



Self-Governance Communication & Education Tribal Consortium

Written Testimony of

The Honorable W. Ron Allen, Chairman, Self-Governance Communication & Education Tribal Consortium (SGCETC) and Tribal Chairman/CEO, Jamestown S'Klallam Tribe

On behalf of SGCETC, I am submitting this written statement regarding funding priorities for the FY 2020 budgets for the Departments of the Interior's (DOI) Indian Affairs and the Health and Human Services' Indian Health Service (IHS).

The fiduciary responsibilities of the United States to Tribal Nations arise from commitments made in treaties and agreements, in exchange for which Indians relinquished vast tracts of homelands and resources.¹ More than 360 Tribal Nations participate in Self-Governance and have entered into agreements with the DOI and/or IHS to transfer Federal resources and programs from Federal administration to Tribal administration as a means of upholding trust and treaty obligations. Tribal Nations in Self-Governance know that increased Tribal control and decision-making authority results in improved social and economic well-being for their communities.

Tribal Nations assuming administration over programs once administered by Federal agencies does not cancel out the Federal government's treaty and trust obligations. It enables Tribal governments to be healthy, productive entities capable of enriching themselves and their surrounding non-Native communities. As such, we offer the following recommendations:

Exemption from Sequestrations and Unilateral Recessions in FY 2020

Tribal governments experienced massive budgetary cuts as a result of the 2013 sequester that affected direct services to Tribal citizens, which included, but are not limited to, public safety, social welfare, and health care services. We request Congress exempt Tribal Government Services and Program funding from sequestrations, unilateral rescissions and budget cuts in all future appropriations.

Advance Parity in Funding for Indian Programs

Indian programs face significant disparity compared to similar programs, and the failure of the U.S. to provide sufficient funding for these programs undermine some Tribal governments ability to provide adequate services to their citizens. For example, IHS's per capita spending levels were significantly less than those of the Veterans Health Administration (VHA), Medicare, and Medicaid. Specifically, IHS per capita spending level is 60 percent less than the VHA per capita spending level. The United States

¹Pub. L. No. 114-178, § 101, 130 Stat. 432 (2016)(codified at 25 U.S.C. § 5601).

Commission on Civil Rights (USCCR) recommended that “Congress should provide increased, non-discretionary, and advance appropriations for IHS to bring it to parity with other Federal health programs, such as the VHA.

Enact Advance Appropriations Authority for Federal Indian Programs

In FY 2019, the Interior appropriations, which includes funding to provide health care and other critical services for Tribal citizens, was severely delayed due to the government shutdown. Many Tribal Nations, with the inability to be paid any of their compact funds during the shutdown, found themselves in dire straits needing to find ways to maintain services that are trust obligations of the Federal government. This situation is untenable. Advanced appropriations for Indian programs would eliminate the adverse effect of a shutdown and critical services would operate uninterrupted. We ask the Subcommittee for support to make advanced appropriations a reality.

Overcome Barriers Hindering Tribal Nations from Achieving Self-Government

Earlier this week, the Senate Committee on Indian Affairs held its 4th hearing in two years to discuss the long-standing management weaknesses in Federal administration of Indian programs. In contrast, Tribal Nations have demonstrated for more than 30 years that Tribal governments administer these programs more efficiently and effectively. This is not surprising. Tribes know the needs of their communities and can redesign Federal programs to address local priorities in a culturally responsive manner. Yet, a number of factors hinder Tribes from pursuing their goals of self-government. The Subcommittee can take the following actions to help overcome the barriers:

Increase Base Budgets and Recurring Funding for Indian Programs

The authority Tribal Nations have to take over the administration of Federal programs is useful to the extent that adequate funds are made available to the Tribes to operate the program. Across the board, Federal Indian programs are significantly underfunded. The Subcommittee heard from numerous witnesses this month with examples of the significant underfunding in a variety of programs, such as Tribal Courts Program, Law Enforcement, and Ambulatory Services. The lack of adequate funding puts the lives of Tribal citizens at risk and limits what Tribal governments can provide their people. Increases to base budgets for Indian Programs will allow Tribes to fund core Tribal government programs such as community and economic development, natural resource management, and community safety and will provide an opportunity for additional Tribal Nations to participate in Self-Governance.

Ensure DOI Disburses Funds in a Timely Manner

For decades, Tribal leaders have reported that DOI does not disburse funds agreed upon in Self-Governance funding agreements and Self-Determination contracts within agreed upon timeframes. When funds are not disbursed promptly, Tribes have to use funds from their general revenue accounts to cover expenses for Federal programs or seek other sources, such as loans, to cover program expenses. When a Tribe has to

use its funds for the administration of programs—even temporarily—it can adversely affect the Tribe in various ways, including lost opportunities to use Tribal funds for improving the tribes’ economic conditions or reducing other services provided to Tribal communities. The Subcommittee can address this weakness at DOI by (1) emphasizing in appropriations language that DOI must disburse funds as agreed upon in funding agreements and contracts and (2) establishing mandatory payment of interest on funds that Tribal Nations do not receive within the agreed upon terms.

Increase Investments in Tribal Infrastructure

Tribal governments face long-standing infrastructure challenges. Decaying, unsafe infrastructure is not only a public health issue, but an impediment to economic development and job growth reflects a failure of the government to uphold its trust obligations and hinders Tribes from pursuing their goals of self-government. As documented by the USCCR in 2003, decades of general mismanagement of infrastructure and programs under BIA’s administration can hinder a Tribes’ use of self-determination contracts (the first step towards Self-Governance). BIA reported to Congress in 1999 that funds provided under self-determination must be used not only for current operations but also “to repair 150 years of general neglect” of Indian programs. Twenty years later, this statement remains true. Taking over programs that experienced significant and long-term neglect is a liability that many Tribes are not able to assume. We request the Subcommittee increase the Federal investment in both new infrastructure and improvements to aging infrastructure in Indian country.

Tribes found success with Section 105(l) leases to address chronically underfunded facilities operation, maintenance, and replacement costs. We request the Subcommittee continue to increase funding for these leases and to extend lease opportunities to Bureau of Indian Education for education facilities.

Increase Funding for Tribal Governance Capacity Building

In 2019, GAO reported that the capacity of a Tribe to administer a Federal program is a crucial factor that can affect a Tribe’s decision to enter into a Self-Governance compact. GAO also noted the need for sustained and consistent funding over time since developing capacity can be an ongoing effort. EPA’s General Assistance Program (GAP) has been successful assisting Tribal governments build capacity.

Capacity building is also more effective when the Federal government provides funds to Tribal organizations for implementation. Tribal governments work collaboratively sharing best practices and learning from one another how to address challenges unique to Tribes. Federal agencies are unable to comprehend the obstacles Tribes face and Federal agencies often attempt to implement the one-size-fits-all approach that will never work for many Tribes. SGCETC is an example of a non-profit Tribal consortium that builds capacity by creating and sustaining a Tribal-based community.

Thank you for the opportunity to share our recommendations with the Subcommittee. We look forward to your continued partnership.