



LUMMI INDIAN BUSINESS COUNCIL

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**Testimony Presented by Sheri Lee Williams, Councilwoman
On Behalf of the Honorable Clifford A. Cultee, Chairman of the Lummi Nation
Before the House Interior, Environment and
Related Agencies Appropriations Subcommittee on the FY 2012 Budgets for the
Bureau of Indian Affairs and the Indian Health Service Programs
May 4, 2011**

Good morning and thank you Mr. Chairman and distinguished Committee Members for the opportunity to share with you the appropriation priorities of the Lummi Nation for the FY 2012 budgets of the Bureau of Indian Affairs and the Indian Health Service.

Lummi Specific Requests – Bureau of Indian Affairs

- +\$2 million – Phase 1. New Water Supply System-Increase in funding for Hatchery construction, operation and maintenance. Funding will be directed to increase hatchery production to make up for the shortfall of wild salmon.
- +\$300,000 to increase the funding for the BIA Natural Resources Law Enforcement.

Committee Directive Requests

- Direct the BIA to work with Lummi Nation to insure that its needs related to the removal of wild stocks from the salmon available for harvest are met through increased hatchery construction, operations and maintenance funding.
- Direct the DOI to fully fund the Office of Indian energy and Economic Development, Workforce Development Division to continue its job training/development work that has resulted in jobs.

Lummi Specific Requests – Indian Health Service

- Request Funds for community based Aids/HIV Rapid Testing
- +\$4 million to combat Drug Epidemic in Lummi Community

Regional Requests

- Support the requests of the Affiliated Tribes of Northwest Indians, the Northwest Portland Area Indian Health Board and the Northwest Indian Fisheries Commission

National Requests

- TPA General Increase - Provide \$82.9 million (10% increase over FY2010) for General Increase
- Contract Support Costs - Provide \$50 million Increase for BIA and \$112 Million for IHS to Fully Fund Contract Support Cost (CSC), Including Direct CSC; and Provide \$5 million for the Indian Self-Determination (ISD) Fund
- Law Enforcement/Tribal Courts/Tribal Detention Facilities – Provide \$30 million over FY2010 levels
- Education – Provide \$24.3 million to fully restore funding to Johnson O'Malley (JOM)
- Increase funding to the Office of Self-Governance to fully staff the office
- Support the Requests if the National Congress of American Indians

BACKGROUND INFORMATION

The Lummi Nation is located on the northern coast of Washington State, and is the third largest Tribe in Washington State serving a population of over 5,200. The Lummi Nation is a fishing Nation. We have drawn our physical and spiritual sustenance from the marine tidelands and waters for hundreds of thousands of years. Now the abundance of wild salmon is gone. The remaining salmon stocks do not support commercial fisheries. Our fishers are trying to survive from shellfish products. In 1999 we had 700 licensed fishers who supported nearly three thousand (3,000) tribal members. Today, we have about 523 remaining. This means that over 200 small businesses in our community have gone bankrupt in the past fifteen (15) years. This is the inescapable reality the Lummi Nation fishers face without salmon. We were the last surviving society of hunters/gatherers within the contiguous United States. We can no longer survive in the traditional ways of our ancestors.

LUMMI SPECIFIC REQUESTS – BUREAU OF INDIAN AFFAIRS

- **+\$2 million – Phase 1. New Water Supply System-Increase in funding for Hatchery construction, operation and maintenance. Funding will be directed to increase hatchery production to make up for the shortfall of wild salmon.**

The Lummi Nation currently operates two salmon hatcheries that support tribal and non-tribal fishers in the region. The tribal hatchery facilities were originally constructed utilizing Federal funding from 1969-1971. Predictably some of the original infrastructure needs to be repaired, replaced and/or modernized. Lummi Nation Fish Biologists estimate that these facilities are currently operating at 40% of their productive capacity. Through the operation of these hatcheries the Tribe annually produces one million fall Chinook and two million Coho salmon. To increase production, we offer a “phased approach” that addresses our water supply system. The existing system only provides 850 GPM to our hatchery. To increase production to a level that will sustain tribal and non-tribal fisheries alike, we need to increase our water supply four-fold. A new pump station and water line will cost the Tribe approximately six million dollars. We are requesting funding for the first phase of this project. Our goal is to increase fish returns by improving aquaculture and hatchery production and create a reliable, sustainable resource to salmon fishers by increasing enhancement.

- **+\$300,000 to increase the funding for the BIA Natural Resources Law Enforcement**
-Two new officers, extended training beyond the Police Academy, and one new patrol vehicle.

The Lummi people rely on several commercial fisheries for their livelihood and several non-commercial fish, game, fowl and natural plants for ceremonial and subsistence purposes. Lummi Natural Resource Officers patrol the Lummi Indian Reservation and all areas open to harvest within the Usual and Accustom (U&A) fishing grounds, and hunting and gathering areas of the Lummi Nation, as defined by the Treaty of Point Elliott (Treaty) and Federal Court cases interpreting the Treaty.

There are currently three Natural Resource Enforcement Officers (NREO's) and one Sergeant to patrol the 1846 square miles of marine area and 9145 square miles of the ceded lands. The

NREO's patrol from the Canadian Border to Mt. St. Helens; a distance roughly 300 miles north to south. The Natural Resource Officers patrol a vast area, with a large amount of Natural Resources to protect, including: shellfish, salmon, halibut, deer and elk, and other protected species. The NREO also respond to emergency oil spills and natural disasters.

Currently, the Lummi NREOs are only able to concentrate their patrol to the major Treaty concerns of fishing, crabbing, and shellfish harvesting. Other important enforcement activities include: halibut fishing, hunting, goosander harvests, derelict vessels and gear management, and monitoring protected species. The addition of two Natural Resource Enforcement Officers would mean that we could effectively patrol the U&A, enforce Tribal laws, and protect our natural environment.

To increase efficiency within the department and to promote safety of our officers, we request funds for training beyond the basic training that is given in the Academy. Our officers patrol in boats, ATVs, and motorized vehicles, and require proper training in operation and maintenance.

- **Direct the DOI to fully fund the Office of Indian Energy and Economic Development, Workforce Development Division to continue its job training/development work that has resulted in jobs.**

Unemployment on the reservation has been very difficult to address with limited on-reservation jobs. Tribal governments need to be able to meet the employment and training needs of our membership as well as the business development needs of our communities. We need financial assistance to enable our membership to get the job skills the local (Reservation and Non-Reservation) labor market demands. The Lummi Nation and many other Tribes worked well with the Office of Indian Energy and Economic Development. We developed and successfully implemented a welding training program with the support of both union and non-union companies. Now we hear that all employment and training funding has been eliminated from this office. We ask the Committee to direct the Bureau to replace the employment and training support activities that were provided by the Office of Indian Energy and Economic Development.

LUMMI SPECIFIC REQUESTS – INDIAN HEALTH SERVICE

- **Request Funds for Community Based Aids/HIV Rapid Testing**

Lummi Nation is requesting that all Tribal Health Systems, operating within the Indian Health Service, be provided with an annual allocation to support community based Aids/HIV rapid testing based on the population served. Lummi Nation is experiencing an epidemic of black tar heroin among its addicted members. This has increased the risk in our community for contracting HIV. We are seeking this funding on an emergency basis, to support implementation of rapid HIV Testing among all Tribal members.

- **+\$4 million to Combat Drug Epidemic in Lummi Community**

Drug abuse is at epidemic proportions on the Lummi Reservation. The proximity of the Lummi Reservation to the U.S. and Canadian Borders makes for a key ingredient in successful drug

trafficking. With that prime ingredient add production, transportation, distribution, abuse and drug related crimes...welcome to where I live and where my people are becoming prisoners in our own homes.

Our people are seeking a return to health through massive consumption of Lummi Nation Health Care resources. We have been successful in slowing the rate of death due to overdose suicides. We have increased the number of Tribal members receiving substance abuse treatment and mental health counseling by 300%. But we are not equipped to keep pace with the increasing access and use of heroin and other opiate additive drugs that have besieged our ports, borders, communities and citizens.

National Requests - Bureau of Indian Affairs

1. **TPA General Increase** - Provide \$82.9 million (10% increase over FY2010) for General Increase
2. **Contract Support Costs** - Provide \$50 million Increase for BIA to Fully Fund Contract Support Cost (CSC), Including Direct CSC; and Provide \$5 million for the Indian Self-
3. **Determination (ISD) Fund**
4. **Law Enforcement/Tribal Courts/Tribal Detention Facilities** – Provide \$30 million over FY2010 levels
5. **Education** – Provide \$24.3 million to fully restore funding to Johnson O'Malley (JOM)
6. **Increase funding to the Office of Self-Governance to fully staff the office for the increase of Tribes entering Self-Governance**

National Requests - Indian Health Service

1. **Fully Fund Current Services** - Provide \$532 million for IHS and Tribal Pay Costs, Inflation and Population Growth; Staffing for New/Replacement Facilities and Health Care Facilities Construction Previously Approved Plan
2. **Contract Health Services (CHS)** - Provide \$118 million Increase for CHS
3. **Contract Support Costs (CSC)** - Provide \$122 million for IHS to Fully fund CSC
4. **Office of Tribal Self-Governance (OTSG)** - Increase \$5 million to the IHS OTSG

Thank you for this opportunity to provide these oral and written appropriations priorities of the Lummi Nation.

Hy'shqe.



Quinault Indian Nation

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TESTIMONY BEFORE THE
HOUSE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
ON THE FY 2012 BUDGETS FOR THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH
SERVICE

BY FAWN R. SHARP, PRESIDENT
QUINAULT INDIAN NATION

May 4, 2011

"The Great Spirit bestowed life to all of us...including the animals, birds, fish, insects and plants. Our collective Native warnings and predictions were ignored in the rush to capitalize and exploit the bountiful resources of the land. Countless irreplaceable species are preserved now in museums or documents in textbooks. As the consequences of unmanaged exploitation and pollution reach irreversible proportions, the United States heeded our centuries old appeals for environmental protection. We only hope it's not too late and that Mother Nature's wounds can still be healed. We will continue to serve as the environmental conscience to the nation and the world."

*Joseph B. DeLaCruz, President
Quinault Indian Nation, 1972-1993*

In the spirit of these profound words of our former President, I am honored to appear before this Committee on behalf of the Quinault Indian Nation and provide testimony on our priority requests and recommendations on the FY 2012 Budgets for the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS).

Tribal Specific Priority Requests

- \$7 million a Year for Blueback Restoration – BIA (for 2012-2019)
- \$500,000 for Substance Abuse Strategy – IHS
- \$325,000 TO FULLY IMPLEMENT THE QUINAULT FOREST MANAGEMENT PLAN (FMP)
- \$2.21 MILLION McBRIDE ROAD MAINTENANCE AND EMERGENCY RESERVATION EXIT

Local/Regional Requests and Recommendations

- Affiliated Tribes of Northwest Indians
- Northwest Portland Area Indian Health Board
- Northwest Indian Fisheries Commission

Self-Governance and National Requests and Recommendations:

Bureau of Indian Affairs

1. TPA General Increase - Provide \$82.9 million (10% increase over FY2010);
2. Contract Support Costs - Provide \$50 million Increase for BIA to Fully Fund Contract Support Cost (CSC), Including Direct CSC; and Provide \$5 million for the Indian Self-Determination (ISD) Fund;
3. Law Enforcement/Tribal Courts/Tribal Detention Facilities – Provide \$30 million over FY2010 levels; and,
4. Increase funding to the Office of Self-Governance to fully staff the office for the increase of Tribes entering Self-Governance.

Indian Health Service

1. **Fully Fund Current Services** - Provide \$532 million for IHS and Tribal Pay Costs, Inflation and Population Growth; Staffing for New/Replacement Facilities and Health Care Facilities Construction Previously Approved Plan;
2. **Contract Health Services (CHS)** - Provide \$118 million Increase for CHS;
3. **Contract Support Costs (CSC)** - Provide \$122 million for IHS to Fully fund CSC; and,
4. **Office of Tribal Self-Governance (OTSG)** - Increase \$5 million to the IHS OTSG.

We support all requests and recommendations of the **National Congress of American Indians (NCAI)** and the **National Indian Health Board (NIHB)**.

TRIBAL SPECIFIC REQUESTS JUSTIFICATION

\$61 MILLION BLUEBACK RESTORATION (\$7 million annually from 2012-2019)

The Blueback Restoration Program is designed to halt the current habitat loss and deterioration and to repair and restore natural habitat forming processes and sockeye production on the Quinault floodplain. Conditions that will result from implementation of this program will benefit other salmon stocks in the system and will serve to protect private property and public infrastructure. The program plan calls for formation of public and private coalitions and partnerships to implement restoration actions.

The Quinault River Blueback (Sockeye Salmon) Restoration Program will help to restore the natural beauty and productivity of the Quinault River Basin to historic levels, thus making it a more attractive tourism destination. In addition, the program will provide local construction jobs during its implementation phase, and the restoration program will result in conditions that will improve and sustain commercial and sport fishing on the Quinault River. The program will also benefit local residents and businesses by reducing the likelihood of flooding and property loss and increasing local economies both in the near and long term future. Implementation of the restoration program will help avoid the burdensome and restrictive consequences of having the Quinault sockeye listed as threatened or endangered under provisions of the Endangered Species Act (ESA).

This unique and valuable stock of salmon is near collapse due mostly to degraded habitats in the upper Quinault River Basin and in Lake Quinault. This habitat loss has occurred over the past century due to historic timber harvesting, property development, and infrastructure construction. Natural processes on the floodplain began unraveling in the late 1800s and the deterioration is continuing in the present time.

This is a long term project expected to take up to 20 years to complete structure placement and enhancement, including the engineering and material procurement, with full implementation occurring in the decades following as natural processes rebuild the habitat to historic conditions. Through successful efforts of this program, it will protect and restore the livelihoods of 100 commercial fishermen and 25 sport fishing guides in Grays Harbor and Jefferson Counties and the Quinault Indian Reservation.

The program will also contribute partial support for approximately 20 jobs in the fish processing industry in western Washington, thus improve the economic status of the families living in the communities within the Quinault Indian Reservation. The program will provide employment for 10-30 laborers and equipment

operators in Grays Harbor and Jefferson counties during the construction phases of individual projects. This project will reverse adverse environmental impacts by restoring habitats and ecosystems of the Quinault River and Lake Quinault while at the same time stabilizing the river channel in efforts to protect infrastructure and property loss.

The construction phase of this plan was implemented in the Fall of 2008 with the construction of 12 engineered log jams. With full funding as needed on an annual basis, the basic construction phase of this project is expected to be completed at the end of Fiscal Year 2019. Fertilization, data acquisition and monitoring will continue for many years.

\$500,000 SUBSTANCE ABUSE AND SECURITY STRATEGIC PLAN

The Quinault Indian Nation Substance Abuse and Security Strategic Plan seeks to improve, integrate, and strengthen the overall health and services to protect the communities on the reservation from the significant risks related to heroin and methamphetamine production, sale, and use by targeting enforcement, outreach, prevention, stabilization and harm reduction services to high risk-populations.

Heroin and methamphetamine use within the Quinault Indian Nation is a serious concern and a significant public health and social challenge. Some of the major problems contributing to the spread of meth trafficking is the size and isolation of our communities, and jurisdictional issues related to law enforcement on Tribal lands. Tribal and local agencies are discovering that cooperation and collaboration represent a way to leverage resources to attack the threat of heroin and methamphetamine. Cooperative, inter-jurisdictional law enforcement efforts are the only way that Federal, Tribal, and state law enforcement agencies will be able to effectively combat methamphetamine.

During this past year, the Quinault Indian Nation identified border and security threats as an added component to our comprehensive substance abuse strategy. The Quinault Indian Reservation occupies 27 miles of international border along the Pacific Ocean. We believe drug traffickers have discovered our unpatrolled borders and the twenty-two points of entry via abandoned logging roads directly to U.S. Hwy 101. Our ocean fishermen have reported high speed vessels making multiple trips into Raft River, a system in a very remote location along our central coast. Following our meetings with the U.S. Border Patrol, we learned that our coastline is not a part their regular patrol routes. Our Resources Protection Officers and Police Officers have also received multiple reports of camouflaged persons exiting from boats onto our shore, while confirming no military operations were underway at that time. We have also received multiple reports of low flying helicopters both within the interior and along our coastline at odd hours of night and early morning.

The Quinault Indian Nation's Substance Abuse Strategic Plan is part of a broader more comprehensive alcohol and drug strategy that recognizes the need to plan for the future. The Nation has encouraged collaborative relationships among government departments, health authorities, professionals, community members and families to create conditions that **prevent** drug use, **treat** drug users, **educate** the public and hold offenders **accountable** and **control access** to supply while helping ensure safer communities. Most importantly, we have actively sought the guidance and wisdom of our elders and with the participation of our youth, community, churches and school districts we have undertaken a multidisciplinary approach and strategy, emphasizing prevention, enforcement, treatment and aftercare. Unfortunately, the best plans

prove valuable only when the funding is available to execute and implement the strategy. We have found that at every level and in every discipline, funding to support our strategy is appallingly inadequate. We stress the urgent need to reclaim our communities to protect our families, our elders and our next seven generations from this menacing and deteriorating drug on the Quinault Indian Nation Reservation.

\$325,000 TO FULLY IMPLEMENT THE QUINAULT FOREST MANAGEMENT PLAN (FMP)

From time immemorial, the Quinault people have been deeply connected with the land, water systems, and forests. The Quinault Nation, with enthusiasm and tremendous hope for building a sustained economy, adopted a Forest Management Plan in 2001. However, recent budget reductions have brought our efforts in implementing the plan to a near standstill. We are entering a second phase of implementation and must evaluate the plan's effectiveness and our need to undertake adaptive management measures. However, with recent and impending reductions in natural resource funding, we are left with very little hope for implementing the plan as it was originally intended. Moreover, the Endangered Species Act (ESA) created unfunded mandates for the Quinault Indian Nation Forestry Management Program. We contend with ongoing issues, daily, due to a lack of funding and inadequate staffing levels. We urge you to be very cognizant of trust obligations and commitments to maximize tribal resources and restore funding levels to ensure that progress made, thus far, will continue to support a comprehensive and sustained management approach to reservation lands.

\$2.21 MILLION McBRIDE ROAD MAINTENANCE AND EMERGENCY RESERVATION EXIT ROUTE: BIA/ROADS MAINTENANCE PROGRAM

The Quinault Reservation is located in Grays Harbor County in the village of Taholah, Washington; a rural isolated and economically deprived area. The village of Taholah lies in a tsunami danger zone. The site of the village is barely above sea level and experts have determined that the sea level is rising because of global warming patterns. For Taholah, tsunami is a health and safety risk factor that we must live with everyday. The Quinault Reservation is interlaced with thousands of miles of roads that are left over from large logging contracts that ended in about 1980. Most of these roads do not have the required right-of-way and do not receive funding for maintenance.

The village of Taholah is accessible via SR 109 that parallels the Pacific Ocean. The McBride Road, a single forest road, is the only escapement route available to the 1,000 community members of the Quinault Indian Nation living in the village of Taholah. Its state of disrepair necessitates that immediate action be taken to bring the road up to a Class B gravel road status to be used in cases of emergency. The cost for this project is \$876,500 to repair 10.75 miles and could be accomplished within a 3-month time frame during dry weather conditions. The Project will create four new jobs in right-of-way acquisition and road engineering and will impact about 400 jobs of timber workers, fishermen, and fishing guides that rely on these roads for their livelihood.

Major portions of this route are at sea level. What is particularly important to understand is that the portions of this road above sea level are susceptible to mudslides. Three such mudslides have occurred in the past five years. In a single event, the road blocked access for 3 days. Medical needs for village people became an issue, while those in need of kidney dialysis were particularly affected. Some tribal members were able to evacuate the village by using another, longer alternate route. Still, this application is unsafe for use by the general public because the forest roads are not patrolled, well maintained, have limited signage and cell reception.

**Testimony of Micah McCarty,
Chairman, Makah Tribal Council**
Neah Bay, Washington

May 4, 2011

Before the
House Appropriations Subcommittee
On Interior, Environment and Related Agencies
On the Fiscal Year 2011 Budget

Good afternoon, Mr. Chairman and Members of the Subcommittee, I am Micah McCarty, Chairman of the Makah Tribal Council. I am joined today by Michael Lawrence, the Vice Chair of the Council. First of all, Mr. Chairman, I want to congratulate you for the honor you have received by being named Chairman of this distinguished Subcommittee.

I would like to testify today on six priority issues:

- federal assistance for improvements to our decrepit community jail through the Department of Justice or other sources;
- the need for increased contract support cost funding from the Indian Health Service (IHS) for the administration of our Neah Bay health clinic;
- the role of tribes in implementation of federal ocean policy;
- our Tribe's desire to deepen Neah Bay harbor for economic development;
- assistance from the federal government for helping us close the Warmhouse Beach open dump on our Reservation; and
- the need for consultation with our Tribe and protection of our treaty rights as part of any effort to expand Olympic National Park.

Neah Bay Jail

The current Neah Bay Public Safety Correction Facility is totally inadequate, in size, capacity and design, for our community's needs. A BIA audit in 2001 found it non-compliant with almost all of the BIA's detention facility standards, and it has gotten worse since then. Inmates have been able to escape from the jail by kicking through decomposing walls and punching out window frames. The facility has serious plumbing and wiring deficiencies. The kitchen at the jail is no longer usable for preparing meals for inmates.

Our Tribe's long-term goal is to create a modern 911 Public Safety Complex above the tsunami floodplain. Our short-term goal is to repair the current facility by the most cost-effective means possible to meet minimum standards. We believe the best way to do that is by 1) purchasing a 60' by 53' modular unit that can be attached to the existing facility and house our inmates; and 2) making improvements to the existing building for administrative uses and to the adjoining grounds.

We were deeply grateful to this Subcommittee for including funding in your FY 2011 appropriations bill for improvements to this facility. As you know, that measure was never reconciled with the Senate and, by all accounts, FY 2011 appropriations will not include earmarks.

We have sought and will continue to seek grant funding for this project through the Justice Department's Coordinated Tribal Assistance Solicitation and the Correctional Facilities on Tribal Lands Program. We would appreciate the assistance of Congress in helping us secure funding for this program through grants or other funding opportunities. Such assistance will help us provide a correctional facility that meets the public safety and public health needs of our community.

Contract Support Costs

In 2006, the Makah Tribal Council assumed the administration of all direct health care services in Neah Bay through a self-governance compact agreement with the Indian Health Service (IHS). We signed that agreement with the understanding that, in the next few years, we would receive significant contract support cost (CSC) funding.

We appreciate the efforts this Subcommittee has made to address the serious shortfall in CSC funding. Our Neah Bay clinic has benefited substantially from increases in CSC funding in recent years. Those additional funds have enabled us to hire a fourth physician at our clinic, expand our behavioral health, mental health, dental and preventative health programs, and open a full-time fitness center.

We urge this Subcommittee not to back-track; but to build on and complete the good work done in recent years by providing 100 percent of CSC funding for self-governance health programs. By doing so, you will be complying with the letter and the spirit of the Indian Self-Determination Act as well as the recent Supreme Court decision on contract support costs.

National Ocean Policy

I am deeply honored to have been named by President Obama as a member of the Governance Coordinating Committee that will coordinate with the National Ocean Council on national ocean policy issues. By naming me and two other tribal

representatives to this Committee, the Administration has acknowledged the importance of tribal consultation in the setting of national policies.

I believe that tribes will be able to inform the National Ocean Council's efforts to eliminate waste and reduce the inefficiency resulting from the maze of dozens of different laws, policies and regulations affecting the oceans. I greatly appreciate the opportunity to serve in this important role.

Neah Bay Harbor

The Makah Tribe is committed to improving the harbor in Neah Bay to help our economic development efforts. We are interested, for example, in shipping aggregate materials from our sand and gravel pit for use in regional construction projects. We were unsuccessful in our effort to secure TIGER grants for waterfront planning and for replacement of our dock, but we will continue to press our efforts.

We were disturbed to learn that the Administration has proposed to cut in half harbor maintenance in "low use" harbors as part of its FY 2012 budget request. In our case, we want to deepen our harbor to greatly increase use of our harbor for the good of our community and the economy of our region.

The shallow draft in Neah Bay harbor also poses a threat to marine safety. We have a rescue tug stationed in our harbor and other response vessels also call there. When the tide is low, these vessels often have a difficult time entering or leaving the harbor. Deepening our harbor could therefore also help prevent the loss of life and property from maritime incidents.

Warmhouse Beach Open Dump

The Makah Tribe is taking aggressive steps to address the serious environmental and health risks posed by the Warmhouse Beach Open Dump, a decades-old landfill located on the Makah Reservation that was used by the U.S. Department of Defense and other federal agencies to dispose of hazardous waste. The Dump is leaching harmful chemicals into a nearby stream which flows into the pristine waters of the Strait of Juan de Fuca at Warmhouse Beach, a traditional shellfishing location for the Makah people. Frequent fires at the Dump contribute to air pollution in the Town of Neah Bay and the Reservation community. Closing the Dump is the Makah Tribal Council's top environmental priority.

The Tribe has documented that the Makah Air Force Station, which supported radar operations at Bahokus peak from World War II through 1988, disposed of many hazardous substances at the Dump since its opening in the 1970s, including asbestos, batteries, pesticides, paints and waste oil. For many years, other federal agencies with operations on the Reservation also disposed of their waste at the Dump. As a result of

this legacy of waste disposal on tribal land, the federal government bears substantial responsibility for cleaning up the Dump and preventing further exposure of the Reservation community to the environmental and health hazards caused by the Dump.

The Makah Tribe has taken action to secure federal assistance for closing the Dump through negotiations with the Defense Department or possibly through the federal Superfund program. We have waited many years and tried many avenues to close this dump. We believe that our latest actions are a necessary last resort to protect the health of our citizens. We would appreciate this Subcommittee's support of our efforts.

Olympic National Park

The National Park Service has proposed the purchase of 240 acres near Umbrella Bay of Lake Ozette to expand the size of the Olympic National Park. The Makah Tribe filed comments on this proposal that focused on the need for the National Park Service to engage in government-to-government consultation with the Makah Tribe regarding this proposed boundary expansion in order to ensure that it does not impair the treaty hunting and gathering rights of the Makah Tribe in this area. Our Tribe reserved the right to hunt and gather on "open and unclaimed lands" in the 1855 Treaty of Neah Bay.

Congressman Norm Dicks has consulted closely with our tribe and other tribes on possible legislation to expand the National Park. We appreciate his willingness to include a treaty savings clause in such legislation to ensure that our Tribe's existing treaty rights on these lands are preserved.

Thank you again, Mr. Chairman and Members of the Subcommittee, for this opportunity to testify before you today.

**Testimony of Brian Patterson, President
United South and Eastern Tribes, Inc.
before the
House Interior Appropriations Subcommittee
Wednesday, May 4, 2011**

FY 2012 Interior Appropriations Requests:

- **Include Carcieri “Fix” Language**
- **Generally Fund Indian Programs at a Level above the Rate of Inflation**

Chairman Simpson, Ranking Member Moran and members of the Subcommittee, my name is Brian Patterson. I am the president of the United South and Eastern Tribes, Inc. (USET). Thank you for this opportunity to present to you on the FY 2012 Budget and the budget priorities of USET.

The United South and Eastern Tribes, Inc. (USET), is an inter-tribal organization representing 26 federally recognized Tribes from Texas across to Florida and up to Maine. The USET Tribes are within the Eastern Region of the Bureau of Indian Affairs (BIA), covering a large expanse of land and area compared to the Tribes in other Bureau of Indian Affairs Regions. Due to this large geographic area, the tribes in the Eastern Region have great diversity.

I. The Constitution, Indian Tribes, Treaties and the Laws of the United States.

From the earliest days of the United States, the Founders recognized the importance of America’s relationship with Native nations and Native peoples. They wove important references to that relationship into the Constitution (e.g., Art. I, Section 8, Cl. 3 (Indian Commerce Clause); Article II, Section 2, Cl. 2 (Treaty Clause)). Natives influenced the Founders in the development of the Constitution as recognized by the 100th Congress, when the Senate and the House passed a concurrent resolution that “on the occasion of the 200th Anniversary of the signing of the United States Constitution, acknowledges the historical debt which this Republic of the United States of America owes to the Iroquois Confederacy and other Indian Nations for their demonstration of enlightened, democratic principles of government and their example of a free association of independent Indian nations;...” (S. Con. Res. 76, 100th Congress.) One has only to walk the halls of the Capitol to see many works of art and sculpture that depict, although sometimes in ways that are objectionable to Native peoples, the central role that Native nations have played in the development of America’s national identity. Not depicted on the walls of the Capitol are the many injustices that Native peoples have suffered as a result of Federal policy, including Federal actions that sought to erode Native learning and culture. Out of those injustices, and from other legal sources, there has arisen a Federal trust obligation to support Native governments and Native peoples.

The Indian provisions in the Constitution were given immediate life in treaties that the United States entered into with Indian nations beginning with the Treaty with the

Delaware in 1778 and continuing through an additional 373 treaties. Additionally, in the first decades of the United States, numerous laws were enacted addressing the details of the Federal-Tribal relationship (e.g., Trade and Intercourse Acts of 1790, 1793, 1796, 1799, 1802, and 1834), even as the Federal courts defined the Federal government's trust obligation to Indian nations (e.g., *Cherokee Nation v. Georgia* (1831)). Notwithstanding this Constitutional foundation, the Federal government engaged in many actions that betrayed the treaties and trust obligation to Indian nations, such as the seizure of Indian lands and the forced assimilation efforts of the Indian boarding school system, whose philosophy was captured by the founder of the Carlisle Indian School in the phrase "Kill the Indian in him, and save the Man." Fortunately, American greatness has led to more enlightened policies since the boarding school era, reflected in a host of laws that support tribal sovereignty and are critical to the vitality and well-being of tribal communities. Regrettably, these laws are rarely funded to the level necessary to achieve their intended purposes.

II. Carcieri "Fix." USET is very thankful to this Subcommittee for its strong support of the Carcieri "fix" in the last Congress. We look forward to working closely with you in this Congress to finally get that fix in place. USET was also very pleased to see that the Obama Administration has included language in its proposed FY 2012 budget that addresses the U.S. Supreme Court's 2009 *Carcieri v. Salazar* decision. The Court held in *Carcieri* that the Secretary of the Interior has authority to take land into trust under the Indian Reorganization Act of 1934 (IRA) only for those tribes that were "under federal jurisdiction" in 1934.

The Court's opinion is inequitable because it creates two classes of federally recognized tribes that would be treated differently under federal law – those that were "under federal jurisdiction" in 1934 and those that were not. The decision also opens the door to considerable confusion and potential inconsistencies concerning the status of tribal lands, tribal businesses, and important civil and criminal jurisdictional issues.¹

The Proposed Language is the Proper Response to *Carcieri v. Salazar*. The proposed IRA amendment is a direct and comprehensive response to the confusion generated by *Carcieri*. The proposal: (1) makes clear that the IRA applies to all federally recognized tribes; (2) ratifies previous actions taken by the Secretary under the IRA for any federally recognized tribe so that such actions cannot be challenged on the basis of whether the tribe was federally recognized or under federal jurisdiction in 1934; (3) impacts no statute other than the IRA; and (4) does not diminish or expand the Secretary's authority under any statute or regulation other than the IRA.

¹ These concerns are significantly heightened given the recent holding in *Patchak v. Salazar*, --- F.3d ---, 2011 WL 192495 (D.D.C. Jan 21, 2011) that the Quiet Title Act did not bar a challenge to the Secretary of Interior's decision to take land into trust for the Gun Lake Band that was raised on several grounds, including because the tribe was allegedly not "under federal jurisdiction" in 1934.

Simply put, the proposal does nothing more than restore the *status quo ante*. For nearly 75 years before the *Carcieri* decision, DOI and tribes throughout Indian Country consistently interpreted the IRA as applying to all federally recognized tribes. This proposal found strong support in the 111th Congress. Importantly, this same language was unanimously approved by that House Interior Appropriations Subcommittee late last year and included in the House-passed continuing resolution (H.R. 3082). The language is vigorously supported by tribal organizations across the country.

The “equal footing” doctrine compels Congress to enact this proposal. Congress amended the IRA in 1994 to clarify that all federal agencies must provide equal treatment to all Indian tribes regardless of how or when they received federal recognition. See 25 U.S.C. §476(f)-(g). This proposal is consistent with that amendment.

Also, action by Congress is needed to ensure permanent resolution of this issue. Although DOI may continue to acquire land in trust for tribes, any decisions to do so remain under the threat of *Carcieri*-based administrative and court challenges. Those who oppose tribal sovereignty will use *Carcieri* to challenge all trust acquisitions, even for tribes with long-standing treaty relations with the United States and clear federal recognition in 1934. Even lands currently held in trust for such tribes are now subject to challenge in court under the *Patchak* decision. Each of us is obliged to comb through years and volumes of historical records to establish a standard – “under federal jurisdiction” – that remains a moving target. This uncertainty undermines the very purpose of the IRA. Congress must provide Indian country certainty by enacting the proposed legislative fix.

Protecting Tribal Homelands and Promoting Self-Sufficiency. DOI has used the IRA to assist tribal governments in placing lands into trust, enabling tribes to rebuild their homelands and provide essential governmental services. Tribal trust acquisitions have also been instrumental in helping tribes protect their traditional cultures and practices. Equally important, tribal trust lands have also helped spur economic development on tribal lands, providing much needed financial benefits, including jobs, not only for tribal communities, but also the non-Indian communities that surround them.

Opponents argue that the *Carcieri* fix proposed here would lead to the proliferation of off-reservation Indian gaming across the country. That notion is wrong. The IRA’s land-into-trust process is legally distinct from determining whether Indian land is eligible for gaming. The Indian Gaming Regulatory Act (IGRA) generally prohibits gaming on lands placed in trust after 1988, making exceptions in extremely limited circumstances. DOI has promulgated strict regulations (25 C.F.R. Part 292) to guide the Secretary in determining whether Indian land meets an exception to the prohibitions set out in IGRA. Those with concerns over the expansion of gaming have every opportunity to oppose and possibly stop any off-reservation expansion under existing law and regulations.

Congressional Inaction Has Significant Consequences. Failing to enact the proposed amendment deprives tribal governments of important benefits that the IRA was intended

to provide. Inaction also threatens surrounding non-Indian communities that benefit from economic development on tribal lands.

Congressional inaction could also generate significant costs for the federal government. Until Congress addresses *Carcieri*, we should expect tribal opponents to frequently challenge pending trust acquisitions that the federal government must defend. Indeed, since the Court's decision, more than a dozen trust acquisitions have been challenged on this basis. The recent *Patchak* opinion compounds this problem. Taxpayers will bear the burden of such protracted and costly litigation. By contrast, the proposed amendment costs taxpayers nothing. It simultaneously eliminates the threat of significant litigation and mushrooming costs on the question of what "under federal jurisdiction" means.

Finally, *Carcieri* creates a significant threat to public safety on tribal lands. Upending decades-old interpretations regarding the status of Indian lands, *Carcieri* has thrown into doubt the question of who has jurisdictional authority over certain trust lands, and consequently casts doubt on federal prosecution of crimes committed in Indian country as well as civil jurisdiction. The proposed amendment alleviates this concern.

III. General Budget Considerations. While USET believes that *all* Indian programs are vital to creating strong Tribal Governments and healthy Tribal communities, and that Congress should protect and improve current base funding levels for all programs and provide for increases in excess of the inflation rate, the USET priority programs are: *Tribal Priority Allocations, Contract Support, Tribal Court, Scholarships and Cultural Resources.*

- **Tribal Priority Allocations (TPA).** Funding for the Eastern Region Tribes TPA needs to increase by at least \$9.4 million, even without considering our unmet historical needs.
- **Tribal Courts.** Currently, in the Eastern Region only 46% of the Tribes receive BIA funding for the operation of their Tribal courts.
- **Scholarships.** Over the last several years, funding for BIA's post-secondary education programs has remained largely stagnant.
- **Contract Support Costs.** The FY 2012 President's Budget proposes a funding increase of \$21.5 million for Contract Support Costs over FY 2010/2011CR levels. This proposed increase, coupled with previous years' increases, brings the BIA to 94% level of achieving this obligation. Other Bureaus within the Department of Interior, as with other federal agencies, have achieved their obligation of paying a 100% contract support costs to their non-native contractors; this obligation cannot be ignored when it involves tribal 638 contractors.
- **Cultural Resources.** Adequate funding for Tribal cultural resource programs is essential to the spiritual, health, social, and economic wellbeing of Tribal communities.

Conclusion. The work of this Committee is very important to Indian Country. Thank you for this opportunity to provide testimony. Please do not hesitate to contact me if you should have any questions.