

NATIONAL CONGRESS OF AMERICAN INDIANS

NCAI TESTIMONY TO THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES ON FY 2006 BUREAU OF INDIAN AFFAIRS APPROPRIATIONS

MARCH 18, 2005



On behalf of the more than 250 member tribal nations of the National Congress of American Indians, we are pleased to present written testimony on FY 2006 appropriations for the Bureau of Indian Affairs and Office of Special Trustee.

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On February 7, President Bush submitted to Congress a \$2.57 trillion budget proposing a 2.1% increase in all foreign and domestic discretionary spending – but that included level funding and numerous decreases for Indian programs, continuing the trend of consistent declines in federal per capita spending for Indians compared to per capita expenditures for the population at large. This year's budget request reduces effective funding for tribal governments and instead funds a trust reorganization that tribes have opposed, with proposed reductions for programs such as Tribal Priority Allocations, education, and contract support, infrastructure, and land consolidation.

We are deeply disappointed that this budget does not support strong tribal self-government and self-determination. In many ways, tribal governments are exactly like state and municipal governments – providing critical services, shaping values, and promoting jobs and growth. Though federal spending for Indians has lost ground compared to spending for the U.S. population at large, tribal self-government has proven that the federal investment in tribes pays off. According to a recent report by the Harvard Project on American Indian Economic Development, reservation communities have made remarkable socio-economic gains in the last decade and these gains are driven by the policy of tribal self-government. Between 1990 and 2000, income levels rose by 33 percent and the poverty rate dropped by 7 percent, with little difference between those tribes with gaming operations and those tribes without gaming.

Yet substantial gaps remain – real per capita income of Indians living on reservations is still less than half of the national average. Indian unemployment is still double the rest of the country. Thus, while the work of tribal self-determination is well underway, much work is left to be done. These long enduring socio-economic disparities, and the success of tribes in addressing them, warrant continued federal investment in tribal self-determination. As Congress begins to shape the FY 2006 budget, NCAI urges Congress to honor its commitments to the Indian Nations and provide tribes with the necessary tools for continued progress through the promise of strong tribal self-government. We hope that Congress will work with tribes to see this priority better reflected in the budget process.

BUREAU OF INDIAN AFFAIRS/OFFICE OF SPECIAL TRUSTEE

The Bureau of Indian Affairs budget request is \$2.2 billion, a level \$108.2 million below the FY 2005 enacted amount. Operation of Indian Programs would receive \$1.9 billion, a \$1.9 million decrease. In the BIA budget, the costs of OST-BIA reorganization are effectively punishing tribes for the Department's own trust mismanagement—a double injury to individual and tribal trustees hurt by this mismanagement. Between 1996 and 2005, \$2.9 billion has been spent on the management and reform of Indian trust programs. Key areas of the BIA budget, such as Tribal Priority Allocations and initiatives that support education and economic development, remain deeply under-funded. NCAI does however commend the Administration's requested increases for law enforcement in the BIA budget. These welcome increases will help empower Indian Country to address tragic and accelerating crime rates.

Tribal Priority Allocations (TPA). The Administration requests a 10.7% decrease of \$9.4 million for TPA funding for FY 2006. TPA funds are the main source of tribal resources to provide governmental services at the local level for most tribes. Funding for this account supports ongoing services at the local tribal level for such critical needs as housing, education,

natural resource management, and tribal government services. Since tribes have flexibility to use TPA funds to meet the unique needs of their individual communities, these funds are an essential resource for tribes to exercise their powers of self-governance. This account, key to tribal self-determination, has been deeply under-funded for years. According to a 2003 report by the U.S. Commission on Civil Rights, the percentage of BIA funds provided to TPA has steadily dwindled since 1998. Between FY 1998 and FY 2003, TPA spending power has decreased by \$36.5 million or 4.4 percent. Unfortunately, the proposed FY 2006 budget continues to undermine the ability of tribes to effectively govern and serve their communities.

BIA Budget Restructuring and TPA Reforms. NCAI understands that BIA is proposing a revised budget structure for the Operation of Indian Programs account, which would group programs by function rather than organization and reduce the number of line items by 50%. NCAI objects to this proposal being presented to Congress before any informing or consultation with tribes. The current budget structure was developed by a Joint Tribal/DOI/BIA Reorganization Task Force in response to a Congressional directive, and implemented by Congress in FY 1993. NCAI urges Congress to allow tribal leadership, such as through the BIA/Tribal Budget Advisory Council Restructuring Subcommittee, to review the proposal and develop recommendations on any changes to the current structure that would be beneficial, in accordance with the Consultation Policy of the BIA. The Administration has also proposed an evaluation and reform of the allocation of funds in the TPA program to target the areas of greatest need. NCAI supports essential tribal consultation on the proposed reforms for the allocation of TPA funds.

Self-Determination Pay Cost Increases. NCAI recommends that 638 Pay Costs be restored to full funding for tribes in the FY 2006 Interior Appropriations budget. In the past, the 638 Pay Cost account has matched what the Administration and Congress provide for federal workers employed by federal agencies each year. But tribes received only 15% of their 638 Pay Cost funding in FY 2003 and about 30% in FY 2004. As a result of these decreases, tribes' core service funding is effectively rendered far less than nearly a decade ago. This under-funding seriously undermines tribes' ability to provide critical services promoting the public safety, security, and well being of communities already suffering some of the worst living standards in America. Some federal agencies may be able to absorb such an onslaught of cuts, but tribes—wrestling with well-documented funding shortfalls to begin with—cannot. The Pay Cost disparity between federal and tribal employees seriously undermines the federal Indian policy of self-determination and self-governance.

Contract Support Costs (CSC). Contract Support Cost funds are the key to self-determination for tribes—these funds ensure that tribes have the resources that any federal contractor would require to successfully manage decentralized programs. NCAI Resolution #ABQ-03-46 requests full funding of all contract support requirements and ask Congress to fully budget and to fully appropriate tribal contract support costs.

Trust Reorganization and the BIA Budget: The budget request includes a significant initiative to increase funding for trust management within the BIA and the Office of Special Trustee. The ongoing reorganization of the Bureau of Indian Affairs is creating a top-heavy bureaucracy that does not meet the real need for trust management on the reservations. Trust management requires people and systems on the ground in resource management, inspections, enforcement, appraisals, probate, and title. This work cannot be done solely by bureaucrats and accountants in Washington, DC or Albuquerque. Each region and reservation has unique needs, and tribes in each region of the country are preparing plans to make the reorganization funding more effective and equitable.

The 2005 enacted appropriations for Interior and the President's proposed FY 2006 budget continue to alarm tribal leaders. Since FY 2004, Central Office Operations have received the largest increases in the BIA budget: the 2006 requested amount would be an 8% increase over the FY05 enacted amount and a considerable 71% increase over the FY04 level for a total request of \$151.5 million. Regional Office Operations however have decreased by 35% from the FY 2004 amount in the FY 2006 request. The Office of Special Trustee, which does only accounting and oversight, received a 40% increase of \$75.8 million – to \$269.4 million. Tribal leaders have repeatedly emphasized that funding needed to correct problems and inefficiencies in DOI trust management must not come from existing BIA programs or administrative monies—yet once again, this year's budget request reduces effective funding for tribes to fund a reorganization that tribes have opposed. It is critical that the Department request additional funding from Congress to correct the internal problems created

through their administrative mistakes rather than depleting existing, insufficient BIA program dollars for these purposes.

Indian Land Consolidation. Tribal leaders continue to stress that Indian land consolidation is critical for addressing the problem of fractionation, which creates an accounting nightmare and enormous difficulties for owners in putting land to beneficial use. Land consolidation will improve federal administration and management, and saves substantial federal dollars that currently go to tracking tiny interests. The President's budget only requests \$34.5 million, a little more than one-third the amount authorized by Congress for FY 2006. NCAI urges an appropriation of \$95 million for Indian land consolidation in FY2006, the full amount authorized by Congress and approved by OMB in last year's Indian Land Consolidation Act Amendments. This investment in land consolidation will do more to save on future trust administration costs than any other item in the trust budget.

Alcohol and Substance Abuse Prevention: NCAI is concerned that the BIA Office of Alcohol and Substance Abuse has been eliminated from the FY 2006 BIA budget line item in the President's budget. Alcohol and drug use are endemic among American Indians, and are intertwined with all other socio-economic conditions. These conditions impede the development of strong tribal governments. NCAI supports appropriate consultation so that tribes receive sufficient resources to address the destructive prevalence of alcohol and substance abuse as well as the unique challenges facing Indian Country.

Indian Education: NCAI has high expectations that Executive Order 13336 will lead to specific proposals to enhance Indian education under the No Child Left Behind act. Not only will it take extensive consultation with tribes, but sufficient Federal funding is absolutely critical to fulfill the promise of the new Executive Order and of the NCLB. NCAI is concerned, however, that the BIA overall funding for Education programs in the proposed budget would fall approximately 11% from the 2005 enacted levels. Education funds in TPA would decline by 10 %, Continuing Education in Other Recurring Programs by 18.8%, and Education Construction by a dramatic 34.4% from the 2005 enacted levels

Proposed funding for Administrative Cost Grants—the equivalent of contract support for tribally operated schools—fails to come close to addressing the drastic shortfalls faced in this account. Current funding is approximately 70% of the formula required by law for essential Administrative Cost Grants that support sound management of tribally-operated schools. The President's budget would provide level funding for this critical line item. With the added burden of implementing the requirements of the No Child Left Behind Act, additional funding for Indian School Equalization Program is absolutely critical to the continuing function of BIA schools. NCAI urges restoring funding levels for school construction and facility repairs programs in the BIA school construction account, which was cut by \$31.6 million in FY 2005 and another \$89.5 million in the 2006 request, for a total reduction of \$121.1 million from the FY 2004 enacted amount.

Tribal Education Departments. Federal support for Tribal Education Departments has been authorized in several federal statutes including: the No Child Left Behind Act, the Indian Self-Determination and Education Assistance Act, Improving America's Schools Act, and others. Despite these authorizations the federal government has never appropriated federal funds for these programs. NCAI supports \$5 million in appropriations in FY 2006 for Tribal Education Departments so they can assume the responsibilities that Congress envisions for them.

Tribal Colleges and Universities. Since 1981, when the Tribal College Act was first funded the number of tribally controlled colleges funded under Title I has quadrupled, growing from 6 to 26 institutions and it is expected that three to five new tribal colleges will be eligible for Tribal College Act funding in the near future. In addition to the increased number of tribal colleges, enrollments have increased over 330 %between 1981 and 2004. When considering inflation, the TCUs need to be fully funded at the authorized level (\$6,000 per ISC) to simply receive a level of funding with the same buying power as the initial FY 1981 appropriation of \$2,831 per ISC. Diné College would need an additional \$6.5 million to meet its annual demonstrated need.

Institutional Operations Request. \$57.8 million, an increase of \$17 million, is needed to support the day-to-day operations of 26 tribal colleges under Title I of the Act at the authorized \$6,000 per ISC. NCAI supports adequate funding of the institutional operating budgets for the 6 other fully-accredited TCUs, including: Haskell

Indian Nations University, KS; Southwestern Indian Polytechnic Institute, NM; Crownpoint Institute of Technology, NM; United Tribes Technical College, ND; and Institute of American Indian Arts, NM.

Public Safety and Justice: NCAI highly commends the Administration's requested increases for BIA law enforcement in the proposed budget. Tribal governments serve as the primary instrument of law enforcement and emergency response for the more than fifty million acres of land that comprise Indian country, 2% of the United States. The BIA/Tribal Budget Advisory Council through formal motion has made law enforcement, justice, and tribal courts its number one priority in 2005. According to a Bureau of Justice Statistics 2004 report, violent crime committed against American Indians is more than twice the national average and more likely committed by a perpetrator of a different race. The Department of Justice reports that one in three American Indian and Alaska Native women will be raped in her lifetime – triple the rate for the rest of the country. Current funding for tribal law enforcement lags well behind that for non-tribal law enforcement.

Thus, NCAI strongly supports all proposed increases for BIA law enforcement as a start to addressing the dire challenges facing law enforcement, tribal courts, and detention facilities in Indian Country. The increases to BIA law enforcement total \$19.2 million and are in response to the September 2004 Office of Inspector General report on Indian Detention facilities as well as the expiring Department of Justice Community Oriented Policing Services grants program. 123 COPS positions are slated to expire in 2006, totaling 759 expired positions since 2004. The President requests an additional \$2.5 million to expand BIA law enforcement programs in areas where violent crime is most severe. NCAI urges Congress to ensure that federal and tribal law enforcement on Indian reservations are not curtailed as COPS funding expires.

Detention Facilities. In its September 2004 report, the U.S. Department of Interior Inspector General's Office informed the Department of the deplorable conditions at some of the facilities leading to life-threatening situations, concluding that the BIA's detention program is a national disgrace with conditions comparable to those found in Third World countries. Tribal leaders emphasize that Federal funding shortfalls have made it virtually impossible for tribes and the BIA to keep abreast basic maintenance, training, and other functions at detention facilities. The FY06 budget request proposes increases of \$4 million for operational costs for new detention centers; \$3.2 million for operations and maintenance of existing detention centers; and \$5 million to outsource detention of detainees to local jurisdictions in places where BIA facilities are non-compliant. An additional \$4.4 million is proposed for facilities improvement and repair of detention centers in the BIA Construction account. NCAI supports these badly needed increases to begin addressing the deficiencies and backlog in tribal detention centers.

Tribal Courts. Violent crime rates, while declining nationally, have increased substantially in Indian Country. Tribal courts are the primary and most appropriate institutions for maintaining order in tribal communities. Congress recognized this need when it enacted the Indian Tribal Justice Act and re-affirming this commitment in reauthorizing the Act in 2000 for 7 years. While the Indian Tribal Justice Act promised \$58.4 million per year in additional funding for tribal court systems starting in FY 1994, tribal courts have yet to see any funding under this Act. Since Congress enacted the Indian Tribal Justice Act, the needs of tribal court systems have continued to increase without any corresponding increase in funding for tribal justice systems. In fact, the Bureau of Indian Affairs funding for tribal courts has actually decreased substantially since the Indian Tribal Justice Act was first enacted in 1993. NCAI urges Congress to appropriate adequate funds to fully implement the Indian Tribal Justice Technical and Legal Assistance Act of 2000.

Conclusion: NCAI realizes Congress must make difficult budget choices this year. As elected officials, tribal leaders certainly understand the competing priorities that you must weigh over the coming months. However, the federal government's solemn responsibility to address the serious needs facing Indian Country remains unchanged, whatever the economic climate and competing priorities may be. We at NCAI urge you to make a strong, across-the-board commitment to meeting the federal trust obligation by fully funding those programs that are vital to the creation of vibrant Indian Nations. Such a commitment, coupled with continued efforts to strengthen tribal governments and to clarify the government-to-government relationship, truly will make a difference in helping us to create stable, diversified, and healthy economies in Indian Country.