

**Raymond Maxx, Executive Director  
Navajo-Hopi Land Commission Office, Navajo Nation  
Testimony Before the  
House Interior Appropriations Subcommittee**

**Tuesday, May 3, 2011**

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**Requests:**

- **\$5 million** for housing improvements in the former Bennett Freeze Area of the Navajo Nation, out of BIA Trust Natural Resources and Housing Improvement Funds, Department of Interior
- **Establishment of a Former Bennett Freeze Area Rehabilitation Trust Fund with an FY 2012 funding level of \$10 million**
- **Increase Funding to the Office of Navajo and Hopi Indian Relocation by 50%**

**Introduction.** Thank you for this opportunity to provide testimony on what is one of the most vexing matters in modern Federal Indian policy and a true tragedy for the Navajo Nation. I am the executive director of the Navajo-Hopi Land Commission Office, an entity of the Navajo Nation.

Because my family was relocated twice by the Federal government, and now lives in the Bennett Freeze area where we have been subject to severe construction restrictions, we have unfortunately experienced every aspect of the issues we are here to discuss today. As a former Navajo Nation council delegate, I represented Tuba City and Coalmine Canyon, two communities in the Bennett Freeze Area. I can tell you that virtually every day, my constituents approached me to tell me of the hardships that they have suffered because of the relocation law and the construction freezes, including lots of young people whose families relocated and who now are homeless and landless. The impact of the Land Dispute and the Bennett Freeze will be with the Navajo Nation for many generations.

When I was just a toddler, my family lived in District Six, an area that was declared exclusively Hopi. Although we had lived there for generations, we were forced to leave. At the time, the Federal government provided no benefits for moving. You just had to move. We relocated to the Big Mountain area in what was known as the Joint Use Area, owned together by the Navajo and the Hopi according to a court decree.

In the late 1970's, when we had just about reestablished ourselves and our livelihood off the land, the Federal mediator divided the joint use area and we found ourselves again on Hopi land. We moved to the nearest portion of the Navajo Reservation, the Bennett Freeze, and there we have lived ever since. I don't think my parents fully understood at the time that you could not fix your home in the Bennett Freeze; that you could not make additions; that no Federal, Tribal or State programs could assist your community through the building of infrastructure essential to the health and well-being of any community.

As a result, the Bennett Freeze is locked into the poverty of 1966, when the freeze was imposed. It was only in the 111<sup>th</sup> Congress that the freeze legislation was finally repealed.

In 1934, the U.S. Government clarified the western boundary of the Navajo Nation identifying an area of land as for the Navajo and “such other Indians as may already be located thereon.” This language created ambiguity over ownership of the land, which was nearly entirely inhabited by Navajos. In litigation between the tribes, the Hopi sought extensive rights over the whole area. As a result, in 1966, Commissioner of Indian Affairs Robert Bennett ordered a “freeze” on development in a 1.5 million acre area in the extreme western portion of the Navajo Reservation, now called the Bennett Freeze Area. As a result of this construction freeze, the Bennett Freeze Navajos have become the “poorest of the poor.” While in theory development was possible with the permission of both tribes, in reality the area was principally occupied by Navajo families and the Hopis rarely granted permission for Navajo projects. Thankfully, the two tribes reached agreement on a settlement of their disputes and last year the Congress passed legislation striking from the U.S. Code the language which had authorized the Bennett Freeze. The agreement provided that most of the area belonged to the Navajo Nation. For the thousands of Navajo families who live there this means that the freeze served no real purpose other than to bring them misery and hardship.

**Expanding on President Obama’s Request for the Bennett Freeze – Adding \$5 Million for Housing Improvements.** In his proposed FY 2012 budget, President Obama has set aside \$1.2 million “to begin redeveloping the former ‘Bennett Freeze’ area...” In the FY 2012 BIA Budget justification, the Administration notes that “[t]he Bennett Freeze was a product of a long-standing land dispute between the Navajo and Hopi reservation boundaries... more than 12,000 Navajo people living in the area were subjected to a 41-year freeze on development.... During the freeze era, the Navajo people were prohibited from building new homes, schools, health facilities, constructing (electricity, water, roads, etc.) and community and economic development projects.”

While the President’s budget request is welcome, it is intended to be spent largely on land use and agricultural purposes. While these purposes are important, the number one need in this area, based on an extensive independent study completed last year, is improved housing. For this reason, I would propose that an additional \$5 million in BIA housing funds be set aside for critical housing repairs and construction.

**This Committee should establish a trust fund for reconstruction of the former Bennett Freeze area.** For the former Bennett Freeze area to recover there must be a sustained reconstruction program implemented over a decade or more. This would be consistent with the findings of the Interior Appropriations Subcommittee of the Senate Appropriations Committee in a field hearing held in Tuba City, Arizona on July 9, 1993. Going back four decades to the “War on Poverty” and the “Great Society Program,” and continuing through numerous Federal initiatives addressing poverty and economic hardship in general, as well as programs directed at Indians in particular, this area has been effectively ineligible for aid. The results have been devastating with most homes

lacking electricity and running water, limited infrastructure, few schools and, therefore, no economic development. Congress should authorize the Office of Navajo and Hopi Indian Relocation (ONHIR) to oversee reconstruction activities, with the Navajo Nation having the option of assuming control of those activities that affect Navajo people and lands, as well as the option of assuming control of the trust fund proposed above.

**Office of Navajo and Hopi Indian Relocation.** ONHIR has had a very difficult job that has taken far longer and cost far more than originally expected. However, this is not the fault of the Navajo Nation, which opposed the relocation program but now must live with its awful consequences. We would ask that ONHIR budget, which in recent years has ranged from \$8 million to \$9 million, be increased by 50% to accelerate the provision of benefits for those many families who relocated but have not yet received their benefits.

**Conclusion.** Although the Navajo-Hopi Land Dispute and the Bennett Freeze are painful issues, I thank the Committee for this opportunity to provide testimony on a path forward to assure that the many Navajo families who have suffered under these Federal actions can have hope for a better life.

**Testimony of Todd D. Honyaoma, Sr., Vice President,  
NATIVE AMERICAN GRANT SCHOOL ASSOCIATION (NAGSA)  
Flagstaff, Arizona**

**Regarding  
The Impacts Of The Proposed FY 2012 Budget And Chronic Underfunding Of Tribal  
Support Costs And School Facilities On Native American/BIE Funded Schools**

May 3 and 4, 2011

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Mr. Chairman and Members of the Subcommittee:

My name is Todd D. Honyaoma, Sr. and I serve as the Vice President for the Native American Grant School Association, also known as NAGSA. NAGSA is a non-profit organization comprised of Native American Grant Schools that have come together to act collaboratively on Native American school issues. NAGSA currently has approximately fifteen school members throughout the southwest. NAGSA, through its duly elected representatives, presents this statement to draw Congressional attention to the impacts of the chronic underfunding of BIE funded schools and the FY 2012 proposed budget on tribally-operated schools.

The United States Government has a binding Treaty and Trust responsibility and obligation to educate all Native American children – forever. As former Senator Daschle noted in the Congressional Record:

“The right to attend a good school should be the birthright of every child in America. But Native American children have a special claim on this right. **Our Government has given its word**, in treaties and laws, to provide education, . . . and other basic necessities to Indian tribes and their members **forever.**”

“Education and other Federal programs serving Native Americans are not handouts; they are treaty obligations. They are installment payments the United States Government owes for land the tribes surrendered reluctantly more than a century ago. **America has never even come close to meeting those obligations.**” (emphasis added)

These obligations and responsibilities were recently reaffirmed in the No Child Left Behind Act as follows:

“Congress declares that the Federal Government has the **sole responsibility for the operation and financial support** of the Bureau of Indian Affairs funded school system . . . ensuring that the programs of the Bureau of Indian Affairs-funded school system are of the **highest quality** and provide for the basic elementary and secondary educational needs of Indian children . . .” 25 U.S.C.A. § 2501

The proposed FY 12 budget and history of chronically underfunding BIE funded schools belies these lofty legislative pronouncements.

NAGSA is comprised of tribally controlled grant schools. The tribally controlled grant schools are primarily funded through appropriations received from the United States Department of the Interior's Bureau of Indian Education, and pass-through funding from the Department of Education. Native American school boards operate our member schools through a Grant under the Tribally Controlled Schools Grant Act. Our collective mission is to make a difference in the educational progress of our students and we believe that all our students are capable of achieving academic success.

We are expressing our concerns about the current budgetary crisis affecting all federal agencies, but in particular, to address the impact of potential budgetary shortfalls on BIE-funded schools, like our member schools. Currently the Federal Government is operating under a Continuing Resolution which holds spending at Fiscal Year (FY) 2010 levels; and there has yet to be any action on the FY11 budget. Late last year, the Administration called for a 5% across the board budget decrease for FY 2012. Just recently, in the State of the Union address, the President called for a freeze on "discretionary spending" for the next five years, and the House Leadership has proposed rolling spending back to FY08 levels.

Spending for Indian education programs, quite illogically, is considered "discretionary" and thus, is highly vulnerable to the type of budget reductions that are currently under consideration. Providing and improving the quality of, educational opportunities for all children, is and must be a bi-partisan priority. It is not only counterproductive but a breach of government's responsibility to further burden the historically underfunded Indian education program with more and more draconian budget cuts. Ironically, while funding at current levels is inadequate to meet school needs, the Federal Government nonetheless imposes more and more requirements and compliance mandates on BIE-funded schools without providing the resources to perform them.

For these reasons, we request that you support efforts to hold funding for Indian education programs harmless from the potentially catastrophic budget cut backs that are currently being discussed and reverse the shameful history of underfunding Native American grant schools. We are particularly concerned about two areas of funding to which tribally operated schools are entitled. We appreciate the proposed \$3 million dollar increase in Tribal Grant Support Costs; however, it is woefully inadequate to correct the history of gross underfunding and will be consumed by the addition of the Jones Academy and other schools which will also draw from these funds. We are extremely distressed that the meager school Facilities Operations and Maintenance (O&M) funds we are currently receiving is proposed to be decreased by transferring those funds. This will cripple our school facilities upkeep and compromise the safety of our students. The majority of our school facilities are outdated and antiquated and require current budget amounts and much more to keep them safe, clean and barely adequate. With the ever increasing utilities cost, a huge portion of our current O&M funds is absorbed by the utilities expense leaving a small budget for other facility needs. Furthermore, the addition of the Jones Academy will take away the scarce facilities funds because we do not foresee additional funds being added for this new school.

We urge Congress to direct the Bureau to reopen the competitive process by which schools can submit applications for replacement school construction, as nearly six years have passed since the Bureau has solicited new applications.

### **Tribal Grant Support Costs**

"Tribal Grant Support Costs" or "TGSC", formerly known as Administrative Costs Grants, are funds provided to tribally-operated Schools by the Federal Government to cover the administrative or indirect costs associated with the operation of a School. This funding is applied to the costs of payroll, accounting, insurance, background checks, and other legal, reporting and record-keeping requirements, including the preparation of required annual audits. TGSC are appropriated in a lump sum and then are awarded to individual schools after application of a complex statutory formula that divides the available funding among eligible recipients. Currently, 124 of the 183 BIE funded schools are operated by tribes or tribal school boards. In FY10, the funding available for TGSC met only 62% of the need of the schools, the lowest rate to date. Given the proposed addition of the Jones Academy and possibly other schools, even with the proposed increase, TGSC funding will continue to be less than 65% of need. Schools cannot reasonably operate on this level of funding. The BIE has been provided substantial budget increases in previous years for their management needs while our same legitimate needs have been ignored.

Insufficient Tribal Grant Support Costs means that schools constantly have to absorb more and more administrative expenses and cut back on prudent management activities. Schools have had to reduce their management staff to the point that their ability to maintain prudent internal controls and checks and balances is compromised.

Full funding of the BIE's Tribal Grant Support Costs obligation would require \$70.2 million for current tribally-operated schools. An additional \$2 million is required to address the needs of those schools who intend to convert to grant status in FY10, in order to avoid the siphoning of funds from existing schools. For these reasons, we endorse NCAI's budget request of \$72.3 million for Tribal Grant Support Costs.

### **Replacement School Construction**

Many of our school buildings are more than 50 years old and the meager amount of funding we have received over the years for facility operation, maintenance and repair has been insufficient to allow us to address the serious deficiencies that come with aging electrical, heating, cooling and plumbing systems. Many of the schools' electrical systems, for example, in many cases cannot support their technology needs. Schools are constantly dealing with such problems as leaking sewer lines, deficient if not dangerous gas lines, outdated and malfunctioning alarms, inadequate sprinkler systems, mold and other types of structural problems. The proposed freeze on "new construction" exacerbates this critical problem and indefinitely postpones any action to provide habitable schools to our Native American students. Many of our schools are beyond repair and the refusal to appropriate money for new construction is a de facto closure of these schools.

While the Bureau has a process for evaluating school construction projects and placing them on a priority list for funding, no new applications for replacement school construction have been added to the list since 2004, and our NAGSA member schools have not had the opportunity to even make a case for their needs for replacement schools. For these reasons, we urge Congress to direct the Bureau to reopen the process by which BIE-funded schools can submit applications for replacement school construction that can then be prioritized for when construction funding becomes available. Further, we ask that these dire, long ignored needs be funded, immediately.

### **Conclusion**

As noted by the United States Commission on Civil Rights:

“As a group, Native American students are not afforded educational opportunities equal to other American students. They routinely face deteriorating school facilities, underpaid teachers, weak curricula, discriminatory treatment, outdated learning tools, and cultural isolation. As a result, achievement gaps persist with Native American students scoring lower than any other racial/ethnic group in basic levels of reading, math, history. Native American students are more likely to drop out.”

“The Federal Government has sole responsibility for providing education to these students. . . an obligation it is failing to meet.”

A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country, p. xi, The United States Commission on Civil Rights (2003)

Lawmakers on both sides of the aisle have endorsed the education of our children as one of our highest national priorities, through the provision of better teachers, better instructional materials, appropriate facilities, and more innovative opportunities. Good education costs money, and it is our hope and expectation that Congress will recognize the tremendous needs that exist in our BIE-funded schools, the potentially disastrous impact of budget reductions, and join us in supporting a quality educational program for all our students.

We ask for your support as the Department of the Interior's appropriations bills are developed, debated, and brought to a vote. Please communicate these concerns to your colleagues on the House and Senate Appropriations Committees. We are grateful for any assistance you can provide.

We wish to thank you for your consideration. If you need further information, you may contact us by phone at 928-226-0000 or you can reach me via email at [debra@h2m2law.com](mailto:debra@h2m2law.com).



**NATIONAL JOHNSON-O'MALLEY ASSOCIATION**  
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*"We are the elected voice and liaison to Congress for JOM Programs  
Nationwide"*

**TESTIMONY OF THE  
NATIONAL JOHNSON O'MALLEY ASSOCIATION  
BEFORE SUBCOMMITTEE ON INTERIOR  
AND RELATED AGENCIES**

**May 3, 2011**

Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee, my name is Harold L. Dusty Bull and I am the program Director for the Blackfoot Johnson O'Malley program of the Blackfoot Nation of Montana. I am here today representing the National Johnson O'Malley Association, which I serve as Vice President.

We educators in Indian Country are always happy to be in your company. The previous administration tried to eliminate the JOM program. But for our good friends in Congress supporting us through the appropriations process, the JOM program would have waned out of existence.

I'm here to tell you about JOM and to give you an update on our fiscal year 2012 requests and recommendations. I don't need to tell anyone in this room, but it has been a very interesting year for JOM and as a current year funded program we have been eagerly watching the appropriations process for this year. Like most people who have testified and will be testifying it is hard to plan for the future when we don't know what we currently have.

**What is JOM?**

The Johnson O' Malley Act was enacted in 1934 to allow the Department of the Interior to provide assistance to Indians in the areas of education, medical attention, agricultural assistance, social welfare, and relief of distress because of findings that Indians needed support to transition from Indian-only settings to general population settings such as the environments found in public schools and in urban areas. Seventy-six years later, JOM continues to provide critical support to Indian kids – most of which live in impoverished areas.

JOM grants provide Indian tribes, school districts, tribal organizations, and parent committees supplemental funds designed to address the unique and specialized educational needs of Indian students enrolled in public schools or non-sectarian schools. The purpose of JOM grants is to provide supplementary financial assistance for Indian students ages 3 to grade 12. JOM have historically provided basic resources so that

Indian students can participate in school like their non-Indian peers, which, in turn, gives them a chance to achieve academically.

Without JOM program dollars, Indian students at all academic standings, both remedial as well as gifted and talented, would not be able to afford things such as college counseling, athletic equipment, eye glasses, after school tutoring, or culturally specific education, resume counseling, summer school, scholastic testing fees, school supplies, transition programs, musical instruments, Native youth leadership programs, financial aid counseling, caps and gowns, art and writing competitions. Other programs administered by the federal government, such as funding through the Department of Education, do not allow funding for these types of activities.

Our program at Blackfeet spends a good portion of our JOM dollars on after school programs and parenting classes designed to get parents more involved in their kids' education.

### **Our Appropriations Request**

Along with our partner, the National Indian Education Association, we request a total of \$24 million for JOM, which was the FY06 enacted level. The FY10 enacted amount (and the enacted amounts from FY07 through FY09) was \$21.4 million, which was only partial restoration of JOM funding. President Obama's FY12 budget requests \$21.273 million, a decrease of \$259,000 from the FY10 enacted level. When FY11 is enacted we will be able to further assess the increase or decrease of these levels.

Even with the funding requested, \$24 million will not keep pace with the extraordinary needs in Indian Country. In 1995, a freeze was imposed on JOM funding through DOI, limiting funds to a tribe based upon its population count in 1995. The freeze prohibits additional tribes from receiving JOM funding and does not recognize increased costs due to inflation and accounting for population growth.

We urge this committee to work with us to lift the funding freeze to ensure that tribes are receiving funding for their student populations at a level that will provide access to a high quality education.

Finally, we hope that this committee will urge the DOI to appoint one staff person who can assist JOM programs moving forward. Much can be gained by having a person at the Department specifically charged with fulfilling the intent of the regulations. Additionally, we simply need someone in Washington who is dedicated to understanding and advocating internally for our program.

I am very grateful for this opportunity to testify and stand ready to answer any questions you may have.



# Choctaw Nation of Oklahoma

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Gregory E. Pyle  
Chief

Gary Batton  
Assistant Chief

**TESTIMONY PRESENTED BY  
JOY CULBREATH, EXECUTIVE DIRECTOR OF EDUCATION SERVICES  
(ON BEHALF OF MICKEY PEERCY)  
CHOCTAW NATION OF OKLAHOMA  
ON THE FISCAL YEAR 2012 BUDGET  
AT THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED AGENCIES  
PUBLIC HEARING ON NATIVE AMERICAN ISSUES  
May 3, 2011**

On behalf of Chief Gregory E. Pyle, of the Great Choctaw Nation of Oklahoma, I bring greetings to the distinguished Members of the Committee. I am Joy Culbreath, the Executive Director of Education for the Choctaw Nation of Oklahoma. I appreciate this opportunity to provide written and verbal testimony to the Committee on our top budget priorities for FY2012; highlighting:

**Tribal Specific Priority**

1. Support for the Jones Academy

**National Priorities:**

1. Provide \$50 Million Increase to Bureau of Indian Affairs (BIA) Contract Support Costs;
2. \$153 Million Increase for Indian Health Service (IHS) Contract Support Costs; and,
3. Provide \$200 Million Increase for Indian Health Service Contract Health Services.

**Jones Academy**

First, I am here to express our sincere appreciation to the Committee, this Subcommittee and all of the Members and staff, past and present, who supported us in our efforts to re-establish the Federal trust relationship for Jones Academy education through the Bureau of Indian Education; Bureau of Indian Affairs (BIE/BIA). We worked together on this correction for decades, since the Federal government unilaterally closed the academic programs at Jones Academy and Wheelock Academy and created the Jones Academy Boarding facility which required students to go to the local public school. The statutory language to rectify this wrong is included in the President's FY2012 budget request. It was also in the FY2011 House Committee passed Interior Appropriations bill written by this Subcommittee. If enacted, it finally brings Jones Academy into compliance with the Self-Determination policy of the last three decades, strongly supported by this Subcommittee. Most importantly to all of us, it enhances future educational opportunities for our students.

There are so many to thank for their efforts that no list here would be sufficient. Chairman Simpson and Ranking Member Moran provided seamless continuation for the work begun by former Committee Chairman Norm Dicks and Representative Tom Cole, of our own Oklahoma delegation. I must also warmly thank our Congressman, Representative Dan Boren. Though not a member of the Committee, he provided extensive guidance and support. Finally, I want to thank the representatives of the Administration, particularly Assistant Secretary-Indian Affairs Larry Echo-Hawk. He considered our situation with an open mind and an open heart; looked at the results of the Subcommittee directed report on the history of Jones Academy; and recommended the budget neutral language under consideration in this bill.

This is a prime example of the ancient Choctaw philosophy that issues should be resolved openly and fairly by people of good will working together. With a new Jones Academy, built with Tribal funds, and the dedication of our staff, the Choctaw Nation will work tirelessly to affirm your faith in us and especially in our students. With your support, we look forward to continuing the unprecedented achievement record of our extraordinary students at Jones Academy.

**Full Funding of BIA and IHS Contract Support Costs:**

The Indian Self-Determination and Education Assistance Act (ISDEAA) has made it possible for Tribes to administer large portions of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) budgets, including operating programs previously provided by the Federal government functions in health care, education, law enforcement, and land and natural resource protection. Today, under the ISDEAA, Tribes collectively administer over \$2.82 Billion in essential Federal government functions, and support a workforce of approximately 35,000 people. The ISDEAA carries out its goal of transferring essential government functions from federal administration to Tribal administration through a contracting mechanism. To meet these contract requirements, the Act requires that both IHS and BIA fully reimburse every Tribal contractor for the "contract support costs" that are necessary to carry out the contracted Federal functions. When contract support costs are not funded, off-setting reductions must be made in direct health program funding, job vacancies go unfilled, and services are reduced, effectively making a program cut to desperately needed health services.

The IHS projects a shortfall in contract support costs (CSC) of \$153 Million for FY2012. This means a \$153 million cut in Tribally-contracted programs – not IHS-administered programs, but Tribally-administered health programs alone. The BIA reports its own shortfall exceeded \$62 million in 2010, indicating that total CSC requirements totaled \$228 million. Yet, the FY2012 proposed President's Budget request only \$195.5 million, resulting in a required cut in Tribally-operated BIA programs of another \$33 million next year.

And, as the CSC needs continue to escalate in this uncertain fiscal climate, for FY2013, the National Contract Support Cost Coalition project recommendations that the IHS contract support cost line will be increased to \$615 million and the BIA contract support cost line will be increased to \$228 million.

The current status quo is just not acceptable. Without the requested increases, the CSC shortfall for both agencies will exceed \$186 million in FY2012. That means a \$186 million cut in Tribal health, education, law enforcement and other contracted programs, and could affect as many as 3,600 jobs.

Tribes are being penalized for their self-determination contracting. Because of the CSC shortfall, Tribal facilities have substantially less dollars to provide services to their communities than does an IHS-operated facility. Nor can Congress's Policy of Self-Determination move forward – new contracting activities have slowed drastically, and both IHS and BIA are stuck at no more than 60% of their budget operated by Tribes.

Finally, fully paying Contract Support Costs is *legally required*. The United States Supreme Court so held in the 2005 Cherokee Nation case. It is not necessary to write a better law; just honor the law that Congress has already written. The United States Government honors, to the penny, all government contracts even when doing so requires supplemental appropriations, with the exception of contracts with Tribes. This standard should apply to all Indian Tribes as well. Law, policy, fairness and honor require this.

**Provide Increased Funding for Contract Health Service:**

Contract Health Service (CHS) is the most complex and dysfunctional service provided by the Indian Health Service, Tribally Operated Health Program (IT) health care delivery program. CHS is designed to refer patients and reimburse providers outside of the IT system for medical services provided to American Indians/Alaska Natives (AI/AN) patients. The CHS supplements services that are not provided by the IT hospitals and clinics. Congress is aware of what CHS is designed to do. However, the underlying issue to be addressed is how CHS can be improved.

The most logical way to fix the contract health problem is to provide adequate funding for the IT system. The Congress is also aware of the marginal funding level for IT overall, and specifically in this line item. The FY2010 appropriations level for CHS was a positive step and needs to be continued, with similar increases for the next 5 years. At this point, we know that some Tribal health programs receive assistance in their health programs budget, specific to CHS, from their Tribal governments. Not all Tribes have the economic development base that allows this support. Also, in most cases, these Tribal funds are not recurring and cannot be counted on long term. Significant Federal funding over the next several years is critical.

It is difficult to define the unmet need for CHS throughout Indian Country. However, IHS Director, Dr. Roubideaux has implemented a CHS Workgroup in an effort to define the parameters of unmet need and to arrive at an approximate cost. This again, is a critical area that we must define so our requests to Congress are valid.

**In closing**, on behalf of the Choctaw Nation of Oklahoma, and Chief Gregory E. Pyle, we are honored to provide our Tribe's views on these priorities and respectfully urge your consideration and support of these program funding requests in the FY2012 budgets for the BIA and IHS.

*Choctaws – growing as one with pride, hope and success*



GWY.9 DBP  
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Joe Grayson, Jr.  
Deputy Principal Chief

**United States House of Representatives**

**Hearing before the House Appropriations Committee  
Subcommittee on Interior, Environment, and Related Agencies  
On the FY 2012 Budget**

**10:00 a.m., May 3rd, 2011  
B-308 Rayburn House Office Building  
Testimony of Melanie Knight, Cherokee Nation Secretary of State**

**Introduction:** Mr. Chairman, members of the Committee, thank you for convening this hearing to discuss important Fiscal Year 2012 Budgetary concerns regarding Native American Issues. I am Melanie Knight, Cherokee Nation Secretary of State and on behalf of the Cherokee Nation, I am here to request that the federal government uphold its Trust Responsibility in regards to the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) and their 2012 budget priorities for Indian Country. The Cherokee Nation (Nation) was one of the first tribes to enter a treaty with the United States. Over 200 years later the Nation executed a self-determination contract under the original Indian Self-Determination and Education Assistance Act and in 1990 executed a self-governance agreement under ISDEA, Title III.

No single enactment has had a more profound effect on tribal communities, including the Cherokee Nation, than the ISDEA. In just two decades, we have taken over the administration of several Bureau of Indian Affairs and Indian Health Services programs, including health care, education, law enforcement and land and natural resource management and protection. It has served as a mechanism to shift back to the Nation our sovereign right to control and administer essential governmental services and engage in economic and resource development at the local level, thus increasing efficiency and autonomy.

Presently, the Cherokee Nation is thriving in our 14-county jurisdiction in northeastern Oklahoma. The Nation currently has approximately 305,000 citizens nationwide and we are the largest employer in northeastern Oklahoma with approximately 8,500 employees. While a percentage is employed within the Nation's government, an ever-increasing number of people are gainfully employed in the Nation's various businesses that range from the hospitality industry to the aerospace sector. Strong, cohesive Cherokee communities help us persevere, adapt and prosper in today's difficult economic climate. Therefore, the necessity for adequate funding for both the IHS and BIA is vital to maintain our recent progress and strength.

**Indian Health Service (IHS):** In accordance with the Self-Governance compact the Nation has with the Department of Health and Human Services, the Nation constructs and maintains waterlines and improves sanitary services throughout the region. Furthermore, in conjunction with IHS contract support cost dollars, the Nation operates a sophisticated network of eight rural outpatient health centers that provide Indians with primary medical care, dental service, optometry, radiology, mammography, behavioral health promotion

and disease prevention and a public health nursing program. In addition to these services, the Cherokee Nation also operates WW Hastings Indian Hospital in Tahlequah, Oklahoma. Hastings is a 60-bed facility offering outpatient and ancillary services with over 300,000 outpatient visits each year and more than 335,000 prescriptions filled annually. The Nation also has inpatient and outpatient programs for management of specialty care throughout our 14-county jurisdiction, therefore adequate funding is necessitated.

**Expanding the Joint Venture Program:** The IHS Joint Venture program demonstrates the shared commitment of Tribal Nations and the IHS in providing additional health facilities within the Indian health system and the staff necessary to support the facilities in the Nation. This has been especially effective in the Oklahoma City Area. The Cherokee Nation requests that the Joint Venture program be funded on an annual basis, including CSC funds, and adequate operational funds.

**Indian Health Care Improvement Fund (IHCIF):** In addition to the well-documented disparate funding between the IHS and other federally funded health programs, funds among the IHS Areas are distributed inequitably. In order to address such inequities, the IHCIF was created to achieve parity among the IHS Areas. Nations have recommended that the federal government implement a time-limited plan to bring all IHS Operating Units to the 80% level. To achieve parity, a \$1 billion investment will be required over a four-year period. Such an effort is especially supported by Oklahoma City Area Tribal Nations, given the estimate that under current funding levels for the IHCIF, it will require 120 years to reach parity with the other Areas.

**Need to Exempt IHS Appropriations from Rescissions:** The Cherokee Nation realizes that the federal government will be limiting spending for budget discretionary programs; however, as a direct-healthcare provider, the Nation asks that all funds appropriated to the Indian Health Service be exempt from rescissions that may be imposed during the appropriations process.

**Substance Abuse and Mental Health Services Administration (SAMHSA) Block Grant Funds:** Each state receives block grant (a.k.a., formula funding) funds from SAMHSA for the purpose of providing behavioral health services for all residents within the state. However, when an American Indian is in need of behavioral health services, they typically seek care through an IHS or tribally-operated facility, as opposed to a state agency or state-operated facility. As with competitive and discretionary funds, giving the Nation access to this type of funding would allow us to expand and improve upon or behavioral health services to better meet the current demand on the system.

**Bureau of Indian Affairs (BIA):** Pursuant to the Nation's compact with the Department of the Interior, the need for full federal funding is crucial so the Nation can administer a wide array of federal programs serving Indian people. Several of these programs include social services, child wellness programs, child abuse services, adult and higher education, housing improvement programs, law enforcement service, road and bridge construction, planning and maintenance, forestry and real estate programs, and Johnson O'Malley education programs.

**Tribal Priority Allocations:** We join our fellow Self-Governance Tribes in continuing to request funding increases for the fundamental services provided as Tribal Priority Allocations. Of the 567 federally recognized Tribes within the United States, 235 Tribes manage their own affairs under Self-Governance agreements with the Bureau of Indian Affairs. Although these Tribes account for 42% of the federally-recognized tribes, they received only small percentage of the BIA budget which bears the responsibility for providing services to all federally-recognized Tribes. Collectively, most of the varied programs fall under the broad category of “Tribal Priority Allocations (TPA)”. Pursuant to provisions within the ISDEA, each tribe has the flexibility to utilize these funds to meet the distinctive needs within their local communities, resulting in more effective use of federal funds. In order for funds to yield necessary service delivery at the local level, it is imperative that distribution methodologies be applied consistently throughout Indian Country.

**Fixed Costs-Contract Support Costs (CSC):** One of the most important budgetary issues facing Indian Country for the upcoming fiscal year is the underfunding of contract support by the BIA and IHS which negatively affects every single tribe. This issue is especially significant to Indian Country where every dollar lost in contract support costs is one dollar less for health care, education, law enforcement and other critical governmental services. The contract support cost crisis has caused severe financial strains on the Nation’s programs and facilities, as it has for numerous other tribal governments.

Since contract support costs are fixed costs that a contractor must incur, tribes are required to either (1) reduce funds budgeted for critical healthcare, education and other services under contract to cover the shortfall; (2) divert tribal funds to subsidize the federal contract (when such tribal funds are available); or (3) use a combination of these two approaches. For every \$1 million that the Cherokee Nation must divert from direct patient care to cover contract support costs, the Cherokee Nation health system must forego 5,800 patient visits.

After years of neglect by subsequent Administrations for funding of CSC obligations and increasing budget shortfalls, in 2010, we finally received better funding. The effort in FY 2010 by Congress and the President to support a \$116 million increase to reduce the IHS contract support costs shortfall by one-half and a \$21 million increase to the BIA was welcomed. However, there were still excessive gaps in budget allocation amounting to over \$100 million. Even with this temporary attempt to increase funding, the current desire of both political parties to reduce the deficit could potentially hinder the progress we have made.

Jobs are imperative to helping the economy, which in turn reduces the deficit. Unemployment is often prevalent in rural areas of the Cherokee Nation’s jurisdiction and in FY 2010, an \$8 million infusion gave the Nation a means to create 124 jobs in rural health care facilities. These positions included pharmacists, dental staff, clerks, social workers, etc, which created positive economic growth in the surrounding communities and increased the well-being of our citizens. Furthermore, the increased staffing resulted in a dramatic increase in workload as compared to FY 2009: primary care visits increased

by 30,824 or 11 percent, dental visits increased by 6,138 or 16 percent and pharmacy visits increased 83,979 or 51 percent.

However, based on the increased services in FY 2010 attributable to increased CSC funds, the Nation estimates that a \$4.2 million shortfall will prevent us from providing 13,900 primary care visits, 2,700 dental visits and 37,700 pharmacy visits. Today, IHS projects a total fiscal year shortfall in contract support cost payments of \$153 million. That means a \$153 million cut in tribally-contracted programs (not IHS administered programs), therefore tribes alone must cover the projected shortfall as long as the federal government maintains the status quo of inadequate funding. Additionally, the BIA reports that its CSC shortfall exceeded \$62 million in FY 2010.

It is not acceptable for the Administration or Congress to seek deficit reduction by singling out tribally-administered health and law enforcement programs and cuts to essential governmental services for which the federal government is legally and contractually responsible to provide.

**Fixed Costs-Various:** In addition to contract support costs, there are other fixed or uncontrollable costs for which a tribe must bear the burden. These fixed costs include population growth, inflation, and tribal pay costs, which if not funded, will directly reduce services to our citizens. Tribal programs should at least participate on the same basis as federal programs for these funding allocations. The Nation urges Congress to fully fund these fixed costs in order to provide financial assistance to all Tribes.

**Indian Guaranteed Loan Program:** The Indian Guaranteed Loan Program, established under the Indian Financing Act of 1974, helps Cherokees and other tribes gain access to capital by guaranteeing and insuring loans to promote economic development throughout Indian Country. The program leverages appropriated monies by a ratio of 13 to 1. However, in the upcoming budget, the program sees a \$5 million reduction due to its supposed duplicative services because other agencies like the SBA also offer similar programs. However, they do not replace the Guaranteed Loan Program and I request that this highly-successful program be fully funded so that tribes have access to loans when attempting to increase their economic livelihood in often economic-depressed regions.

**Conclusion:** Mr. Chairman and fellow Committee members, the Cherokee Nation is committed to providing federal services and direct, local-level programs, including but not limited to job creation, education, health and law enforcement services in a time when bureaucracy, hard economic times and desired deficit reduction only hinder federal attempts to accomplish the same. The federal government's current fiscal situation should not allow the United States to break its Trust Responsibility and underfund the Cherokee Nation and Indian County. Thank you for your continued support and for the opportunity to testify on these critical FY 2012 Budget issues. Please contact the Cherokee Nation Washington Office at 202.393.7007 should you have any questions or need additional information.

# INDEPENDENT REVIEW TEAM

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**ORAL TESTIMONY OF ELBRIDGE COOCHISE, CHIEF JUSTICE, RETIRED  
INDEPENDENT TRIBAL COURTS REVIEW TEAM  
BEFORE THE HOUSE INTERIOR, ENVIRONMENT AND RELATED AGENCIES APPROPRIATIONS  
SUBCOMMITTEE FOR THE FISCAL YEAR 2012  
BUREAU OF INDIAN AFFAIRS APPROPRIATIONS  
May 3, 2011**

Thank you for the opportunity to testify today and to address the serious funding shortages that have limited and continue to hinder the operations of Tribal judicial systems in Indian Country. I serve as the Lead Judge representing the Independent Tribal Court Review Team. For the past 5 years, the Review Team has conducted an assessment of approximately 73 Tribal courts systems, including analysis of staffing and resources. We thank this Committee for the additional \$10.0 million funding in FY 2010. These funds were a blessing to Tribes. Even minimal increases were put to good use. It is the strong recommendation of the Independent Tribal Courts Review Team that the Federal Tribal Courts budget be substantially increased in FY 2012 to support the needs of Tribal judicial systems.

### **Budget Priorities, Requests and Recommendations**

1. + \$10.0 Million Increase for Tribal Courts above the FY 2010 enacted level
2. + \$58.4 Million authorized under the Indian Tribal Justice Act of 1993, P.L. 103-176, 25 USC 3601 and re-authorized in year 2000 P.L. 106-559 (no funds have been appropriated to date)

The increase funding will support:

1. Hiring and Training of Court Personnel
2. Compliance with the 2010 Tribal Law and Order Act
3. Salary Increases for Existing Judges and Court Personnel
4. State-of-the-Art Technology for Tribal Courts  
Security and Security Systems to Protect Court Records and Privacy of Case Information
5. Tribal Court Code Development
6. Financial Code Development

### ***BACKGROUND:***

The Bureau of Indian Affairs (BIA) within the Department of the Interior provides funding to Tribal governments to supplement their justice systems including courts. Tribal courts play a

"vital role" in Tribal self-determination and self-governance as cited in long-standing federal policy and acts of Congress. Funding levels from BIA to support Tribal justice systems have not kept up with the Federal obligations and responsibilities.

For the past 5 years, the Independent Court Review Team has been traveling throughout Indian Country assessing how Tribal Courts are operating. During this time, we have completed approximately 73 court reviews. There is no one with more hands-on experience and knowledge regarding the current status of Tribal Courts than our Review Team.

We have come into contact with every imaginable composition of Tribe; large and small, urban and rural, wealthy and poor. What we have NOT come into contact with is any Tribe whose Court system is operating with financial resources comparable to other local and State jurisdictions.

***JUSTIFICATION FOR REQUEST:***

- 1. Hiring and Training of Court Personnel** - Tribal Courts make do with underpaid staff, under experienced staff and minimal training. (We have determined that hiring Tribal citizens limits the inclination of staff to move away; a poor excuse to underpay staff.)
- 2. Compliance with the 2010 Tribal Law & Order Act** – To provide Judges, Prosecutors, Public Defenders, who are attorneys and who are bared to do “enhanced sentencing” in Tribal courts
- 3. Salary Increases for Existing Judges and Court Personnel** – Salaries should be comparable to local and State Court personnel to keep pace with the non-Tribal judicial systems and be competitive to maintain existing personnel.
- 4. Tribal Courts Need State-of-the-Art Technology** - (software, computers, phone systems, tape recording machines.) Many Tribes cannot afford to purchase or upgrade existing court equipment unless they get a grant. This is accompanied by training expenses and licensing fees which do not last after the grant ends.
- 5. Security and Security Systems to Protect Court Records and Privacy of Case Information** - Most Tribal Courts do not even have a full time Bailiff, much less a State-of-the-Art security system that uses locked doors and camera surveillance. This is a tragedy waiting to happen.
- 6. Tribal Court Code Development** - Tribes cannot afford legal consultation. A small number of Tribes hire on-site staff attorneys. These staff attorneys generally become enmeshed in economic development and code development does not take priority. Tribes make do with under-developed Codes. The Adam Walsh Act created a hardship for Tribes who were forced to develop codes, without funding, or have the state assume jurisdiction. (States have never properly overseen law enforcement in a Tribal jurisdiction.)
- 7. Financial Code Development** - We have rarely seen Tribes with developed financial policies. The process of paying a bond, for example, varies greatly from Tribe to Tribe. The usual process of who collects it, where it is collected and how much it is, is never consistent among Tribes.

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**TRIBAL COURTS REVIEW:**

There are many positive aspects about Tribal Courts. It is clear that Tribal Courts and justice systems are vital and important to the communities where they are located. Tribes value and want to be proud of their Court systems. Tribes with even modest resources tend to allocate funding to Courts before other costs. After decades of existence, many Tribal Courts, despite minimal funding, have achieved a level of experience and sophistication approaching, and in some cases surpassing, local non-Indian Courts.

Tribal Courts, through the Indian Child Welfare Act, have mostly stopped the wholesale removal of Indian children from their families. Indian and Non-Indian Courts have developed formal and informal agreements regarding jurisdiction. Tribal governments have recognized the benefit of having law-trained Judges, without doing away with Judges who have cultural/traditional experience. Tribal Court systems have Appellate Courts, jury trials, well-cared-for Courthouses (even the poorer Tribes), and Tribal Bar listings and fees. Perhaps most importantly, Tribes recognize the benefit of an independent judiciary and have taken steps to insulate Courts and Judges from political pressure. No longer in Indian country are Judges automatically fired for decisions against the legislature.

Our research indicates Tribal Courts are at a critical stage in terms of need. Nationwide, there are 184 Tribes with Courts that received \$24.7 million in Federal funding in 2010. Assessments have indicated that BIA only funds Tribal Courts at 26% of the resources needed to operate. Tribes who have successful economic development ventures generally subsidize their Tribal Courts. On the flip side, Tribes who cannot afford to assist in the financial operations of the Court are tasked with doing the best they can with what they have even at the expense of decreasing or eliminating services elsewhere. All this while operating at a disadvantage with already overstrained resources and underserved needs of the Tribal citizens. The assessment suggests that the smaller Courts are both the busiest and most underfunded.

The grant funding from the Department of Justice (DOJ) is intended to be temporary. However, we have found that it is often used for permanent needs; such as funding a Drug Court Clerk who then is used as a Court Clerk with Drug Court duties. When the DOJ funding runs out, so does the permanent position. We have witnessed many failed Drug Courts, failed Court management software projects (due to training costs) and incomplete Code development projects. When the Justice funding runs out, so does the Project.

As a directive from the Office of Management and Budget, our Reviews specifically examined how Tribes were using Federal funding. In the last five fiscal years through FY2010, there were only two isolated incidents of a questionable expenditure of Federal funds. It is speculated that because of our limited resources, we compromise one's due process and invoke "speedy trials" violations to save Tribal Courts money. Everyone who is processed through the Tribal judicial system is afforded their Constitutional civil liberties and civil rights.

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We do not wish to leave an entirely negative impression about Tribal Courts. Tribal Courts need an immediate, sustained and increased level of funding. True. However, as we have noted, there are strong indications that the Courts will put such funding to good use.

There are Tribes like the Fort Belknap Tribe of Montana whose Chief Judge manages both offices and holds Court in an old dormitory that can't be used when it rains because water leaks into the building and the mold has consumed one wall. ***Their need exceeds 100%.***

There are several courts where the roofs leak when it rains and those court houses cannot be fixed due to lack of sufficient funds. The Team took pictures of those damaged ceilings for the BIA hoping to have additional funds for the Tribes to fix the damaged ceilings.

Tribal Courts have other serious needs. Tribal Appellate Court Judges are mostly Attorneys who dedicate their services for modest fees that barely cover costs for copying and transcription fees. Tribal Courts offer Jury Trials. In many Courts, one sustained Jury Trial will deplete the available budget. The only place to minimize expenses is to fire staff. Many Tribal Courts have Defense Advocates. These advocates are generally not law trained and do a good job protecting an individual's rights (including assuring speedy trial limitations are not violated.) However, this is a large item in Court budgets and if the defense advocate, or Prosecutor, should leave, the replacement process is slow.

I come here today to tell Congress these things. We feel it is our duty to come here on behalf of Tribes to advocate for better funding. Tribes ask us to tell their stories. They open their files and records to us and say, "We have nothing to hide". Tell Congress we need better facilities, more law enforcement, more detention facilities, more legal advice, better codes... the list goes on and on. But, as we have indicated, it all involves more funding. This Congress and this Administration can do something great. We respectfully request that funding be invested in our Tribal courts to fulfill and meet the promises that have been made.

**NATIONAL REQUESTS:**

**We support the requests and recommendations of the National Congress of American Indians.**

In closing and on behalf of the Independent Tribal Court Review Team; Charles D. Robertson Jr., Honorable Philip D. Lujan, Myrna R. Rivera and myself, we thank you for the opportunity to provide these requests and recommendations.