community, which will serve to lower crime across the board. A source of funds specifically for this purpose would greatly help in this effort.

In the area of Health care, as you know the Great Plains tribes have the worst health statistics in the country, the highest infant mortality rates, diabetes, heart disease, cancer, alcohol and drug abuse.

These factors, along with distance, how far you have to travel, access to medical facilities, poverty and underfunding make it extremely difficult to meet the health needs of our people. The Great Plains tribes do appreciate the consultation process that has been going on between the Indian Health Services and all the tribes.

It is imperative that this process continues so that our needs and concerns are heard. It is extremely difficult to provide quality health care to our people with the current budgets. The funding that we receive doesn't even begin to address the health needs of the Great Plains area.

The Great Plains area budget for fiscal year 2000 was $175,715,000, when the need for $347,512. With this kind of barebones budget, service units and health clinics operate by crisis management or with a band-aid approach.

Our tribe, the Flandreau Santee Sioux Tribe, operates an outpatient clinic with a 638 contract with the Indian Health Services. In fiscal year 2001, our contract amount was $2 million.

According to the Level of Need Study by Indian Health Services, we are funded at only 37 percent of our need. We have approximately 2,200 users on our reservation. This figures out to be less than $1,000 per person.

Our mental health dollars in this contract were only $33,918. This doesn't even cover the salary or the fringe or the qualified medical health professionals and the basic necessities.

Our alcohol funding for fiscal year 2001 was $83,000. Again, it is extremely difficult to provide the services needed on a reservation with this low funding. Because this is such a huge need on our reservations, the tribe commits a portion of the tribal dollars to alcohol and drug treatment each year.

The dental program for our tribal members. For fiscal year 2001 is $68,792. This does not even begin to cover the dentist's or the dental hygienist's or the dental assistant's salaries and fringe and supplies needed to operate the dental clinic. Dental referrals outside of our clinic are put on hold, so the orthodontic and periodontal referrals are gone.

Because we operate an outpatient clinic with a small lab and no x-ray department, a good portion of our services are purchased outside with Contract Health Services dollars. This includes our physician, contract for OB services, x rays, mental health referrals for evaluation and commitments and purchase of pharmaceuticals.

Our people cannot be referred outside the facility until they are in a life threatening. You have to have a life-threatening situation before you can referred out. Then, the price for service goes up and the recovery is more difficult.

The entire Great Plains area operates on a Priority 1 status for contract health. This makes it difficult to practice any kind of preventative medicine.

The larger tribes in the Great Plains area are in the same situation, but on a much greater scale because of their size, economy, and population.

Our recommendation to all of you with regard to health care issues in the Great Plains area is to continue the consultation process, which began in the year 2000.

We invite Senators and Congressmen to visit the IHS and tribal facilities on our reservations in your States and more importantly to work to bring the Indian Health Services budgets up to an amount where we can realistically address the health needs of our tribal people.

By doing this, you and I both would be fulfilling the treaty obligations which were signed by our ancestors many years ago.

Contract Support. The 638 process is very important for tribes to continue to develop and to manage their programs. Through the appropriations process, Congress needs to ensure that contract support costs are funded at the 100 percent level for any 638 contracts and Federal agency grants.

In the area of economic development, and I know that President Masten is really strong in this area and I would just like to talk briefly for the Great Plains area, if I may. The tribal leaders in the Great Plains area would like to thank Senator Tom Daschle and Senator Tim Johnson for introducing legislation that would provide economic development and regional job creation opportunities for the Sioux Nation.

The Sioux Nation Economic Development Council would coordinate economic development projects and centralize the expertise and technical support to help tribes obtain assistance, as well as to raise funds from the private sector in the match with the Federal contributions. I think that is very important.

Economic development is slow in coming in the Great Plains area for many reasons. Despite the modest success in Indian gaming in our area, we have the long winters that last 6 months with low population in our States, less than 900,000 people total population in the whole State of South Dakota.

The capital debt repayments for casinos. Yes, we can go into gaming, but the cost of going into gaming is tremendous. The average payback is 15 years. The location of our casinos, again, is in isolated areas and the returns are very minimal at this point.

Also, in South Dakota, the State continues to limit the economic growth to tribes by freezing the number of gaming devices each tribe may have to a total of 250 devices. These types of gaming devices generate approximately 85 percent of the gross dollars for the tribes.

Another area of need is the development of energy. There are tribes in the Great Plains Region that have energy resources that are requesting dollars for technical assistance.

For example, my tribe, the Flandreau Santee Sioux Tribe, is looking into wind energy. We are very excited about that.

Welfare reform also requires economic development. We are also subject to the requirements of welfare reform. To put people to work we need jobs on or near the reservations. Without jobs, the goals of welfare reform as applied to our tribes and other members will be impossible to meet.

Our unemployment rates in the Great Plains area, according to the BIA labor statistics are often over 50 percent of our adult, working-age population, with many tribes facing more than 80 in unemployment. Bennett County in South Dakota is part of the Oglala Nation and is consistently one of the poorest counties in the United States, as is Ziebach County within the Cheyenne River Sioux Reservation. There are several other counties within the State of South Dakota.

Population is growing fast. At the same time our population is among the fastest growing segments in the U.S. population when

the Indian tribal members are coming home to work on their reservation and to be with their families.

Infrastructure, I think President Masten talked about this and, Mr. Vice Chairman, you also mentioned this. We also need support in infrastructure improvement. This includes our roads, our sewer and water system, better telecommunication systems, among other things.

For an example, a portion of the proposed Dakota Water Resources Act was introduced by our North Dakota Congressional delegation, will go to improve municipal, rural and industrial water projects on the Indian reservations in North Dakota. We need those funds and we need them now.

Also, Indian business loans and grant programs are needed. Individual tribal members need more assistance, also. Individuals and tribal governments alike have benefited greatly from such programs as the BIA direct loans, now without funds, and the BIA guaranteed loans which have been highly successful in our area.

Programs like the Indian business development grants and Indian business technical assistance need to be reinstated and provided enough funds to have a chance to succeed.

Native American tax incentives, I think we talked about that briefly. We really do support that. With only 2 years remaining before the tax incentive expires, many businesses are now reluctant to commit to locating or expanding on our reservations. Economic planning and construction can take months and sometimes years to develop from start to finish.

We would like to thank Senator John McCain for his support on the incentives for economic development on Native American lands in the Senate.

Tribal governments are good neighbors. They are good partners in the future of economic development of our country, our States and our local communities.

Our court systems, a strong court system in place is the key to a strong Nation. It is very important for our courts to run properly and without interference from our tribal politics. Private companies feel more secure forming relationships and partnerships when they feel like they have an equitable dispute resolution mechanism that is available to them.

We experienced that when we applied for private funding for our casino in Flandreau, SD. Tribal court funding is needed because it not only improves the economic development, but also deters criminal behavior and maintains tribal identity.

For our roads, the Great Plains area current funding level is approximately 30 percent of the actual need. Our tribes in our region overwhelmingly expressed that road maintenance is a major concern on our reservations.

The BIA estimates that road maintenance is funded as little as $80 per mile. In comparison, the average of $2,200 per mile is spent maintaining other Federal roads and an average of $2,500 to $4,000 is spent on State roads. With 7 million acres of land and 200,000 people, versus the small tribes in other areas of the country with 15 to 30 tribal members and few roads, we urge you to increase our funding in the Great Plains area. Our roads are im-

portant in providing emergency health care, law enforcement and fire services to our people.

In conclusion, we ask that Congress maintain the Federal trust responsibility to Indian country and continue to assist the tribes on the road toward self-sufficiency.

I thank you for your time.

[Prepared statement of Mr. Ranfranz appears in appendix.]

Senator INOUYE. I thank you very much, Mr. President.

Lieutenant Governor Keel, do you have anything you would like to add?

STATEMENT OF LIEUTENANT GOVERNOR JEFFERSON KEEL, CHICKASAW NATION, ADA, OK

Mr. KEEL. Senator Inouye, thank you very much for the opportunity to address this subcommittee.

As a member nation of the National Congress of American Indians, the Chickasaw Nation does support vigorously the actions that have been taken on behalf of those member nations. I don't have any written testimony, but in the testimony that has been presented by the NCAI I know it is written in there that the areas of language and historic and cultural preservation are very important. We urge this committee to continue and we appreciate your help in leading in these efforts.

I know that your personal involvement in this has been very important to Indian country and to the Alaskan Natives and native Hawaiians. I want to thank you for that.

We urge this committee to continue to press forward in helping the tribes to continue to preserve our language and our culture and our heritage. It is what sets us apart from all other people. That is very important.

I wanted to encourage you and thank you again for allowing this testimony.

Senator INOUYE. I thank you very much. I can assure that I concur with you 1,000 percent.

Madam President, as I indicated to you, we have hundreds of questions that we could ask at this moment, but I would like to just touch upon one issue before we close.

As noted with the problems in California, energy will become an issue of national dimensions. Some experts have suggested that we are on the brink of disaster, that what is happening in California may happen in many, many other States. OPEC is not being too friendly.

As we all know, a significant portion of the land from which energy resources are derived are located on Indian lands. Accordingly, it would seem logical that we have an Indian energy policy.

I hope that NCAI would get together with its membership to articulate a special policy on energy that would affect Indian country. This policy should not only involve production, but also protection.

For example, a few days ago I was in the Pacific Northwest meeting with tribal leaders from that area. They were quite concerned that this energy problem may place the salmon in jeopardy.

For example, the dams that have been built on some of the rivers that are located in the Pacific Northwest have had a devastating effect on the salmon fisheries. So, if there is going to be Indian pol-

icy on energy, I hope that it does not focus on just production but protection.

I would most respectfully suggest that this matter be high on the agenda of Indian country.

Ms. MASTEN. I appreciate that. Being from California and being a tribe who lives on the second largest river in the State of California, I know all of those concerns that you heard from the tribes in the northwest because we have the same concerns.

I have already experience this last summer, having our electricity shut down for the day in our very rural community. I still don't understand how that helped to alleviate the pressure, but we did experience two shutdowns for two days.

So, as the President of NCAI, it behooves me, so I already have energy as a discussion item for the General Assembly as well and a special breakout session and have recruited CERT's assistance in putting together the critical issues that should be addressed and looked at in Indian country.

So, that is my intention, to make sure that we come up with a policy that allows for us to move forward to advocate for tribal governments to ensure that there is development and that we are included as perspective opportunities for energy development but also to ensure that there is that element which we all have the responsibility for future generations to ensure that we are also at the same time ensuring the protection of the resources.

Senator INOUYE. There are three projects that are ongoing at the present time, three very exciting projects that will have a tremendous impact upon the future of Indian country.

One is the construction and completion of the National Museum of the American Indian. The first phase was very successful. We were able to raise approximately $100 million. We have already established the museum in New York and the Cultural Resource Center in Maryland.

Now we are completing the museum on the Natiional Mall. That project will take an additional $90 million. Much of that will be from Federal resources, but I would hope that the tribes will participate in this fund-raising effort.

Ms. MASTEN. We are also working very closely with Rick West in the effort.

I do want to also, before you close, thank you for your comments and feedback for the revision of our 101 on Indian Tribal Government booklet. We are very appreciative of that. The final product is done and will be available for efforts in educating your colleagues as well as the general public. So, for your information, that is complete.

I also would ask that the Senator keep the record for at least 2 weeks so those tribal governments who wish to submit written testimony could have an opportunity. I understand you are going to be holding more hearings, but I think it would help to alleviate some of the concerns with this go-around if you could keep the record open for an additional 2 weeks

Senator INOUYE. Actually, this record will be kept open until the end of this series of hearings.

Ms. MASTEN. Good. Thank you.

Senator INOUYE. There are two other projects I would like to just mention. As you know, Madam President, when I assumed the chairmanship of this committee I did some research and I noted that the federally subsidized Howard University which was established by the Congress to help the descendants of African slaves 10 years ago was receiving something like $14,000 per student 10 years ago. At that time Indian students throughout the United States were receiving about $2,000 per student.

There is no medical school for Indians. There is no law school, no schools of specialization. We have 28 Indian colleges and we are in the process of trying to develop a university of national scope.

Second, a bank. I recently met with the Board of Directors of the Native American Bank and I am pleased that they are moving forward. I hope NCAI will look upon this and hopefully support this effort.

Ms. MASTEN. I have been actively involved at the very beginning of that effort. Personally, I support that. In my travels and in many of my speeches as the president, I have encouraged tribes to actively engage in support of that national bank. It is about time that we made our money work for Indian country. We need to be supportive of that effort.

I also want to thank you for taking on the cause of a university that is national in scope that would focus on Native Americans. So, I appreciate your commitment to that effort and look forward to working closely with you.

In fact, our initial discussions began on forming the banking institution based on a comment that you made during the economic summit. It is amazing the number of ways that you have touched Indian country in your leadership and we are appreciative of that.

Senator INOUYE. With that, I thank all of you in attendance. This committee will stand in recess, subject to the call of the Chair.

Thank you very much.

Ms. MASTEN. Thank you, Vice Chairman.

[Whereupon, at 3:25 p.m. the committee was recessed, to reconvene at the call of the Chair.]

GOALS AND PRIORITIES OF THE MEMBER TRIBES OF THE UNITED SOUTH AND EASTERN TRIBES

THURSDAY, APRIL 5, 2001

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:17 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs meets this morning for the second in a series of hearings on the goals and priorities of Indian country for the 107th session of the Congress. I want to reiterate that the committee will be soliciting the views and concerns of all the federally-recognized tribes, Alaska Native communities and native Hawaiian organizations.

On behalf of the committee, I am pleased to welcome Keller George, president of the United South and Eastern Tribes and a member of the Oneida Indian Nation of New York. I will now recognize Chief Keller George.

STATEMENT OF KELLER GEORGE, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN

Mr. GEORGE. Thank you, Senator Inouye.

On behalf of the Oneida Indian Nation and the 24 tribes of USET, we appreciate the opportunity to come and bring our agenda for the 107th Congress.

Because our member tribes cover a huge range of circumstances living in 12 different States in the eastern regions, in the north and in the south, we vary widely in population, tribal government infrastructure, economic development, and natural resources. As such, the issues addressed in this statement do not reflect a priority order. They are all critical to the well being of USET.

The tie that binds the various legislative priorities of USET is our commitment to tribal sovereignty and the freedom to exercise that sovereignty through tribal self-governance. The Senate Committee on Indian Affairs has been critical to the protection of tribal sovereignty, whether through legislation that this committee has

approved or disapproved or in your role as an advocate on behalf of tribal concerns in legislation under the jurisdiction of other congressional committees. We truly appreciate this stalwart support, and hope to count on your continued partnership in our ongoing struggle against erosion of tribal sovereignty rights and the prospect of harmful legislative proposals, Federal and State agency actions, and adverse court decisions during the 107th Congress.

Examples of actions which have eroded or threaten to erode tribal sovereignty among the USET member tribes are: Efforts by the State of Maine to assume all authority and jurisdiction of their National Pollution Discharge system within the borders of tribal lands in Maine; efforts by the State of Louisiana to require State licenses for the tribally charted Chitimacha Insurance Company; Federal legislation, H.R. 240, which would prohibit the Poarch Band of Creek Indians from using certain lands it currently has in trust for gaming purposes; Federal law which singles out the Narragansett Tribe as being ineligible to operate gaming in Rhode Island under the authority of the Indian Gaming Regulatory Act; and the National Labor Relations Board General Counsel has asked the agency to reverse its long-standing precedent and unlawfully subject Indian nations to the National Labor Relations Act.

We ask your continued help in solidifying tribal sovereignty by promoting positive legislation under this committee's jurisdiction which furthers tribes' ability to govern, such as the Self-Governance measure passed last year. It is also vital that this committee continues to be actively involved with other committees on legislation that impacts tribal governments, evaluating legislation with regard to its impact on tribes and educating and coordinating with congressional colleagues and staff; the Finance Committee's jurisdiction over tax and other financial matters, Medicare, Medicaid, and social service entitlement programs which makes the work of that committee particularly critical to Indian country.

We appreciate that this committee sponsors issue briefings for congressional staff, and encourage you to continue in this endeavor.

Finally, we ask your assistance in building tribal relationships with the new administration. As with any new administration, there is a great deal of initial education and introduction that must be undertaken. We look forward to developing positive working relationships with Federal officials and White House staff, and welcome your assistance in building smooth pathways for communication between all of us who are concerned with the well being of American Indian and Alaska Native communities.

Below are outlined specific legislative issues of importance to USET member tribes. We have attached issue papers and resolutions on many of these topics. Also attached is a map of the USET area, a list of our member tribes and other information about our organization.

No. 1, would be appropriations. The USET tribes are encouraged by Secretary Norton's recent statement in testifying before this committee that she and President Bush are "both believers in the concept of self-determination." As the committee is well aware, adequate funding is essential to continuing the successes achieved under self-determination and self-governance.

Because we have not seen the details of the proposed fiscal year 2002 budget request, we urge the committee to keep in mind the following when considering Indian funding related issues. First is Tribal Priority Allocations, [TPA]. As indicated by the initial data from Census 2000, tribes will face increased demands for services to their communities and families due to the population growth on reservations. However, TPA funds, which are utilized to provide ongoing, essential services at the local tribal level, have not been increased at levels that would meet the growing needs of each tribe. According to the 1999 Tribal Report on TPA, the unmet need in TPA-funded programs was estimated at $688 million.

No. 2, is means testing. In recent years, Congress has expressed concern about perceived "inequities" in funding and considered imposing a "means test" to allocate Federal funds to tribes. We certainly commend members of this committee for successfully fighting these ill-conceived proposals that would stand in stark violation of the Federal trust responsibility. We remain strongly opposed to any type of means test to determine whether or how much Federal assistance a tribe may receive until Congress first ensures that the unmet needs of all tribes have been met.

Although some of our member tribes have recently begun to achieve economic success through their various businesses, there are decades, if not centuries, of poverty from which the tribes must rebuild. The toll on human health, education, and welfare has been tremendous and the tribes are still building the infrastructure and systems necessary to cultivate economic development.

We instead encourage this committee to continue efforts to develop long-term solutions identified by the 1999 Tribal Report on TPA, which includes the "Tiered Methodology" for funding distribution that USET first proposed in 1998. This method provides that future TPA funding increases would be distributed to all tribes but at an accelerated rate to the lower-funded tribes in order to address the disparities among tribes. We attach our testimony on this topic as an additional resource.

No. 3, is contract support and administrative cost grants. Both contract support costs, [CSC] funds and Administrative Cost Grants are intended to fund the additional costs incurred by tribes when they contract to operate Federal programs. These are costs not necessarily borne by the Federal contracting agency, for example, GSA lease support, agency legal counsel or Department of Justice legal support, retirement costs, telecommunications costs, et cetera.

Administrative Cost Grants are the mechanism by which tribes that operate BIA-funded schools receive funding for administrative and indirect costs. Although it is irrefutable that these funds are a critical element in fulfilling the Federal policy of encouraging tribal governments to design and administer services locally for their members, CSC and Administrative Cost Grants have been seriously underfunded for a number of years.

The fiscal year 2001 estimated shortfall for CSC funds was $16.9 million for BIA programs, and $13 million for Administrative Cost Grants. Whenever the appropriations fall below the needed amount, all contractors and schools suffer a pro-rata reduction in CSC and/or Administrative Cost Grant funding, and, thus, must

offset these shortfalls with reduced services, reductions in force, delayed updating of financial systems, et cetera.

We appreciate the increases provided by Congress in the past several years for IHS contract support but there is still an existing shortfall of approximately $45 million for ongoing and new contractors. We urge Congress to fully fund IHS contract support costs.

Finally, we urge this committee to work with tribes in educating other committees of Congress and Federal agencies outside of the BIA and IHS that contract support costs are a legitimate and necessary part of this Nation's policy which recognizes and promotes tribal self-determination.

No. 4, is tribal historic preservation. Beginning in 1996, tribes, under the authority of the National Historic Preservation Act, began establishing tribal historic preservation offices to take over the duties of the State historic preservation officers on tribal lands. There are now 27 tribal historic preservation offices, of which 7 are USET members—Wampanoag, Narragansett, Catawba, Poarch Band of Creeks, Tunica-Biloxi, Eastern Band of Cherokee, and Seneca.

The National Park Service reports that there is interest among many other tribes in establishing tribal historic preservation offices. Congress is providing about $5 million annually for tribal historic preservation programs. The tribal historic preservation offices receive a base of $100,000 plus some additional funding based on population. Other parts of the $5 million are distributed competitively to tribes for preservation programs outside of the tribal historic preservation offices.

Establishing and carrying out the duties of a tribal historic preservation office is an enormous undertaking, and is an attribute of tribal sovereignty. We urge Congress to significantly increase funding for tribal historic preservation offices so that they can better meet the requirements of their offices and so that additional tribes can establish tribal historic preservation offices.

We have heard under the President's budget, they are going to hold that level of funding to the levels of 2000 which will mean we will still not be at those levels but will go below that level again. This is of concern to our efforts for tribal historic preservation programs that we have.

The ability of tribal governments to provide services to their members is directly impacted by the amount of Federal funding made available for tribes. We ask this committee to continue advocating for funding that more accurately reflects tribal needs and the, United States' trust responsibility for tribes.

We are fortunate that six members of the Senate Committee on Indian Affairs also serve on the Appropriations Committee. We know the Senate Committee on Indian Affairs' work has been very important in securing recent funding increases for contract support costs, diabetes programs, BIA school construction, and law enforcement, among other areas. We ask your continued support in maintaining the critical gains in these areas, as well as in securing additional funding for the several key areas mentioned above that are in need of immediate attention.

No. 5, is child welfare, the Indian and Alaska Native Foster Care and Adoption Services Amendments of 2001. USET strongly sup-

ports S. 550, the Indian and Alaska Native Foster Care and Adoption Services Amendments, legislation which would end the wholly inequitable treatment afforded Indian children under the Foster Care and Adoption Assistance Act, found in title IV–E of the Social Security Act. That act was enacted in 1980 and it provides funding, on an open-ended entitlement basis, to State governments to administer foster care and adoption programs for children who meet income eligibility requirements.

The act applies to State governments and children placed by State agencies, leaving out tribal governments and children under tribal jurisdiction who are placed in foster and adoptive homes by tribal agencies.

We thank Senator Daschle and the cosponsors of the legislation, including Senators Inouye, McCain, and Johnson of this committee, for working to bring equity for Indian children under the Foster Care and Adoption Assistance Act. It is ironic, and sad, that we have a Federal entitlement program regarding foster care and adoption services, but leave out benefits Indian children who are placed in out-of-home placements at a rate higher than any other group. Indian children, according to the most recent Department of Justice figures, suffer the highest rate of abuse and neglect of any group in the Nation—a tragic situation, which often leads to the necessity of removing a child from his or her home.

Some tribes and States have been able to work out agreements to provide tribes at least some of the resources that States receive under the IV–E program. Often these agreements do not provide tribes with administrative, training, case management and data collection funds that States receive under the act. The agreements usually focus on the provision of monthly payments to the foster home. Among the USET tribes only St. Regis Mohawk has a tribal/State agreement for the IV–E program.

The Bush administration child welfare proposal outlined by the Bush administration for child welfare does not contain many details, but we are nevertheless concerned that it makes no mention of Indian children. We are also concerned with its implication that "permanence" is narrow concept that may leave out kinship care, guardian arrangements, and other tribally approved living arrangements for children who are removed from the homes of their biological parents.

It is possible that the President's recommendation of a $1-billion increase over 5 years for child welfare will be considered as part of the reauthorization of the Promoting Safe and Stable Families Act, found in Title IV–B, Subpart 2 of the Social Security Act. Tribes currently receive a 1-percent statutory allocation under this act.

We will closely examine this proposal as it becomes more fully developed. The Promoting Safe and Stable Families Act will be reauthorized this year, and we believe that it should be amended to provide additional resources to tribes. Currently 66 tribes share an allocation of only $3 million under that act.

The economic diversity of our member tribes reflects the wide differences in economic circumstances that exist among the tribes nationwide. We have a member tribe whose only source of funding is the minimum level of BIA TPA funding of $160,000. With these

meager funds they are desperately focused on establishing their basic tribal government, which leaves them no funds to develop business ordinances, codes, and strategic planning that would prepare them for a greater chance of achieving economic success.

At the other end of the spectrum, we have tribes who have achieved the capacity to extensively diversify their economic base. It is critical for Congress to recognize that the economic success of a very few does not mean it is time to withdraw support for Federal responsibilities.

Within USET there are two tribes that now have decided to turn back their TPA funding to the BIA. That would be redistributed using the tiered methodology that we have proposed. We did a study on that and we are using that methodology with the Bureau now and presently redistributing those funds to the tribes that have the most need for those funds. We did it in fiscal year 1998-99 and are doing it in 2000 and hopefully 2001 also. There are two tribes that have decided to do this because of their economic development. They feel confident that they will be able to get along without these funds and to help those tribes that need it so desperately.

We still hold that improving the economic status of tribes can be achieved through: Honoring tribal sovereignty so that tribes may self-regulate their economic affairs and interact with the Federal government on a government-to-government basis, rather than fighting off legislative and regulatory attempts to diminish their authority; honoring trust responsibility to provide the health and education services which will enable tribes to move toward economic development with a skilled and healthy workforce; offering meaningful tax incentives for private investment on Indian lands such as the proposed legislation to allow tribes to issue, revenue bonds and tax-exempt financing; and improving the infrastructure on tribal lands. Tribes must be able to provide adequate water, sewer, roadways, electricity, and communications systems in order to attract new businesses.

We applaud the committee's efforts to enact legislation that would allow tribes to consolidate economic development resources from various agencies/programs under one self-determination contract and coordinate the role of the Federal agencies. We hope to work closely with you in this Congress to secure enactment of this and other proposed legislation that addresses our economic development needs.

In addition to the legislation already noted, we urge the committee to oppose further attempts to subject tribes to the National Labor Relations Act.

Under education, we greatly appreciate the work of this committee in drafting S. 211, the Native American Improvement Act of 2001, which concerns elementary and secondary schools in the BIA system. Tribal children among the USET tribes attend a mix of BIA and public schools. To that end, we hope that you will continue to work with tribal leaders and advocates to ensure that the broader Elementary and Secondary Education Act reauthorization includes provisions to ensure that Indian youth in both the public school systems and the BIA-funded school system receive all of the support they need.

The USET's are pleased that the new administration has placed education among its highest priorities, and has pledged that the "Federal Government will meet its responsibilities to Native American children." We hope that this year will mark a turnaround in the chronic funding shortfalls that have too long plagued BIA funded schools and public schools with high numbers of Indian students.

We strongly support fulfillment of President Bush's campaign promise to devote $1 billion to fully fund the maintenance backlog and construction needs of BIA schools. But it is also critical that these schools have adequate resources to fund the educational program itself, funding to draw and retain teachers, ensure prudent administration of schools, and otherwise ensure that what goes on inside the schools receives as much attention as the school facilities themselves.

To this end, it is important that the BIA schools receive full funding for the Administrative Cost Grants, approximately $55 million in fiscal year 2002, and that the core funding for these schools be increased to a level more equitable with other schools, or $4,000 per student.

We also support increased funding for the Johnson O'Malley Program, which provides funds to both BIA and public schools, and urge that the funding take into account increased student enrollment.

The Impact Aid Program is vital to public school districts that contain Indian trust lands, and we are encouraged by recent increased appropriations for the Impact Aid basic support payments and for construction for these schools.

USET was an active participant in the National Steering Committee made up of tribal leaders who drafted a proposal for reauthorization of the Indian Health Care Improvement Act, and we urge its enactment. We believe that pending Senate bill, S. 212, which would bring more of the IHS funding to the local level, improve access to Medicare and Medicaid, provide new options for facility construction, and provide better coordination among behavioral health services, social services, mental health, substance abuse, will result in improved health care for Indian people.

We appreciate that this committee held hearings on the reauthorization of this important health legislation last Congress and that the bills introduced in the House and Senate largely reflect the work of the Tribal Steering Committee. We realize that both the legislation and the committee jurisdictional issues surrounding it are complex, and are willing to put a lot of effort into working for its enactment.

We support legislation, S. 214, which would elevate the position of the IHS Director to that of an Assistant Secretary. This committee has been persistent in its advocacy of this bill and we appreciate that. We believe that an Assistant Secretary for Indian Health will be in a better position within the Department of Health and Human Services to advocate for Indian Health Service funding.

We also believe that the Assistant Secretary will have more clout in working with other assistant secretaries in the Department to increase tribal access to other programs. One example would be mental health funding.

We believe the concept of a comparison to the funding available to the IHS services population to the Nation as a whole is a sound concept and one that could lead to increased funding for the Indian health programs. We are, however, troubled by the development of a level of need funding for tribes which could be used as a comparative tool between tribes and result in a reallocation of existing funds among tribes.

The USET's believe that the utilization of the LNF methodology as anything other than a national benchmark for overall funding is inherently flawed.

Our attached position paper details a number of concerns we have about the methodology utilized by the LNF Work Group. We believe that contract support costs and tribal shares should not be counted as a resource in the calculation of the LNF fund percentages. CSC funding is by definition funding to provide a tribe with resources equal to that which the Secretary is provided by the Federal Government for the Federal direct-operated operating unit.

Similarly, tribal shares are not identified in the amounts allocated to Federal direct operating units and that creates a bias when using the current LNF methodology to compare the differing operating units.

Finally, we want the committee to know that we are opposed to using LNF methodology for distribution of any IHS funds other than the Indian Health Care Improvement Fund.

Contract Health Services funding is a critical component in the provision of health care to Indian people. It provides funding for health care services that are not available in IHS and tribal health facilities. CHS is heavily affected by the medical inflation rate. We greatly appreciate the $40-million increase in contract health services for fiscal year 2001 and urge this program receive an increase in fiscal year 2002 as well. IHS reported in its fiscal year 2001 budget justification that in fiscal year 1999 it deferred payment on 84,085 recommended contract health services cases due to inadequate funding.

USET supports the formula developed by the INH Community Health Service Work Group for distribution of the $40-million increase in that program. The formula takes into account congressional mandates, the needs of unfunded tribes, maintenance of buying power by addressing inflation, population, influence of local cost differences, and access to inpatient health services.

We also believe that this formula and other distribution formulas must be reviewed on an annual basis to incorporate the most current and verifiable local data.

USET thanks the committee for its role in last year's amendments to the Balanced Budget Act, which increased and extended the entitlement diabetes funding for Indian tribes and urban Indian organizations. Given the extremely high incidence of diabetes in Indian country, we urge that this be ongoing funding beyond fiscal year 2003.

While we hope great progress is made in the prevention and treatment of diabetes by fiscal year 2003, we know that there will still be much work to be done after that date. USET supports the use of the existing distribution methodology for the entire amount of fiscal year 2001 diabetes funds, $30 million previously made

available through the Balanced Budget Act of 1997 and an additional $70 million made available through the Balanced Budget Act of 2000.

We support use of the existing methodology for the fiscal year 2001 funds so that they can be disbursed in a timely manner. However, we believe that the distribution methodology for funding that begins in fiscal year 2002 should be analyzed and modified. We urge that newly appropriated diabetes funds be allocated to tribes for prevention and treatment activities and not diverted to universities or special interest organizations for research purposes.

USET commends Dr. Trujillo for his good work and advocacy for Indian and Alaska Native people as director of the Indian Health Service, and we are on record in asking the Bush administration to allow him to remain in his position for the remainder of his term.

The USET strongly endorse increases to the BIA/DOJ law enforcement initiative as a high priority for future appropriations. We firmly believe that law enforcement is an essential component of a tribal government's ability to govern and an integral part of successful economic development. Like other tribes nationally, the USET are experiencing increased rates of crime and violence. But, with limited resources, many of our member tribes are unable to provide law enforcement on the 24 hour/7 days a week basis that would lead to more peace and stability in our communities.

In order to strengthen our law enforcement programs, we believe that BIA and DOJ should work with the tribes to develop and implement model cross-deputization agreements. Since we work with not only local law enforcement officials but also State police and other Federal law enforcement officials such as National Park Service Rangers, consistent recognition of tribal law enforcement authority would improve interaction with these other agencies.

Similarly, there is a need to develop a memorandum of agreement between tribal police and U.S. attorneys that establishes the standards for bringing cases to the Federal courts. These actions would go far in promoting the legitimacy of tribal law enforcement programs.

In the 106th Congress, the committee was instrumental in the enactment of the Indian Tribal Justice and Legal Assistance Act. We hope that this Congress will appropriate the funds necessary to support much-needed development of tribal justice systems. In addition to increased funding for tribal courts, additional technical assistance and regionally based training have been identified as needs of the USET.

The USET are concerned that the discussion and consideration of the tribal Federal recognition process has become mired in controversies regarding two related but separate processes, trust land acquisitions and tribe-State agreements for gaming. We believe it is misleading and prejudicial for the opponents of the recognition process to assert that recognition will lead to wide expansion of Indian gaming and significant loss of revenue from lands taken into trust on behalf of the tribe.

What the opponents fail to make clear is that it is only after achieving Federal recognition that a new tribe would be able to pursue gaming under the Indian Gaming Regulatory Act and the

acquisition of lands in trust. Both of these processes are time-consuming and wholly separate from the recognition process.

The process for American Indian groups to obtain Federal recognition has become an arduous, costly and very lengthy endeavor, a process that must be improved so that it is not politicized and moves the applications in a timely manner. We support the committee's efforts to improve the process but request that the Branch of Acknowledgment and Research activities remain within the BIA rather than creating an independent commission.

We ask the committee to consider the following in improving the BAR process: Provide adequate funding for the BAR; establish enforceable timeframes under which the BAR must complete it work; authorize the BAR to contract with experts and research institutions to conduct research and analysis, with the BAR retaining final review under the acknowledgment criteria.

Finally, we would urge that the responsibility for final decisions on applications for Federal recognition remain with the Assistant Secretary. As with other matters of Federal policy, the Assistant Secretary considers the recommendations of the staff but the final decision lies with the Assistant Secretary. Federal recognition decisions should be handled the same way.

USET is greatly concerned that the FCC has not taken seriously its consultation responsibilities with our member tribes, particularly when it comes to the licensing and siting of communications towers. As we all know, literally tens of thousands of these towers have been constructed across the country, with tens of thousands more in the planning stages. A number of these towers have, or may have, an adverse impact on sites of religious and cultural importance to tribes.

The National Historic Preservation Act provides, among other things, that Federal agencies shall consult with any Indian tribe and native Hawaiian organization that attaches religious or cultural significance" to properties that might be affected by a Federal undertaking. 16 U.S.C. Section 470a(d)(6)(B). The FCC licensing process is a Federal undertaking but the FCC has consistently failed to consult with tribes.

The FCC adopted rules last year to provide incentives for wireless telecommunications carriers to service Indian country. At the same time, FCC seemed to attempt to delegate its consultation responsibilities to the tower industry to which we strongly object.

We applaud FCC's actions last year in issuing a policy statement establishing a government-to-government relationship with Indian tribes and approval of a plan to subsidize telephone service in Indian country. However, there is still a long way to go in establishing a productive working relationship between the FCC and tribes. The FCC has held several multi-day meetings with tribes in various parts of the country but unfortunately not in the USET area.

Of note, FCC Commissioner Tristani is quoted in the March 19, 2001 issue of Communications Daily expressing concern that the programmatic agreement on wireless communications towers fell short of the FCC's obligation to facilitate tribal consultation. She stated that:

The overwhelming majority of tribal comments told us our approach is not working. This response is prima facie evidence that our understanding of tribal consultation is misguided.

USET urges this committee to examine closely the FCC's obligations in this area.

Obviously there undoubtedly will be other items of interest to our member tribes which will come up during the course of the 107th Congress, and we will want to be in communication with you.

One thing that has come to our attention about which we are very concerned is NAGPRA. As you know, NAGPRA is under the National Park Service. We are experiencing some real problems with the National Park Service in their administration of NAGPRA.

Under the act the Federal funded museums should have had their inventories presented to the tribes at least 5 years ago. That still today has not happened. There have been extensions and extensions and we still have not had those inventories of the Federal funded museums. We certainly need those.

We believe it is a conflict of interest on the part of the National Park Service because they have some of these lands that deal with repatriation of Indian artifacts and funeral items back to the tribes. They are controlling it under this. This is something we are proposing and USET has passed a resolution. We failed to include it in our attachments but we will get that to this committee along with other papers on this particular issue.

We feel that NAGPA should be moved from the National Park Service to some other entity that would be more responsive to the needs of the tribes.

The requests we make of you—protecting tribal sovereignty through the legislation under the Senate Committee on Indian Affairs' jurisdiction, working with other congressional committees on legislation of importance to tribes, building working relationships with the new administration—are things we require of USET also. We will do our part.

Again, thank you for requesting the input of the USET concerning the legislative agenda of the 107th Congress.

I will be glad to attempt to answer any questions you may have.

[Prepared statement of Mr. George appears in appendix.]

Senator INOUYE. Thank you very much for your very comprehensive report.

I am pleased and I am sure the committee is pleased that you consider tribal sovereignty to be of the utmost importance. It is our desire that what we do will strengthen tribal sovereignty, enhance it, and make certain that it is recognized and honored by the U.S. Government.

Speaking of the United States and the government-to-government relationship it has with tribal governments, it was felt that the President of the United States should have a face-to-face, government-to-government meeting with tribal leaders. Soon after the 1992 elections, Indian leaders proceeded to send messages to the White House requesting such a meeting. The White House acknowledged and said, yes, we would be happy to do so but when the plans were made, the White House made this a great photo opportunity. If you recall about 7 years ago on the White House lawn,

there was a great meeting and I believe about 400 to 500 people assembled. I have no idea how many speeches were made but there was no meaningful meeting of senior tribal leaders with the President of the United States.

Accordingly, in my meetings with tribal leaders in recent times, they have once again requested an opportunity to meet with the President have suggested that the meeting be limited to about 12 or 15 leaders. When you consider that there are many tribes in this land, some tribes may feel they are left out, but I concur with these tribal leaders that if you want to have a meaningful, in-depth meeting with the President of the United States, the number of participants should be as small as possible. Does the USET agree with that approach?

Mr. GEORGE. Yes, Senator; we do. Our position is that USET is not so concerned who the messenger is as long as the message gets out. We would propose that a good idea would be to look at some of the regional Indian organizations such as USET, the Northwest Affiliate Tribes, the Montana-Wyoming Tribal Chairmens Association. Most of the regional organizations, like the Midwest Alliance of Sovereign Tribes, represent a certain area of tribes in their organizations.

It will be difficult. In USET we talked about this issue at our January meeting and we believe we can come to an agreement on who would be our representative if we indeed had one. We would support a small meeting with the President. I am sure that Indian country can support that idea. At least we know we can and will work toward that end in USET.

Senator INOUYE. I know that you touched upon means testing at some length. My position is a very simple one. Most of the agreements we have reached between Indian country and the Government of the United States are based upon treaties. As far as I am concerned, treaties are solemn promises made by both parties. If the U.S. Government promised that in return for the cession of millions of acres of Indian land that you would be entiled to received certain programs and services, like health care and education, the U.S. Government should honor those commitments, even if you become multi-millionaires.

Means testing is one way of breaking treaties. I think a better solution might be for those fortunate tribes, in their own judgment, to distribute those funds that can be used by those tribes that are in need. I can assure you that those of us on this committee, and I think we have a majority, are opposed to the means testing approach because that would be violating provisions of the treaties. Do you concur with our position?

Mr. GEORGE. I concur with your statement, Senator. We are opposed to the means testing. In USET, we have passed various resolutions opposed to means testing. However, we would like to turn it around a bit and propose needs testing. If the needs have been met and as tribes are developing—as we mentioned, there are two tribes within the USET area that have decided to turn back those funds to the BIA to be redistributed among the tribes that are most needy in the USET area.

We think that is the way to go and hopefully by example, other tribes will follow. It may catch on or may not but the needs vary

greatly from tribe to tribe. We have some tribes that have 300-some members that are members of USET. We have other tribes that are much larger with much larger land bases.

I agree that means testing should not be used and will support and work with the committee to make sure that means testing is not used.

Senator INOUYE. There is concern among members of Indian country about the Federal recognition process. As you know, a bill sponsored by the chairman of this committee has been introduced to acknowledge that responsibility but take it out of the Interior Department. Your position is to keep it in the BIA. Can you tell us further why you wish to have it under the present process?

Mr. GEORGE. Part of the reasoning is that the bill that the chairman has presented is not really specific on where the recognition process would go. We have been an advocate all along for the streamlining of the bar process and making sure there is adequate funding. As I mentioned in my testimony, if adequate funding dollars are there, we believe within the BIA under BAR would be the most likely place to be able to do the research in a more timely manner but in the long process, my tribe, although the tribe has been federally-recognized from the beginning, the type of government we had, it took us 12 years to get Federal recognition for that type of government which is a traditional government. So that was a lengthy and timely and expensive process we had to go through. Nevertheless we did it. In 1987, we got our government's recognition.

We feel the BIA is better equipped than any other entity in being able to do that. USET has gone on record as opposing recognition through legislation. We have been that way but will work with tribes and are working with tribes through our legends, through our oral traditions. We know who our neighbors were if the tribes actually existed or not in those particular areas. That is one of the strong things that we look for.

However, we would be willing to take a closer look at the proposal but for now, I think it needs adequate funding and streamlining of the process, and probably the BIA is the best place to keep it but we are willing to examine it and maybe reevaluate it and change our mind. As we stand and as we look at it today, we think the BIA is the best place for it.

Senator INOUYE. Some have suggested there should be a moratorium on the acknowledgement of newly recognized tribes. Do you agree with that?

Mr. GEORGE. No, sir; I don't believe I would. We have not, as an organization, discussed that except among tribal leaders but have not taken a position. I think the process has to go on. If through the BAR process, they have been determined to be eligible, I think they should be recognized.

Senator INOUYE. There is a recent Supreme Court decision that I believe should be the concern of Indian country. In a water rights case in which the U.S. Government is involved, the Interior Department represented the interests of the Klamath Tribe because the U.S. Government is a trustee. The Klamath Tribe, at the request of the Government, submitted certain confidential documents to the Department.

Then those non-Indian water users demanded those documents under the Freedom of Information Act. The Supreme Court ruled that the Interior Department was obligated by law to release those confidential Indian documents to the non-Indian groups. Do you think that is a proper way of doing business?

Mr. GEORGE. In this case, USET is on record and did present an amicus brief in this particular case under the Freedom of Information Act which is what we were basically concerned with. I think when we submit confidential materials to any agency they should be held in confidence and not released. That is our position.

As I mentioned in my opening, in the State of Maine, they are going through a similar thing right now based on the State of Maine's Freedom of Information Act where they are asking for council meeting minutes of things that went on to deal with the pollution of the rivers in Maine. We are opposed to that. I think there is a court case in the State of Maine on that.

It was a bit too late for us to file a brief but we did file a very extensive brief from the USET in the *Klamath* case. We still think we are right in our position on these confidential things we are required to give to agencies. We have the same thing with the National Indian Gaming Commission. We are required by statute to present audits of the class III gaming operations to the NIGC. They are supposed to be held in confidence.

There had been requests from Time Magazine and others to get that. The decision of the NIGC was that they couldn't release it under FOIA. I don't know if that case is to go on or if that will be taken to the Supreme Court. According to the act, those audits we present to that agency are supposed to be proprietary information. We still believe that.

We have cautioned our tribes about some of the information we do give to the BIA and other agencies, that we be very careful what information we give out.

Senator INOUYE. I think this case is an important one because I believe if the Supreme Court decision is permitted to stand, then your sovereign rights will have been diminished. For example, if Great Britain provided documents to one of our agencies, say the CIA, on the basis of confidentiality, I do not believe the Government of the United States would be required to release that under the Freedom of Information Act. That being the case, I think the Indian sovereigns should also be acknowledged and their rights to confidentiality honored. Would you favor some measure to make certain that confidential papers be kept confidential?

Mr. GEORGE. Yes; we would. That has been a concern all along and yes, because we are a sovereign, we believe that information should be dealt with on a government-to-government basis and would support such legislation.

Senator INOUYE. On your matter involving the FCC, I believe this is something that also hinges upon sovereignty. If the President of the United States were to, in the strongest terms, tell members of the Commission to straighten up and recognize your rights and your sovereign rights, I think things would change.

So this meeting that we hope will be carried out with the President of the United States, this could be one of the matters on the agenda.

Have you or any of your members experienced any problems with implementation of the Native American Graves Protection and Repatriation Act?

Mr. GEORGE. Yes; we have. My tribe in particular has. This has been a very serious issue for us. We are very interested and have a resolution from USET requesting the NAGPRA be taken from the National Park Service and moved to another agency within Interior, whether BIA, Office of Policy and Budget or something else.

We feel it is a conflict of interest because the National Park Service does have artifacts or areas within their jurisdiction of the National Park Service such as in the Everglades with the Miccosukee Tribe in Florida. They are right in the heart of the Everglades and there are possible religious sites, very spiritual related sites that only tribes can identify which is sacred to them.

We are experiencing a lot of problems with the NAGPRA. The very contentious section 106—the National Historic Preservation Act—it seems to us these tie together. Yes, to be blunt about it, we are experiencing a lot of problems with the NAGPRA process, particularly in the Federally funded museums and inventories, and the outright refusal to bring back or give back to Indian tribes these skeletal remains that are still on the shelves even at the Smithsonian Institute. We would like to get those back.

Senator INOUYE. That is a matter of concern to some of us on the committee. I can assure you we will act upon this.

We have been advised that the Interior Department may be considering a moratorium on the taking of lands into trust. Do you support this moratorium?

Mr. GEORGE. No, sir; we don't. One prime reason is there is a misconception out there actually brought on by primarily gaming opponents. There is actually more land going out of trust than going into trust from the data we have been able to access. We have been opposed to the regulations or parts of the regulations and taking land into trust but placing a moratorium on it, in our minds, is not going to bring this to a conclusion. We do not support a moratorium.

Senator INOUYE. At the present time, one of the major problems or issues confronting this country is energy. Hardly a day goes by without mention of something involving California or some energy problem elsewhere.

We note that many of the fossil fuel deposits are located in Indian country; we note because of some of the vast expanses of land, alternative sources of energy can be considered. Do you believe Indian country should formulate a policy addressing the development of energy resources on Indian lands?

Mr. GEORGE. Absolutely. I believe this is a part of our ongoing economic development in Indian country. I know in New York, they are predicting in a few short years, if we don't do something about the energy crunch, we will be in the same shape as California. My tribe and others are looking at alternative generation of electricity, primarily harnessing the wind, using solar energy because we don't have, particularly in New York, vast natural resources. However, on the Seneca Reservation, they do have some resources of natural gas but my tribe does not have significant natural resources. We

do have property on the mountaintops and different places like that, so we are looking into that.

I think there has to be some type of organization or some economic development. Maybe the National Center on Economic Development could help the tribes in looking for those alternative energy development projects. I'm in full support of that, Senator.

Senator INOUYE. I would respectfully suggest that the leadership of Indian country get together and consider forming some sort of organization because otherwise, the major energy companies will play one against the other and divide all of you. If you all got together, you would have a vast resource. It is going to be a powerful resource. Before you are all divided by others, I would suggest you get together.

Mr. GEORGE. Within USET, we have an economic development committee that is working on a number of things. More than likely USET will take the lead in this area because we have been progressive over the years. This committee is looking at all types of economic development projects we can do as individual tribes or even together.

Senator INOUYE. Do you believe we should have another revision of the definition of class II gaming?

Mr. GEORGE. In some instances, I do, particularly in the definition of the classification of machines. There has been some movement and some determination made by the NIGC on certain machines determined to be pull tab dispensers but I think there are some machines that are not slot machines that could be used in class III or class II operations.

The NIGC came out with regulations to define what class II was but after looking at them, we're not so sure the NIGC under the IGRA, has the authority to promulgate those regulations.

I was in Tulsa well over 1 year ago and testified before the NIGC. The major theme of all the tribal testimony on reclassification of games was not in support of the way they had come up with those regulations. However, we do know there is a need for tribes such as the tribes in Oklahoma that have only class II gaming and have not been able to enter into the class III arena.

We would be willing to take a close look at that but we encourage the NIGC, the way they are working now, there are some games that have been reclassified such as Mega Mania, Diamond Games, to name a few, reclassified to be able to be used in class II facilities.

Senator INOUYE. Do you believe the time has come for the committee to conduct oversight hearings on the implementation of the gaming laws?

Mr. GEORGE. Yes, sir; definitely do.

Senator INOUYE. We will consider that but you have to keep in mind that may open Pandora's box too.

Mr. GEORGE. Yes; I was involved in the process you and Senator McCain initiated with the Governors and attorney generals in 1992, I believe. I was intimately involved in all those meetings and we thought we could get an agreement without opening the IGRA. If the IGRA is opened, we have a fear most of what we enjoy today would go away. So we have a very, very grave concern but if legislation could be targeted specifically for a certain area.

One thing I think was a holdup was the scope of gaming. If my memory serves me right, it was the position of yourself and Senator McCain that scope of gaming could only be settled in the courts because of the vast differences as you go from State to State on the games that were legal. The IGRA says the tribes negotiate with the State for a compact for games that are legal in that State. The scope of gaming varies widely from State to State. I think that was the roadblock in those discussions with the Attorney Generals Association. I think it was over 2 years we worked on this and not a lot of came of it because more or less they walked away from those negotiations.

Senator INOUYE. I was reminded that on May 8 the committee will convene a roundtable type gathering with Indian country leaders on energy. I hope you will be able to participate in that meeting.

Mr. GEORGE. We would be honored to do that and we look forward to be able to present what we have been working on for quite some time.

Senator INOUYE. We have several other questions we would like to submit to you. They are rather technical and if you would favor us with your responses, we would appreciate it.

Mr. GEORGE. Yes, sir; we will.

Senator INOUYE. With that, thank you again for your very comprehensive report. We will take your remarks very seriously and hopefully we will be able to craft legislation to carryout some of the recommendations you have made.

Mr. GEORGE. Thank you.

Senator INOUYE. Thank you, sir.

The hearing is adjourned.

[Whereupon, at 11:29 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF THOMAS R. RANFRANZ, PRESIDENT, FLANDREAU SANTEE SIOUX TRIBE, FLANDREAU, SD

My name is Thomas Ranfranz, president of the Flandreau Santee Sioux Tribe, Flandreau, SD.

On behalf of the Great Plains people I appreciate the opportunity present our concerns. The Great Plains Region is comprised of 16 tribes with a land base of 7 million acres and approximately 200,000 population.

In a united front, we are presenting our needs to be heard and demand that the U.S. Government uphold its unique legal relationship and trust responsibility as stated in the U.S. Constitution and numerous treaties.

We, the Treaty Tribes within the Great Plains Region, exercise our rights by holding the Federal Government to its treaty and trust responsibilities, and demand any program increases be distributed in such a manner as to upgrade the quality of life for Indian people. Historical underfunding has been the main factor contributing to the current economically depressed environment of our people.

The Great Plains Tribes' Reservations are situated in extremely isolated locations, on lands that the territorial governments and settlers least desired. According to the Census Bureau, the Great Plains Area has 3 of the poorest counties within the United States. Shannon (average annual wage-S11,6310.), Ziebach (average annual wage-$12,062.), and Todd (average annual wage-$11,197.) counties are located within reservation boundaries in the State of South Dakota. Further, 9 of the poorest 38 counties within the United States are located in South Dakota and North Dakota.

The Great Plains tribal leaders want an acceptable quality of life for their people. Until the quality of life, that is, poverty, unemployment, education, and housing on Great Plains Reservations are comparable to the rest of the American people, the Federal Government must increase and maintain its funding support to meet its obligations as agreed upon.

The Great Plains Tribes want to go on record that we oppose the current budget formulation process of prioritizing our top ten programs. Each program has equal importance. Each of the 16 tribes in the Great Plains Region has different needs for their unique situation on their Reservations. Choosing 10 of the most important programs forces division among our nations.

Of particular importance to achieving this desired quality of life are education programs. TPA programs include: Scholarships, Johnson O'Malley, Adult Education, and Tribally Controlled Community Colleges. Education is the means by which our tribes will attain self-sufficiency, economic development, sustainability, and most importantly, survival. We applaud the Bush administration's commitment to provide additional Indian education construction funding. We also appreciate the support of many committee members for your hard work in increasing the funding for school renovations, repairs, and replacements. This commitment to BIA schools is a very positive sign and we thank you.

Education cannot be accomplished in schools that are poorly designed, falling down around them, unsafe and ill-equipped, and yet that is the condition of many of the schools on our reservations. BIA construction budgets for replacement of old, inadequate, and in many cases condemned schools is still a major concern in the Great Plains Area. Three tribes in the Great Plains Area have expressed their strong need for new schools: Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and Crow Creek Sioux Tribe.

Base funding for operations of K–12 must be increased. Indian Student Equalization Program [ISEP] funding for student transportation, base funding, operation and maintenance, and administrative costs has been from 15 percent to more than 50 percent below the actual need.

Adult Vocational Training/Job Placement is underfunded to a point that many tribes in the Great Plains Area need to turn away 40-50 percent of their applicants. Many of our adults need training in life skills and job training.

Student transportation in the Great Plains Area is in need of additional funding. BIA schools are located primarily in rural, isolated areas. The BIA funded transportation cost is approximately $2.26 per mile, compared to the national average of $2.94 for public schools across the Nation.

Scholarships/Higher Education: This program provides financial aid to eligible Indian students attending accredited post secondary institutions; with the intent that, upon graduation, recipients will return to their communities to benefit tribes with their educational skills [community service]. If tribes are to promote self-determination, education is the key to achieving this goal. In fiscal year 2002 the Great Plains Region's unmet need was $8,230,000.

Adult Education: This program provides opportunities for adult Indians to obtain a General Equivalency Diploma [GED] or basic skills to transition to a community college or job placement, thereby increasing their economic competitiveness and reducing their economic independence on Federal welfare programs. In fiscal year 2002 the Great Plains Region's unmet need was S1,576,000.

Johnson O'Malley: This program provides funding to education programs for eligible Indian students attending public schools and for pre-school children, thereby improving the succession of students to each educational level by providing tutoring and counseling and parental involvement programs. This is the only Bureau program that provides for the culturally related and supplementary academic needs of Indian children attending public schools. In fiscal year 2002 the Great Plains Region's unmet need was $2,124,000.

Tribally controlled community colleges and post-secondary schools are an Indian success story, providing education and job training opportunities to thousands of students who otherwise might fail out of the educational system. The schools offer courses in everything from biology and math to native languages and history, to ensure that students not only know about academic subjects, but cherish American Indian life and traditions.

What is most impressive is that tribal colleges provide a wide range of services on what most would describe as a shoestring budget. Tribal colleges receive less than half the funding per student of other community based institutions. Between 1989–99, enrollments at tribal colleges tripled 10,000 to 26,500 according to an article published in the *Lincoln Journal Star.*

Tribal housing in the Great Plains Area is inadequate on our reservations. There are extremely low income families who are forced to live with other families or tribal members because they are homeless. There are some cases where 15 people share a three bedroom home. We need approximately 10,400 housing units to meet our existing needs of the reservations. This does not include our people who wish to return to the reservations as our economic opportunities increase.

Many of our housing units are in substandard conditions and are in need of repair. Some of the homes that are substandard are 1,648 on the Cheyenne River Reservation, 1,883 on the Pine Ridge Reservation and 1,555 on the Turtle Mountain Reservation. Many Reservations in the Great Plains Region simply do not have adequate funding to repair and maintain substandard existing and aging homes.

Many reservations try to serve the neediest of the needy. They try to prioritize such as living quarters for elderly and handicapped families. But yet, there still remains a desperate need for adequate funding for new homes and for repair on our older homes. The past 13 years' funding for just the Aberdeen Area alone for housing improvement projects has remained the same with little or no increase. The Great Plains Region is in dire need for more funding for new homes and to repair aging and existing homes.

Increase in Total Funding: In general, Indian country is very underfunded in all areas. We desperately need more dollars just to be able to operate at the same level as all of the other non-tribal and non-Federal agencies.

No. 1, for fiscal year 2001, the Aberdeen Area had a need of $56.3 million. However we will only receive $19.8 million. This figures up to an unmet need of $36.5 million. Furthermore, this shortfall of $36.5 million represents a manpower shortage of 170 employees.

No. 2, Flandreau, for example, has a huge unmet need. For fiscal year 2003 we have a documented need for $450,000., yet only receive $112,000, which creates an unmet need of $338,000, and this is just 1 year.

No. 3, "We have an immediate need for $1.5 million for law enforcement, our court system, and a public safety center".—*Roger Trudell, Santee Nebraska Chairman.*

Permanent Funding: We need money that will be there from now on. Programs like the COP grants are great, but they have, a short duration, usually a few years. We need an increase in funding that we can always count on.

More Diverse Funding Sources: Programs like the COP grant are good for meeting the initial need. However, we need sources of money that we can use to retain our officers. Frequently, departments use these funds to hire and train new officers, but once the money, runs out, the trained and experienced officers leave to find work in more stable departments.

More Officers Are Needed: Much like some areas in the country, there is a huge, shortage of properly trained officers in Indian country. Having more officers could help solve several problems, not just the obvious increase in enforcement. Safer communities would be more economically inviting for businesses to move into. Having a well trained, quality police force would also assist in helping to break the endless cycle of domestic abuse and many other of the social problems that plague our reservations and communities.

Detention Centers Are Needed: While this is a national problem, it is particularly bad on the reservations. Funds are needed to build modern, secure detention facilities. When it is necessary to incarcerate an individual, many reservations have very limited options. They can either house the prisoner in their own substandard facility, or take an officer off the street to transport the prisoner to another facility.

Increased Funding for Community Awareness Activities: Many communities, ours included, are moving toward community based law enforcement. Our police force is actively participating in and educating the community, which will serve to lower crime across the board. A source of funds specifically for this purpose would greatly help the effort.

Health Care: As you know, the Great Plains Tribes in the Aberdeen Area have the worst health statistics in the country.

Highest Infant Mortality Rates
Years of Productive Life Lost
Diabetes
Heart Disease
Cancer
Alcohol and Drug Abuse
Injuries and Accidents

These factors along with distance, access to medical facilities, poverty, and underfunding make it extremely difficult to meet the health needs of our people. The Great Plains tribes do appreciate the consultation process that has been going between the Indian Health Service and all tribes. It is imperative that this process continues so that our needs and concerns are heard. It is extremely difficult to provide quality health care to our people on the current budget. The funding that we receive doesn't even begin to address the health needs in the Great Plains Area. The Great Plains/Aberdeen Area budget for fiscal year 2000 was $175,715.860 when the need is $347,512,094. With this kind bare bones budget, service units and health clinics operate by "crisis management" or a with a band-aid approach.

The Flandreau Santee Sioux Tribe operates an outpatient clinic with 638 Contract with the Indian Health Service. In fiscal year 2001 our contract amount was $2,081,578. According the Level of Need Funded Study by Indian Health Service, we are funded at 37 percent of our need. We have approximately 2,200 users on our reservation. This figures out to less than $1,000 per person. Our Mental Health dollars in this contract was $33,918. This does not even cover a salary and fringe for qualified mental health professional, basic office necessities, and referrals for any emergency commitments or mental health evaluations. Our alcohol funding for fiscal year 2001 is $83,031. Again, it is extremely difficult to provide the services needed on our reservation with this kind of funding. Because this is such a huge need on our reservation the tribe commits a portion of their tribal dollars to Alcohol and Drug Treatment each year. The Dental Program dollars for fiscal year 2001 is $68,792. This does not even begin cover the dentist's, dental hygienist's, or dental

assistant's salaries and fringe; and supplies needed to operate the dental clinic. Dental referrals outside of our clinic are put on hold such as orthodontic and periodontal referrals.

Because we operate an outpatient clinic with a small lab and no x-ray department a good portion of our services are purchased outside with Contract Health Services dollars. This includes our physician, contract for OB services, lab and x ray, mental health referrals for evaluation and commitments, purchase of pharmaceuticals. Any other referrals must be a priority 1. Our people cannot be referred outside the facility until they are in a life threatening health situation. Then the price for services goes up and recovery is more difficult. The entire Aberdeen Area operates on a Priority 1 status for Contract Health Services. This makes it difficult to practice any kind of preventative medicine.

These are issues on my reservation for our people. The larger tribes in the Great Plains/Aberdeen Area are the same but on a much greater scale because of their size, economy, and populations. Our recommendation to all of you in regards to health care issues in the Great Plains/Aberdeen Area is to continue the consultation process which began in 2000.

Senators and Congressmen visit the I.H.S and tribal facilities on the reservations in your States and most importantly, commit and work to bring the Indian Health Service budget up to an amount where we can realistically address the health needs of our tribal people.

By doing this you and I both would be fulfilling the treaty obligations which were signed by our ancestors.

Contract Support Costs: The 638 process is very important for tribes to continue to develop and manage their own programs. Through the appropriation process, Congress needs to ensure that contract support costs are funded at the 100 percent level for any 638 contracts and Federal agency grants.

Economic Development: The Tribal Leaders in the Great Plains Area would like to thank Senator Tom Daschle and Senator Tim Johnson for introducing legislation that would provide economic development and regional job creation opportunities for the Sioux Nation. The Sioux Nation Economic Development Council will coordinate economic development projects and centralize expertise and technical support to help tribes obtain assistance, as well as raise funds from private organizations to match Federal contributions.

Economic development is slow in coming in the Great Plains Area for many reasons. Despite the modest success of Indian gaming in our area, the long winters (6 months), low population in the State (less than 900,000), capital debt repayment, (average–15 years) and location of casinos in isolated areas, the returns are minimal. Also, in South Dakota, the State continues to limit the economic growth to tribes by freezing the number of gaming devices each tribe may have to a total of 250. These types of gaming devices generate approximately 85 percent of gross dollars for the tribes. Another area that needs to be developed is energy. There are tribes in the Great Plains Region that have energy resources and are requesting dollars for technical assistance.

Farm Bill: The Great Plains tribes would like to see a separate section in the Farm Bill addressing Native American issues. One area would be to provide a USDA office on each reservation to ensure better access to tribal members on farm issues.

Welfare Reform: No. 1. Welfare reform also requires economic development. We are also subject to the requirements of welfare reform. To put people to work, we need jobs on or near the reservations. Without jobs, the goals of welfare reform as applied to our tribes and our members will be impossible to meet.

No. 2. Our unemployment rates according to BIA labor statistics are often over 50 percent of our adult working age population, with many tribes facing more than 80 percent in unemployment. Bennett County, SD, a part of the Oglala Nation, is consistently one of the poorest counties in the United States, as is Ziebach County within the Cheyenne River Sioux Tribes Reservation, and there are several other counties that are part of other reservations in the Aberdeen Area that face chronic poverty.

No. 3. At the same time, our population is among the fastest growing segments of the U.S. population, and more tribal members are returning to the reservations to seek employment and be with family.

No. 4. We also need support for infrastructure improvement—this includes roads, sewer, and water systems and better telecommunication systems, among other things. For example, a portion of the proposed Dakota Water Resources Act as introduced by our North Dakota Congressional Delegation would go to improve municipal, rural, and industrial water projects on the Indian reservations in North Dakota—and we need those funds now.

No. 5. Individual tribal members need more assistance too. Individuals and tribal governments alike have benefited greatly from such programs as BIA Direct Loans, now without funds, and BIA Guaranteed Loans, which have been highly successful in our area. Programs like Indian Business Development Grants and Indian Business Technical Assistance need to be reinstated and provided enough funds to have a chance to succeed.

Native American Tax Incentives: With only 2 years, remaining before the tax incentives expire, many businesses are now reluctant to commit to locating or expanding on our reservations. Economic planning and construction can take months and sometimes years to develop from start to finish.

We would like to thank Senator John McCain for his support on the incentives for economic development on Native American lands in the Senate.

I would like to say that tribal governments are good neighbors and good partners in the future of economic development of our country, State, and local communities.

Tribal Courts: A strong court system in place is the key to a strong Nation. It is very important for our courts to run properly and without interference from tribal politics. Private companies feel more secure forming relationships/partnerships when they feel like they have an equitable dispute resolution mechanism that is available to them. Tribal court funding is needed because it not only improves economic development, but also deters criminal behavior and maintains tribal identity.

Roads Maintenance: The Great Plain Area's current funding level is approximately 30 percent of the actual need. All tribes in our region overwhelmingly expressed that road maintenance is a major concern on our reservations. The BIA estimates that road maintenance is funded as little as $80 per mile. In comparison, an average of $2,200. per mile is spent maintaining other Federal roads, and an average of $2,500. to $4,000. per mile is spent by states. With 7 million areas of land in the Great Plains Region and 200,000 people versus. the small tribes in California with 15–30 members and few roads we urge you to increase our funding. Our roads are important in providing emergency health care, law enforcement, and fire services to our people.

We ask that the Congress maintain the Federal trust responsibility to Indian country and continue to assist tribes on the road toward self-sufficiency. Thank you.



SUSAN MASTEN, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
TESTIMONY ON
THE GOALS AND PRIORITIES OF THE MEMBER TRIBES
OF THE
NATIONAL CONGRESS OF AMERICAN INDIANS
FOR THE 107TH CONGRESS

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

March 22, 2001

I. INTRODUCTION

Good afternoon, Vice Chairman Inouye, Chairman Campbell, and distinguished Committee members. My name is Susan Masten, and I am Chair of the Yurok Tribe and President of the National Congress of American Indians (NCAI). On behalf of NCAI's 250 member tribal nations, I am very pleased to have the opportunity to present testimony regarding the goals and priorities of the member tribes of NCAI for the 107th Congress.

I want to begin today by reflecting on the wisdom of the many great Indian leaders who came before us and founded the NCAI. As you know, the 561 Indian Nations in the United States are a very diverse group, ethnically, culturally and linguistically. In 1944, when NCAI was founded, our ancestors had the wisdom and understanding to recognize the need for unity and cooperation among tribal governments for the protection of treaty rights and tribal self-government. Even though there was a common cause, problems still remained in working together due to differences in history, resources, and ways of life. Every day tribal governments are working to overcome those difficulties and this hearing regarding the priorities and issues of NCAI member tribes is a tribute to those ancestors who gave so much to ensure that American Indian tribes and our respective cultures could continue.

With that in mind, I want to emphasize how very difficult it is for NCAI to come to today's hearing and focus on only a handful of issues. NCAI currently has 250 member tribes, and they are concerned with a very broad range of issues. For the purposes of today's

hearing, we have narrowed our focus to fourteen issues, a relatively large number, but even then we will omit many important ones. We chose these issues because they are the most fundamental for the purposes of protecting tribal self-determination and serving the health and welfare of Indian people, and because they are the issues that our member tribes most frequently bring to our attention.

II. TRIBAL SOVEREIGNTY AND THE EDUCATION OF AMERICA

It is well established in the U.S. Constitution and federal treaties, statutes and court opinions that Indian tribes are sovereign governments with the right to make their own laws for the protection and benefit of their tribal members. The treaties created a fundamental contract between Indian Nations and the United States. Indian Nations ceded millions of acres of land that made the United States what it is today, and in return received the guarantee of self-government on their own lands.

Tribal sovereignty today serves the same purpose that it has since the beginning: it empowers Indian Nations to remain culturally viable as distinct groups of people. Tribal governments provide a broad range of governmental services on tribal lands, including education, law enforcement, justice systems, and environmental protection and provide basic infrastructure such as roads, bridges, and public buildings. Self-government is essential if tribal communities are to continue to protect their unique cultures and identities.

Unfortunately, too few people today are even aware that Indian Nations have the power of self-government. This is a matter that is rarely taught in schools, and most Americans never have an interaction with a tribal government because they are largely located in the rural areas of the United States. There is a great misunderstanding in the general public, that is sometimes found in Congress, that Indian tribes existed in the past but have little relevance in the present and that today's Indian tribes are little more than an ethnic or social grouping. It is with this fundamental misunderstanding that the general public and Congress may consent to legislative efforts to remove the sovereign rights of tribes. As Felix Cohen observed "confusion and ignorance in fields of law are allies of despotism."

The status of Indian Nations as a form of government is at the heart of nearly every issue that touches Indian Country. It is only when the general public and Congress understand that an Indian tribe functions as a government and provides basic governmental services, that the principles of tribal governance will be recognized and respected. As the history of federal policy toward Indian Nations illustrates, federal protection of Indian tribes is never secure. In the 1990's there was an increase in the amount of hostile legislation toward the exercise of tribal self-government. A variety of legislation surfaced in the U.S. Congress that would cripple the tribes ability to provide basic government functions and services, exercise legal jurisdiction, enforce treaty rights, recover land or raise revenues for government functions.

Recently, tribal leaders had the opportunity to hear from Secretary of Interior Gale Norton and she confirmed that the Bush Administration will support tribal self-determination and self-governance, just as every Administration has since President Nixon, and that she supports government-to-government consultation with tribal leadership. She announced that she plans to put together a strong management team that will protect tribal trust assets and promote education for our children. Her positive statements provide assurance that the Bush Administration is starting off on a solid foundation of respect for tribal governments.

However, as you know, we have our work cut out for us in the coming weeks, months and years. We will have to continue to work hard to meet with the Administration and the new Congress and be sure that they understand both the foundation and the details of the critical issues that are facing Indian Country. This will require a high degree of vigilance, coordination and action by all tribal governments. This is the time to get ahead of the curve and educate the new Administration and the new Congress before the threats materialize, as they inevitably will. In addition, we have many great opportunities for positive change, and we need to push those agendas firmly forward.

It is in this area of public education that we are seeking the assistance of the members of the Senate Committee on Indian Affairs. The stature and well-earned respect accorded to this Committee are critical to educating the public and new members of Congress that tribal self-governance is modern, democratic, fair and deserving of respect. That in addition to being culturally and historically rich, tribal governments are good neighbors and good partners in economic development. It is up to each of us to help the public become informed about tribal governments, and to help to protect them. The Indian Nations of this great country are depending on your efforts and thank you greatly for them.

III. FY2002 APPROPRIATIONS

Achieving sufficient levels of annual federal appropriations for programs that assist Indian people and Indian tribes remains to be one of the top priorities for NCAI. This goal is especially important to our member tribes and for all of Indian Country because of the continual high population growth rate of Indian reservations which has put great strains on an already inadequate infrastructure. Education, law enforcement, transportation, health care, jobs, housing, technology, water and sewer systems – each of these basic governmental services all too often falls victim to resources that are spread far too thin.

While FY2001 funding levels for Indian programs certainly made great strides toward meeting the basic programmatic needs of tribes, our work is not yet done. In order to fully support tribal self-government and economic self-sufficiency, Congress must not turn back the clock on last year's gains and in fact should consider increases for key programs that serve Indian Country.

NCAI submitted to this Committee on March 13, 2001, a written statement regarding the President's budget request for FY2002 Indian programs and services. Since the President's "Blueprint for New Beginnings" failed to provide many substantive, agency-level details about the FY2002 budget request, our statement addressed the proposed funding levels that were available and highlighted those programs that we believe are critically important to Indian Nations. Until these details become available through the release of more comprehensive agency budgets, it is extremely difficult to gauge the impact of the proposed FY2002 budget on programs that serve American Indians and Alaska Natives. Nonetheless, NCAI seeks support from this Committee to ensure that Indian programs are fully funded during the FY2002 Appropriation process.

IV. RECOVERY OF TRIBAL LANDS

Though many Americans believe that tribal lands were taken only through military means by the United States during its early history, the reality is that the United States continued to take away tribal lands long after the treaties were signed, even up until the 1970's. The severe and continuing economic, social and cultural disruptions caused by enormous land loss are felt every day throughout Indian Country, and will doubtlessly be felt for many more generations. Indian tribes have an extremely compelling and urgent need to be able to recover land into federal trust status.

The principal goal of the Indian Reorganization Act of 1934 (IRA) was to halt and reverse the abrupt decline in the economic, cultural, governmental and social well-being of Indian tribes caused by the disastrous federal policy of "allotment" and sale of reservation lands. Between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes, nearly 2/3 of all reservation lands, and sold it to settlers. The IRA is comprehensive legislation for the benefit of tribes that stops the allotment of tribal lands, continues the federal trust ownership of tribal lands in perpetuity, encourages economic development, and provides a framework for the reestablishment of tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. §465, provides for the recovery of the tribal land base and must be viewed in light of the IRA's overall goals of recovering from the loss of land and reestablishing tribal economic, governmental and cultural life:

> *The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.*

Section 5 is broad legislation designed to implement the fundamental principle that all tribes in all circumstances need a tribal homeland that is adequate to support economic

activity and self-determination. As noted by one of the IRA's principal authors, Congressman Howard of Nebraska, "the land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship," and said the purpose of the IRA was "to build up Indian land holdings until there is sufficient land for all Indians who will beneficially use it."(78 Cong. Rec. 11727-11728, 1934.)

As Congressman Howard described these land reform measures:

> *Considering the magnitude of the losses of Indian land brought about by the past 50 years of incompetent Federal guardianship, the purchase program here proposed is indeed a very modest restitution; and it is moreover an investment that will many times repay itself by taking Indians off the relief and ration rolls.*

78 Cong. Rec. 11730.

> *This Congress, by adopting this bill, can make a partial restitution to the Indians for a whole century of wrongs and of broken faith, and even more important – for this bill looks not to the past but to the future – can release the creative energies of the Indians in order that they may learn to take a normal and natural place in the American community.*

78 Cong. Rec. 11731.

Of the 90 million acres of tribal land lost through the allotment process, only about 8 percent have been reacquired in trust status since the IRA was passed sixty-seven years ago. Still today, many tribes have no land base and many tribes have insufficient lands to support housing and self-government. Most tribal lands will not readily support economic development. And the legacy of the allotment policy, which has deeply fractionated heirship of trust lands, means that for most tribes, far more Indian land passes out of trust than into trust each year.

Moreover, the acquisition of trust lands is an important component of the Self-Determination policy. As you know, President Nixon initiated the Self-Determination policy in 1970. That policy – which has been strongly supported by every Administration since that time – calls for renewed tribal control over tribal affairs. Self-Determination is based on the premise that the tribes themselves, and not federal officials in Washington, are best situated to address their own local problems. NCAI focuses much of its work on advancing the principles of Self-Determination. While much progress has been made, we still have a long way to go. As we see it, one of the major constraints in this regard

concerns land. Tribes simply can not advance their cultural, governmental and economic goals in the absence of a sufficient land base. In short, the ability to acquire some additional trust lands is vital to the future of the Self-Determination policy.

The IRA reflected a fundamental shift in federal Indian policy – away from the devastating policy of allotment, in favor of a new policy of promoting the governmental, cultural and economic advancement of tribes. Today, however, there is opposition to tribal governments reacquiring land in trust, largely from surrounding local and state governments. In response to that opposition, the Secretary of Interior, under the Clinton Administration, pushed forward a set of regulations on land to trust that were published in final form on January 16, 2001. The new Secretary, under the Bush Administration, is reviewing these new rules to determine whether she will allow them to become effective. The effective date is set at April 16, 2001.

NCAI is urging the Secretary to go forward with the new regulations regarding the acquisition of lands in trust. Those regulations were the result of a comprehensive process undertaken by the Department – going back to 1997. There were hundreds of comments on the proposed regulations – by all concerned including NCAI and tribes, as well as many state and local governments. NCAI and the tribes worked long and hard to make our views known by the Department during the process leading up to these new trust land regulations. The Department by no means accepted all our views in the final regulations, and we have significant concerns about the manner in which the final regulations address various issues – including the omission of the Alaska tribes entirely, and the treatment of contiguous lands. At the same time, NCAI feels strongly that the work that went into these regulations should not now be abandoned.

NCAI believes that on balance the new regulations provide a considered and reasonable framework for addressing the land acquisition issue. The new regulations provide opportunities for all concerned parties to be heard. They incorporate a time deadline for agency action – which is important to tribes that have had their trust land acquisition applications unduly delayed, sometimes for years on end. And the new regulations provide more detailed, concrete standards, which provide an important measure of fairness to all parties by clarifying at the outset the manner in which a trust land application will be evaluated.

NCAI wants to stress that the trust lands issue is vitally important to tribes nationwide, and that the federal government has a responsibility to ensure that tribal land acquisition can take place. We appreciate your consideration of NCAI's position, and we look forward to working with you in addressing this matter.

V. ECONOMIC DEVELOPMENT

As this Committee is well aware, creating and sustaining economic development in Indian

Country relies upon many factors. These factors range from the availability of financing to start or expand tribal business, education of the tribal workforce, infrastructure development for reservation accessability, strengthen tribal court systems for internal controls and regulations, and providing technical assistance for new business development. Currently, there are a number of programs that provide assistance to tribes in these areas, including the Bureau of Indian Affairs' Office of Economic Development, HUD's Community Development Block Grant program, ANA's Social and Economic Development Strategies grant program, the Department of Commerce's Office of Native American Business Development, the Minority Business Development Agency's Native American Business Development Centers, and the Economic Development Administration. There is also the Small Business Administration's Tribal Business Information Centers and Small Business Development Centers, and the Department of Treasury's Community Development Financial Institutions Fund.

Unfortunately, even with all of these programs, there still exists severe poverty and unemployment on Indian reservations which can mostly be attributed to the history of federal mismanagement of Indian property and the historical under funding of federal programs. Therefore, tribal governments are very thankful that this Committee has taken the lead on Indian economic development issues and has taken some very positive legislative steps in the past to help spur economic development in Indian Country. For example, in November 2000, the Native American Business Development, Trade Promotion, and Tourism Act of 2000 was enacted that created within the Department of Commerce an Office of Native American Business Development. This office will provide the much needed coordination between the programs and assistance to Native Americans in the areas of business development and trade promotion. NCAI was in full support of this office and passed NCAI Resolution #STP-00-091 (attached), endorsing any funding requests by the Commerce Department and other federal agencies to further its objectives and activities.

NCAI is pleased to see that this Committee has introduced new legislation that will assist tribes in creating sustainable economic development. NCAI supports any federal assistance that is available to tribes and encourages this Committee to continue to work with our membership in identifying new ways of creating sustainable economic development on Indian reservations. NCAI also urges this Committee to support the funding levels identified in our appropriations testimony previously forwarded.

VI. HEALTH CARE

Mr. Vice Chairman, as this Committee knows first hand, quality health care for tribal members has and continues to be among the top priorities of tribal governments. With inadequate medical services, facilities and treatment programs in most tribal communities Indian people have the highest levels of chronic diseases such as diabetes, infant mortality, teen suicide and substance abuse. The member tribes of NCAI are appreciative of the

focus this Committee has provided on the reauthorization of Public Law 94-437, the Indian Health Care Improvement Act. Per NCAI Resolution # STP-00-053 (attached), we look forward to working with the Committee during this Congress in support of S. 212.

Accordingly, we also support efforts to elevate the Director of the Indian Health Service (IHS) to Assistant Secretary of Health and Human Services. NCAI supports S. 214 and H.R. 293 and any executive action which would elevate the position of the IHS Director. As this Committee knows, the IHS Director holds a position of extreme importance for the health of Indian people and deserves a rank commensurate with the responsibilities of such a position. The IHS, the largest direct health care provider within the HHS Department, should answer directly to the Secretary to insure that the issues that impact the agency are addressed. There are many legal and cultural issues that are unique to Indian health programs, and tribes look to the IHS Director to insure that these are taken into consideration when Department policy and regulation are developed. In order to do this effectively, the Director needs to report directly to the Secretary and to serve at the top policy making level within the Department.

VII. INDIAN EDUCATION

On October 29, 2000, NCAI strengthened its partnership with the National Indian Education Association (NIEA) and reaffirmed its commitment to Indian education issues through a formal Memorandum of Agreement (MOA). In the MOA, NCAI and NIEA joined forces with the National Indian School Board Association (NISBA) and the American Indian Higher Education Consortium (AIHEC) to create a unified front on Indian education. This combined power will preserve and protect the successful efforts NCAI and other organizations have undertaken on behalf of Indian students – and to build a brighter future through new and better coordinated policy initiatives.

It is in this cooperative spirit that NCAI supports the recommendations of the NIEA provided to this Committee on March 14, 2001, regarding S. 211, the Native American Education Improvement Act of 2001. We also echo the concerns raised by NIEA in regards to President Bush's proposed new education strategies guaranteeing that "no child be left behind" and the additional demands placed on Indian schools already faced with limited resources.

In regards to the reauthorization of the Elementary and Secondary Education Act (ESEA), NCAI supports the request that this Committee holds additional hearings in order to consider the entire breath of Indian education programs in the Department of Education. We also request the Committee's support in seeking a New Millennium White House Conference on Indian Education that would provide national attention on Indian education in the 21st century.

Lastly, NCAI seeks the support of this Committee in ensuring that: adequate funding and

resources are provided to address the many needs of Indian students and Indian schools; the Executive Orders on American Indian and Alaska Native Education and Tribal Colleges are both supported and carried out; and, the many concerns, suggestions and recommendations of tribes and tribal organizations such as NIEA, NISBA, and AIHEC are addressed and implemented.

VIII. WELFARE REFORM

Also due for reauthorization is Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, better known as Welfare Reform which provided a major change in federal policy concerning assistance to poor families and children. Responding to the widespread belief that people who could work should do so, PRWORA refocused on moving people away from cash assistance and into work. The law capped federal spending for the primary cash assistance program serving poor families and children, ending the Aid to Families with Dependent Children (AFDC) program. Under the newly established Temporary Assistance for Needy Families (TANF) program, which replaced AFDC, poor families are required to work and are no longer entitled to assistance; most families can receive federal cash assistance for no longer than 60 months. Although with fewer resources than state governments, PRWORA also offered tribal governments the unprecedented opportunity to administer TANF.

While these changes dramatically altered the provision of services to poor families and children throughout the country, tribal communities have particularly and uniquely been affected by welfare reform. Specifically, many tribal communities suffer from disproportionate poverty rates; remote, rural geography; inaccessibility of services and high cost of service delivery; lack of economic base; inadequate training, job opportunities, and support services; and lack of facilities and infrastructure. Tribes also face challenges in coordinating tribally-provided and state-provided services, as there are still various related programs that tribes do not have the authority to administer directly. Beyond the commitment of the federal government to provide a safety net for all low-income families, the United States government has also made unique commitments of a higher order to Indian tribes in treaties and laws. In exchange for millions of acres of ceded lands, the United States government has an obligation to provide for the health, safety and welfare of tribal communities beyond the implementation of welfare reform.

Since Welfare Reform was enacted, every tribe has dealt with the many challenges which PRWORA presents to tribal children, families and communities. Tribes commonly provide child care, employment, training, education and a variety of social services to needy Indian people within their service areas. Many of these services are funded through Indian programs authorized under PRWORA. In addition, tribes devote a significant amount of the other federal resources they receive under other statutes to dealing with welfare reform requirements. Some tribes also provide services to their people on public assistance through grants and contracts from state government agencies. Many tribes have

adopted new and innovative approaches to restructuring and integrating their services, in part using the opportunities under Pub. L. 102-477, to better serve their needy families. Pub. L. 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992 allows tribes to integrate the employment, training and related services they provide in order to improve effectiveness of services, reduce joblessness and serve tribally-determined goals. In effect, tribes can use Pub. L. 102-477 to co-locate services and streamline eligibility processes, providing recipients with one-stop shopping.

Tribes administer a variety of programs under PRWORA. To date, 30 Tribal TANF plans, serving 158 tribes, have been approved. Two-hundred and fifty-seven Tribal Child Care grantees, serving over 500 tribes, have received $71 million, approximately 2 percent of the federal Child Care Development Fund. Four tribes run Child Support Enforcement programs. Seventy-eight tribal grantees administer the Native Employment Works program, and 86 tribes administered $5 million in Welfare-to-Work grants.

Tribal governments have shown great enthusiasm for operating new programs and for re-designing service delivery systems. While struggling with limited resources and the lack of employment opportunities on reservations, tribes have made great strides in offering coordinated, holistic support services to their tribal members. Tribal governments have made assistance programs and support services far more accessible to their communities than ever before. Tribes have also begun to take advantage of the opportunity to become directly involved in the administration of child support enforcement programs.

Tribal governments maintain that welfare reform is not only a policy but a process as well. Tribes must have the same opportunity as states—to design programs, to modernize and customize services that are flexible and responsive to individual client needs.

American Indian and Alaska Native tribal governments are committed to:

- Strengthening tribal families,
- Protecting the interests of tribal children,
- Promoting family self-sufficiency,
- Substantially reducing dependence on public assistance, and
- Developing economically prosperous and culturally thriving tribal communities.

For generations, poverty has been prevalent in many Indian communities, in part a result of past federal policy. Any formula to reduce public assistance and develop economically viable tribal communities must include a substantial, strategic investment in Indian and Alaska Native communities. A dual investment strategy dictates both an investment in critical supports for individual Indian families and for tribal communities.

In the reauthorization of programs covered by PRWORA, tribal governments have advanced the following guiding principles that are essential in helping tribal families in

reservation and other tribal communities to become self-sufficient. Any legislation that is considered should:

- Provide funding directly to tribes based on a government-to-government relationship.
- Be adequately funded to meet tribal needs, including funding for capacity building and special needs.
- Have the flexibility to serve the needs of a wide variety of persons on welfare, transitioning off welfare or at risk of becoming dependent on cash assistance. Policies should authorize tribes to provide any types of services and activities that they consider effective in furthering self-sufficiency.
- Include education, job creation, and economic development components.
- Provide a structure to encourage diplomatic relations and constructive cooperation between tribes and states.
- Clarify that reduction of poverty is a goal of welfare reform.

Indian tribal governments and Indian families are very committed to the principle of self-sufficiency at both the community and the family levels. We call upon the Congress and the Administration to make the substantial investment necessary to empower tribal governments to build the economic and social infrastructure to move tribal families to self-sufficiency in the short-term, and to make reservations thriving economic communities in the long-term.

IX. STATE TAXATION

Taxation within Indian Country over the past several years has become a hot bed of debate, where lobbying groups for the retail cigarette and motor fuel trade are claiming that Indian retailers located on Indian lands are not remitting "lawfully imposed" state sales taxes on gasoline and tobacco products sold to non-Indians.

These groups have been able to persuade certain members of Congress to introduce legislation that would eliminate the alleged advantage. The most extreme piece of legislation was introduced in the first session of the 106th Congress, which threatened to take Indian land out of federal trust status if the Indian retailer did not pay the "lawfully

imposed" state sales taxes.[1] Fortunately, none of these extreme measures have been passed.

The collection of state sales taxes on tribal lands has an unfair and disproportionate effect of dual taxation and makes it extremely difficult for tribal governments to raise revenues by imposing their own taxes. Additionally, a number of state governments are failing to even reimburse lawfully owed taxes to tribes. All of these factors have grave effects on economic development in Indian Country.

This debate has resurfaced again and we anticipate another piece of tax legislation in this first session of the 107th Congress. The collection of state and local taxes in Indian Country is an issue that many tribal and state governments have resolved effectively thought tribal state tax compacts. NCAI seeks the support of this Committee in opposing any tax legislation that would force tribes to collect and remit state sale taxes, which ultimately makes the federal government the states tax collector. Tribes and states should be left alone to work out their difference as sovereigns.

Not all tax legislation however has been detrimental. Indian Country has been working very hard to introduce affirmative pieces of tax legislation. In the 106th Congress, the Federal Unemployment Tax Act was signed into law as Public Law 106-554, and treats tribal employers like other government employers in regards to unemployment tax. In the 107th Congress, numerous pieces of tax legislation have been introduce to help spur investments in community, infrastructure, and economic development. Additionally, there has been legislation to provide for the issuance of tax-exempt bonds by Indian tribal governments. Second to education, tax legislation will be a top priority for the Bush administration providing a perfect opportunity to have these positive pieces of legislation passed. We seek the support of this Committee in passage of these bills important to tribal governments.

X. TRUST FUNDS

By any measure, the federal government has fundamentally failed to maintain its responsibilities for management of Indian lands and natural resources and the funds derived therefrom. Over the last year, NCAI has begun to work more intensively with the Bureau of Indian Affairs on any corrections to trust management that are underway. In particular, NCAI has worked with the BIA on the development of the first round of "Trust Management Regulations" on trust funds, leasing, grazing and probate, and also worked with the Senate Committee on Indian Affairs on the passage of the Indian Land Consolidation Act Amendments of 2000. While some progress is being made in spots, overall we are very disappointed with the Department of Interior's unwillingness to accept

[1] H.R. 1814 - Introduced by Representative Peter J. Visclosky (D-IN) and Representative Ernest Istook (R-OK).

responsibility for reforming the trust management system. We strongly believe that vigorous Congressional oversight and technical changes to the underlying trust management statutes will be necessary in the coming year.

As a general statement, we believe that the Department of Interior continues to act as if it does not have the responsibilities of a trustee. The fact is that the United States, as a trustee, manages and administers trust property, resources and funds for both tribal and individual Indian trust beneficiaries, and when dealing with Indian trust or restricted property, including land, water, minerals, timber, funds and hunting and fishing rights, the Department has generally the same responsibilities as would a private trustee. E.g., Mitchell v. United States, 463 U.S. 206 (1983).

Although there are many examples of this, perhaps the most fundamental is the way the Department's "final" regulations fail to deal with the primary source of failure in the trust management system: internal controls, accounts receivable and monitoring and enforcement on uncollected trust funds from the sale or leasing of trust resources. There has been far more money lost in the Indian trust system from payments that were never received than from mismanagement of funds after receipt. It is undeniable that collecting trust funds from the development of trust resources is a critical aspect of trust management. Yet there is no discussion in the government's Part 115 on Trust Funds that deals with policies regarding collection or accounts receivable. These are not the standards for a trustee.

Our concerns on these matters relate to the overall architecture of the trust management system. Currently there is a hodgepodge of variously outdated and dysfunctional trust management systems across the BIA Regions and Agencies. The purpose of the BIA trust reform project is to create modern, uniform systems. Yet, the proposed regulations do little to address what the ultimate trust management systems will look like. The policies and procedures currently contemplated are being drafted in a vacuum, without a structural foundation of how the trust management system will operate. It is notable that this criticism, a lack of structural foundation, is exactly the same as has been leveled against the Department's development of the new computer system, the Trust Asset and Accounting Management System.[2]

Our discussions with the Office of Trust Funds Management (OTFM) and the BIA Office of Trust Policies and Procedures have led us to the conclusion that many of these issues remain unresolved because of existing structural and management divisions within the Department of Interior, and a lack of coordination or integration. The responsibilities for performing tasks that are essential to trust management seem to fall between agencies and between job descriptions. We have been assured that some day in the future the OTFM

[2]Indian Trust Funds: Challenges Facing Interior's Implementation of New Trust Asset and Accounting Management System (Testimony, 07/14/1999,GAO/T-AIMD-99-238).

TFAS computer system will be compatible with the BIA TAAMS computer system, and that they will be able to print out an "exceptions report" that will show payments that were due but not received. However, no office seems to be responsible for running the "exceptions report" and no office seems to be responsible for taking action to notify the lessees and begin the process of collection. We believe that issues such as these must be specifically addressed within the proposed regulations.

Unfortunately, we believe that Congressional oversight will be needed to ensure that the BIA develops the overall structural, management and staffing framework for its trust management system as a part of the development of the regulations that will drive that system. We believe that an appropriate management structure should begin with an analysis of what obligations and services must be provided to Indian beneficiaries, and then structured to ensure that obligations are met, that offices work together, and that employees are held accountable for performing their duties. In this regard, we believe that the EIA should look toward private sector trust management systems and develop a system that is much more oriented toward the beneficiary.

Finally, we would like to note several areas of underlying trust management law where we would like to work with Congress on improving the statutes. First, we believe that Congress should directly address the trust funds management and provide clear guidance to the BIA and the OTFM on roles and responsibilities for trust funds management and particularly in a number of areas on Individual Indian Money (IIM) accounts. Second, the Indian Land Consolidation Act of 2000 was a big step forward in helping move the probate of Indian estates forward. An important next step will be to consider developing a federal probate code for the probate of Indian estates where the tribe has not established its own code. In far too many instances, Indian probate cases are decided under state laws which do not adequately address the concern relevant to Indian trust property. In addition, a federal probate code would serve to resolve conflicts of laws issues and generally speed the resolution of the backlog of Indian probate cases. Finally, we would like to ask the Committee to consider revising the general statute on surface leasing of Indian lands found at 25 U.S.C. 415 in light of the modern era of tribal self-determination. Our view is that tribal governments are considerably more sophisticated than in the 1950's when this statute was adopted, and that it is time to allow tribes to have a greater role in approval of leases, particularly short term leases. This type of change could considerably reduce the workload of the BIA, particularly if it were paired with change to the law regarding lease appraisal. The current statute also contains the vestiges of the discredited termination policy, and these provisions should be updated as well.

XI. LAW ENFORCEMENT

Despite comprising the smallest segment of the Nation's population, American Indians are more than twice as likely to be the victims of violent crime than any other race, according to statics released on March 18 2001, by the Department of Justice (DOJ).

In a "Special Report on Violent Victimization and Race, 1993-98", the DOJ Office of Justice Program reported that:

- Between 1993 and 1998, the rate of victimization among Americans Indians over the age of 12 was 119 per 1,000. This was more than twice that experienced by African-Americans (57 per 1,000), two-and-a-half times that experienced by Whites (45 per 1,000), and four-and-a-half times that experienced by Asian-Americans (26 per 1,000).

- American Indian women, in particular, were the victims of intimate partner violence at higher rates than their counterparts. Between 1993 and 1998, 23 per 1,000 American Indian women were victimized compared to 11 per 1,000 African-American, 8 per 1,000 White, and 2 per 1,000 Asian-American.

- Whether male or female, urban or rural, married or unmarried, young or old, high income or low, American Indians were victimized at disproportionately higher rates than any other racial group. Overall, American Indians were 1.3 percent of all victims of violent crime, but are just 0.5 percent of the total population.

The latest statistics are the second set of numbers the Justice Department has compiled about violence in Indian Country. This study shows violent crime against Indians has stayed the same while violent crime against all other U.S. races has fallen and that American Indians experienced the highest rates of overall and serious violent crimes regardless of the locality of residence considered. These statistics confirm that rapes, assaults, and serious violent crimes continue to plague American Indians just as crime among other races has decreased. This leaves Indians twice as likely to be victims no matter where they reside.

With the current and ongoing public safety crisis in Indian Country, additional support for the improvement of law enforcement on tribal lands is urgent. The level of law enforcement services that many Americans take for granted rarely exists on or near Indian lands. There are only 2,380 BIA and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states. On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities under 10,000. A total of at least 4,290 sworn officers are needed in Indian Country to provide a minimum level of coverage enjoyed by most America.

The member tribes of NCAI are encouraged by Secretary Norton's recent testimony regarding her commitment to provide adequate law enforcement resources to Indian Country and seek the support of this Committee in continued funding for the joint DOJ-BIA Law Enforcement Initiative.

XII. TRANSPORTATION

There is still an enormous need for physical infrastructure on Indian lands throughout the country. This infrastructure is necessary for Indian tribes and their citizens to carry out emergency services, law enforcement, and the transportation of goods and services. Indeed, good transportation is fundamental to attracting private investment and enterprise into Native communities. When entrepreneurs or investors are calculating whether to invest in a community they first look to see if the basic building blocks exist within the community. Roads, highways, electricity, potable water, and other amenities are critical factors that investors look to before making their investment decisions.

NCAI appreciates the focus of this Committee in addressing the enormous need for transportation infrastructure on Indian reservations throughout this country. However, in the last Congress, legislation to remove the so-called "obligation limition" from the Indian Reservation Roads (IRR) program under TEA-21did not pass, nor were efforts to secure additional resources to offset this obligation limit through the appropriations process successful. This failure to fully fund the IRR program, despite significant advocacy efforts by tribal governments underscores the need to enact legislation that would address this issue. Therefore, NCAI fully supports S. 344 as it would provides a fix to TEA-21 by removing the obligation limitation contained within the Act and would allow the already-authorized funds for Indians to reach the intended beneficiaries.

XIII. TRIBAL-FEDERAL GOVERNMENT-TO-GOVERNMENT CONSULTATION

On November 6, 2000, the much anticipated Executive Order 13175, Consultation and Coordination with Indian Tribal Governments was signed. This Executive Order provides that "each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This Executive Order was and continues to be viewed by Indian Country as a very positive step in the strengthening of the government-to-government relationship.

NCAI and our tribal leader workgroup worked extensively with the Bureau of Indian Affairs and the Department of Energy in formalizing consultation policies for those agencies. However, we understand that the Department of Education is finalizing its consultation policy and like other department or agencies, has failed to seek tribal input. NCAI urges this Committee and Congress to support the Executive Order and to ensure that its mandate is carried out. This is of particular importance, since the Administrations is creating an Interagency Working Group on Federalism to consult with state and local officials on issues pertaining to federalism including, but not limited to, the issuance of the new Executive Order on Federalism.

In the words of Chairman Robert Chicks, co-chair of the tribal leaders workgroup on consultation, "don't make decisions about us without us."

XIV. CENSUS 2000

Mr. Vice Chairman, as you may know, the Census Bureau is releasing this month block level population numbers to the states for use in the redistricting process. This data, which include racial and ethnic characteristics, are the first detailed numbers to emerge from last year's decennial census. NCAI is proud of its efforts to improve the conduct of the census in Indian Country and Alaska Native villages and to encourage census participation among our people on reservations and other tribal lands, in remote Alaskan communities, and in urban areas.

According to the Census Bureau's Accuracy and Coverage Evaluation (A.C.E.) survey, the net national undercount in Census 2000 is lower than in 1990, 1.2 percent compared to 1.6 percent ten years ago. The net undercount for American Indians living on reservations also was reduced, from 12.2 percent in 1990 to 4.7 percent in 2000. We are encouraged by this significant drop in the undercount rate for the residents of Indian Country, and we commend the Census Bureau for consulting with tribal governments in its efforts to improve census operations in many important respects.

Nevertheless, we are deeply concerned about the disproportionate undercount of American Indians, both on and off reservations, and of Alaska Natives, in the census. Census 2000 missed nearly one in twenty Indians living on reservations – the highest undercount of any racial or ethnic group. Viewed another way, people in Indian Country were nearly seven times as likely to be missed as non-Hispanic whites. The undercount of American Indians and Alaska Natives living off reservations also was disproportionately high – 3.3 percent.

Despite the persistence of this "differential undercount" of American Indians, other people of color, and the poor, a committee of Census Bureau experts recommended earlier this month against the release of statistically adjusted numbers based on the A.C.E. survey. The committee cited a lack of time to reconcile differences between the A.C.E. estimate of the nation's population and an independent demographic estimate developed by the Bureau. Secretary of Commerce Donald Evans agreed with the recommendation and ordered the release of unadjusted numbers to the states for redistricting purposes.

We cannot fully understand and analyze the apparent substantial undercount of our people without evaluating the adjusted numbers. The Census Bureau's expert committee, while recommending against release of the adjusted data at this time, confirmed the high quality of the coverage evaluation survey and said there is "considerable evidence" that the adjusted numbers are more accurate than the raw census counts. These conclusions lead us to believe that the undercount of American Indians in Census 2000 is not a statistical creation but a very real and troubling outcome of the traditional census process that must be corrected using the best scientific methods available.

Therefore, NCAI called upon the Commerce Department and the Census Bureau to release the A.C.E. adjusted data as soon as possible, to allow for the fullest public scrutiny and evaluation of Census 2000, and to help policymakers in Congress and federal agencies make informed decisions about program development and the allocation of fiscal resources to those most in need. We seek support of this Committee in bringing about that disclosure in a timely way.

XV. NATIVE HAWAIIANS

Mr. Vice Chairman, as you know, NCAI was organized in 1944 to fight against termination of tribal sovereignty and the assimilation policies promulgated by the federal government and that we are dedicated to protecting the rights of tribal governments, as well as to working with all Native people to achieve self-determination and self-sufficiency. It is in this spirit that we strongly support S. 81 and any measure that would provide the recognition of Native Hawaiian sovereignty by the federal government and the creation of a process that will lead to self-determination for Native Hawaiian people.

It is important to formally recognize the sovereignty of the Native Hawaiian people because of the historical wrongdoings and deprivations that the Native people faced at the hands of the United States when their government was taken from them. But self-determination is needed not only to ensure a measure of justice, but more importantly to protect the unique indigenous Hawaiian culture which is constantly threatened by the incursions of a predominant non-native culture. Self-determination is also necessary for the protection and governance of lands, which are necessary for any culture to continue to survive, to allow native people to live together as a community, continue traditional land-based cultural practices, and provide the economic means to live productive and healthy lives.

XVI. CONCLUSION

Vice Chairman Inouye, as we continue to urge the Congress to fulfill its fiduciary duty to American Indians and Alaska Native people, I would like to thank you for this remarkable opportunity to present testimony on the goals and priorities of the member tribes of NCAI. The support of this Committee in the past has been crucial in our constant fight for self-determination. Again in this Congress, we look to you and the Committee for it's unwavering support in not only the areas that have been identified, but in those areas that affect American Indians and Alaska Native people. As you are well aware, tribes throughout the nation relinquished their lands, as well as their rights to liberty and property, and NCAI asks that the Congress through your assistance maintain the federal trust responsibility to Indian Country and continue to assist tribes on the road toward self-sufficiency. Thank you.

NATIONAL CONGRESS OF AMERICAN INDIANS



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Jamestown S'Klallam Tribe

FIRST VICE PRESIDENT
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Oneida Nation of Wisconsin

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EXECUTIVE DIRECTOR

JoAnn K. Chase
Mandan, Hidatsa & Arikara

THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #STP-00-091

Title: Office of Native American Business Development in the Department of Commerce

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, on November 7, 2000 the President signed into law the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (S. 2719). This Act creates within the Department of Commerce an Office of Native American Business Development, which will provide coordination and assistance to Native Americans in the areas of business development and trade promotion; and

1301 Connecticut Avenue NW, Suite 200, Washington, DC 20036 202.466.7767 fax 202.466.7797

WHEREAS, S. 2719 based the creation of the **Office of Native American Business Development ("Office")** in the Department of Commerce on the findings that the capacity of Indian tribes to build strong tribal governments and economies is hindered by their inability to engage communities that surround Indian lands and outside investors in economic activities on Indian lands. For that and other reasons, the bill states that the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands, specifically in the areas of **investment** from outside sources that do not originate with the tribes; and **economic ventures** with outside entities that are not tribal entities; and

WHEREAS, the purpose of the Office of Native American Business Development is to ensure the coordination of Federal programs that provide assistance (including financial and technical assistance) for increased business, the expansion of trade by eligible entities, and economic development on Indian lands to Indian tribes, tribal organizations and enterprises, Indian-owned businesses, Indian arts and crafts organization and marketing cooperatives; and

WHEREAS, the duties of the Office of Native American Business Development are focused on the coordination and/or provision of the following activities, according to the language of the Act: interagency programs for economic development; a Native American export and trade promotion program, and a Native American tourism program (including grants for demonstration projects); and

WHEREAS, the Department of Commerce supports the creation and activities of this office.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby support the creation of the Office of Native American Business Development and any funding requests by the Department of Commerce and other Federal agencies dedicated to furthering the objectives and activities of the Office for the benefit of tribal enterprise and economic development.

CERTIFICATION

The foregoing resolution was adopted at the 2000 Annual Session of the National Congress of American Indians, held in St. Paul, Minnesota on November 12-17, 2000 with a quorum present.

Susan Masten, President

ATTEST:

Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2000 Annual Session of the National Congress of American Indians, held in St. Paul, Minnesota on November 12-17, 2000.

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Wichita & Affiliated Tribes

BILLINGS AREA
Earl Old Person
Blackfeet Tribe

JUNEAU AREA
Steve Ginnis
Native Village of Fort Yukon

MINNEAPOLIS AREA
Bernida Churchill
Mille Lacs Band of Ojibwe

MUSKOGEE AREA
S. Diane Kelley
Cherokee Nation

NORTHEAST AREA
Michael W. Schindler
Seneca Nation of Indians

PHOENIX AREA
Ivan Makil
Salt River Pima-Maricopa

PORTLAND AREA
Henry Cagey
Lummi Nation

SACRAMENTO AREA
Cheryl A. Seidner
Table Bluff Reservation/Wiyot

SOUTHEAST AREA
A. Bruce Jones
Lumbee Tribe

EXECUTIVE DIRECTOR

JoAnn K. Chase
Mandan, Hidatsa & Arikara

THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #STP-00-053

Title: Supporting Re-authorization of the Indian Health Care Improvement Act, P.L. 94-437

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the Indian Health Care Improvement Act, P.L. 94-437 was first enacted in 1976 to address Indian health disparities, to increase the number of health care professionals serving Indian communities, to authorize services to urban Indian populations, to rectify Indian Health Care facility problems and to provide access to Indian patients to other health care resources such as Medicare/Medicaid; and

WHEREAS, the Indian Health Care Improvement Act provides comprehensive directives to the Federal Government with regard to Indian health and, along with Snyder Act of 1921, provides overall guidance and authority for U.S. Indian Health Services programs; and

WHEREAS, the Indian Health Care Improvement Act is scheduled to expire at the end of the fiscal year 2000; and

WHEREAS, national Indian organizations and tribes participated and consulted with the Indian Health Service and Federal Government to advise on the re-authorization and proposed language changes to the Indian Health Care Improvement Act.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby support the re-authorization of the Indian Health Care Improvement Act, P.L. 94-437 with the proposed language changes previously submitted by NCAI.

CERTIFICATION

The foregoing resolution was adopted at the 2000 Annual Session of the National Congress of American Indians, held in St. Paul, Minnesota on November 12-17, 2000 with a quorum present.

Susan Masten, President

ATTEST:

Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2000 Annual Session of the National Congress of American Indians, held in St. Paul, Minnesota on November 12-17, 2000.

UNITED SOUTH AND EASTERN TRIBES, INC.
711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
Telephone: (615) 872-7900 • Fax: (615) 872-7417

TESTIMONY PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

BY UNITED SOUTH AND EASTERN TRIBES, INC.
KELLER GEORGE, PRESIDENT

GOALS AND PRIORITIES FOR THE 107TH CONGRESS

April 5, 2001

Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs:

My name is Keller George. I am an enrolled member of the Oneida Indian Nation, and currently serve as President of United South and Eastern Tribes (USET). On behalf of the 24 member tribes of USET, I thank you for this opportunity to present to you our legislative priorities for the 107th Congress.

Our member tribes cover a huge range of circumstances, varying widely in population, tribal government infrastructure, economic development, and natural resources. As such, the issues addressed in this statement do not reflect a priority order — all are critical to the well being of USET tribes.

The tie that binds the various legislative priorities of USET is our commitment to tribal sovereignty and the freedom to exercise that sovereignty through tribal self-governance. The Senate Committee on Indian Affairs has been critical to the protection of tribal sovereignty — whether through legislation that this Committee has approved or disapproved or in your role as an advocate on behalf of tribal concerns in legislation under the jurisdiction of other congressional committees. We truly appreciate this stalwart support, and hope to count on your continued partnership in our ongoing struggle against erosion of tribal governmental rights and the prospect of harmful legislative proposals, federal and state agency actions, and adverse court decisions during the 107th Congress.

Examples of actions which have eroded or threaten to erode tribal sovereignty among the USET member tribes are:

- Effort to by the state of Maine to assume all authority and jurisdiction of their National Pollution Discharge system within the borders of tribal lands in Maine.
- Effort by the state of Louisiana to require state licenses for the tribally charted Chitimacha insurance company.

- Federal legislation, HR 240, which would prohibit the Poarch Band of Creek Indians from using certain lands it currently has in trust for gaming purposes.
- Federal law which singles out the Narragansett Tribe as being ineligible to operate gaming in Rhode Island under the authority of the Indian Gaming Regulatory Act.
- The National Labor Relations Board General Counsel has asked the agency to reverse its long-standing precedent and unlawfully subject Indian nations to the National Labor Relations Act.

We ask your continued help in solidifying tribal sovereignty by promoting positive legislation under this committee's jurisdiction which furthers tribes' ability to govern, such as the Self-Governance measure passed last year. It is also vital that this Committee continues to be actively involved with other committees on legislation that impacts tribal governments – evaluating legislation with regard to its impact on tribes and educating and coordinating with congressional colleagues and staff. The Finance Committee's jurisdiction over tax and other financial matters, Medicare, Medicaid, and social service entitlement programs makes the work of that Committee particularly critical to Indian country.

We appreciate that this Committee sponsors issue briefings for congressional staff, and encourage you to continue in this endeavor.

Finally, we ask your assistance in building tribal relationships with the new Administration. As with any new Administration, there is a great deal of initial education and introduction that must be undertaken. We look forward to developing positive working relationships with federal officials and White House staff, and welcome your assistance in building smooth pathways for communication between all of us who are concerned with the well being of American Indian and Alaska Native communities.

Below are outlined specific legislative issues of importance to USET member tribes. We have attached issue papers and resolutions on many of these topics. Also attached is a map of the USET area, a list of our member tribes and other information about our organization.

APPROPRIATIONS

The USET Tribes are encouraged by Secretary Norton's recent statement in testifying before this Committee that she and President Bush are "both believers in the concept of Self-Determination." As the Committee is well aware, adequate funding is essential to continuing the successes achieved under Self-Determination and Self-Governance. Because we have not seen the details of the proposed FY 2002 budget request, we urge the Committee to keep in mind the following when considering Indian funding related issues:

- *Tribal Priority Allocations (TPA).* As indicated by the initial data from Census 2000, tribes will face increased demands for services to their communities and

families due to the population growth on reservations. However, TPA funds, which are utilized to provide on-going, essential services at the local tribal level, have not been increased at levels that would meet the growing needs of each tribe. According to the 1999 Tribal Report on TPA, the unmet need in TPA-funded programs was estimated at $688 million.

- *Means Testing.* In recent years, Congress has expressed concern about perceived "inequities" in funding and considered imposing a "means test" to allocate federal funds to tribes. We certainly commend members of this Committee for successfully fighting these ill-conceived proposals that would stand in stark violation of the federal trust responsibility. We remain strongly opposed to any type of means test to determine whether or how much federal assistance a tribe may receive *until Congress first ensures that the unmet needs of all tribes have been met.* Although some of our member tribes have recently begun to achieve economic success through their various businesses, there are decades–if not centuries–of poverty from which the tribes must rebuild. The toll on human health, education, and welfare has been tremendous and the tribes are still building the infrastructure and systems necessary to cultivate economic development.

  We instead encourage this Committee to continue efforts to develop long-term solutions identified by the 1999 Tribal Report on TPA, which includes the "Tiered Methodology" for funding distribution that USET first proposed in 1998. This method provides that future TPA funding *increases* would be distributed to all tribes but at an accelerated rate to the lower-funded tribes in order to address the disparities among tribes. We attach our testimony on this topic as an additional resource.

- *Contract Support and Administrative Cost Grants.* Both contract support costs (CSC) funds and Administrative Cost Grants (AC Grants) are intended to fund the additional costs incurred by tribes when they contract to operate federal programs. These are costs not necessarily borne by the federal contracting agency, e.g., GSA lease support, agency legal counsel or Department of Justice legal support, retirement costs, telecommunications costs, etc. AC Grants are the mechanism by which tribes that operate BIA-funded schools receive funding for administrative and indirect costs. Although it is irrefutable that these funds are a critical element in fulfilling the federal policy of encouraging tribal governments to design and administer services locally for their members, CSC and AC Grants have been seriously underfunded for a number of years.

  The FY 2001 estimated shortfall for CSC funds was $16.9 million for BIA programs, and $13 million for AC Grants. Whenever the appropriations fall below the needed amount, all contractors and schools suffer a pro-rata reduction in CSC and/or AC Grant funding, and, thus, must offset these shortfalls with reduced services, reductions in force, delayed updating of financial systems, etc.

We appreciate the increases provided by Congress in the past several years for IHS Contract Support but there is still an existing shortfall of approximately $45 million for ongoing and new contractors. We urge Congress to fully fund IHS contract support costs.

Finally, we urge this Committee to work in tribes in educating other Committees of Congress and federal agencies outside of the BIA and IHS that contract support costs are a legitimate and necessary part of this nation's policy which recognizes and promotes tribal self-determination.

- *Tribal Historic Preservation.* Beginning in 1996, tribes, under the authority of the National Historic Preservation Act, began establishing Tribal Historic Preservation Offices to take over the duties of the State Historic Preservation officers on tribal lands. There are now 27 Tribal Historic Preservation Offices (THPOs), of which seven are USET members – Wampaoag, Narragansett, Catawba, Poarch Band of Creeks, Tunica-Biloxi, Eastern Band of Cherokee and Seneca. The National Park Service reports that there is interest among many other tribes in establishing THPOs. Congress is providing about $5 million annually for tribal historic preservation programs. The THPOs receive a base of $100,000 plus some additional funding based on population. Other parts of the $5 million are distributed competitively to tribes for preservation programs outside of the THPOs. Establishing and carrying out the duties of a Tribal Historic Preservation Office is an enormous undertaking, and is an attribute of tribal sovereignty. We urge Congress to significantly increase funding for THPOs so that they can better meet the requirements of their offices and so that additional tribes can establish THPOs.

The ability of tribal governments to provide services to their members is directly impacted by the amount of federal funding made available for tribes. We ask this Committee to continue advocating for funding that more accurately reflects tribal needs and the United States' trust responsibility for tribes. We are fortunate that six members of the Senate Committee on Indian Affairs also serve on the Appropriations Committee. We know the Indian Committee's work has been very important in securing recent funding increases for contract support costs, diabetes programs, BIA school construction, and law enforcement, among other areas. We ask your continued support in maintaining the critical gains in these areas, as well as in securing additional funding the several key areas mentioned above that are in need of immediate attention.

Child Welfare

Indian and Alaska Native Foster Care and Adoption Services Amendments of 2001. USET strongly supports S. 550, the Indian and Alaska Native Foster Care and Adoption Services Amendments, legislation which would end the wholly inequitable treatment afforded Indian children under the Foster Care and Adoption Assistance Act (found in Title IV-E of the Social Security Act). That Act was enacted in 1980 and it provides funding, on an open-ended entitlement basis, to state governments to administer foster care and adoption programs for children who meet income eligibility

requirements. The Act applies to state governments and children placed by state agencies, leaving out tribal governments and children under tribal jurisdiction who are placed in foster and adoptive homes by tribal agencies.

We thank Senator Daschle and the cosponsors of the legislation, including Senators Inouye, McCain, and Johnson of this Committee, for working to bring equity for Indian children under the Foster Care and Adoption Assistance Act. It is ironic, and sad, that we have a federal entitlement program regarding foster care and adoption services, but leave out of its benefits Indian children who are placed in out-of-home placements at a rate higher than any other group. And Indian children, according to the most recent Department of Justice figures, suffer the highest rate of abuse and neglect of any group in the nation – a tragic situation, which often leads to the necessity of removing a child from his or her home.[1]

Some tribes and states have been able to work out agreements to provide tribes at least some of the resources that states receive under the IV-E program. Often these agreements do not provide tribes with administrative, training, case management and data collection funds that states receive under the Act. The agreements usually focus on the provision of monthly payments to the foster home. Among the USET tribes only St. Regis Mohawk has a tribal/state agreement for the IV-E program.

Bush Administration Child Welfare Proposal. The Bush Administration outline for child welfare does not contain many details, but we are nevertheless concerned that it makes no mention of Indian children. We are also concerned with its implication that "permanence" is narrow concept that may leave out kinship care, guardian arrangements, and other tribally approved living arrangements for children who are removed from the homes of their biological parents.

It is possible that the President's recommendation of a $1 billion increase over 5 years for child welfare will be considered as part of the reauthorization of the Promoting Safe and Stable Families Act (found in Title IV-B, Subpart 2 of the Social Security Act). Tribes currently receive a 1% statutory allocation under this Act. We will closely examine this proposal as it becomes more fully developed. The Promoting Safe and Stable Families Act will be reauthorized this year, and we believe that it should be amended to provide additional resources to tribes. Currently 66 tribes share an allocation of only $3 million under that Act.

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[1] U. S. Bureau of Justice statistics for 1995 reported a per capita rate of one substantiated report of a child victim of abuse or neglect for every 30 American Indian children aged 14 or younger. This compares to one report for every 58 children of any race, approximately half the rate for Native children. It was the highest rate of abuse or neglect reported for any ethnic group.

In addition, American Indians and Asians were the only racial/ethnic groups to experience increases in the rate of abuse or neglect of children under age 15 from 1992 to 1995 (Dept. of Justice, 1999). Data from the National Child Abuse and Neglect Data System (NCANDS) show that, for child maltreatment victimization rates by race and ethnicity in 1998 (40 states reporting), the rate for Native children was 19.8 cases per 1000 children. This compares to a rate of 3.8 for Asians/Pacific Islanders, 8.5 for Whites, and 10.6 for Hispanics (U.S. Dept. of Health and Human Services, Children's Bureau, 2000).

Economic Development

The economic diversity of our member tribes reflects the wide differences in economic circumstances that exist among the tribes nationwide. We have a member tribe whose only source of funding is the minimum level of BIA TPA funding of $160,000. With these meager funds they are desperately focused on establishing their basic tribal government, which leaves them no funds to develop business ordinances, codes, and strategic planning that would prepare them for a greater chance of achieving economic success. At the other end of the spectrum, we have tribes who have achieved the capacity to extensively diversify their economic base. It is critical for Congress to recognize that the economic success of a very few does not mean it is time to withdraw support for federal responsibilities.

Sustained economic growth for all Indian communities has been a long-held goal for tribes as well as this Committee. The elements critical to achieving that goal have not changed significantly since we last testified before the Committee on this topic in 1998. We still hold that improving the economic status of tribes can be achieved through—

- *Honoring tribal sovereignty* so that tribes may self-regulate their economic affairs and interact with the federal government on a government-to-government basis, rather than fighting off legislative and regulatory attempts to diminish their authority.
- *Honoring trust responsibility* to provide the health and education services which will enable tribes to move toward economic development with a skilled and healthy workforce.
- *Offering meaningful tax incentives* for private investment on Indian lands such as the proposed legislation to allow tribes to issue revenue bonds and tax-exempt financing.
- *Improving the infrastructure on tribal lands.* Tribes must be able to provide adequate water, sewer, roadways, electricity and communications systems in order to attract new businesses.

We applaud the Committee's efforts to enact legislation that would allow tribes to consolidate economic development resources from various agencies/programs under one Self-Determination contract and coordinate the role of the federal agencies. We hope to work closely with you in this Congress to secure enactment of this and other proposed legislation that addresses our economic development needs. In addition to the legislation already noted, we urge the Committee to oppose further attempts to subject tribes to the National Labor Relations Act.

Education

We greatly appreciate the work of this Committee in drafting S. 211, the Native American Education Improvement Act of 2001, which concerns elementary and

secondary schools in the BIA system. Tribal children among the USET tribes attend a mix of BIA and public schools. To that end, we hope that you will continue to work with tribal leaders and advocates to ensure that the broader Elementary and Secondary Education Act reauthorization includes provisions to ensure that Indian youth in both the public school systems and the BIA-funded school system receive all of the support they need.

The USET Tribes are pleased that the new Administration has placed education among its highest priorities, and has pledged that the "federal government will meet its responsibilities to Native American children." We hope that this year will mark a turnaround in the chronic funding shortfalls that have too long plagued BIA funded schools and public schools with high numbers of Indian students.

We strongly support fulfillment of President Bush's campaign promise to devote $1 billion to fully fund the maintenance backlog and construction needs of BIA schools. But it is also critical that these schools have adequate resources to fund the educational program itself, funding to draw and retain teachers, ensure prudent administration of schools, and otherwise ensure that what goes on *inside* the schools receives as much attention as the school facilities themselves. To this end, it is important that the BIA schools receive full funding for the Administrative Cost Grants (approximately $55 million in FY 2002) and that the core funding for these schools be increased to a level more equitable with other schools, or $4,000 per student. We also support increased funding for the Johnson O'Malley Program, which provides funds to both BIA and public schools, and urge that the funding take into account increased student enrollment.

The Impact Aid program is vital to public school districts that contain Indian trust lands, and we are encouraged by recent increased appropriations for the Impact Aid basic support payments and for construction for these schools.

Health

Indian Health Care Improvement Act. USET was an active participant in the National Steering Committee made up of tribal leaders who drafted a proposal for reauthorization of the Indian Health Care Improvement Act, and we urge its enactment. We believe that pending Senate bill, S. 212, which would bring more of the IHS funding to the local level, improve access to Medicare and Medicaid, provide new options for facility construction, and provide better coordination among behavioral health services (social services, mental health, substance abuse) will result in improved health care for Indian people. We appreciate that this Committee held hearings on the reauthorization of this important health legislation last Congress and that the bills introduced in the House and Senate largely reflect the work of the tribal Steering Committee. We realize that both the legislation and the committee jurisdictional issues surrounding it are complex, and are willing to put a lot of effort into working for its enactment.

Elevation of the Position of the IHS Director. We support legislation, S. 214, which would elevate the position of the IHS Director to that of an Assistant Secretary. This Committee has been persistent in its advocacy for this bill, and we appreciate that. We believe that an Assistant Secretary for Indian Health will be in a better position within the Department of Health and Human Services to advocate for IHS funding. We also believe that an Assistant Secretary will have more clout in working with other Assistant Secretaries in the Department to increase tribal access to other programs, e.g., mental health funding.

Level of Need Funded. We believe the concept of a comparison of the funding available for the IHS services population to the nation as a whole is a sound concept, and one that could lead to increased funding for Indian health programs. We are, however, troubled by the development of a Level of Need Funded (LNF) for tribes which could be used to as a comparative tool between tribes and result in a reallocation of existing funds among tribes. The USET tribes believe that the utilization of the LNF methodology as anything other than a national benchmark for overall funding is inherently flawed.

Our attached position paper details a number of concerns we have about the methodology utilized by the LNF workgroup. We believe that contract support costs and tribal shares should not be counted as resources in the calculation of LNF percentages. CSC funding is, by definition, funding to provide a tribe with resources equal to that which the Secretary is provided by the federal government for the federal direct-operated operating unit. Similarly, tribal shares are not identified in the amounts allocated to federal direct-operated operating units, and that creates a bias when using the current LNF methodology to compare the differing operating units.

Finally, we want the Committee to know that we are opposed to using an LNF methodology for distribution of any IHS funds other than the Indian Health Care Improvement Fund.

Contract Health Services. Contract Health Services (CHS) funding is a critical component in the provision of health care to Indian people. It provides funding for health care services that are not available in IHS and tribal health facilities. CHS is heavily affected by the medical inflation rate. We greatly appreciate the $40 million increase in Contract Health Services for fiscal year 2001, and urge that this program receive an increase in FY 2002 as well. IHS reported in its FY 2001 budget justification that in fiscal year 1999 it deferred payment on 84,085 recommended contract health services cases due to inadequate funding.

USET supports the formula developed by the IHS CHS workgroup for distribution of the $40 million increase in that program. The formula takes into account congressional mandates, the needs of unfunded tribes, maintenance of buying power by addressing inflation, population, influence of local costs differences, and access to inpatient health services. We also believe that this formula and other distribution

formulae must be reviewed on an annual basis to incorporate the most current and verifiable local data.

Diabetes Funding Distribution. USET thanks the Committee for its role in last year's amendments to the Balanced Budget Act, which increased and extended the entitlement diabetes funding for Indian tribes and urban Indian organizations. Given the extremely high incidence of diabetes in Indian country, we urge that this be ongoing funding beyond fiscal year 2003. While we hope great progress is made in the prevention and treatment of diabetes by fiscal year 2003, we know that there will still be much work to be done after that date.

USET supports the use of the existing distribution methodology for the entire amount of FY 2001 diabetes funds ($30 million previously made available through the Balanced Budget Act of 1997 and an additional $70 million made available through the Balanced Budget Act of 2000). We support use of the existing methodology for the FY 2001 funds so that they can be disbursed in a timely manner. However, we believe that the distribution methodology for funding that begins in FY 2002 should be analyzed and modified. We urge that newly appropriated diabetes funds be allocated to tribes for prevention and treatment activities and not diverted to universities or special interest organizations for research purposes.

Dr. Trujillo. USET commends Dr. Trujillo for his good work and advocacy for Indian and Alaska Native people as Director of the Indian Health Service, and we are on record in asking the Bush Administration to allow him to remain in his position for the remainder of his term.

LAW ENFORCEMENT

The USET tribes strongly endorse increases to the BIA/DOJ Law Enforcement initiative as a high priority for future appropriations. We firmly believe that law enforcement is an essential component of a tribal government's ability to govern and an integral part of successful economic development. Like other tribes nationally, USET tribes are experiencing increased rates of crime and violence. But, with limited resources, many of our member tribes are unable to provide law enforcement on the twenty-four hour/seven days a week basis that would lead to more peace and stability in our communities.

In order to strengthen our law enforcement programs, we believe that BIA and DOJ should work with the tribes to develop and implement model cross-deputization agreements. Since we work with not only local law enforcement officials but also state police and other federal law enforcement officials such as National Park Service Rangers, consistent recognition of tribal law enforcement authority would improve interaction with these other agencies. Similarly, there is a need to develop a Memorandum of Agreement between tribal police and U.S. Attorneys that establishes the standards for bringing cases to the federal courts. These actions would go far in promoting the legitimacy of tribal law enforcement programs.

In the 106th Congress, the Committee was instrumental in the enactment of the Indian Tribal Justice and Legal Assistance Act. We hope that this Congress will appropriate the funds necessary to support much-needed development of tribal justice systems. In addition to increased funding for tribal courts, additional technical assistance and regionally based training have been identified needs of the USET tribes.

Federal Recognition

The USET Tribes are concerned that the discussion and consideration of the tribal federal recognition process has become mired in controversies regarding two related but separate processes—trust land acquisitions and tribe-state agreements for gaming. We believe it is misleading and prejudicial for the opponents of the recognition process to assert that recognition will lead to wide expansion of Indian gaming and significant loss of revenue from lands taken into trust on behalf of the tribe. What the opponents fail to make clear is that it is only *after* achieving federal recognition that a new tribe would be able to pursue gaming under the Indian Gaming Regulatory Act and the acquisition of lands in trust. Both of these processes are time-consuming and wholly separate from the recognition process.

The process for American Indian groups to attain federal recognition has become an arduous, costly and very lengthy endeavor, a process that must be improved so that it is not politicized and moves the applications in a timely manner. We support the Committee's efforts to improve the process but request that the Branch of Acknowledgment and Research (BAR) activities remain within the Bureau of Indian Affairs rather than creating an independent Commission. We ask the Committee to consider the following in improving the BAR process—

- Provide adequate funding for the BAR
- Establish enforceable timeframes under which the BAR must completes it work
- Authorize the BAR to contract with experts and research institutions to conduct research and analysis, with the BAR retaining final review under the acknowledgment criteria

Finally, we would urge that the responsibility for final decisions on applications for federal recognition remain with the Assistant Secretary. As with other matters of federal policy, the Assistant Secretary considers the recommendations of the staff but the final decision lies with the Assistant Secretary. Federal recognition decisions should be handled the same way.

Federal Communications Commission

USET is greatly concerned that the FCC has not taken seriously its consultation responsibilities with our member tribes, particularly when it comes to the licensing and siting of communications towers. As we all know, literally tens of thousands of these

towers have been constructed across the country, with tens of thousands more in the planning stages. A number of these towers have, or may have, an adverse impact on sites of religious and cultural importance to tribes. The National Historic Preservation Act provides, among other things, that federal agencies "shall consult with any Indian tribe and Native Hawaiian organization that attaches religious or cultural significance" to properties that might be affected by a federal undertaking. 16 U.S.C. Section 470a(d)(6)(B). The FCC licensing process is a federal undertaking but the FCC has consistently failed to consult with tribes.

The FCC adopted rules last year to provide incentives for wireless telecommunications carriers to service Indian country. At the same time, FCC seems to have attempted to delegate its consultation responsibilities to the tower industry to which we strongly object.

We applaud FCC's actions last year in issuing a policy statement establishing a government-to-government relationship with Indian tribes and approval of a plan to subsidize telephone service in Indian country. However, there is still a long way to go in establishing a productive working relationship between the FCC and tribes. The FCC has held several multi-day meetings with tribes in various parts of the country but unfortunately not in the USET area.

Of note is FCC Commissioner Tristani quoted in the March 19, 2001, issue of *Communications Daily* expressing concern that the programmatic agreement on wireless communications towers fell short of the FCC's obligation to facilitate tribal consultation. She stated that "[t]he overwhelming majority [of tribal comments] told us our approach is not working. This response is prima facie evidence that our understanding of tribal consultation is misguided."

USET urges this committee to examine closely the FCC's obligations in this area.

Other. There undoubtedly will be other items of interest to our member tribes which will come up during the course of the 107th Congress, and we will want to be in communication with you. One such item is the welfare reform statute which we expect will be reuthorized in 2002. USET is represented on the NCAI task force on welfare reform, and that organization has given testimony to this Committee on principles which should be utilized in the reauthorization process. We support those principles and expect to have more detailed proposals as this process evolves.

The requests we make of you – protecting tribal sovereignty through the legislation under the Senate Committee on Indian Affairs' jurisdiction, working with other Congressional committees on legislation of importance to tribes, building working relationships with the new Administration – are things we require of USET also. We will do our part.

Again, thank you for requesting the input of the United South and Eastern Tribes concerning the legislative agenda of the 107th Congress.

United South and Eastern Tribes, Inc.
Position Paper
February 1, 2001

SUBJECT:

Direct Tribal Access to funding under the Foster Care and Adoption Assistance Act as codified in Title IV-E of the Social Security Act.

ISSUES:

These plans for action are essential to prepare recommendations for the new Administration and to successfully implement the goals and objectives of the USET Tribes. Tribal input is critical to the concerns that need to be addressed over the course of the next several years in shaping the future of the USET Tribes.

The following Social Services issues, objectives, and recommendations have been developed as a result of the efforts of Tribal leaders, through their membership with United South and Eastern Tribes, Inc. (USET), who have joined together to provide strength in unity among the member Tribes. The purpose of this Advocacy Plan is to promote a unified view of the problems and difficulties within the Indian community and to encourage negotiations and discussions with Congress and the Administration on critical American Indian Policy issues.

Title IV-E of the Social Security Act is a federal entitlement program that annually provides approximately $5 billion to states for training, administration and data collection related to foster care and adoption programs, foster care maintenance payments, and adoption assistance. Foster care maintenance payments help pay for food, shelter, clothing, daily supervision, etc. Administrative funds help pay for case management and other functions that support child placement. Training focuses on agency staff as well as foster and adoptive families. In order to receive Title IV-E funds, states are required to provide a matching amount.

Title IV-E regulations allow states and Tribes to enter into agreements in order to provide services to Indian children who are under Tribal jurisdiction. However, such agreements have been difficult to reach, and for many of the estimated 50 Tribes that do have agreements with states, their agreements are limited in scope to only some of the services that states receive under Title IV-E.

Because Title IV-E funding has not served Tribal governments and Indian children under Tribal jurisdiction in the same manner that it has served states, Tribes have been forced to utilize child assistance funding through the Bureau of Indian Affairs (BIA), which is generally restricted to the provision of foster care maintenance payments. Funding for administration and training that is available through Title IV-E is commonly unavailable through the BIA. In addition, some Indian children who meet the income eligibility criteria for Title IV-E are place in foster homes without the benefit of financial assistance, and other Tribes have been forced to relinquish the custody of some of their children to state agencies. On the other hand, state governments and income-eligible children placed in foster care and adoptive homes through state agencies receive funding for services needed as an entitlement under Title IV-E.

Background:

United South and Eastern Tribes, Inc. (USET) is a non-profit, intertribal organization composed of twenty-four federally recognized Indian Tribes, representing Indian communities from Maine, south to Florida, and west to eastern Texas. USET provides a forum for exchange of information and ideas among its member Tribes, various governmental agencies, and other American Indian organizations. USET is dedicated to assisting its member Tribes in dealing effectively with public policy issues and serving the board needs of Indian people.

The USET Tribes have been working together for several years to improve Social Service resources for American Indians. The USET Tribes recognize that although steps have been taken in the past to provide for American Indian cultural and to protect Social Services programs, enough is not being done. The social services programs for the American Indian people are constantly in danger as states and the federal government challenge the funding needs of the Tribes.

The USET Board of Directors, at the Annual Board of Directors Meeting held in Verona, NY on October 28, 1999, passed Resolution No. 2000:26. This resolution entitled " Support S.1478- Direct Funding for the Tribes from the Title IV-E Foster Care and Adoption Assistance Program," is incorporated as Attachment A for reference purposes.

The USET member Tribes, through its Social Services Committee, have maintained an ongoing commitment to provide quality foster care and adoption services for their children. However, the current capacity of USET member Tribes to do so is severely hampered by their inability to directly access the funding to which states are now entitled.

S. 1478 was introduced on August 3, 1999. This legislation would have corrected a twenty year inequity in the Foster Care and Adoption Assistance Act through the direct funding of foster care and adoption services provided by the Tribes to income-eligible Tribal children in out-of-home placements. While passage failed in 2000, efforts will be made to re-introduce this bill in the next Congressional session.

Recommendations:

Each of the key issues, previously stated, include herein a plan to implement both short-term and long-term recommendations. The following actions should be considered to assist in the advancement of these issues within the new Administration and Congress.

The USET Board of Directors recommends the introduction of legislation that will amend Title IV-E of the Social Security Act in the following manner:

- Provides for the reimbursement for Title IV-E services to Tribal placement of Indian children in the Tribal foster and adoptive homes meeting Title IV-E eligibility requirements.
- Authorizes Tribal governments to receive direct funding for the administration of the Title IV-E program.

- Recognizes Tribal standards for foster home licensing.
- Allows the Secretary of the U.S. Department of Health and Human Services the flexibility to modify the requirements of the Title IV-E law for the Tribes if those requirements are not in the best interest of Indian children.
- Permits the Secretary of the U.S. Department of Health and Human Services to modify the Title IV-E matching shares requirements so that the Tribes may use other federal or state funds for this purpose.
- Establishes a methodology for Tribal access to the training, administration, and data collection programs under the Foster Care and Adoption Assistance Act.
- Continues to recognize Tribal-state agreements currently in effect and allows Tribes and states to enter into future agreements.
- For Tribes without a Tribal-state agreement, provides for less formal Tribal-state agreements which would allow foster care maintenance payments to be made for children placed by Tribal agencies.
- Allow the Secretary of the Department of Health and Human Services to Waive or modify requirements of the Act for a Tribe as long as the Tribe has an alternative method of meeting the purpose of the Act.

SUMMARY:

Access to Social Security Act Title IV-E funding for Indian children has been severely limited to Tribal governments. This results in inadequate funding for Tribal foster care and adoption programs that must use the Bureau of Indian Affairs funding or relinquish custody of these children to the state courts. Relinquishment of custody results in Indian children being raised outside of their culture.

The USET member Tribes recommend amendments to Title IV-E of the Social Security Act to allow direct funding to Tribal governments for all costs associated with the placement and adoption of Indian children, including, but not limited to, administrative, training, and data collection costs. Further, we recommend amendments allowing flexibility in the matching share requirements of Title IV-E and waivers of requirements for Tribes who demonstrate acceptable alternative methods of meeting the purpose of the Act.

The USET Tribes recognize that some progress has been made in the Social Services area in the past few years, however, the lack of funding is continuing to hamper the effectiveness of Tribal governments in their social services programs. This result has a negative social, cultural, and economic impact on Indian communities. The USET Tribes are convinced that there are solutions to these problems. The federal government is obligated, through its government-to-government relationship with federally recognized Tribes, to contribute to these solutions. The USET Tribes call for a working partnership between the United States Government and the twenty-four USET Tribes to address these issues.

Keller George

Keller George, USET President

United South and Eastern Tribes, Inc.
Position Paper
February 1, 2000

SUBJECT:
RE-AUTHORIZATION OF PUBLIC LAW 94-437 - THE INDIAN HEALTH CARE IMPROVEMENT ACT

ISSUE:

Public Law 94-437, the Indian Health Care Improvement Act (IHCIA) was enacted into law by the 94th Congress "to implement the federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation of Indians in such programs, and for other purposes." This law was enacted to address the Federal governments historical and unique legal relationship, and resulting responsibility to, the American Indian/Alaska Native (AI/AN) people.

The IHCIA is the federal law that provides a detailed framework and funding authorization for health service delivery to AI/AN people through the Indian Health Service (IHS). This law gives Congress authorization to appropriate federal funds for IHCIA programs through Fiscal Year 2000 which ended September 30, 2000. Therefore the law must be re-authorized and extended by Congress in order for funds to be appropriated to continue IHCIA programs.

In the effort to control health care costs, recover costs, and maximize limited resources tribes and tribal organizations have had to deal with law, policy and funding issues at federal and state levels. Tribal governments have had very limited success in negotiating the bureaucratic maze surrounding Medicaid, Medicare and other third party resources available for reimbursement of health and health related costs. In addition, Congressional mandates such as those exemplified by the list of health objectives (Healthy People 2000 & 2010), earmarked studies and pilot programs, etc. are laudable, greatly appreciated and most importantly necessary. However, without additional funds appropriated to carry out the efforts, these "special initiatives" may often take dollars away from necessary health services and programs that are already limited and stretched for operating funds. In the absence of appropriated funds it is too often the case that the effort is addressed in a token attempt or is simply shelved due to the lack of sufficient resources to carry out the program, service, function or activity at any level.

The health care environment has changed substantially since the passage of the IHCIA and also since the passage of the 1988 and 1992 amendments to the law. This changing environment in health care combined with the downsizing of the federal government bureaucracy has, at times, had a significant negative impact upon tribes and tribal organizations in their efforts to provide quality health care services for AI/AN people. It is critical that tribes and tribal organizations be involved in the process of re-authorization of the IHCIA to allow correction of any deficiencies inherent in the current IHCIA.

BACKGROUND:

A National Steering Committee was established to review and make recommendations for changes to the IHCIA prior to re-authorization. The National 437 Steering Committee was composed of tribal and IHS officials including two tribal leaders representing the United South and Eastern Tribes, Inc. (USET). It was determined by the National 437 Steering Committee that consensus had to be reached regarding each title of the IHCIA, thus the goal became "Speaking with One Voice." The National 437 Steering Committee conducted an in-depth review of each of the eight titles contained in the law and made recommendations for changes. Committee members also utilized technical experts to assist in the process of correcting deficiencies inherent in the existing law. These technical experts included attorneys, Health Care Finance Administration (HCFA) staff and statistical personnel. The Committee recommendations were sent to each of the 556 tribal leaders for review and comment. Additionally, four regional consultation meetings were held to give tribal leaders and their representatives an opportunity to publicly communicate their issues and/or concerns to the Committee. The comments from these regional meetings were recorded and compiled into reports for review by the full National 437 Steering Committee.

The National 437 Steering Committee received and reviewed recommendations received as a result of the regional meetings as well as written recommendations submitted by tribes and tribal organizations. In the spirit of "Speaking with One Voice," a final "Proposed Bill to Re-authorize the Indian Health Care Improvement Act" was drafted by the National 437 Steering Committee, based upon the recommendations and concerns of tribes and tribal organizations from across the United States. The 162 page document was forwarded to the relevant committees of jurisdiction as well as the Administration on October 7, 1999. Subsequently, on November 16, 1999, the House Committee on Resources introduced their re-authorization bill, H.R. 3397. H.R. 3397 is almost identical to the proposed bill drafted by the National 437 Steering Committee. Twenty-seven members joined Representative George Miller (R-CA), who chairs the Committee on Resources, in the introduction of this bill. The House has not scheduled or held hearings regarding IHCIA

to date. The Senate version of the bill, S. 2526, was introduced on May 9, 2000 by Senators Ben Nighthorse Campbell (R-CO), Daniel Inouye (D-HI), and John McCain (R-AZ). Titles I, II and III of S. 2526 are almost identical to the proposed bill drafted by the National 437 Steering Committee. The Senate Committee on Indian Affairs held an oversight hearing on the re-authorization of the IHCIA on May 10, 2000 and July 26, 2000.

Due to tribal involvement in the process of re-authorization, the proposed bill makes significant changes that will correct deficiencies inherent in the current bill. For example, the proposed bill

- makes critical changes to the Social Security Act, eliminating barriers to Medicaid, Medicare and the Children's Health Insurance Program.

- shifts resources and responsibilities to the local level when possible, while protecting other programs of national scope or significance.

The concept of changing the Indian Health Service from a discretionary to an entitlement program was debated by tribal leaders throughout the process of reviewing the IHCIA, however it was ultimately decided that more study and tribal consultation must be conducted prior to making a final decision. Therefore, the proposed bill includes a directive to establish a Congressional Commission, to include tribal and IHS officials, to study Indian Health Entitlement.

RECOMMENDATIONS:

The USET Board of Directors, which is comprised of the top two elected officials from each of the twenty-four member tribes, makes the following recommendations:

1. The Administration and Congress should support the enactment of the IHCIA as proposed in the bill drafted by the National 437 Steering Committee. This version of the bill was based upon the recommendations and concerns of tribes and tribal organizations from across the United States. The tribally proposed bill was subject to extensive consultation and was developed to represent the individual needs of each federally-recognized tribe and tribal organization, including urban AI/AN programs to the greatest extent possible.

2. The Administration, Congress and the IHS should continue to provide tribes the opportunity for meaningful participation during the remainder of the re-authorization process. Tribes should be given adequate notice of scheduled hearings in order to provide testimony. Additionally, Tribes who are not invited to provide oral testimony should have adequate time to submit written comments

for the Congressional Record.

3. The Administration and Congress should appropriate new funding to the IHS budget so that all provisions inherent in the IHCIA can be adequately carried out for the benefit of all AI/AN people without impacting current services. The IHS can not and should not be expected to fund all provisions inherent in the IHCIA with existing funds.

4 The Administration and Congress should begin steps to establish the Congressional Commission to study Indian Health Entitlement. This Congressional Commission should include representation from each of the twelve IHS Areas, including representatives from the USET tribes within the Nashville Area.

The USET Board of Directors insists on being included in the steps taken towards reauthorizing the final bill to ensure that the needs of AI/AN people will be more adequately addressed. The USET Board respectfully requests the opportunity to provide oral and written testimony to the House and the Senate during the hearing process that will ensue prior to enactment.

SUMMARY:

USET is one of the oldest and most politically active tribal organizations in the United States. Our member tribes remain actively involved in the political process through regularly scheduled meetings throughout the year. Our annual Impact Week meeting is held in the Washington, DC Area at the beginning of each calendar year. It is during this meeting that the member tribes come together and develop a collective strategic plan for the upcoming year. Individual tribes also schedule appointments to meet with their Congressional representatives during this time. As the National 437 Steering Committee strived to have all tribes "Speaking with One Voice," for thirty-two years USET has operated under the premise that there is "Strength In Unity."

The health status of AI/AN people is extremely low when compared to the U.S. population, as a whole. AI/AN people continue to have higher instances of morbidity and mortality in nearly all health indicators, such as diabetes, cardiovascular disease, and malignant neoplasms. A unique legal relationship exists between tribal and federal governments. In exchange for land and other resources, American Indian Tribes and Alaska Native Villages were promised many things by the federal government, including but not limited to health care. The IHCIA along with the Snyder Act are the key legislative documents that were developed to uphold the federal governments trust responsibility to AI/AN tribal governments for the provision of health care services to their members. The IHCIA has been refined by tribes to address changes in the health care environment. The tribally recommended changes to the IHCIA must be incorporated into the re-authorized bill prior to enactment as this is an integral step to raising the health status of all AI/AN people.

Keller George

Keller George, USET President

United South and Eastern Tribes, Inc.
Position Paper
February 1, 2001

SUBJECT

DEVELOPMENT OF THE LEVEL OF NEED FUNDED (LNF) CALCULATION AND FISCAL YEAR 2001 UTILIZATION AS A RESOURCE ALLOCATION METHODOLOGY FOR THE INDIAN HEALTH SERVICE (IHS) INDIAN HEALTH CARE IMPROVEMENT FUND

ISSUE

The twenty-four tribes comprising the membership of United South and Eastern Tribes, Inc. (USET) agree that the level of funding available for American Indian/Alaskan Native (AI/AN) healthcare is far below similar funding available to the average U.S. citizen. Furthermore, the USET membership agrees that a level of comparison for such funding disparity needs to be scientifically documented as evidence of the claim.

Therefore, the USET tribes support the concept of establishing a Level of Need Funded (LNF) for the AI/AN population as a whole. The USET tribes agree that identifying the LNF for the AI/AN population nationwide, in comparison to other U.S. population groups, could be the foundation used to advocate for greater resources to eliminate disparities.

BACKGROUND

The USET member tribes believe that there are several flaws inherent in the methodology developed by the LNF Workgroup, which need to be addressed. The following issues need to be given special consideration, particularly if the intent remains to utilize such methodology for budget formulation and funding allocation purposes.

- **Contract Support Costs & Tribal Shares:** Contract Support Costs (CSC) and Tribal Shares must be reconsidered in regard to the resources attributed to local operating units in the calculation of LNF percentages. Contract Support Cost funding is by definition, funding to provide a tribe with resources equal to that which the Secretary, Department Of Health and Human Services (DHHS) is provided by the federal government for the federal direct-operated operating unit. As such, resources that are allocated to contracted/compacted operating units are identified when they are not intended for actual delivery of health care services. Additionally, Tribal Shares and similar resources are not identified in the amounts allocated to federal direct-operated operating units, and therefore, a bias is created when using the current LNF methodology to compare the differing operating units.

- **LNF Methodology as a Budget Development and Allocation Tool:** The LNF methodology is inherently flawed when utilized to allocate resources on the local level. Therefore, potential use of the LNF methodology for budget formulation and funding allocation purposes for other funding types must be prevented at this time.

- **Inaccurate Data:** Distinct and unique tribes are affected by vastly different economic, geographic and social situations, and cannot be accurately compared through the utilization of population-based data and

national averages. In particular, the LNF Workgroup contracted with professional actuarial firms to develop the national data for use in the LNF methodology. These consultants themselves identified the unreliability of such data when trying to apply it to the local levels, as well as further difficulties in trying to obtain similar data from local sources. Therefore, the USET tribes believe that the LNF methodology does not have the validity necessary to make decisions regarding funding allocations to individual entities on a local level.

- **Health Status:** The LNF methodology is intended to eliminate health disparities and as such, the single-most important factor that should be considered is health status. Health status indicators should include disease burden, morbidity and mortality data sets. However, current sources of local data (i.e.: states and/or counties) significantly under-report AI/ANs as a distinct population group, or miscode AI/AN people all together. Therefore, accurate local data must be developed or acquired prior to utilizing the LNF methodology for comparison of individual tribes.

- **Public Health Model:** The trust responsibility of the federal government to provide healthcare to the AI/AN people is overlooked by eliminating funding for "wrap-around" services in the LNF calculation. This responsibility includes funding for all aspects of programs, functions, services and activities provided through the Indian Health Service (IHS), not just select line items. A tribe may be listed in the LNF Workgroup Report II as having a LNF of 100%, when in fact, that tribe is not fully funded. The USET member tribes are concerned about the potential misuse of the LNF methodology by an uninformed audience and urge the LNF Workgroup to develop a methodology that incorporates all Indian Health Service funding allocations.

- **Federal Trust Responsibility:** The trust responsibility of providing health care resources specifically to AI/ANs is a unique obligation of the federal government. Other federal dollars expended on behalf of AI/AN people, such as Medicaid and Medicare, are entitlements to which all U.S. citizens may benefit. As such, Medicaid and Medicare payments for AI/AN health care do not meet the trust responsibility of the federal government specifically reserved for AI/ANs. Furthermore, statutory language in Title V of the Indian Self-Determination and Education Assistance Act and Title IV of the Indian Health Care Improvement Act indicates that such resources shall not offset the funding available to AI/ANs.

  Additionally, independent third-party payers (e.g.: Blue Cross/Blue Shield, Kaiser Permanente, etc.) do not have a trust responsibility to provide healthcare to AI/ANs. Fund collections from private insurers should not be included in the LNF formula.

  Finally, the USET tribes agree that the 25% third-party contribution used in the national calculation of LNF is vastly overstated. Many tribes have only a limited capacity for third-party collections, if any at all. The USET tribes also agree that the application of such national data to a local level is inaccurate even for individual tribes that are conducting effective billing operations. This oversight is not corrected by arbitrarily assigning a $745 value to all tribes in the LNF calculation.

- **Inaccurate User Population:** The use of per capita funding figures as the basis for comparison when tribes are prevented from counting all AI/ANs to whom they provide services is flawed. Tribes that accept federal funding are required by federal law to provide healthcare to all individuals who are members of a federally recognized tribe. However, when calculating the per capita LNF values for specific tribes, those tribes are not allowed to count individuals to whom they provide services when they reside

outside of a geographic Contract Health Service Delivery Area. Such incomplete counts of the user population artificially raise the LNF values, and thereby reduce the validity of the LNF methodology in comparing tribes to one another.

- **Review and Adjustment of the LNF Methodology:** The LNF Workgroup membership agreed that the methodology should in fact be reviewed on an annual basis to incorporate the most current data available. The USET Tribes agree that this review should take place no less than annually for all aspects of the methodology, including the benchmark per capita figure of $2,980 itself, the number of users for each tribe, the actual funding level for each tribe, and all data involved in calculating the three adjustment factors currently utilized, as well as the cost of "wrap-around" services.

RECOMMENDATIONS

The USET Board of Directors, which is comprised of the top two elected officials from each of the twenty-four member tribes, makes the following recommendations:

1. Contract Support Cost funding and tribal shares should be excluded from the calculation of LNF. This percentage is calculated by dividing the amount of funding available to the operating unit by the amount of funding needed by the operating unit. The resources allocated to each operating unit include Contract Support Cost funding and tribal shares. The inclusion of such resources in the LNF formula artificially raises the LNF percentage for those operating units that contract or compact their operations.

2. The LNF methodology should only be applied to the IHS Indian Health Care Improvement Fund, and not other funding allocations. The USET tribes strongly oppose the application of the LNF methodology to any other funding allocations.

3. Future data used in the LNF methodology needs to be improved and derived in consultation with the tribes themselves, through cooperative efforts with regional epidemiology centers. These efforts could possibly include an updated version of the results obtained through the Survey of American Indians and Alaska Natives (SAIAN), which most tribes agree is outdated. Although the LNF study attempts to take unique tribal situations into consideration through a series of adjustments, the inaccurate impact of such comparison is only compounded when the data and averages utilized in making such adjustments are proxies or estimates. The validity of such aggregate national data is significantly reduced when applied to the local level due to these factors.

4. Until valid local data is developed or acquired, only regional (i.e.: IHS Area) funding levels be considered for the initial distribution of funds. Subsequent, tribal-specific allocations will be determined through direct consultation with the tribes in each Area.

5. The methodology developed by the LNF Workgroup needs to include funding for all categories of healthcare received by the AI/AN population, not just personal health care services. Eliminating the funding for the "wrap-around" services in the calculation of a LNF only serves to short-change ourselves in advocating for the benefits that are rightfully due to AI/ANs.

6. All resources expended by parties other than the IHS should be withdrawn from the calculation. Inclusion of such resources is a form of means testing for tribes to provide their own health care, thereby circumventing the federal government's trust responsibility to provide such resources specifically for AI/ANs. Tribes nationwide have limited resources as it is, and should not be negatively impacted by taking the initiative, or being effective, in acquiring independent reimbursement for the services they provide.

7. An unduplicated count of all users of a tribal health system needs to be included in the calculation of per capita funding levels, regardless of where said user resides.

8. The process of annually updating the data used in the LNF methodology, as well as consultation regarding both the data used and the results derived, should be conducted prior to any allocation of funds. This process needs to be formalized within IHS on an annual basis (similar to the annual budget formulation process).

9. Congress should continue to appropriate Indian Healthcare Improvement Funds on a recurring basis to the IHS for use in addressing healthcare funding inequities. However, allocations to individual tribes should be made on a non-recurring basis until such time as the LNF formula has been corrected and universally accepted by tribes.

10. The LNF workgroup should consider using something other than the Federal Employees Health Benefits (FEHB) package as a comparison tool; an example could be the Veterans Administration (VA) Benefits Package. The VA is a complete healthcare delivery system and the FEHB is only a part of a healthcare delivery system.

USET is committed to remaining actively involved in this process. The USET Board of Directors approves of the use of the LNF methodology for distribution of the Indian Healthcare Improvement Fund for fiscal year 2001, only. Future use of the LNF methodology for distribution of Indian Health Care Improvement Funds must be reviewed on an annual basis with direct input from AI/AN tribal governments.

SUMMARY

The USET tribes agree that the LNF methodology should only be used as a basis for obtaining increased funding for the AI/AN population as a whole, via annual appropriations to the IHS, and not as a comparative tool between individual tribes. The USET tribes believe that the utilization of the LNF methodology as anything other than a national benchmark for overall funding is inherently flawed, and are especially opposed to any reallocation of funding amongst tribes, or reduction in funding to individual tribes, as a result of using the LNF methodology in such manner. In particular, USET opposes the distribution of any funds other than the Indian Health Care Improvement Funds through the utilization of the LNF methodology.

The USET tribes believe the results derived by the LNF Workgroup in its initial report are sound for comparing the funding available for healthcare to the AI/AN population, as a whole, to that of the U.S. general population. However, the USET tribes further believe that the methodologies of the LNF Workgroup are not sound when used to analyze the funding available for healthcare to specific AI/AN sub-groups (i.e.: individual tribes) in comparison to each other.

Keller George

Keller George, USET President

DRAFT

March 27, 2001

Dr. Michael Trujillo, Director
U.S. Indian Health Service
Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

Dear Dr. Trujillo:

On behalf of the United South and Eastern Tribes, Inc. (USET), I thank you for your commitment to tribal consultation as evidenced through the meeting recently held in Albuquerque, NM. At this time, I am writing specifically to address the distribution method for Contract Health Service (CHS) funding.

I have enclosed the official position paper developed by USET in regard to the CHS funding distribution. In summary, the USET tribes strongly urge you to accept the CHS distribution formula, as proposed by the CHS Workgroup, and utilize this formula for the allocation of the $40M FY 2001 CHS funding increase. The USET tribes also insist that the additional funding be distributed immediately. Finally, the USET tribes recommend that the IHS continue to consult directly with AI/AN tribal governments in future years regarding the continuous improvement of all allocation methodologies, and incorporation of the most current verifiable data available.

In closing, the USET tribes commend the CHS Workgroup and Technical Sub-Workgroup for their efforts to develop a distribution formula that is fair for all AI/AN tribal governments. If you have any questions regarding this position, please do not hesitate to contact me directly. Thank you for your time and attention in this matter.

Sincerely,

James. T. Martin
Executive Director

enc.: (1)
xc: USET Tribal Leaders
USET Tribal Health Directors
B. Shore Fuller, USET Health Information Officer
T. John, USET Policy Analyst
M. Tiger, IHS Nashville Area Director
file

DRAFT

United South and Eastern Tribes, Inc.
Position Paper
March 15, 2001

SUBJECT

DEVELOPMENT OF A DISTRIBUTION METHODOLOGY FOR THE CONTRACT HEALTH SERVICES (CHS) ALLOCATION TO BE UTILIZED BY THE INDIAN HEALTH SERVICE (IHS) TO DISTRIBUTE THE FISCAL YEAR 2001 INCREASE IN CHS FUNDING

ISSUE

The twenty-four tribes comprising the membership of United South and Eastern Tribes, Inc. (USET) agree that CHS funding for American Indians/Alaskan Natives (AI/AN) is vitally important for the provision of adequate healthcare services to the AI/AN population. Furthermore, the USET membership agrees that available CHS funding has been far less than what is actually needed, and therefore, a fair method of allocating such limited resources among AI/AN tribes is necessary.

The USET member tribes believe that the Fiscal Year 2001 allocation formula as proposed by the IHS Contract Health Services Workgroup is justifiably fair for all AI/AN tribes. Therefore, the USET tribes support the utilization of said formula in the allocation of the FY 2001 CHS funding increase. Furthermore, the USET tribes believe that these funds must be distributed **immediately** in order to avoid delays in the provision of much needed healthcare services to the AI/AN population.

BACKGROUND

$40M was appropriated to the IHS in FY 2001 as an increase to the CHS line item. Dr. Michael Trujillo, Director-IHS, convened a special CHS Workgroup to develop a methodology by which to distribute these funds to AI/AN tribes. The CHS Workgroup reviewed past distribution methods, and analyzed numerous options regarding a fair distribution among the 561 federally recognized AI/AN tribes.

The previous CHS distribution formula was reviewed by the CHS Workgroup, and was determined to be inadequate for a variety of reasons. The USET tribes concur with this determination. As a result, the CHS Workgroup developed a "new" three-part distribution model for the allocation of CHS funding increases to AI/AN tribes.

- **Congressional Earmarks:** Congressional language in the appropriation of the CHS increase specified that the IHS Catastrophic Health Emergency Fund (CHEF) would be increased by $3M, to a total of $15M. Congress directed that the CHEF increase be accommodated from the total CHS increase of $40M therefore, $3M was reserved for this purpose. Language in the appropriations bill also included a clause regarding funding for a settlement in Alaska for the provision of healthcare services for specific Alaska Native villages therefore, $140,000 was set-aside for this purpose. Additionally, funding was set-aside from the total appropriation and reserved for eligible tribes not currently funded by IHS. This category includes newly recognized tribes, restored tribes, and tribes that have always maintained federal recognition status, but had not previously received federal funding. An estimate of $1M was set-aside for this purpose, with an additional $1M to be distributed non-recurring to annualize funding for a given tribe in the first year. The total amount reserved from the $40M appropriated is $4.14M. The remaining

$35.86M will be distributed using a "new" formula at the discretion of Dr. Trujillo based upon recommendations made by the CHS Workgroup and AI/AN tribal governments.

- **Inflation Funding for Historical Base Amounts:** The IHS budget has not consistently received funding increases to adjust for inflation. The CHS Workgroup believes that the CHS line item, perhaps more than any other in the IHS budget, is impacted by inflation. The erosion of purchasing power created when appropriations do not keep up with inflation negatively affects AI/AN tribal governments and their ability to provide needed healthcare services to their people. Therefore, the USET tribes strongly agree with the inclusion of an inflation component in the proposed CHS distribution formula. Furthermore, the USET tribes agree that this factor should be reviewed each year to update the inflation rate utilized in relation to additional increases and the other components of the proposed formula.

- **Active User Numbers:** The USET tribes agree with the basic premise that as more people are served, more healthcare services are required. Therefore, the USET tribes concur with the inclusion of a population component in the proposed CHS formula. Furthermore, the USET tribes agree that the most recent verifiable data available should be included in the calculation of the distribution formula each year.

- **Geographic Cost Adjustments:** The impact of local price variations must be taken into consideration to ensure that each AI/AN tribe is treated fairly when distributing resources based upon need. This impact should be reviewed for both inpatient and outpatient healthcare services. Furthermore, local data has to be used consistently as it relates to individual AI/AN tribal governments. Therefore, the USET tribes concur with the inclusion of the geographic cost adjustment as proposed by the CHS Workgroup. The USET tribes also recommend that locally verified data be considered for use in the formula calculation in future years.

- **Access to Health Care:** The USET tribes agree with the basic premise that as IHS funded inpatient facilities are available for the provision of healthcare services, less reliance on CHS resources is realized. Therefore, the USET tribes concur with the inclusion of an access variable that gives greater consideration to those AI/AN tribes with no access to an IHS funded inpatient facility. However, the USET tribes recommend that this factor be further refined in future years to more accurately portray the extent of an AI/AN tribe's reliance on CHS resources.

RECOMMENDATIONS

The USET Board of Directors, which is comprised of the top two elected officials from each of the twenty-four member tribes, makes the following recommendations:

1. Dr. Michael Trujillo, Director-IHS, should authorize the utilization of the CHS distribution formula, as proposed by the IHS Contract Health Services Workgroup, for the allocation of the $40M FY 2001 CHS funding increase.

2. Distribution of the FY 2001 CHS funding increase should commence immediately.

3. The IHS should continue to work directly with AI/AN tribal governments in future years regarding the continuous improvement of all allocation methodologies, and incorporate the most current data available.

DRAFT

SUMMARY

The USET tribes agree that the CHS distribution formula as proposed by the IHS CHS Workgroup is fair. The formula duly considers congressional mandates, the needs of unfunded tribes, and maintenance of buying power by addressing inflation, population, influence of local costs differences, and access to inpatient healthcare services. Each of these factors has a direct impact on the need for CHS resources at the local level, and the IHS CHS Workgroup did a commendable job in addressing each of them fairly. Finally, the USET tribes agree that the CHS formula, and other distribution formulae should be reviewed on an annual basis to incorporate the most current and verifiable local data.

United South and Eastern Tribes, Inc.
Position Paper

SUBJECT

DISTRIBUTION METHODOLOGY FOR THE FIVE-YEAR $150M GRANT TO THE INDIAN HEALTH SERVICE FOR DIABETES PREVENTION, RESEARCH, AND TREATMENT IN AMERICAN INDIAN/ALASKA NATIVE COMMUNITIES

ISSUE

In accordance with the Indian Health Service (IHS) Tribal Consultation and Participation Policy, Indian Self-Determination and Education Assistance Act (P.L. 93-638), and an April 29, 1994-Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies, the agency (IHS) shall consult to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. Consultation is defined as an enhanced form of communication that emphasizes trust and respect. It is integral to a process of mutually satisfying deliberations to result in collaboration and joint decision-making.

The IHS has instructed tribal governments to submit recommendations regarding the distribution methodology for the five-year $150M grant to the IHS for diabetes prevention, research, and treatment in American Indian/Alaska Native Communities by November 28, 1997.

BACKGROUND

The United South and Eastern Tribes, Inc. (USET) is an inter-tribal organization that represents twenty-three Tribes located in the states of Texas, Louisiana, Mississippi, Alabama, Florida, North Carolina, South Carolina, New York, Connecticut, Rhode Island, Massachusetts and Maine.

The USET member tribes support using a needs-based distribution formula for the Diabetes Funds. Historically, the tribes in the USET region have been under-funded due to small population numbers even though their need may be greater than those tribes with larger population numbers.

The USET Board of Directors, at the Annual Board of Directors Meeting held in Philadelphia, MS on October 30, 1997, passed Resolution USET 98:11. This resolution titled, "New Diabetes Funds," is incorporated, as "Attachment A," for reference purposes.

Further, the USET Board of Directors has established an advisory committee consisting of health professionals and Tribal Leadership whose purpose is to develop a distribution plan based on the needs of the Indian Health Service, Tribes, and Urbans (I/T/U's) within the USET region.

In response to USET 98:11 the Indian Health Service/Nashville Area Office (NAO) developed a diabetes needs assessment of the USET member tribes. The report titled, "Diabetes Needs Assessment," is incorporated as "Attachment B" for reference purposes. In summary, this report will provide an overview of diabetes prevalence in the USET/NAO Area. Some of the highlights include:

- the USET/NAO Area ranks first among the twelve IHS Areas in diabetes prevalence and is 65% above the IHS average

- diabetes mortality rates in the USET/NAO Area exceed the IHS average

- the USET/NAO Area has high percentages of individuals that have sedentary lifestyles with high fat intake and low fruit and vegetable consumption which can be precursors to diabetes, the incidence in proteinuria in the Area also exceeds the IHS average, thus making USET Tribal members more susceptible to diabetes

- the USET/NAO Area ranks first in childhood obesity rates and second in diabetic patients with hypertension which are both diabetes major risk factors

- the number of dialysis patients in the USET/NAO Area has almost quadrupled from 1989 to 1997

The current capacity of USET member tribes in diabetes prevention and treatment includes two IHS diabetes model-program sites, and several community-based programs. In response to the tremendous needs of their diabetic populations and in recognition of the need to initiate community-based diabetes prevention programs, the USET tribes and urban centers have all developed diabetes projects with limited resources.

RECOMMENDATIONS

In accordance with the Conference Report on H.R. 2107 Department of the Interior and Related Agencies Appropriations Act, 1998 (House of Representatives-October 24, 1997), Resolution No. USET 98:11, and USET Health Committee decisions, the following recommendations are offered on behalf of the I/T/U's in the USET/NAO Area.

In the Conference Report on H.R. 2107 Department of the Interior and Related Agencies Appropriations Act, 1998, during a colloquy between House Speaker, Newt Gingrich (R-GA), and Congressional Representatives Ralph Regula (R-OH) and George R. Nethercutt, Jr. (R-WA), (a copy of this exchange is incorporated as, "Attachment C," for reference purposes) the following points were clarified:

- that the 5 year $150M special diabetes programs for Indians grant be distributed in a timely manner with a coherent and detailed policy formulated by those within the Indian Health Service who have direct programmatic oversight responsibility and expertise in diabetes care for Native Americans

- that the extensive epidemiologic data related to prevalence, complications, care process, and outcomes currently collected and coordinated on an earlier basis by the Indian Health Service diabetes program shall be used as the primary basis for the distribution of these funds

- that 25 percent of the grant should be used for primary diabetes prevention and 75 percent of the grant should be utilized for secondary and tertiary diabetes prevention

The USET Board of Directors via Resolution USET 98:11 offer the following recommendations:

- that the USET Diabetes Advisory Committee, in conjunction with NAO staff, develop a distribution plan based on the needs of I/T/U's within the USET region
- that the distribution of the $30M (amount available for Fiscal Year 1998) Diabetes Funds should be based on needs of Tribes within respective Areas
- that the NAO Area Diabetes Funds be distributed to USET, Inc. for distribution
- that the USET Board of Directors create a USET Diabetes Center of Excellence to address the diabetes prevalence in its communities
- that the NAO Director assist the USET Advisory Committee in completing an annual assessment to be used for distribution of the remaining four years of funding
- that the NAO authorize USET, Inc. to receive the allocation in lump sum payments

As stated earlier, this Resolution was passed on October 30, 1997 during the 1997 USET Annual Board of Directors Meeting in Philadelphia, MS.

The USET Health Committee's decisions are contained in Resolution USET 98:11. This committee has a representative from each of the twenty-three member tribes, as well as a representative from the each of the three Urban Centers.

The USET Health Committee does not support a set aside, in any amount, for the Urban programs. However, the Urban Centers do have a representative on the USET Diabetes Advisory Committee and Urban concerns will be addressed in the same manner as the concerns of USET member tribes.

SUMMARY

The prevalence of diabetes is highest in the USET/NAO Area and this fact is supported by the Fiscal Year 1996 IHS Diabetes Program Prevalence Report. The USET/NAO recommendation for distribution involves using a needs-based formula. This recommendation for distribution is consistent with the intent of Congress. It should also be noted that neither population or Tribal Share Methodology is listed as a primary basis for the distribution of these funds in the House of Representatives Conference Report, and thus should not be incorporated.

The USET, Inc. member tribes appreciate the consultation efforts of the IHS regarding the Diabetes Funds. It is understood that the final decision lies with the IHS Director and USET trusts that the recommendations in this position paper will be addressed in an appropriate manner. The USET membership anticipates a distribution plan based upon need which will be fair and equitable to large and small tribes alike.

United South and Eastern Tribes, Inc.
Position Paper
February 1, 2001

SUBJECT:

Strengthening Tribal Law Enforcement agencies by providing recognition, agreement, and support from the federal government and local law enforcement agencies.

To develop coordinated support from the Department of the Interior and the Justice Department for Indian law enforcement agencies.

These plans for action are essential to prepare recommendations for the new Administration and to successfully implement the goals and objectives of the USET Tribes. Tribal input is critical to the concerns that need to be addressed over the course of the next several years in shaping the future of Tribal Justice programs.

ISSUES:

The USET Tribal Justice Committee, through the Board of Directors, has identified the following issues as being of upmost importance. Th following principals are essential to effectively address the Tribal Justice issues of the USET Tribes.

In spite of their clear legal authority, Tribal law enforcement personnel are hampered in the effective discharge of their duties by the inconsistent respect and recognition accorded to them by the U.S. Attorneys and state and local law enforcement officials. The inconsistent recognition of Tribal law enforcement authority endangers public safety because of the double standards that are set. Federal and local prosecutors may decline to prosecute individuals that are arrested by Tribal police officers, even when those individuals are non-Indian, over whom the Tribal authority lacks jurisdiction.

The Tribal law enforcement agencies need a standardized agreement for bringing cases to the Federal court level as well as general encouragement and support by the U.S. Justice Department of the Tribal law enforcement agencies and their work.

There is a need to establish a system to handle lower level criminal cases in areas where local governments will not enter into agreements with Tribal law enforcement agencies.

BACKGROUND:

United South and Eastern Tribes, Inc. (USET) is a non-profit, intertribal organization composed of twenty-four federally recognized Indian Tribes, representing Indian communities from Maine, south to Florida, and west to eastern Texas. USET provides a forum for exchange of information and ideas among its member Tribes, various governmental agencies, and other American Indian organizations. USET is dedicated to assisting its member Tribes in dealing effectively with public policy issues and serving the broad needs of Indian people.

The USET Tribes have been working together for several years to improve Tribal Justice services and resources for American Indians. The USET Tribes recognize that although steps have been taken in the past to protect and strengthen the American Indian Tribal Justice system, enough is not being done. The sovereignty of the American Indian people is constantly in danger as states challenge the ability of the Tribes to succeed as a Tribe administered justice system.

Indian Nations posses the inherent sovereign authority to maintain Tribal law enforcement agencies in order to :

1. Maintain order in Indian communities
2. Exclude trespassers
3. Enforce Tribal laws and ordinance violation committed by Indians on the reservation lands
4. Detain and transport to local, state, or federal law enforcement authorities non-Indians who have committed or are about to commit a crime on a reservation.

Pursuant to the Indian Law Enforcement Reform Act, 25 U.S.C. 2801 et.sec., the Bureau of Indian Affairs grants special commissions to many Tribal police officers in order that Tribes may exercise federal law enforcement authority in addition to their inherent authority. Courts have repeatedly recognized the legitimacy of Tribal police forces.

RECOMMENDATIONS:

Each of the key issues, previously stated, include herein a plan to implement both short-term and long-term recommendations. The following actions should be considered to assist in the advancement of these issues within the next Administration and Congress.

There are a number of solutions that may be researched to assist in the rectification of current recognition and jurisdictional issues pertaining to Indian law enforcement agencies.

1. U.S. Justice Department's support to establish a Violations Bureau with a designated Magistrate that can hear lower level criminal cases in areas where the state and local governments will not enter into a cross-deputization agreement with Tribal law enforcement agencies.

2. The U.S. Justice Department's support for agreement between Tribal police and U.S.

Attorneys that set standards for bringing cases to the Federal Court level.

3. Encourage the U.S. Justice Department and the U.S. Department of the Interior to give more support to Tribal police department.

SUMMARY:

The purpose of this Advocacy Plan is to promote a unified view of the problems and difficulties within the Indian community and to encourage negotiations and discussions with Congress and the Administration on critical American Indian Policy issues.

The USET member Tribes hereby call upon the U.S. Department of Justice and the U.S. Department of the Interior to strengthen their support of Tribal law enforcement agencies and to develop mechanisms that will enhance the credibility and effectiveness of Tribal law enforcement agencies. This can be done through the establishment of specialized bureaus within the respective U.S. Attorneys' offices to more effectively handle criminal cases occurring within the Indian reservation lands.

The USET Tribes recognize that some progress has been made in the Tribal Justice area over the past few years, however, the non-recognition of authority the disrespect by other law enforcement agencies is continuing to hamper the effectiveness of the Tribal law enforcement agencies. This result has a negative social, cultural, and economic impact on Indian communities. The USET Tribes are convinced that there are solutions to these problems. The federal government is obligated through its government-to-government relationship with federally recognized Tribes, to contribute to these solutions. The USET Tribes call for a working partnership between the United States Government and the twenty-four USET Tribes to address these issues.

Keller George

Keller George, USET President

United South and Eastern Tribes, Inc.
Position Paper
February 1, 2001

SUBJECT:

Improving the competency of the Tribal Justice systems through adequate financial support.

United South and Eastern Tribes, Inc. (USET) would like support from the Federal Government and Federal Agencies for the development and vitality of Tribal Courts, Peacemakers and other Tribal Justice Systems, for the advancement and improvement of justice administration within Indian country.

ISSUES:

These plan for action are essential to prepare recommendations for the new Administration and to successfully implement the goals and objectives of the USET Tribes. Tribal intercession is critical to the concerns that need to be addressed over the course of the next administration in shaping the future of the USET Tribes.

The USET Tribal Justice Committee, through the Board of Directors, has identified the following issues as being of the upmost importance. The following principals are essential to effectively address the Tribal Justice concerns of the USET Tribes.

Tribal Sovereignty means very little if Tribes lose the right to determine the liberty, lives and futures of their community members. Without improving the competence of Tribal justice systems through adequate financial support, the right of Tribal sovereignty and self-determination is at risk of being eradicated through Congressional actions.

In accordance with the Indian Self Determination and Education Assistance Act (P.L. 93-638), USET is requesting that more financial resources be allotted to the agencies serving Tribal justice systems located within the Bureau of Indian Affairs (BIA), Eastern Area Office and within the Department of Justice (Bureau of Justice Administration). Important programs such as, the Indian Country Law Enforcement Initiative's Indian Tribal Courts Assistance Program, must continue to be funded in order to sufficiently address the disproportionately high rate of violent crimes in Indian country.

BACKGROUND:

United South and Eastern Tribes, Inc. (USET) is a non-profit, intertribal organization composed of twenty-four federally recognized Indian Tribes, representing Indian communities from Maine, south to Florida, and west to Eastern Texas. USET provides a forum for exchange of information and ideas among its member Tribes, various governmental agencies, and other American Indian organizations. USET is dedicated to assisting its member Tribes in dealing effectively with public policy issues and serving the broad needs of Indian people.

The National American Indian Court Judges Association (NAICJA), the national representative voice of Tribal Justice Systems, developed recommendations for the adoption of pro-active, lasting solutions to the Tribal Justice System needs. These recommendations included: increased funding for the National Tribal Justice Resource Center, continued funding for the Department of Justice's Indian Tribal Courts Program, increased federal-Tribal coordinated strategic planning efforts, and support for the passage of S.1508, the "Indian Tribal Justice and Legal Assistance Act of 2000," which will re-authorize the unfunded Indian Tribal Justice Act of 1993. These strategies for improving justice services to Indian country were identified with the assistance of Attorney General Janet Reno.

Nationally, the technical assistance needs of Tribal justice systems far outweigh current resources allocated for the operation of the National Tribal Justice Resource Center. The constituency to be served by the National Tribal Resource Center is not only large, but widely diverse as well. Moreover, some components, are executive or legislative in nature, rather than strictly related to the judicial branch (i.e., probation officers, prosecutors, public defenders). Uncertainty regarding the future makes it difficult to start multi-year technical assistance projects, which are rated the highest priority by needs assessment (bench books, clerk manuals, and a national Tribal court opinion database).

RECOMMENDATIONS:

Each of the key issues, previously stated, include herein a plan to implement both short-term and long-term recommendations. The following actions should be considered to assist in the advancement of these issues within the next Administration and Congress.

The Indian Tribal Justice Technical and Legal Assistance Act of 2000, S.1508 (which contains a re-authorization of the Indian Tribal Justice Act of 1993), was passed by both the U.S. House of Representatives and the U.S. Senate an is awaiting the signature of the President. USEThas been encouraged by the President signing S.1508 and for adequate appropriations under both S. 1508 and the Indian Tribal Justice Act.

Tribal courts require increased base (daily operations) funding. Grant programs do not provide that dependable a base funding; only 638 TPA (or self Governance) funds or the Tribal Justice Act (for a limited period of time) would provide adequate funding.

USET supports the continuation of Department of Justice funding under Indian Law Enforcement initiative for the Tribal Courts program that is administered by the Bureau of Justice Assistance. This program is funding many Tribe's efforts to build strong Tribal courts and also funding the National Tribal Justice Resource Center and other technical assistance providers. USET requests that more flexibility be allowed in the

Bureau of Justice Assistance Grants so that Tribe's can build their own court systems and adequately reflect each individual Tribe's culture and traditions. Regionally based training sessions should be encouraged and funded so that Tribes can share resources and expertise within the geographic regions. The geographically based training also allows from grant money to be spent on instruction and education as opposed to excessive long distance travel expenses.

To be effective in supporting Eastern Tribal Justice Programs the Eastern Regional Office of the BIA must create a new full-time Tribal courts support staff position. USET has passed a resolution requesting the Eastern Regional Office of the BIA to hire a Tribal Courts Liaison person within the ERO, but that has not been done. Applicants should be required to have significant experience working in and for Tribal Courts in Indian communities and a panel of Tribal Court Representatives should be utilized to recommend the best candidates.

It is advocated that the National Tribal Justice Resource Center's annual budget be increased to one million dollars. This may be accomplished with a Congressional earmark (like received by the National Judicial College) or a specific line item in the federal budget. A non-competitive process should be utilized in order to allow for the development of new district prosecutor, public defender, and probation officer projects, which are vital to improving the justice services to American Indian communities.

SUMMARY:

The purpose of this Advocacy Plan is to promote a unified view of the problems and difficulties within the Indian community and to encourage negotiations and discussions with Congress and the Administration on critical American Indian policy issues.

The USET member Tribes hereby call upon the U.S. Department of Justice and the U.S. Bureau of Indian Affairs to strengthen their support of the Tribal Justice court systems. The USET Tribes recognize that some progress has been made in the Tribal courts area over the past few years, however, the lack of funding resources continues to hamper the effectiveness of the Tribal court system. This results in negative social and cultural impacts on Indian communities. The USET Tribes are convinced that there are solutions to these problems. The federal government is obligated, through its government-to-government relationship with federally recognized Tribes, to contribute to these solutions. The USET Tribes call for a working partnership between the United States Government and the twenty-four USET Tribes to address these issues.

Keller George

Keller George, USET President

POSITION PAPER OF THE UNITED SOUTH AND EASTERN TRIBE ON THE SUBJECT OF TAXATION

Whereas, Indian nations are sovereign nations whose existence predates the formation of the United States;

Whereas, Indian nations: (a) possess the inherent right to sovereign immunity; (b) exercise governmental powers over persons and lands within their jurisdiction; and (c) enact laws and ordinances to govern such persons and lands;

Whereas, the United States Constitution, by using the phrase "Indians not taxed" in Article I, Section 2 and in Section 2 of the Fourteenth Amendment, recognizes the nontaxable status of Indian nations;

Whereas, the United States has entered into numerous treaties with Indian Nations that reaffirm their sovereign status, and such treaties, according to the Supremacy Clause of the U.S. Constitution, are the supreme law of the land; and many such treaties continue in full force and effect to this day; and

Whereas, by executive order, the President of the United States has directed the Federal Government, its various departments and agencies to respect the sovereignty of Indian nations, consistent with the historic nation-to-nation relationship between Indian nations and the United States.

Now therefore, the members of USET hereby subscribe to the following principles and adopt such principles as their united position on the subject of taxation:

1. Indian nations are not subject to taxation by other governments.

2. Indian Nations have the power to impose their own taxes on persons and transactions within their jurisdiction.

3. The sovereignty and independence of Indian nations precludes external governments from forcing Indian nations and their members to act as tax collectors for the States otherwise submit to their jurisdiction.

4. From time to time, an Indian nation and another government may disagree regarding the scope and jurisdiction of their respective tax statutes. Individual Indian nations, consistent with their status as sovereign and independent governments, are at liberty to resolve such disagreements through: (a) litigation, in either tribal courts or such other forums that are deemed appropriate; (b) the negotiation and execution of agreements; or (c) such other means as may be appropriate and/or necessary.



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TESTIMONY PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
CONCERNING
DEPARTMENT OF INTERIOR FISCAL YEAR 1999 BUDGET REQUEST
BUREAU OF INDIAN AFFAIRS TRIBAL PRIORITY ALLOCATION
FEBERURY 26, 1998

Chairmen Campbell, and other distinguished members of the Senate Committee:

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama.

I am the Executive Director of United South and Eastern Tribes, Inc. (USET) an inter-tribal organization consisting of twenty-three federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States. USET's main function is to provide a forum for the exchange of information and ideas among its member Tribes, the federal government and other entities. USET appreciates the opportunity to provide testimony on the Department of Interior's 1999 Budget Request.

As Executive Director, I have been afforded the opportunity to serve on behalf of the USET Tribes on various committees and workgroups dealing with the governmental agencies that provide funding and enter into contracts, grants, or cooperative agreements with our member Tribes. I was honored to participate in the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs and the Negotiated Rulemaking Committee for the Indian Self-Determination and Education Assistance Act. I currently serve on the Contract Support Workgroup for IHS and I am working with the BIA Tribal Share Workgroup. Recently, I participated in the BIA Tribal Priority Allocation (TPA)Task Force. This will be the main focus of my comments today.

Before taking my position with USET, I served my Tribe as Tribal Administrator for over ten (10) years. As Administrator I was responsible for the day to day operations as they pertain to the administration of contracts, grants, and other agreements for the delivery of services to our tribal membership. Poarch Creek was re-recognized in 1984 through the Federal Acknowlegdement Process. Being a newly recognized Tribe afforded Poarch Creek the opportunity to develop contract, grant, and cooperative agreement programs from the ground up. Tribal Priority Allocation funds were and continue to be the cornerstone of my Tribe's ability to deliver essential services to its membership. TPA allowed my Tribe the flexibility to place funds in priority program areas to meet the needs of our Tribal community. From my background and experience I would like to focus my comments on the Tribal Priority Allocation (TPA) within the Department of Interior 1999 Budget Request.

In FY-98 TPA comprises almost half (49 percent) of the total BIA budget and continues to remain one of the top funding priorities. The majority of these funds are used to support on-going services at the local Tribal level including such programs as education, law enforcement, housing, natural resources management and governmental services. Funding priorities for all of the programs included in TPA are determined in consultation with Tribal officials.

I want to commend the BIA, for in recent years it has been one of the principle goals of the Bureau to provide maximum resources to the TPA, by identifying TPA as one of the highest priorities within it's budget request. However, over the past two decades, limited or no funds have been added to TPA, by Congress, to fully implement Self-Determination and Self-Governance. Further, in FY-96 TPA was drastically cut and critical Tribal programs and services were severely impacted . These budget reductions are contrary to the legal and moral obligation of the United States and it's proclaimed support of Self-Determination for Indian people. Ultimate Self-Determination for Indian people will not be realized until adequate funding to develop strong and stable tribal governments is appropriated. Continued funding at the current level is in danger of under-mining the successes Tribal governments have achieved trough Self-Determination and Self-Governance. The small increases to TPA are not adequate to keep pace with inflation. The loss of purchasing power has hindered many Tribe's ability

to provide essential services to our communities.

As background, there are many complexities and factors that exist both in the current makeup of each Tribe's TPA base funding and in the methods used to adjust these recurring bases. One truth that is known at all levels - Indian Country, Congress, and the Federal Agencies - is that inequities exist amongst tribal funding bases. In general, existing TPA Tribal bases vary across the nation and are in many cases reflective of the ability and capacity of each respective Tribal government to assume programs and services formally performed by the BIA. There is no single factor that can be identified that contributes to the adequacy or inadequacy of a Tribe's funding base. For example, Tribal management of trust resource programs such as forestry, grazing and mineral rights are not necessarily directly related to factors such as population and land base. Decisions over decades created this untenable situation for Tribes and Indian people. It is for this reason I see no value in laying blame at any level of government or to any Tribe. As we now look to engage in methods of developing proposed revisions to the TPA distribution, we must be sensitive to and take into consideration for these factors and unique political conditions and agreements that currently exist.

As the Committee is aware, Congress in the 1998 appropriations bill (HR 2107) directed the BIA to set up a TPA Task Force to review and determine a new method for the allocation of FY-98 TPA funding. The Task Force met within the time frame identified and developed an alternative method to the historical method of TPA distribution. During it's deliberations, the Task Force considered the recommendations included in the 1994 Joint Tribal/BIA/DOI Task Force Report, as well as comments from the Task Force members. The Task Force acknowledged the current economic and TPA base disparities that exist amongst Tribes and within Areas. They also recognized that, in the short-term, the FY-98 general increase could not significantly address these disparities. After full discussion the Task Force recommended an equal division of the increase of TPA funding to each Area.

The 1/12 distribution method, though simplistic, goes toward addressing the funding inequities among the various Areas. Under this distribution method seven (7) of the twelve (12) Areas received more funding than they otherwise would have received by using the historical pro-rata based distribution

method. However, this re-distribution resulted in a shift in funding from the five (5) Areas with larger TPA bases and penalized those Tribes that have been successful in their Self-Determination efforts. The Task Force members strongly concurred, however, that the more important aspect of this process included the development of accurate and meaningful data to address funding inequities, unmet Tribal needs, and funding shortfalls.

During deliberations on how to best distribute FY-98 funding, several different methodologies were explored. Although the 1/12 distribution among Areas was ultimately chosen, I would like to describe to the Committee another distribution methodology. This methodology received support from many of the Task Force members, but due to the short time frame for the methodology development, it did not receive full approval of the TPA Task Force. For lack of a formal title this methodology is called a "Tiered Methodology" (see attachment). The basis for this methodology begins with several assumptions:

- Disparities exist between tribal base funding.
- Common characteristics exist among Tribes that can be measured. (land, population, location, etc.)
- There will be annual increases to the TPA.
- The goal of the methodology is to achieve parity in funding between Tribes.
- Tribes will be identified and placed into a single tier based upon their common characteristics
- There will be two (2) or more different tiered levels of Tribes.
- Annual funding increases will be distributed by percentages.

Current tribal funding bases will not be decreased by this methodology

The concept behind this methodology is that by using common measurable characteristics among Tribes, a ratio between funding and the common characteristics can be determined. Each Tribe can be placed within a tier with Tribes having similar characteristics and funding bases. Thresholds or breakpoints between the different tiers can be determined. The tiers will be arranged into catagories from upper tier (Tribes that are better funded compared to the common characteristics) to the lowest tier (Tribes that are the worst funded compared to the common characteristics). I believe that no more than three (3) tiers are needed to aid the methodology to achieve it's goals. After the different tiers are developed and the Tribes are placed within their respective tier then the annual funding is distributed based on a percentage to each tier, such as 20% to the upper tier, 30% to the middle tier, and the remaining 50% to the lower tier. If this methodology is employed and used continually then parity between the Tribes would be achieved in future years. As you can determine mathematically the lower level funded Tribes will gain ground on the upper level funded Tribes. The major part of this methodology will be how the common characteristics are determined and where the threshold breakpoints are identified between the tiers.

The methodology I have described, if used consistently, will achieve the goal of bringing Tribes into parity with each other. However, it does not achieve the ultimate goal of Tribes which is to bring funding for Indian people equal to the funding allocated for non-Indian people. This methodology provides a tool to make value judgements based upon common characteristics that are defendable when funds are distributed to the Tribes. No methodology will ever be truly successful until such time as each Tribes has sufficient critical mass (funding and staffing) to fully exercise their authority as sovereign governments. The solutions come not only in increased dollars, but through increased knowledge in managing these dollars. Though Tribes gain success the federal trust responsibility is never diminished.

One of the strongest recommendations to come out of the TPA Task Force was the endorsement and commitment of resources by the BIA to complete the recommendations of the 1994 Joint

Tribal/BIA/DOI Task Force Report. Another recommendation is to complete the Standard Assessment Methodology (SAM) to be used by the BIA to adequately determine the resources needed by Tribes to run respective programs. SAM will be an excellent tool to assist in determining the benchmarks to make necessary judgements on common characteristics measurements in the tiered methodology.

In order for any methodology to be successful all Tribes and the BIA will have to be committed to the goal of achieving parity through the distribution of future increases to the TPA. Tribes will only commit to a methodology developed through consultation. To secure commitment from the Tribes any distribution methodology developed will need to include the following principles and objectives:

- **Protection of Existing TPA Tribal Bases:** Factors used to determine each Tribe's existing TPA base varies among Tribes across the nation and reflects the unique government-to-government relationship between each Tribe and the United States. The Joint Tribal/BIA/DOI Task Force 1994 Report recommended that Tribal funding bases should be protected as a priority to promote strong and stable Tribal governments.

- **Adjustment for Inflation:** In addition to the establishment of recurring base funding for individual Tribes, the 1994 Tribal/BIA/DOI Report stated that such protection shall include, as a first priority, inflation adjustments to preserve the purchasing power of the overall funding base amount. An analysis of TPA funding from 1981-1993 reveals that available resources have remained level despite population growth increases of 43% during the same 12-year period. No increases have been made to reflect the continued increased responsibilities assumed by Tribal governments.

- **Accurate Identification of Tribal Priorities and needs:** Tribal programs and funding to meet these needs have long been grossly under funded. American Indians and Alaska Natives have been enduring some of the worst

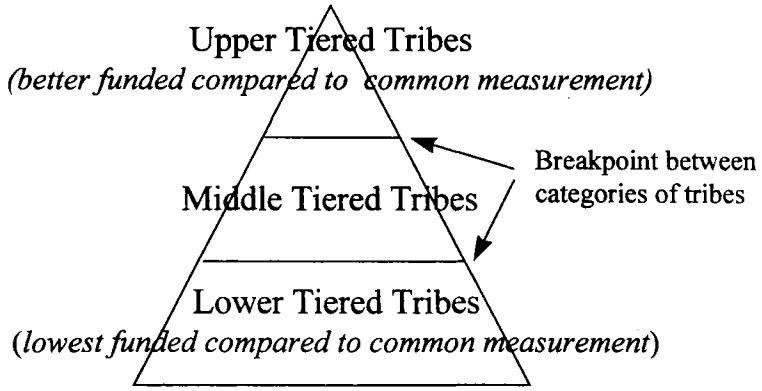
living conditions in the United States; nearly one third live in poverty, their health status is among the worst in the nation, and their mortality rate is several times greater than the national average. A standard measure for each TPA program should be developed (in consultation with Tribal governments). This development would included the establishment of a national database and information system.

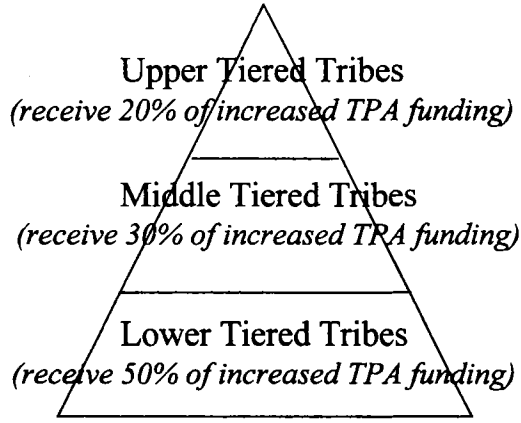
- **Support of Equity in Fund Distribution:** The development of standard measures for each TPA program would be used to support the goal of achieving "relative equity" in the identification and distribution of future available TPA funding. Again, as recommended by the Joint Tribal/BIA/DOI Task Force, these standards shall be based on bringing about conditions in Indian country which, at the very least, equal those enjoyed by the balance of the nation. Additionally, such methodology shall support the targeting of additional resources to Tribes who have the greatest needs by comparison to national standards.

As I conclude my testimony, I thank the Committee for the opportunity to provide my comments and testimony concerning how to improve the Tribal Priority Allocation. I believe that the timing is right to respond to this challenge. Indian Tribes continue to prove that Self-Determination is the ultimate act of Tribal sovereignty. As I have heard Senator Inouye and others say many times, "the solution to Indian problems will best come from within Indian Country." These solutions will take time, but can be achieved through creation of opportunities and the art of negotiation on a government-to-government basis between Congress, federal agencies, and Tribes.

Again, I thank you for the opportunity to provide testimony. I will be happy to answer questions at this time.

Tiered Methodology Components





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TESTIMONY PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
CONCERNING
TRIBAL ECONOMIC DEVELOPMENT
APRIL 9, 1998

Chairman Campbell, and distinguished members of the Senate Committee on Indian Affairs:

My name is James T. Martin. I am enrolled member of the Poarch Band of Creek Indians of Alabama.

I am the Executive Director of the United South and Eastern Tribes, Inc. (USET) an inter-tribal organization consisting of twenty-three federally recognized Indian Tribes from twelve states in the south and eastern region of the United States. USET's main function is to provide a forum for the exchange of information and ideas among it's member Tribes, the Federal Government and other entities. USET is grateful for the opportunity to appear before this Committee to discuss the subject of economic development in Indian Country—an issue of considerable importance to the USET membership along with virtually every other federally recognized Indian Tribe.

It is not possible for me to adequately address this topic in the short amount of time we have today. Instead, I have elected to focus on a more narrow issue: What are the tools that Tribes need in order to successfully develop their economies and provide for the welfare of their members and how can the Federal Government help Indian Tribes accomplish this objective?

The needs of American Indians and their respective Tribal Governments are substantial. Unemployment in Indian Country is still several times the national average. In addition to the historic problems of alcohol addiction, drug abuse, and illiteracy, Tribes are now confronting new threats to their culture and society in the form of teen suicide, gang violence and renewed racial discrimination.

Most governments levy taxes to raise revenues for the programs they need to provide for the health, education and welfare of their citizens. This, however, is not a viable for option for Indian Tribes since, almost without exception, they have no tax base. Therefore, economic development is the only avenue open to them for generating the funds needed to fulfill their governmental obligations. Economic development opportunities for Tribes are severely hindered by the remote location of most Indian reservations and the historic problems of unemployment, racial discrimination and limited resources that have plagued their economies. If the Federal Government is sincere in its efforts to improve the economic circumstances of Indian Tribes and their members, I believe this can be achieved by the following:

- ***Honoring Tribal Sovereignty.*** In recent years, virtually every legislative proposal concerning American Indians has attempted to accomplish the same objective: diminish or destroy tribal sovereignty. Last year, Representative Archer sought to levy an income tax on Indian Tribes, threatening to confiscate 34% of their revenues—funds that are badly needed by Tribal Governments to provided basic services to some of the poorest members of our society. Other members of Congress have advanced proposals that would further diminish the boundaries of our reservations. For example, on April 1, the Senate Commerce Committee considered a ludicrous proposal that would redefine all Indian reservations to include only trust lands. Sadly, this was no April fools joke. In addition, Indian Tribes are constantly confronting regulatory and legislative initiatives that threaten to curtail or eliminate their ability to self-regulate their own economic affairs. In the nineteenth century, Indian people were decimated by the U.S. Army and betrayed by a government in Washington that chose to live up to its treaty obligations only when it was expedient to do so. Today, the objective of those who seek our destruction remains the same; the only thing that has changed are the weapons they employ. If, in fact, the Federal Government genuinely desires to help Indian Country, the best thing it can do is to leave Tribal sovereignty in tact and stop attacking our right to exist as sovereign nations. In 1990, President Clinton said that the Federal Government respects our sovereignty and is committed to dealing with Indian Tribes on a government-to-government basis. We ask for nothing more; we will accept nothing less.

- ***Honoring Trust Responsibility.*** Many in Congress point to the financial success of one or two Indian Tribes as justification for substantially reducing, or eliminating altogether, the few grant programs that have been created to provide basic health and education services on Indian reservations. These programs represent a minute fraction of the entire federal budget and fall short of the resources needed to build strong and stable Tribal Governments. However, these programs provide not only the means by which Tribes can deliver certain services to their membership, but can also be utilized as a step toward economic development. The health and education of a Tribe's membership are two critical components required to ensure a Tribe's success in economic development. As a Tribe improves the health and education of it's members then economic development can be realized through a skilled and healthy workforce. At a time when our country is enjoying unprecedented success and prosperity, it is a travesty that some wish to take away from the poorest members of our society, what little they have.

- ***Offer Meaningful Tax Incentives for Non-Indian Businesses.*** Congress has created few, if any, meaningful incentives for non-Indian companies to establish new enterprises on Indian reservations. What few incentives that do exist contain restrictions that completely undermine their utility. For example, while section 7871 of the Internal Revenue Code allows an Indian Tribe to issue industrial revenue bonds, such bonds will only qualify for tax-exempt treatment if a substantial number of the employees of the financed activity are members of the issuing Tribe—a requirement that virtually no Tribe can satisfy given the general unavailability of skilled workers on Indian reservations. Tribal Governments, like all other governments, need capital to build for the future and meet the current needs of their members. Given their general inability to raise revenues through taxes, Tribes need the capability to offer attractive financing

to outside businesses. The current restrictions on the issuance by Tribes of tax-exempt securities, deprives them of this option. Further, tax-exempt financing is just one of several incentives that governments have used to attract new industry. Municipalities, for example, frequently give property tax breaks to companies that promise to build new plants and facilities. Indian Tribes, since they generally do not levy property taxes, cannot offer similar incentives. The Federal Government, however, can enhance the benefits of "enterprise zones" and "empowerment zones" insofar as they apply to Indian Tribes and it can do so at very little expense to the Federal treasury.

- ***Improve the Infrastructure on Tribal Lands.*** The United States is embarking upon a nation-wide program to build and repair the roads, bridges and other infrastructure components of its cities and towns. Virtually all Indian reservations are in need of similar assistance. If Tribes are to attract new business ventures, they must be able to deliver essential support services, such as water and sewer, highways, electricity and communications. Some states have implemented programs designed to help cities and towns improve their infrastructure in order to make them more attractive to outside industry. Alabama, for example, has implemented a "Prepared Cities Program" that specifically targets the infrastructure needs of small municipalities (population of less than 20,000). No similar concern for Indian reservations has ever been exhibited by either the Federal or State governments. This must change if there is a genuine desire to foster economic development in Indian Country.

The commitment required by the United States to implement the foregoing and improve Tribal economies is small when compared the benefits that will be derived by *both* the Federal Government and the affected Indian Tribes. The standard of living of Tribal members will be elevated and the governments of Indian Tribes will become more self-sufficient. All of this translates into reduced unemployment, lower crime rates and fewer demands placed on federal and state social services.

Indian Tribal Governments have limited resources. We would prefer to devote those resources to working cooperatively with the Federal Government on projects that promise to benefit both parties instead of expending our limited funds defending against constant legislative attacks on our right to exist and function as sovereign governments.

Again, I thank you for the honor of appearing before you to discuss this important issue. I will be happy to answer questions at this time.

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001:01

REQUEST TO AMEND P.L. 93-288 (STAFFORD ACT) TO GIVE AMERICAN INDIAN AND ALASKA NATIVE TRIBAL GOVERNMENTS THE SAME STATUS AS THE STATES, POSSESSIONS, AND OTHER TRUST TERRITORIES OF THE UNITED STATES

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, American Indian and Alaska Native Tribal governments hold a unique status in the United States with the rights and benefits of sovereign nations; and

WHEREAS, in recognition of the historic relationship between the United States and American Indian and Alaska Native Tribal governments, the Federal Emergency Management Agency (FEMA) has indicated support for a government-to-government relationship with American Indian and Alaska Native Tribal governments; and

WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 *as amended* (Stafford Act) includes Indian Tribes and Alaska Native Tribal governments in the definition of "Local Governments"; and

WHEREAS, the Stafford Act includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands in the definition of a "State" and subject to the same provisions afforded a state under the Stafford Act; and

WHEREAS, in recognition of the trust relationship between the Federal Government and American Indian Tribes and Alaska Natives, Indian Tribal Governments and Alaska Native Tribal governments should be afforded the same status as other trust territories, possessions, and the states; therefore, be it

RESOLVED the USET Board of Directors requests that the United States Congress amend the Stafford Act to give American Indian and Alaska Native Tribal governments at a minimum the same status as the states, possessions, and other trust territories of the United States; be it further

RESOLVED, the USET Board of Directors supports amending the Stafford Act and working with FEMA to recognize the trust responsibility and the unique government-to-government relationship that exists between American Indian and Alaska Native Tribal governments, affording them the highest recognition of a government-to-government relationship.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present in Verona, NY on Thursday, November 2, 2000.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

"Because there is strength in Unity"

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001:06

NATIONAL PARK SERVICE THPO FUNDING FORMULA

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the U.S. Congress and the U.S. Department of the Interior have provided an increase in the Historic Preservation Fund for Federally certified Tribal Historic Preservation Officers; and

WHEREAS, the National Park Service (NPS) currently is considering THPO apportionment for FY 2001 funds; and

WHEREAS, the NPS (October 13th) proposal clearly is unacceptable because the base level funding is inadequate to the needs of the THPOs, and the proposed THPO competitive grants create an atmosphere of divisiveness that clearly benefits the NPS to the exclusion of the Tribes; and

WHEREAS, there is no past discussion or demonstrated need for such a competitive grant program; and

WHEREAS, the NPS has failed to consult with the Tribes in any meaningful manner concerning this funding formula; and

WHEREAS, the NPS has failed to seek adequate funding for current and future THPO, therefore, be it

RESOLVED the USET Board of Directors calls upon the Department of the Interior to delete the THPO competitive grant from its current NPS funding proposal, and to apportion the FY2001 basic program allocation of $100,000 each, with the remaining funds allocated to the THPOs per the current land-base formula, for this year only; be it further

RESOLVED the USET Board of Directors urges the Department of the Interior to direct the NPS to engage in real and meaningful consultation with the THPOs concerning future funding allocations.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present in Verona, NY on Thursday, November 2, 2000.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001:17

REAUTHORIZATION OF NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT (NAHASDA)

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Native American Housing Assistance and Self-Determination Act (NAHASDA) provides necessary resources to provide adequate and safe housing for American Indian/Alaska Native (AI/AN) communities; and

WHEREAS, the current authorization for NAHASDA is scheduled to expire in the year 2002; and

WHEREAS, the NAHASDA contains a provision mandating the development of implementing regulations through use of the negotiated rule-making process; and

WHEREAS, the negotiated rule-making process was instrumental in insuring tribal participation, determination and implementation of the final regulations; therefore, be it

RESOLVED the USET Board of Directors directs HUD to implement the negotiated rule-making process insuring tribal participation in determining necessary revisions to the NAHASDA.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present in Verona, NY on Thursday, November 2, 2000.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.



UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001:22

SUPPORT OF THE REAUTHORIZATION OF THE INDIAN HEALTH CARE IMPROVEMENT ACT

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Indian Health Care Improvement Act has since 1976 provided a detailed structure for addressing the health care needs of American Indian/Alaska Native people in a manner consistent with the federal responsibility; and

WHEREAS, authorization for appropriations in the Act is currently set to expire on September 30, 2000; and

WHEREAS, the bill developed by the National Tribal Steering Committee for the reauthorization of the Indian Health Care Improvement Act has been introduced in the House of Representatives as H.R. 3397 and (with some modifications) in the Senate as S. 2526; and

WHEREAS, former Chief Joyce Dugan, Eastern Band of Cherokee Indians and former Chairman Eddie Tullis, Poarch Band of Creek Indians were involved in the development of the National Steering Committee bill through participation on the National Tribal Steering Committee on behalf of the USET member tribes; and

WHEREAS, the USET Board of Directors endorses the enactment of the National Steering Committee bill and supports the modifications therein, which are intended to (1) increase the number of Indians involved in health professions; (2) improve the delivery of health services and increase the tribal consultation requirements relevant to health services delivery; (3) identify the total health facility deficiency in Indian country and authorize innovative approaches to health facility construction financing without waiving the federal responsibility to provide health services under existing federal law; (4) increase access to Medicare, Medicaid and other third party reimbursements for health services to AI/AN people; (5) increase access to health services for urban AI/AN people without reducing federal support for health care to tribal AI/AN people; (6) establish the Indian Health Service (IHS) as an agency of the Public Health Service; (7) comprehensive behavioral health program; and (8) establish a commission to study the issue of how the federal government's obligation to provide health care to AI/AN people should be maintained as an entitlement and to provide for negotiated rulemaking on critical health care issues; and

WHEREAS, reauthorization of the Indian Health Care Improvement Act is essential to maintain the federal policy of raising the health status of AI/AN people to the highest possible level and the Steering Committee bill removes barriers to improvements in such status as identified above;

WHEREAS, the National Steering Committee bill takes account of the development of the federal policy of tribal self-determination and self-governance, which has developed since the original Indian Health Care Improvement Act was enacted and seeks to assure that health programs reflect tribal and urban decision-making to the maximum feasible extent; therefore, be it

RESOLVED, that the USET Board of Directors supports the enactment of the National Steering Committee bill and urges the Congress to approve the bill without changes.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present in Verona, NY on Thursday, November 2, 2000.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001: 031

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATES PROGRAMMATIC AGREEMENT

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the wireless communications industry of America is currently experiencing industry growth at an accelerated rate; and

WHEREAS, the USET Board of Directors passed Resolution No. 2000:80, in support of the rights of its member Tribes to protect their ancestral lands in the face of the massive construction of cell towers; and

WHEREAS, the construction of cell towers has the potential to have severe and permanent adverse affects upon the ancestral lands of the USET member Tribes; and

WHEREAS, Personal Communications Industry Associates (PCIA) is one of the largest of the national industry representatives and USET has offered to open consultations with PCIA, to create a programmatic agreement or other appropriate legal instrument to ensure the participation of the USET Tribes and exercise their rights under Federal laws and Executive Orders mandating consultation and government-to-government relations; therefore, be it

RESOLVED the USET Board of Directors instructs the Chairman of the Culture and Heritage Committee to investigate and create, a programmatic agreement, or other legal instrument, in order to establish overall policies addressing these concerns, and present such to the USET Tribal governments for action.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present in Arlington, VA on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.



UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution 2001:048

APPOINTMENT TO THE NCAI NATIONAL WELFARE REFORM TASK FORCE

WHEREAS, United South and Eastern Tribes, Inc. (USET) is an intertribal organizations of twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, on September 3, 1998, the Board of Directors appointed the Chairperson and Vice-Chairperson of the USET Social Services Committee to serve as representative and alternate representative, respectively, to the NCAI Welfare Reform Task Force; and

RESOLVED effective immediately, the USET Board of Directors appoints Eleanor Jankovich as the representative and Jean Allen-Wilson as the alternate representative to the National Congress of American Indians (NCAI) Welfare Reform Task Force.

CERTIFICATION

This resolution was duly passed at the USET Impact Week meeting at which a quorum was present in Arlington, VA on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

Resolution No. USET 2001: 037

FEDERAL LABOR POLICIES AND INDIAN COUNTRY

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the National Labor Relations Board (NLRB) has historically and correctly taken the position that Indian nations are not subject to the National Labor Relations Act; and

WHEREAS, the NLRB General Counsel has asked the agency to reverse its long standing precedent of subjecting Indian nations to the National Labor Relations Act; and

WHEREAS, the United States Court of Appeals for the Tenth Circuit, in *NLRB et al. v. Pueblo of San Juan*, 228 F.3d 1195 (10th Cir. 2000), has recently upheld the validity of the "right- to-work" ordinance enacted by the Pueblo of San Juan and ruled that the National Labor Relations Act does not apply to Indian nations; and

WHEREAS, Indian nations, as sovereign and independent governments, should not be subjected to the labor and employment statutes of other governments and should be free, like all governments, to decide whether and to what extent they will enter into collective bargaining agreements; therefore be it

RESOLVED the USET Board of Directors hereby condemns the efforts of the NLRB General Counsel to unlawfully subject Indian nations to the National Labor Relations Act; and be it further

RESOLVED the USET Board of Directors urges each member Tribe to consider the adoption of a "right-to-work" ordinance or similar measure for purposes of regulating employment and labor issues on all lands within their sovereign jurisdiction.

CERTIFICATION

This resolution was duly passed during Impact Week, at which a quorum was present in Arlington, Virginia on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

Resolution No. USET 2001: 040

FEDERAL WAGERING EXCISE TAX

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Internal Revenue Service (IRS) has attempted to impose a federal wagering excise tax—26 U.S.C. § 4401(a)(1)—on the sale of paper pull-tabs by Indian gaming enterprises; and

WHEREAS, 26 U.S.C. § 4401(a)(1) is an anachronistic and archaic provision of the Internal Revenue Code which was never intended to apply to tribal gaming operations; and

WHEREAS, the imposition of the wagering excise tax on Indian nations is illegal and affront to tribal sovereignty; and

WHEREAS, one federal court has sustained the efforts of the IRS to collect the wagering excise tax, while another federal court has sided with the tribes on this issue; and

WHEREAS, the U. S. Supreme Court has elected to review the lower court cases to determine the applicability of the wagering excise tax to Indian nations; therefore, be it

RESOLVED the USET Board of Directors hereby urges the U. S. Supreme Court to strike down the illegal efforts of the IRS to impose wagering excise taxes on Indian nations; and, be it further

RESOLVED the U. S. Congress, regardless of the decision of the U. S. Supreme Court, repeal 26 U.S.C. § 4401(a)(1) as an anachronistic and ineffective provision of federal tax law.

CERTIFICATION

This resolution was duly passed during a meeting of the Board of Directors during Impact Week, at which a quorum was present in Arlington, Virginia on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

"Because there is strength in Unity"

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001: 043

SUPPORT FOR DR. MICHAEL H. TRUJILLO TO COMPLETE HIS TERM AS DIRECTOR, INDIAN HEALTH SERVICE

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Indian Health Service (IHS) is obligated to provide health services to American Indian/Alaska Native (AI/AN) people in fulfillment of the Federal Governments' trust responsibility; and

WHEREAS, Dr. Michael H. Trujillo has been a commendable advocate for AI/AN people and their healthcare needs for the past six years; and

WHEREAS, Dr. Trujillo has a Senate confirmed term that expires in June of 2002; therefore, be it

RESOLVED the USET Board of Directors supports Dr. Trujillo in his current position as Director of the IHS; be it further

RESOLVED the USET Board of Directors respectfully requests that the Bush-Cheney Administration allows Dr. Trujillo to remain in his position for the remainder of the Senate confirmed term.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present in Arlington, VA on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001: 044

DISTRIBUTION METHODOLOGY FOR FISCAL YEAR 2001 DIABETES FUNDS

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, in an attempt to address the diabetes epidemic in Indian Country the Congress appropriated $150M in the Balanced Budget Act of 1997 (1997 BBA) over a five-year period to the Department of Health and Human Services (DHHS) Indian Health Service (IHS); and

WHEREAS, the IHS developed and implemented the Special Diabetes Program for American Indians/Alaska Natives utilizing the funds appropriated in the 1997 BBA; and

WHEREAS, because diabetes is so rampant in Indian communities and $30M per year is not enough funding to make an adequate impact at the local level the Congress appropriated an additional $70M for the remaining three years of the Special Diabetes Grant Program which brings the total amount available to $100M for Fiscal Years 2001, 2002, and 2003; and

WHEREAS, the distribution methodology used to allocate funds to the twelve IHS Areas includes measures regarding disease prevalence, tribal size and user population and has been the same throughout the Special Diabetes Grant Program; and

WHEREAS, the existing methodology does need to be adjusted, however distribution of the new funds in a timely manner is extremely important given the change in the political environment; therefore, be it

RESOLVED the USET Board of Directors recommends and supports the use of the existing distribution methodology for the new diabetes funds as well as the previously appropriated funds for Fiscal Year 2001 only; and, be it further

RESOLVED the USET Board of Directors instructs the USET Health Committee to continue to analyze and modify the distribution methodology prior to the next funding cycle that begins on October 1, 2001 with periodic status reports provided to the USET Board; and, be it further

RESOLVED the USET Board of Directors insists that all of the newly appropriated diabetes funds be allocated to tribes for prevention and treatment activities and not diverted to universities or special interest organizations for research purposes.

USET Resolution 2001:044

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present in Arlington, VA on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2001: 045

SUPPORT FOR A YOUTH CONFERENCE TO ADDRESS ALCOHOL AND SUBSTANCE ABUSE IN TRIBAL COMMUNITIES

WHEREAS, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the future of Indian Country lies in the hands of our American Indian/Alaska Native (AI/AN) youth and their physical, spiritual and emotional health is a priority in tribal communities, and

WHEREAS, alcohol and substance abuse among AI/AN youth is becoming an increasing concern for tribal communities; and

WHEREAS, in August of 2000 a Youth Conference was held to begin addressing alcohol and substance abuse in tribal communities; and

WHEREAS, due to the success of the former youth conference the USET Health Committee recommends that the Indian Health Service (IHS) Nashville Area Office of Public Health (NAO-OPH) continue efforts to coordinate another youth conference to be held in Fiscal Year 2001; therefore, be it

RESOLVED the USET Board of Directors accepts the recommendation of the USET Health Committee and supports a youth conference addressing alcohol and substance abuse.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present in Arlington VA, on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.



UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution 2001:047

RECOMMENDATIONS FOR AMENDING THE GEORGE W. BUSH ADMINISTRATION'S CHILD WELFARE POSITION

WHEREAS, United South and Eastern Tribes, Inc. (USET) is an intertribal organization of twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the Board of Directors officially represent the intentions of each member tribe, since the Board of Directors is comprised of delegates for the member tribes' leadership; and

WHEREAS, there is a unique government-to-government relationship between the federal government and federally recognized tribal governments; and

WHEREAS, Congress, through statutes, treaties, and the general course of dealing with tribes, are charged with the responsibility for the protection and preservation of Indian tribes and their resources; and

WHEREAS, there is no resource more vital to the continued existence and integrity of Indian tribes than their children; and

WHEREAS, as trustee, the United States Government has a direct responsibility to protect Indian children; and

WHEREAS, a proposed initiative of the Bush Administration entitled "Strong Families, Safe Children" (attached) fails to address the unique needs of Indian families, children and tribal governments in the following ways: 1) It proposes additional funding of $1 billion to States over a five-year period for preventive services, and does not consider funding to Tribes for similar services; 2) It narrowly defines "permanence" as either returning a child to a safe and stable biological or adoptive family, and ignores more culturally appropriate definitions of both permanence and family; 3) By omission, it fails to support the requirements of the Indian Child Welfare Act which covers procedures for working with Indian children in State custody who are in out-of-home placements; therefore be it

RESOLVED the USET Board of Directors recommends that the child welfare position of the current administration be amended; to include:

1) that provisions for need-based direct and flexible funding to tribes for prevention and intervention services for Indian families and children in adequate amounts with equitable distribution to all tribes;

2) provisions for tribally defined strategies for "permanence" that include culturally appropriate options such as kinship care, guardianship arrangements, and other tribally approved living arrangements that lead to positive outcomes for Indian children;

3) that provisions mandate severe penalties for states which fail to comply with the Indian Child Welfare Act.

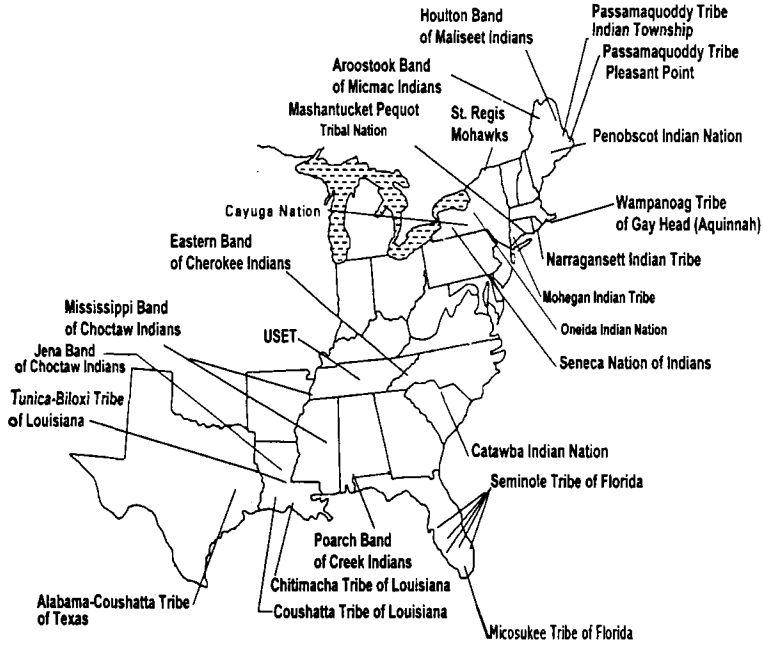
CERTIFICATION

This resolution was duly passed at the USET Impact Week meeting at which a quorum was present in Arlington, VA on Thursday, February 1, 2001.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.
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Telephone: (615) 872-7900 • Fax: (615) 872-7417



TESTIMONY PRESENTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED SOUTH AND EASTERN TRIBES, INC.
GOALS AND PRIORITIES FOR THE 107TH CONGRESS
April 5, 2001

"Because there is strength in Unity"

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