

**Testimony of Kitcki Carroll, Executive Director  
United South and Eastern Tribes, Inc.  
Before the  
Interior Subcommittee of the House Appropriations Committee  
Tuesday, March 27, 2012**

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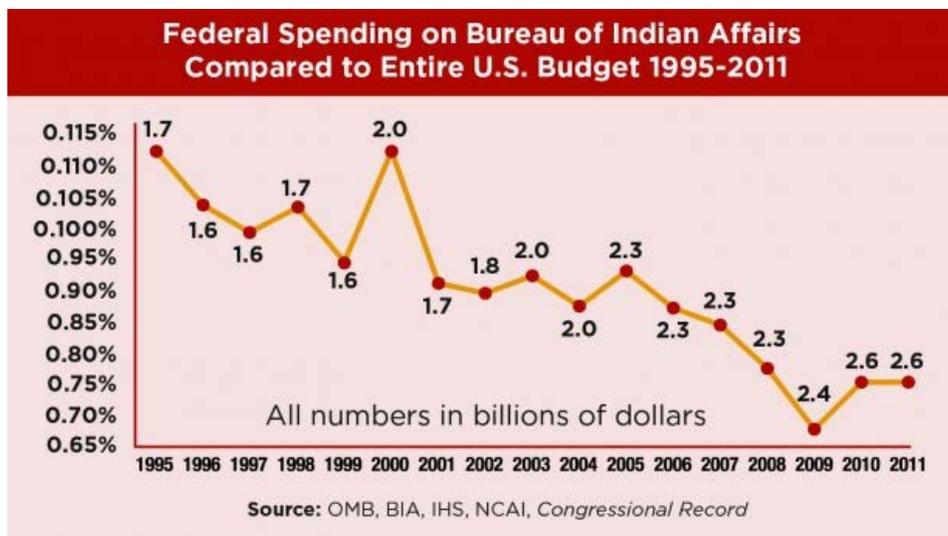
**Introduction.** Thank you for this opportunity to address the overall funding levels in the Bureau of Indian Affairs and the Indian Health Service. USET is an inter-tribal organization representing 26 federally recognized Tribes from Texas across to Florida and up to Maine. The USET Tribes are within the Eastern Region of the Bureau of Indian Affairs (BIA), covering a large expanse of land and area compared to the Tribes in other BIA Regions. Due to this large geographic area, the tribes in the Eastern Region have great diversity. From an economic standpoint, some of our member tribes have highly developed economies, while others remain mired in poverty. All of our tribes, however, look to the United States to live up to its trust responsibility, to support Tribal sovereignty, and to work with us on a government-to-government basis, especially on a matter as central to the trust responsibility as Federal budget policy.

**I. The Constitution, Indian Tribes, and the Federal Budget.** 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 those relationships 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 100<sup>th</sup> Congress, when the Senate and the House passed a concurrent resolution acknowledging the "historical debt" the United States owes to Indian tribes. S. Con. Res. 76, 100<sup>th</sup> Congress. 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 another 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. 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.

Because of this history, the Trust obligation of the Federal government to Native peoples, as reflected in the Federal budget, is fundamentally different from ordinary discretionary spending. As a 1977 U.S. Congress/American Indian Policy Review Commission Report stated:

The purpose behind the trust is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs that are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.

**II. President’s FY 2013 Budget for Indian Programs.** In evaluating whether the Federal budget fulfills the Trust responsibility, USET believes that it is critical to take into account the affects of inflation. From FY 2002 through FY 2008, despite annual increases, after taking into account the affect of inflation, most Federal domestic programs, including the Indian programs, saw a purchase power decrease of approximately 14%. The large budget increase in FY 2009, including ARRA funding, was approximately enough to make up for this effective cut and bring the purchase power of Indian programs back to FY 2002 levels, but in the intervening 10 years, Indian country needs have grown substantially. In a very real way, the budget of the United States government reflects the values of the American people. Courtesy of the National Congress of American Indians (NCAI), set forth below is a chart that depicts the percentage of the Federal budget dedicated to funding the BIA. As you can see, as a percentage of the overall budget, the BIA budget has declined from .115% in FY 1995 to .075% (correcting chart typo) in FY 2011, approximately a one-third decline as a percentage of the overall budget (despite a small bump up in FY 2010).



The President’s FY 2013 budget proposes an increase of 2.6% in the Indian Health Service budget, which is \$116 million over the FY 2012 enacted level. Although USET recognizes that in these difficult budgetary times any increase should be celebrated – and we are appreciative that health care is getting this increase – we must note that the general rate of inflation in 2011 is over 3%. Moreover, it is common for the medical rate of inflation to exceed the general rate of inflation by as much as double. Meanwhile, the President has proposed a modest \$4 million cut in the budget of the BIA, but in light of

inflation this must be understood to be potentially a 3% cut in purchase power. Overall, both agencies lose purchase power from FY 2012, even if some individual programs receive funding in excess of the inflation rate.

Of course, the Budget Control Act of 2011 provides for an 7-10% across-the-board cut for nearly all domestic and defense programs starting January 2, 2013. When you add the effects of sequestration to inflation, Indian country programs, which have always been sparsely funded, could be effectively cut by as much as 11-14%! This would be devastating to Native communities across the land.

Federal budget problems should not be addressed on the back of Native peoples. We respectfully ask the Committee to support the concept that funding increases should consistently exceed the relevant rate of inflation in order to achieve real progress in closing the services gap for Natives. At a minimum, Federal Indian programs should be held harmless from any reductions coming from sequestration or similar future draconian cuts, just as other low income programs are held harmless in the Budget Control Act of 2011 (*e.g.*, Child Care Entitlement to States; Child Health Insurance Fund; Family Support Programs and Temporary Assistance for Needy Families).

**General Budget Considerations.** While USET believes that *all* Indian programs are vital to creating strong Tribal Governments and healthy Tribal communities, 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 \$10 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. There should be sufficient funding for any tribe that needs to establish a court.
- **Scholarships.** Over the last several years, funding for BIA's post-secondary education programs has remained largely stagnant. This area should see increased funding.
- **Contract Support Costs.** There should be sufficient funding to assure that the BIA is able to meet 100% of its contract support 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.

**Indian Health Service.** Health care is not something that can be reduced, delayed, or withheld without real damage to people. Congress and the public have rightly supported maintaining health care funding for members of the military and veterans, and USET believes the same should be true of the Indian health care system. IHS and tribal budgets are suffering the consequences of the past two years' lack of funding for inflation and

population growth. With regard to the President's FY 2013 budget, of particular interest to USET are Contract Health Services, built-in costs, and contract support costs.

*Contract Health Services.* USET appreciates the recognition by Congress and the Administration of the importance of the Contract Health Services program, as evidenced by the FY 2012 increase in appropriations and the Administration's request for a \$54 million increase in FY 2013. While even this amount would not fully meet the need for Contract Health Services, we recognize the difficult fiscal environment, and urge Congress to appropriate at least the amount requested. The CHS program is of particular importance to the USET tribes, as much of our health care is done on a referral basis.

*Built-In Costs.* USET is very concerned about the cumulative effects of deficiencies in the past several years for built-in costs – namely, population growth, inflation, and required pay increases. The Administration and Congress do consistently request and provide funding for staffing and operation of new facilities, although not always in the amount the tribal health care providers feel is needed. In FY 2010 Congress provided \$169 million for built-in costs for pay raises, inflation, population growth, and staffing for new facilities. But in *FY 2011*, the only increases enacted were for a pay increase to Commissioned Officers and staffing of new facilities. The Administration had also requested \$60 million for inflation and \$52 million for population growth and funding for civilian pay increases for that year. And in *FY 2012* the Administration requested \$255 million for pay costs, inflation and population growth, none of which was appropriated. All of these costs must be absorbed by health programs. In *FY 2013* there is no request for funding for population growth, inflation (except for Contract Health Services) or pay increases. Funding is requested for staffing and operation of new facilities.

*Contract Support Costs.* Substantial increases in CSC appropriations in fiscal years 2010 and 2012 have reduced the shortfalls significantly, saving and creating jobs in tribal health care. More progress needs to be made, however. Underfunding of contract support costs continues to impose major hardships on tribal health care providers and patients around the nation, including USET's member tribes.

**III. *Carciari* Fix.** USET would like to see passage of the *Carciari* Fix, which the President included in his budget (and the previous two, as well). The *Carciari* Fix would provide that the Secretary of the Interior could, in accordance with rigorous guidelines, take land into trust for **all** Federally recognized tribes. The *Carciari* decision has already resulted in costly, protracted litigation on a broad range of issues with the United States, at taxpayer expense, as a defendant in more than a half dozen of these lawsuits. In addition, a number of Indian Country projects have slowed or been put on hold while Tribes and investors alike try to puzzle out the implications of the Supreme Court's holding.

The work of this Subcommittee is very important to Indian Country. Please do not hesitate to contact me if you should have any questions or if USET can be of any further assistance.