

# INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR 2014

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## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

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SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND  
RELATED AGENCIES

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(II)

# **DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 2014**

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WEDNESDAY, FEBRUARY 27, 2013.

## **OVERSIGHT OF INDIAN EDUCATION**

### **WITNESSES**

**HON. KEVIN WASHBURN, ASSISTANT SECRETARY OF INDIAN AFFAIRS,  
DEPARTMENT OF THE INTERIOR  
GEORGE A. SCOTT, DIRECTOR, EDUCATION, WORKFORCE AND IN-  
COME SECURITY ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE  
HEATHER SHOTTON, PRESIDENT, NATIONAL INDIAN EDUCATION AS-  
SOCIATION**

### **OPENING REMARKS OF CHAIRMAN SIMPSON**

Mr. SIMPSON. Thank you. Good morning and welcome to the first hearing of the House Appropriations Subcommittee on the Interior, Environment, and Related Agencies of the 113th Congress. Before we get started today, allow me to take a moment to welcome our returning members and our many other members who hopefully will be here to be welcomed when they get here.

Of the programs within this subcommittee's jurisdiction, I think it is fair to say that there is more that Republicans and Democrats can agree on than disagree on, and I hope we continue to work well together on these things that we value and that we strive to find common ground on those things, no matter what is happening beyond these doors.

Almost a year ago today, our subcommittee was sitting here with then-Assistant Secretary for Indian Affairs, Mr. Larry Echo Hawk, a good friend of mine and Mr. Cole's. Mr. Cole asked about per-pupil expenditures at BIE versus non-BIE schools. We followed that up with a formal request to the GAO to look into the matter—in effect to update and expand upon studies they conducted several prior years. At the time, we thought we were asking GAO to answer a relatively simple question.

Fast-forward to January of 2013 when the GAO informed the subcommittee that their final report will not be ready until July 2013 and that the subcommittee should be aware of significant management challenges at both the Bureau of Indian Education and the Bureau of Indian Affairs that are affecting their ability to deliver quality education.

The GAO reminds us that these are not new management challenges and this is not the first time that problems within Indian education have been reported. This is also not the first time that

this subcommittee has attempted to help turn things around, but we must keep at it not only to ensure that things do turn around but that they stay that way. It is simply the right thing to do.

Therefore, these management challenges, coupled with recent or soon-to-be turnover at key leadership positions within the Department of the Interior and the Bureaus, has prompted this subcommittee to convene this hearing now before the GAO actually completes its finding so that the subcommittee can be in a stronger position to take any necessary corrective action as part of the fiscal year 2014 budget process. To wait would be to miss a narrow window of opportunity and I believe the children have waited long enough for this already.

Some people have wondered why we are doing this now rather than waiting for the GAO report. We will probably be writing our bill. In fact, we will be writing our bill before the GAO report comes out. We wanted some preliminary information from them and to talk with you if there are things we need to do in our budget that can help turn around the situation.

The United States Government has a unique and well-documented moral and legal responsibility to help educate American Indian children, a responsibility that goes far beyond the \$2.5 billion in direct federal spending in fiscal year 2012, of which this subcommittee's contribution was 35 percent. What is happening outside the classroom and outside the BIE has just as much impact on student success as what is happening inside, if not more. Many complicated factors come into play and many more people no doubt are working hard to help students succeed.

But as we step back to evaluate our efforts, when we look at the condition of those schools and the roughly 48,000 students directly under the BIE's responsibility, and when we look at measures of progress such as test scores, graduation rates, and employment, and we see the disparity that no doubt our witnesses will testify to today, one thing is perfectly clear to me—that we can and we must do better than this.

So I am interested in us having a constructive and productive discussion today and in the days ahead about how we can help the agency succeed. Whether it will be not just funding but also legislation, policy, a gentle nudge, a swift kick, any of those types of things, I am interested in putting all options on the table for consideration of helping in this area.

With that, let me welcome our witnesses here today as well as our distinguished guests in the audience and the many tribes and tribal organizations around the country who are submitting written testimony for the record. Thank you all for your commitment and your assistance in helping us help you.

Our first panelist is Hon. Kevin Washburn, the newest Assistant Secretary for Indian Affairs at the Department of the Interior. Welcome aboard, Mr. Washburn. You will be supported by Acting Director of Bureau of Indian Education, Mr. Brian Drapeaux, and Director of Bureau of Indian Affairs, Mr. Michael Black. Because Indian education activities are implemented by both bureaus, it is helpful to have both of you here today.

After Mr. Washburn testifies, we thought we would take some questions from the committee, but I think what we will probably



do is have the director of the GAO and Dr. Heather Shotton, the President of the National Indian Education Association, testify, and then we can have you all sit at the table together and answer these questions. And what we really want is a discussion about what are we going to do to improve the quality of education for our Indian children in this country. And what can we do to help?

So I appreciate your being here. Today's ranking member, Mr. Moran, is not here. Betty McCollum from Minnesota is taking his place as the ranking member.

And do you have any opening remarks you would like to make?

#### OPENING REMARKS OF CONGRESSWOMAN MCCOLLUM

Ms. MCCOLLUM. Yes, I do, Mr. Chair. And thank you very much. And I welcome you, Assistant Secretary Washburn, and the other witnesses to the subcommittee this morning as well.

Education is a cornerstone and the foundation in which we build our collective future. Native American parents, like parents all across this Nation, look for a good education and an investment in a better future for their children. While Indian education is a tough responsibility for the Department of the Interior, it is a moral responsibility for all of us, as the chairman said. This morning, we will review how these responsibilities are being carried out and see what we can do working together to improve the Indian education system.

Now, let's face it. There is significant room for improvement in Indian test scores and the delivery of the Indian educational services. In Minnesota, where I am from, where we pride ourselves on the education of our young people, only 42 percent of Native Americans graduate high school on time. That is a shameful record. That rate is half of what our state sees for white students.

We will hear today about the long-standing problems that have existed in Indian education. Some of these are reflection of larger social issues; some reflect the inconsistent direction and management and the delivery of Indian education services. And many are rooted in history of unacceptable low funding levels.

I have appreciated the fact that we approach Native American issues in this subcommittee on a bipartisan basis. And in this spirit I approach this oversight hearing to see how we can work collectively together at this table to facilitate improvements in Indian education.

But as we know, this is a time of restrained funding, and it has been a challenge to provide financial resources necessary to provide a quality education for Native American students. We know that money alone is not the answer, although it certainly helps, especially when we see the backlog on school construction and the fiscal state of many Indian education facilities. The heartbreaking impact of the condition of these schools on Indian children can be heard in the words of a student from Minnesota's Leech Lake Band: "All 13 years I have been told that education is very important. It is hard for me to believe this when I see how my school looks compared to other schools." Well, the school is a pole barn and the temperature back home right now is in the 20 degree range.

We are just 2 days from implementing the sequestration that will cut more than 5 percent of federal spending not only from Indian

education but a whole host of other programs that serve Native Americans. These adverse impacts on these programs are the poster child for the senselessness of sequestration.

And let me quote John Kennedy as I close. He said, "Our progress as a Nation can be no swifter than our progress in education." Well, therein lies the danger of sequestration. There will be no progress under sequestration. And in fact, the across-the-board cuts will do real harm to much of the work that this committee has done bipartisan in the past.

So Mr. Chairman, I want to thank you for holding this hearing on Indian education, and I want to thank you for the way that we work together to make the lives of all children across this country, but especially Native American children, better. And I look forward to hearing the testimony of our witnesses. Thank you.

#### OPENING REMARKS OF ASSISTANT SECRETARY WASHBURN

Mr. SIMPSON. Thank you, Congresswoman.

Why don't we have George Scott, the Director of Education Workforce and Income Security Issues for the Government Accountability Office come forward and then we can go from one testimony to the next. And also Dr. Heather Shotton, President of the National Indian Education Association. We actually have nameplates for you.

Assistant Secretary, again welcome, and thank you for being here today to discuss this important topic with us to help us get an understanding of what we might be about to do to help improve the conditions. The floor is yours.

Mr. WASHBURN. Thank you, Chairman, Ranking Member, and members of the subcommittee. It is a real honor to be here today. It is a real honor to hold this position. I am a member of the Chickasaw Nation from Oklahoma. I went to the same high school as Tom Cole and was represented by his mother in the State Legislature for a while. I am a former resident of Ms. McCollum's district as well, and so it is kind of like coming home in some ways here.

Mr. SIMPSON. I hate to ask this. Have you ever been to Idaho?

Mr. WASHBURN. I visited Idaho and Maine and wonderful places.

I have actually for the last 10 years or so been a teacher and/or a school administrator, mostly in state educational institutions. I have a strong personal interest and commitment to education. My draw to this particular kind of public service is not for the money, and it is also not for altruism purely either. It is because it is such a rewarding job. I am sure that there are several teachers who will attest to that who are in the room.

No offense to the ladies and gentlemen here, but it is much more fun working with students than it is working with Washington officials, for example. Not only are they more educable, it is more rewarding educating them.

I also love to learn and I am——

Mr. SIMPSON. That is not a good start. Well, you know, we are both specializing in legislation.

Mr. WASHBURN. That is right. That is right.

I love to learn, too, and I have been learning a great deal in the last few months. Many of you have been the teachers and I am grateful to be here learning because that is one of life's joys as well.

I am still very much in learning mode about our activities. Like it is serving in Congress, in the Administration, they do not give you six months to kind of get up to speed before they start making you make important decisions. And so I cannot whine about that over here, but I am a deliberative-type person. I like to be able to think about things before I have to start making important decisions. And there is sometimes not a lot of time for that. Just to give you a sense, the budget was largely in process before I even arrived—the fiscal year 2014 budget. The first draft had been done before I arrived at the Department. So I am trying to get up to speed quickly and make a difference where I can.

I have been greatly helped by BIA Director Mike Black and Acting Director of the BIE, Brian Drapeaux. And they are both here with me today. And I may defer a question to them. They have tried to educate me and I am a willing learner, but they still know a lot more than I do.

I have seen a lot of things that worry me in Indian Country, frankly. One of them is the school construction issue that Ms. McCollum raised. Soon after I got on board I sent the report over to Congress to talk to you about the challenges that we face in school construction. And that is very real to me.

I visited Red Lake High School shortly after the shootings, getting close to 10 years ago, and that was a real eye-opening experience because I went up there. It was about a year after the shootings at Red Lake High School and I was working at the University of Minnesota and I went up there to recruit students. And so we went up there with our aim to meet with juniors because juniors are the students that are kind of now starting to think about college. And I think that there were something like 60 juniors in the junior class and only something—it was in the single digits—like six or seven of them were actually in school that day that I was there.

And when I asked why that was, the teacher said well, the parents aren't making their kids come to school. And whenever the kids said I do not want to go to school, I am scared, it is kind of hard to argue with them a year after a school shooting like that. That is tough. These school shooting problems are really detrimental. And I worry that we may have lost a generation of kids at Red Lake to education because of that kind of thing. And those are really serious, serious problems.

I had been working really hard to get up to speed on the issues here in Indian education. The way I have been doing it is largely talking to people, the same way that you all learn. And one of the teachers that I met with recently said that at his school, students just miss more class. It is an Indian school and they miss more class than people do at ordinary public schools. And there are good reasons for it. In a small Indian community, the obligation to attend funerals and wakes and that sort of thing is very high. There are all sorts of cultural activities that are very important to attend. A lot of the schools are in rural areas and weather can be a significant factor. If a blizzard comes through in the Dakotas, it may make it very hard to get to school.

And this teacher told me that on average students miss 45 days of school a year. And if you multiply that times 12 years, that

comes out to losing about 3 years of education. So it is no wonder that some of our Indian students are not reading at grade level or not performing at grade level because they have actually had 3 years less of schooling by the time they would reach graduation age. And that has a huge effect I think. It makes it very challenging to be successful in Indian education.

I am told that our performance, while it does not look good objectively, is as good as state public schools that serve similar populations with similar challenges. So, we do as good a job as anyone does, but it is a very challenging job.

In the Bureau of Indian Education, the schools that we run or that we fund serve about 5 to 10 percent of the Indian students in the United States. So more than 90 percent of them are in public schools. And so we are not a significant participant. We are an important participant, but we cannot really claim to own education of Indian students. That is a much broader thing than what we do.

The students in Indian schools often have great needs. Poverty is rampant and all the things that go with that, learning disabilities and behavioral issues sometimes. And so we do have a difficult population. But as I said, our teachers perform as well as teachers in public schools.

I recently got to go visit the Chemawa Indian School, which is a boarding school out in Oregon, and it was a very heartwarming experience. It is a 9 through 12 boarding school, so 9th grade through 12th grade. The students there were exceedingly engaged. I was there in the evening and I went to the cafeteria and I went to the dorms and I was in meetings all day so I did not get there for classroom, but I met with a lot of the teachers and then I went to a basketball game at Moccasin Square Garden, their gymnasium. And it was really neat. They were playing a team from a neighboring town that was all white. I mean all the kids were white and their parents were white and so the distinction between the communities was kind of apparent.

But the game was started in an interesting way. Instead of the Star-Spangled Banner, they did a traditional flag song. And it was really neat to see both teams standing at attention listening to the flag song while they were looking at the flag. And I saw astonishment I guess at first on the faces of the team from the neighboring town and their parents and great interest. And it was really a nice, heartwarming experience because they were obviously very interested. A good flag song will run about 10 minutes. So they got the full experience. But it was a wonderful game and it was really neat to see. Sports are one thing that really engages kids and so it was neat to see that they are using sports in such a good way at that school.

We have got a lot of things going in the Bureau of Indian Education and I am trying to get up to speed on all of these things. My own sort of personal background as a Chickasaw from Oklahoma is pursuing self-governance. I think that tribes generally do things better than federal employees can when we can empower the tribes and provide the underwriting and the funding for the tribes to run our responsibilities. In other words, I think the tribal employees do very well in enforcing the federal trust responsibilities, as long as we give them the support they need to carry that

out. I do think it is a federal responsibility, but it can be executed best with tribal hands.

We are working on that substantially with the Navajo Nation. We have about 183 schools in the BIE system. Most of those are now tribal schools. They are funded by us but they are run by tribes. And about 60 of them are on the Navajo Nation. And we are moving towards a single contract with the Navajo Nation so there will be a Navajo school district in essence. And that will leave us actually with a very small percentage of the number of schools that we actually run. So we are making great strides in the area of self-governance. It will be soon that we are only running a dozen schools or so ourselves and the rest of them are run by tribes directly. And I think that that will certainly be an improvement.

So those are some of the things that we are working on. I know you have some questions and I can maybe talk a little bit more about those as they come up.

[The statement of Kevin K. Washburn follows:]

STATEMENT  
OF  
KEVIN K. WASHBURN  
ASSISTANT SECRETARY – INDIAN AFFAIRS  
DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE OF REPRESENTATIVES

February 27, 2013

Good morning, Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee. Thank you for the invitation to appear today. I appreciate the opportunity to participate in this oversight hearing on Indian education and provide, on behalf of the Department of the Interior, my vision for Indian education provided by the Bureau of Indian Education (BIE). I am here to express my, and the Administration's, continued commitment to providing high-quality educational opportunities for students educated in our BIE-funded elementary and secondary schools throughout Indian Country.

As the Assistant Secretary for Indian Affairs (ASIA), I have the responsibility to oversee the numerous programs within the Bureau of Indian Affairs (BIA) and the BIE. Indian Affairs programs expend over 90 percent of appropriated funds at the local level. Of this amount, at least 62 percent of the appropriations are provided directly to Tribes and tribal organizations through grants, contracts, and compacts for Tribes to operate government programs and schools. Overall, Indian Affairs' programs serve about 1.9 million American Indians and Alaska Natives.

Over a year ago, on February 28, 2012, former Assistant Secretary Larry Echo Hawk testified before this Subcommittee to provide Indian Affairs' statement on behalf of the Department on the FY2013 President's budget request. During that hearing, members of the Subcommittee agreed that it would be important to know how much money BIE is spending on its schools and to understand how the spending compares to other school systems on a per-student basis. The Subcommittee also asked about the type of data used to assess student yearly performance in BIE schools and how that data compares to the student yearly performance to nearby non-BIE-funded schools.

The BIE recently met with the United States Government Accountability Office (GAO) to discuss comparative costs and student performance assessments. The GAO is also now evaluating the results of the work we have had under way for the last year evaluating our business and administrative support for BIA and BIE programs. We expect to continue our discussions with you and the GAO in the coming weeks. We would very much like to help GAO develop answers to your questions and gain your support for our plans as we move forward.

This is important context for the hearing. Today, I would like to present our vision for Indian Education in BIE-funded schools, review the results of our evaluation of business and

administrative support, and go over the proposal in our 2013 budget to reduce costs and achieve savings through streamlining measures and administrative savings.

#### **The Bureau of Indian Education**

The BIE was an Office in the BIA until 2006, when it was made a separate bureau. This reorganization distinguishes BIE responsibilities from Indian Trust responsibilities and clearly identifies the relationship of the BIE to the Assistant Secretary for Indian Affairs. The BIE supports education programs and residential facilities for Indian students of Federally recognized Tribes at 183 elementary and secondary schools and dormitories. The 2011-2012 school year appropriation for BIE schools was \$753 million and BIE receives an additional \$205 million in funding from the Department of Education. The Department of Education distributes additional Indian set-aside funding directly to Tribes and tribal organizations.

Currently, the BIE directly operates 59 schools and dormitories. The remaining 124 schools and dormitories are operated by 64 Tribes through Public Law 93-638 contracts or Public Law 100-297 grants in 23 States. During the 2011-2012 school year, BIE-funded schools served approximately 48,000 individual K-12 Indian students and residential boarders which equated to an average daily membership of approximately 41,000 students due to transfers, absences and dropout rates. Only about eight percent of Indian students nationwide attend BIE-funded schools. Approximately 4,000 teachers, professional staff, principals, and school administrators work within the 59 BIE-operated schools. In addition, approximately twice that number work within the 124 tribally-operated schools.

The BIE has the responsibilities of a State Educational Agency for purposes of administering Federal formula grant programs for education. BIE responsibilities include providing instruction that is aligned to the academic standards set forth in the Department of the Interior's regulations regarding its standards, assessments and definition of adequate yearly progress (AYP), achieving compliance with the Elementary and Secondary Education Act of 1965 (ESEA) and the Individuals with Disabilities Education Act (IDEA), working with the Department of Education to administer education grants, and providing oversight and accountability for school and student success. The BIE strives to ensure our students receive the best education and exposure to the same educational opportunities provided to students across America. The BIE continually consults with Tribes on the delivery of educational services.

To the extent possible, BIE-funded schools are equipped with the latest tools and technology for our students to compete in the global marketplace. BIE places an emphasis on recruiting and retaining high-quality staff; teachers and principals receive professional development to keep us competitive. Some BIE schools are located in very remote locations; schools offer access to BIE housing in some locations as an incentive to retain teachers. BIE works with the BIA, tribal, or local community law enforcement to ensure our students and school faculty are safe on our campuses. BIA also partners with national education and youth organizations to assist us in trying to reduce the dropout rate for our students.

### **The Vision for Bureau of Indian Education Success**

As identified in regulations, BIE's mission is to provide quality educational opportunities from early childhood through life in accordance with a Tribe's needs for cultural and economic well-being and in keeping with the wide diversity of Indian Tribes as distinct cultural and governmental entities. Further, the BIE is to take into consideration the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and tribal or village context.

I am pleased to have this opportunity to describe our vision for the BIE and to give you an overview of the work we have under way.

**Maximize Student Achievement.** Teaching students effectively is the number one priority for BIE. We believe that effective instruction is a key piece in turning our BIE schools around. BIE established a Principal Leadership Academy to address the high turnover rates in critical school leadership areas. BIE has also introduced methods such as the Striving Readers Literacy Plan which focuses on positively impacting a "birth to grade 12" effort to increase student preparedness for the 21st century. BIE has also increased the number of School Improvement Grants to encourage school turnaround models across BIE schools. To better measure student performance, BIE has begun the process by which it will develop a unified system of standards, assessments, and accountability rather than using the standards, assessments and AYP definitions of 23 different States, which the Department of Interior's regulations currently require. Since this change to the regulations requires negotiated rulemaking, on January 31, 2013, Indian Affairs published in the Federal Register a notice of intent to establish a negotiated rulemaking committee concerning a change to regulations related to standards, assessments, and AYP. The notice seeks comments about establishing a Committee and nominations for the Committee by March 1, 2013.

**Advance Indian Education through Self-Determination.** Indian Affairs is fully supportive of self-determination and self-governance and it is an integral part of advancing Indian education. The Indian Self-Determination and Education Assistance Act of 1975 provided authority for Federally-recognized Tribes to contract with the Secretary for the Department of the Interior to operate BIE-funded schools. The Education Amendments Act of 1978 and further technical amendments provided Department of the Interior funds directly to tribally operated schools, empowered Indian school boards, encouraged local hiring of teachers and staff, and established a direct line of authority between the Education Director of BIE and the Assistant Secretary for Indian Affairs. Amendments to the ESEA made by the No Child Left Behind Act of 2001 (NCLB) brought additional requirements to the schools by holding them accountable for improving their students' academic performance.

This Administration is committed to consulting with Tribes, and our new consultation policy gives evidence of our commitment. Over the past year, the BIE engaged in discussions with tribal governments and their leaders at several tribal consultation sessions that included topics such as the Johnson-O'Malley student count, the Indian Affairs Administrative Assessment, the Public Law 100-297 grant assurance form, the Memorandum of Understanding between the BIE



and the U.S. Department of Education, and the BIE's flexibility request seeking relief from certain provisions of the ESEA.

Each of these tribal consultations brought tribal leaders and Indian educators together to discuss key reforms on how BIE services can be enhanced and how to change the way BIE does business. The BIE has compiled results of the consultations, changes have taken place, and BIE continues to reform the learning environment for students and the tribal community. BIE's actions in response to the feedback received from the Tribes have resulted in agency-wide collaborative efforts in the areas of education, language, culture, and economic development. More Tribes with students attending BIE-funded schools are now engaged in the education of their tribal members.

The BIE met with the Navajo Nation and Department of Diné Education to discuss a possible realignment of its educational program on the Navajo Nation. There are currently 31 BIE-operated schools and 35 grant or Public Law 93-638 contracted tribally operated schools within the Navajo Reservation. The concept is to move all Navajo BIE-funded schools under one Public Law 100-297 grant with the Navajo Nation. This concept would allow the Tribe to have more direct impact on the way all of the BIE-funded schools are administered and operated on Navajo Nation lands. This would provide more local educational control, increase jobs at the local level, and advance BIE education through the Navajo Nation's exercise of self-determination over the education of their children in BIE-funded schools.

**Optimize School Operations.** To support the President's commitment to provide every student even footing when it comes to education, BIE has expressed a desire to adopt the Common Core State Standards (CCSS), along with the 46 States and the District of Columbia who have adopted those standards. The BIE developed and submitted an ESEA flexibility request to waive certain provisions of the ESEA and implement certain education reforms which, if approved, will allow BIE to pursue a unified system of standards, assessments, and accountability rather than using the standards, assessments and AYP definitions of 23 different States. In addition, the BIE has recently moved to a new Financial and Business Management System, which will provide a more transparent and streamlined process geared to improving financial practices.

**Improve School Facilities.** Indian Affairs owns or provides funding for a significant inventory of buildings and other facilities across the Nation, including education facilities in Indian Country. Currently, Indian Affairs provides funds for facility programs for 183 academic and resident-only campuses. From 2002 through 2012, \$2.0 billion, including \$300 million of funding made available in the American Recovery and Reinvestment Act, has been provided for construction, improvement, and repair projects that have reduced the number of schools in "poor condition" from more than 120 of the 183 schools to 63 today. This includes 42 complete school replacements and 62 major renovations, which are either completed, funded or under-construction.

As amended by the NCLB, the Education Amendments of 1978 require the Secretary of the Interior, in consultation with Indian Tribes, to develop a recommended methodology to determine priority of need for replacement schools and improvement and repair projects. The Secretary of the Interior established a Facilities and Construction Negotiated Rule Making

Committee (NRC), which held seven meetings between April 2009 and September 2011. The NRC developed a New School Replacement and Renovation Formula which stipulates that those BIE-funded schools in poor condition, as measured by the Facilities Condition Index, and educating 75 percent or more students in portable facilities are eligible to apply for the program. Locations meeting the stipulated criteria are then evaluated using seven key evaluation criteria such as crowding, declining or constrained enrollment, inappropriate educational space, accreditation risk, and cultural space needs. We anticipate initiating the new school-priority-ranking process this fiscal year.

**Seek Partners.** BIE has signed eleven Memoranda of Understanding, Memoranda of Agreement, and cooperative agreements with other Federal agencies, tribal colleges, and tribal governments to increase access to new programs and initiatives as well as build capacity at tribal colleges and within tribal governments. Recently, for example, BIE has a new agreement with Teach for America to increase BIE-funded schools' access to highly qualified teachers in hard-to-fill locations in our system.

#### **Streamlining and Administrative Savings Consultations**

It was a year ago, almost to the day, that Indian Affairs came before this Subcommittee to present testimony on the President's budget request for FY2013. Former Assistant Secretary Echo Hawk testified as to the importance of maintaining services to Tribes while exercising fiscal responsibility. Consistent with that directive, the 2013 budget for Indian Affairs presented a recommendation for streamlining and administrative savings. The 2013 budget request includes prospective savings of \$19.7 million in streamlining measures and \$13.8 million in administrative savings across all programs within Indian Affairs.

We estimate the \$19.7 million reduction will come from eliminating duplicative or overlapping functions and processes to achieve streamlining reductions across Indian Affairs. Indian Affairs developed a process for implementing the streamlining using early retirement and voluntary separations to reduce full-time employment along with other position-management techniques. The \$13.8 million reduction comes from anticipated management efficiencies in such activities as printing and travel.

Consistent with Secretary Salazar's directive to achieve the highest levels of organizational efficiency and effectiveness, Indian Affairs began an examination of the management and structure of its administrative services. The focus of the review was to develop a support-service design that balances internal controls with effective and timely delivery of programs and services for American Indian Tribes and Alaska Natives. In April 2012, the Bronner Group, which had been contracted to conduct the review, delivered a comprehensive analysis of the effectiveness of the current administrative structure. Indian Affairs held seven consultations throughout the country during April and May 2012 at which the findings and recommendations from the Bronner analysis were presented to tribal leaders.

Reflecting the input of Tribes, Indian Affairs leadership is now in the process of preparing for the realignments and will be submitting a reprogramming request to this Subcommittee. The proposed realignment of the administrative functions would be overseen by an Executive

Implementation Oversight Board (Board), with membership including the Director of the BIA, the Director of BIE, the Deputy Assistant Secretary - Management, the Deputy Assistant Secretary for Policy and Economic Development, the Chief of Staff to the Assistant Secretary - Indian Affairs, and a designee from the Office of Policy, Management, and Budget. The Board will issue a quarterly progress report to the Assistant Secretary-Indian Affairs and the Office of the Secretary. It is anticipated that in the upcoming 12 months, if we move forward with the proposed realignment, at the conclusion of such realignment, the Board would transition to an oversight function and would be responsible for recommending administrative staffing and funding allocations to meet current needs and resolve service-delivery issues.

Specific to BIE, these tribal consultations provided input on ways to streamline the BIE organization while still working to improve the quality of education provided to students served by BIE-funded schools. Additionally, the BIE developed a plan that identifies opportunities to effectively reshape the BIE through consolidation, staffing reassignments and reductions, resource sharing, and the elimination of offices and functions that are redundant and obsolete.

#### **Sequestration's Potential Effect on BIE**

The sequestration will not have an immediate impact on the quality, scope, and types of programs provided by BIE-funded schools during the current schools due to forward funding. If the sequester continues for the next school year, each BIE-funded school will have to establish its funding priorities and adjust budgets accordingly. Individual BIE-funded schools may cut instructional and residential programs, extra-curricular activities, or support services.

If BIE schools had to end their school year sooner than expected as a last resort because of funding issues, it could cause problems with the BIE's ISEP regulations and accreditation challenges with State Departments of Education, which require a certain number of instructional days for the school year. BIE is focusing on improving our lowest-achieving schools through a strategy we term "Turnaround schools". This strategy includes extending the school year to allow additional instruction in core academic subjects; as well as allowing additional time for teacher collaboration. Shortened school schedules resulting from sequestration would reverse the progress being made to turn around these schools.

#### **Conclusion**

I believe our vision for BIE will allow us to achieve improved results in the form of higher student scores and improved operations. We will continue to ensure our education and facilities programs and administrative support operations are supporting the delivery of high- quality educational programs.

Indian education is the foundation for the future leadership of our tribal communities. The discussion around BIE is timely and much needed, and I welcome the opportunity to continue our discussion. Thank you for the opportunity to be here today to testify about Indian education. I would be happy to answer any questions the Subcommittee may have.



## U.S. Department of the Interior Indian Affairs

Office of the Assistant Secretary-Indian Affairs  
Bureau of Indian Affairs  
Bureau of Indian Education

[www.indianaffairs.gov](http://www.indianaffairs.gov)

### Biographical Statement for Kevin K. Washburn Assistant Secretary – Indian Affairs

Kevin K. Washburn, an enrolled member of the Chickasaw Nation in Oklahoma, was confirmed by the United States Senate as the Assistant Secretary – Indian Affairs for the U.S. Department of the Interior on September 21, 2012, and was sworn into office by Secretary of the Interior Ken Salazar on October 9, 2012.

Mr. Washburn is the 12th Assistant Secretary – Indian Affairs to be confirmed since the position was established by Congress in the late 1970s. In addition to carrying out the Department's trust responsibilities regarding the management of tribal and individual Indian trust lands and assets, the Assistant Secretary is responsible for promoting the self-determination and economic self-sufficiency of the nation's 566 federally recognized American Indian and Alaska Native tribes and their approximately two million enrolled members.

Mr. Washburn came to the Department of the Interior from the University of New Mexico School of Law where he served as Dean, a post he held since June 2009. Prior to that, he served as the Rosentiel Distinguished Professor of Law at the University of Arizona James E. Rogers College of Law from 2008 to 2009, and as an Associate Professor of Law at the University of Minnesota Law School from 2002 to 2008. From 2007 to 2008, Mr. Washburn was the Oneida Indian Nation Visiting Professor at Harvard Law School.

Previously, he served as General Counsel for the National Indian Gaming Commission from 2000 to 2002, and as an Assistant United States Attorney in Albuquerque, N.M., from 1997 to 2000. He was a trial attorney in the Indian Resource Section of the U.S. Department of Justice from 1994 to 1997. From 1993 to 1994, he clerked for the Hon. William C. Canby, Jr., of the U.S. Court of Appeals for the Ninth Circuit in Phoenix. His past awards in federal service include the Environmental Protection Agency's Bronze Medal for Commendable Service (2000) for representing the agency in successful Clean Air Act litigation and Special Commendations for Outstanding Service from the Justice Department (1997, 1998).

Mr. Washburn is a well-known scholar of federal Indian law. Among his other books and articles, he is a co-author and editor of the leading legal treatise in the field of Indian law, Cohen's Handbook of Federal Indian Law (2012 edition).



## **U.S. Department of the Interior Indian Affairs**

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### **Biographical Statement for Michael S. Black Director, Bureau of Indian Affairs**

Michael S. Black was named the Director of the Bureau of Indian Affairs on April 26, 2010. Prior to that, he was the Regional Director for the BIA's Great Plains Regional Office in Aberdeen, South Dakota, which oversees 12 agencies that together serve 16 Federally recognized tribes in three states (Nebraska, North Dakota and South Dakota). Mr. Black was named to his position in July 2008 after having served since January 2004 as the Deputy Regional Director for Indian Services in the Bureau's Rocky Mountain Regional Office in Billings, Montana, during which time he also served a period of eight months as the acting Great Plains Regional Director. Mr. Black began his Federal career in 1987 with the BIA's Aberdeen Area Office (now the Great Plains Regional Office) as a General Engineer in the Branch of Facilities Management. He went on to hold regional facility and engineering management positions in the Billings Area Office (now the Rocky Mountain Regional Office) until being named the Deputy Regional Director. Mr. Black is an enrolled member of the Oglala Sioux Tribe in South Dakota.



## **U.S. Department of the Interior Indian Affairs**

Office of the Assistant Secretary-Indian Affairs  
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Bureau of Indian Education

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### **Biographical Statement for Brian Drapeaux Acting Director, Bureau of Indian Education**

Brian Drapeaux, an enrolled member of the Yankton Sioux Tribe in South Dakota, is the acting Director for the Bureau of Indian Education (BIE) in the Department of the Interior in Washington, D.C. Reporting to the Assistant Secretary – Indian Affairs, the BIE Director is responsible for overseeing a federal school system that provides elementary and secondary education for over 40,000 American Indian and Alaska Native children from federally recognized tribes, as well as overseeing the administration of two post secondary institutions, providing funding for 27 tribal colleges and universities and two technical colleges, and operating higher education scholarship programs.

Prior to becoming the acting director, Mr. Drapeaux served as the chief of staff to the BIE Director from October 2010 to June 25, 2012.

He has worked the majority of his professional career on behalf of the Lakota/Dakota/Nakota people of the Great Plains. His leadership experience includes being a secondary education teacher in Alaska and South Dakota, the director of a regional tribal gaming organization, the legislative assistant to former United States Senator Tom Daschle (S.D.), assistant director legislative affairs for Steptoe and Johnson, and Greenberg Traurig, LLP in Washington, D.C., an economic development director for the Lower Brule Sioux Tribe in South Dakota, and the vice president of a Native-owned business in the health field. He also has been an education consultant for the State of South Dakota, and has run several state-wide voter registration and get-out-the-vote efforts.

Mr. Drapeaux has a Bachelor of Arts degree from Dakota Wesleyan University in Mitchell, S.D., where he majored in integrated social studies and minored in U.S. History, Health, Physical Education and Recreation, and Secondary Education.

-DOI-

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2/21/2013

Mr. SIMPSON. I appreciate it. Thank you, Secretary. George.

OPENING REMARKS OF MR. GEORGE A. SCOTT

Mr. SCOTT. Thank you, Mr. Chairman and members of the subcommittee.

Mr. SIMPSON. And thank you for agreeing to come and talk to us before your report is completed because, as I said in the introduction, there may be things hopefully within this bill that we want to do based on some of the findings and so forth. So it is a little unusual to have you come and talk before the report is done, but I appreciate it.

Mr. SCOTT. Now, thank you. Our desire is always to be timely and responsive to your needs, so we do appreciate the opportunity to discuss the preliminary findings of some of our work on the management of the Bureau of Indian Education (BIE).

In fiscal year 2011, the Federal Government provided over \$800 million to BIE schools. These schools serve about 41,000 Indian students living on or near reservations. Given the significant gaps in educational outcomes for students in BIE schools compared to public schools, questions remain about the extent of federal progress in supporting Indian education. My testimony today will focus on key management challenges hindering efforts to improve the education of Indian children and BIE's limited governance of some schools.

Over the years, there have been a number of efforts within Indian Affairs to reorganize administrative functions and improve its ability to support schools. However, management challenges such as fragmented administrative structures and frequent turnover in leadership have continued to hinder efforts to improve Indian education. A study commissioned by Indian Affairs to evaluate its administrative structure concluded that organizations within Indian Affairs do not coordinate effectively and that communication among them is poor. Long-standing issues such as incompatible procedures and the lack of clear roles among various offices can contribute to delays in schools obtaining needed resources.

For example, delays in contracting have occasionally affected BIE's ability to provide services for students with disabilities in a timely manner. Likewise, the responsibility for facilities management is also fragmented and can result in delays in addressing critical issues. For instance, one school we visited closed for a few days because Indian Affairs initially did not respond to their request for funds to replace a broken boiler. School officials in another state told us that they are unsure whether they should invest in additional modular classrooms because they have not been told if or when they will receive a new facility.

Given the seriously poor condition of some schools, it is critically important that officials within Indian Affairs ensure that facility maintenance and construction issues are addressed in a timely, transparent, and consistent manner.

Leadership turnover in Indian Affairs has exacerbated some of the various management challenges. Since the year 2000, there have been about 12 acting and permanent assistant secretaries for Indian Affairs, six deputy assistant secretaries for management, and eight Bureau of Indian Education directors or acting directors.

These are key leadership positions that should play important roles in strategic planning, policy development, and ensuring accountability for agency performance and program outcomes. We have previously reported that frequent changes in leadership may complicate efforts to improve student achievement and that the lack of leadership negatively affects an organization's ability to function effectively and sustain focus on key initiatives.

In addition to the management challenges, school governance remains an issue. Although BIE's responsibilities to operate Indian schools are in some respects similar to those of a state education agency, its influence is limited because most schools are tribally operated. BIE administers and provides technical support for a number of programs funded by the Department of Education and also monitors schools. However, in tribally operated schools, tribes retain authority over key policies. This means that BIE must seek cooperation from tribal officials to implement reforms. For example, they cannot require tribally operated schools to adopt teacher and principal evaluation systems.

Further complicating reform efforts, BIE schools, unlike public schools, have the responsibilities of both school districts and schools. According to BIE and Department of Education officials, many of these individual schools are small in size and may lack the organizational capacity to function as a school district. We have previously reported that smaller school districts may lack the resources, knowledge, or expertise necessary to provide certain services. This can at times further strain BIE's ability to effectively support these schools.

In conclusion, while its mission is clear, significant questions remain as to whether the Bureau of Indian education has the autonomy, resources, and administrative support within Indian Affairs to successfully achieve its goals. Accordingly, sustained attention is needed to address the long-standing challenges hindering efforts to improve Indian education. This includes the commitment to sustain leadership and accountability in key positions.

Additionally, it is imperative that offices within Indian Affairs work together more effectively and efficiently to support schools. We will continue to monitor these issues as we complete our work and we will consider making recommendations as appropriate to help address these challenges.

This concludes my statement. Thank you.

[The statement of George A. Scott follows:]



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United States Government Accountability Office

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**GAO**

**Testimony**

Before the Subcommittee on Interior,  
Environment, and Related Agencies,  
Committee on Appropriations,  
House of Representatives

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For Release on Delivery  
Expected at 10:00 a.m. EST  
Wednesday, February 27, 2013

**INDIAN AFFAIRS**

**Management Challenges  
Continue to Hinder Efforts  
to Improve Indian  
Education**

Statement of George A. Scott, Director  
Education, Workforce, and Income Security Issues



**SCAN  
COPY**

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GAO-13-342T

# GAO Highlights

Highlights of GAO-13-345T, a report to the Subcommittee on Federal Education and Related Agencies, Committee on Appropriations, House of Representatives

## Why GAO Did This Study

In 2011, the federal government provided over \$600 million to BIE schools that serve about 41,000 Indian students living on or near reservations. Within the Department of Interior, BIE is part of Indian Affairs, and BIE's director is responsible for the management of an education function. BIE's mission is to provide quality education opportunities to Indian students. However, poor student outcomes raise questions about how well BIE is achieving its mission.

The testimony reports on findings GAO will report about the Department of Interior's management of BIE schools. A full report will be issued later this year. Based on preliminary findings, today's testimony will focus on: (1) the key management challenges affecting BIE, and (2) BIE's governance of schools.

For this work, GAO reviewed agency documents and interviewed federal, state, and regulatory, tribal, and agency officials, and conducted site visits to public and BIE schools.

See GAO-13-345T for more information. Contact George A. Scott at (202) 412-1226 or [scottg@ga.gov](mailto:scottg@ga.gov).

February 27, 2013

## INDIAN AFFAIRS

### Management Challenges Continue to Hinder Efforts to Improve Indian Education

## What GAO Found

Management challenges within the Department of Interior's Office of the Assistant Secretary – Indian Affairs (Indian Affairs), such as fragmented administrative structures and frequent turnover in leadership, continue to hamper efforts to improve Indian education. For example, incompatible procedures and lack of clear roles for the Bureau of Indian Education and the Indian Affairs' Deputy Assistant Secretary for Management (DAS-M), which provides administrative functions to BIE, such as human resources and acquisitions, contribute to delays in schools acquiring needed materials and resources. According to BIE officials, some DAS-M staff are not aware of the necessary procedures and timelines to meet schools' needs. For instance, delays in contracting have occasionally affected BIE's ability to provide services for students with disabilities in a timely manner. A study commissioned by Indian Affairs to evaluate the administrative support structure for BIE and the Bureau of Indian Affairs (BIA)—also under Indian Affairs—concluded that organizations within Indian Affairs, including DAS-M, BIA, and BIE, do not coordinate effectively and communication among them is poor. Similarly, preliminary results from GAO's work suggest that lack of consistent leadership within DAS-M and BIE hinders collaboration between the two offices.

## Two Indian Affairs Offices Support BIE Schools



Source: GAO analysis of Department of the Interior documents.

Although BIE's responsibilities to operate Indian schools are in some respects similar to those of state educational agencies (SEAs), BIE's influence is limited because most schools are tribally-operated. Like an SEA, BIE administers, monitors, and provides technical support for a number of programs funded by the Department of Education. Yet, in contrast to states that can impose a range of reforms on schools, in most BIE schools tribes retain authority over key policies. For example, BIE cannot require most schools to adopt or develop their own teacher and principal evaluation systems. Further complicating reform efforts, many small individual BIE schools function as their own school districts. We have previously reported that smaller school districts may face challenges acquiring special education services or providers because they lack the same capacity, resources, knowledge, or experience necessary to provide those services as larger-sized school districts.

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Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee:

Thank you for inviting me here today to discuss the preliminary results of our work you requested on management of the Department of the Interior's (Interior) Bureau of Indian Education (BIE) schools. In 2011, the Departments of the Interior and Education provided over \$800 million to 183 BIE schools, primarily in rural areas and small towns, in 23 states. These schools serve about 41,000 Indian students living on or near reservations, or about 7 percent of the Indian student population. There are significant gaps in educational outcomes for students in BIE schools compared with public schools.<sup>1</sup> Additionally, the high school graduation rate for BIE students for the 2008-2009 school year was 52 percent, compared to the national average for public school students of 76 percent.<sup>2</sup> BIE's mission is to provide quality education opportunities to Indian students. Poor student outcomes raise questions about how well BIE is achieving its mission. For today's testimony, we will focus on (1) the key management challenges affecting BIE and its mission of educating Indian children, and (2) BIE's governance of schools.

Our analysis is based on interviews with officials in the Interior's Office of the Assistant Secretary for Indian Affairs' Office of the Deputy Assistant Secretary for Management, and Bureaus of Indian Education and Indian Affairs. We also interviewed Department of Education (Education) officials. Additionally, we reviewed agency documents, including budget justifications, guidance, internal correspondences, agency-sponsored management studies and relevant federal laws and regulations. We also conducted site visits to public schools, as well as BIE schools that serve the Oglala Sioux Tribe in Pine Ridge, S.D., and the Mississippi Band of Choctaw Indians, where we interviewed administrators and teachers. Site visit locations were selected to reflect an array of BIE schools that varied in administration type, school and tribal size, and location. We plan to

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<sup>1</sup>Fourth and eighth grade reading and math scores were higher for Indian students in public schools than those in BIE-schools on the National Assessment of Educational Progress (NAEP), referred to as "The Nation's Report Card." The NAEP has been conducted regularly since 1969 and tracks student achievement throughout the United States over time.

<sup>2</sup>Bureau of Indian Affairs Office of Indian Education Programs, *Bureau-Wide Annual Report Card 2008-2009*, and National Center for Education Statistics, *The Condition of Education 2012* (May 2012).

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conduct an additional site visit in the spring of this year to complete our work. This testimony is part of ongoing work requested by this subcommittee. We intend to produce a report later this year that will provide our final results on and further detail the management of BIE schools, as well as compare funding, expenditures and performance indicators for BIE schools to those of nearby public schools and, where appropriate, Department of Defense schools. We discussed our preliminary results with Interior, and incorporated their comments as appropriate.

We are conducting our ongoing work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

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## Background

BIE, formerly known as the Office of Indian Education Programs when it was part of the Bureau of Indian Affairs (BIA), was renamed and established as a separate bureau in 2006. Organizationally, BIE is under the Office of the Assistant Secretary- Indian Affairs (Indian Affairs), and its director reports to the Principal Deputy Assistant Secretary-Indian Affairs. The director is responsible for the direction and management of all education functions, including the formation of policies and procedures, supervision of all program activities, and approval of the expenditure of funds for education functions. BIE is comprised of a central office in Washington, D.C.; a major field service center in Albuquerque, New Mexico; 3 associate deputy directors' offices located regionally (1 in the east and 2 in the west); 22 education line offices located near Indian reservations; and schools in 23 states.<sup>3</sup> Of the 183 schools and dormitories BIE administers, 58 are directly operated by BIE (BIE-operated), and 125 are operated by tribes (tribally-operated) through federal contracts or grants.

BIE schools are primarily funded through Interior. Similar to public schools, BIE schools receive formula grants from Education. BIE, like

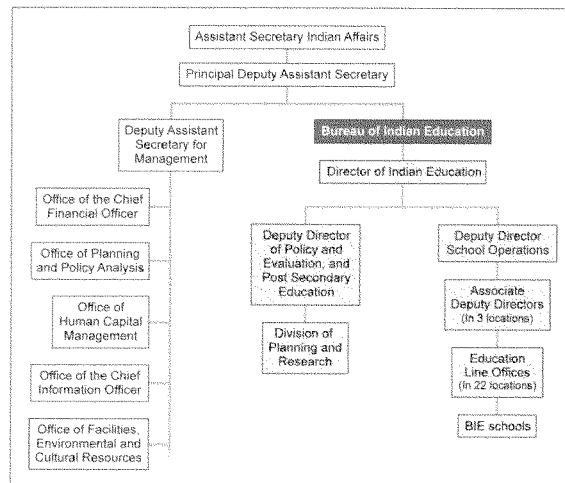
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<sup>3</sup>All of the BIE schools are located in the continental United States.

state educational agencies, administers and monitors the operation of these Education programs.

Currently, BIE's administrative functions—human resources, budget management, information technology, and acquisitions—are managed by Indian Affairs' Deputy Assistant Secretary for Management (DAS-M). The heads of both BIE and DAS-M report to the Principal Deputy Assistant Secretary-Indian Affairs. (See fig. 1)

**Figure 1: Offices Responsible for Supporting BIE Schools**



Source: GAO analysis of Department of the Interior documents.

BIE and its predecessor, the Office of Indian Education Programs, have been through a number of restructuring efforts. Prior to 1999 BIA's regional offices were responsible for most administrative functions for Indian schools. In 1999, the National Academy of Public Administration issued a report, commissioned by the Assistant Secretary of Indian Affairs, which identified management challenges within BIA. The

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report concluded that BIA's management structure was not adequate to operate an effective and efficient agency.<sup>4</sup> The report recommended centralization of some administrative functions. According to BIE officials, for a brief period from 2002 to 2003, BIE was responsible for its own administrative functions. However, in 2004, in response to the NAPA study, its administrative functions were centralized under the DAS-M.

More recently, in 2011, Indian Affairs commissioned another study—known as the Bronner report—to evaluate the administrative support structure for BIE and BIA. The report, issued in March 2012, found that organizations within Indian Affairs, including DAS-M, BIA, and BIE, do not coordinate effectively and communication among them is poor. The study recommended that Indian Affairs adopt a more balanced organizational approach to include, among other things, shared responsibility, new policies and procedures, and better communication, with increased decentralization.<sup>5</sup> According to Indian Affairs officials, the department is in the process of developing a plan to address these recommendations, but they have not yet finalized a proposal for reorganization.

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### Management Challenges Continue to Impede BIE's Mission

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#### Fragmented Administrative Structure Negatively Affects Schools

Indian Affairs' Deputy Assistant Secretary for Management (DAS-M) is responsible for, among other things, acquisition of materials and services for BIE-operated schools and management of construction-related requests. However, incompatible procedures and a lack of clear roles for BIE and DAS-M contribute to delays in the acquisition of needed materials and resources. For example, according to BIE officials, some DAS-M staff are not aware of the necessary procedures and timelines to meet schools' needs. Purchasing items for schools in a timely manner, for

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<sup>4</sup>National Academy of Public Administration, *A Study of Management and Administration: The Bureau of Indian Affairs* (1999).

<sup>5</sup>Bronner Group, *Final Report: Examination, Evaluation, and Recommendations for Support Functions* (March 2012).

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instance, is critical to ensure that all supplies and textbooks are delivered before the start of the school year. However, the procurement process used by BIE-operated schools can cause delays in textbook delivery. Likewise, delays in contracting have occasionally affected BIE's ability to provide timely services for students with disabilities.

Communication is especially difficult because of Indian Affairs' fragmented administrative structure. For example, school officials we spoke with said that their correspondences are often lost and that there appears to be little coordination between Indian Affairs offices. For instance, the Bronner report found that the responsibility for facilities management is scattered between three divisions within DAS-M. First, the Property Management Division in the Office of the Chief Financial Officer (OCFO) is responsible for maintaining the real property inventory. Second, the Acquisition Office in the OCFO manages the leasing of buildings for the BIA and BIE. Finally, maintenance and construction of all Indian Affairs' buildings is under the purview of the Office of Facilities, Environmental and Cultural Resources, and Office of Facilities Management and Construction. This fragmented administrative structure directly impact schools. For instance, the Little Wound School on the Pine Ridge reservation in South Dakota closed for a few days because Indian Affairs initially did not respond to their request for funds to replace a broken boiler. Tribal school officials in Mississippi told us they are unsure whether they should invest in repairs or rent additional modular classrooms as they have not been told when or if the department will construct new facilities.<sup>6</sup>

The Bronner report found that although DAS-M is tasked with supporting both BIE and BIA, its staff is not structured in a way that effectively supports both bureaus. Although the contracting needs of schools are different than those of a federal agency, DAS-M does not have a specific acquisition team assigned to BIE. The report also found that DAS-M's acquisition services were slow and not customer focused and that there was a disconnect between programs and support.

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<sup>6</sup>For additional information on BIE school facilities, see Department of the Interior, Office of Inspector General, *Bureau of Indian Affairs and Bureau of Indian Education: Schools in Need of Immediate Action*, C-IN-BIA-0008-2007 (Washington, D.C.: May 31, 2007); Department of the Interior, Office of Inspector General, *Improvements Needed to Ensure Safety and Program Performance—School Construction Program*, Bureau of Indian Affairs, W-FL-BIA-0047-2002 (Sacramento, CA: February 2004).

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Further, DAS-M staff may not have the requisite expertise needed for working on BIE-related tasks. The Bronner report found that key staff positions, such as budget analysts, were not assigned responsibilities in a manner that would help them develop expertise on the goals, funding history, and performance of BIE programs. Despite a request from BIE, DAS-M has not conducted a workforce analysis to determine the number and skill set of staff supporting the mission of BIE.

According to BIE officials, DAS-M staffs' focus on supporting BIA rather than BIE hinders DAS-M from seeking and acquiring expertise in education issues and from making the needs of BIE schools a priority. We have previously reported that strategic workforce planning, similar to workforce analysis, can identify core competencies for mission-critical occupations and be used to develop targeted training as well as spur planning efforts.<sup>7</sup>

In a December 2011 memo to Secretary Salazar, BIE's former Director expressed frustration with the current organizational structure of Indian Affairs and asserted that the "major challenges facing BIE cannot be overcome . . . until basic structure and governance issues are addressed and resolved." In addition, according to his memo, "because of this disjointed system, points-of-view concerning the effectiveness of support functions do not necessarily originate from a similar organizational culture, mindset, or most importantly, mission outcomes." Additionally, he noted that "the outcome of student achievement is often overshadowed and leaves our Bureau fighting to focus attention on education priorities and competing for leftover resources scattered throughout the larger organization."

The challenges outlined above run contrary to our past work on agency collaboration. We have found that different agencies participating in any collaborative mechanism bring diverse organizational cultures to it. Accordingly, it is important to address these differences and establish ways to operate across agency boundaries.<sup>8</sup> As we have previously reported, agencies can work together to define and agree on roles and

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<sup>7</sup>GAO, *Department of Education: Improved Oversight and Controls Could Help Education Better Respond to Evolving Priorities*, GAO-11-194 (Washington, D.C.: Feb. 10, 2011).

<sup>8</sup>GAO, *Managing For Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).



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responsibilities, which can be set forth in policies, memorandums of understanding, or other arrangements.<sup>9</sup> We will continue to monitor these issues and report our final results later this year.

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**BIE Faces Significant  
Turnover in Leadership**

Leadership turnover in the Office of the Assistant Secretary for Indian Affairs, DAS-M, and BIE has exacerbated the various challenges created by administrative fragmentation. (See fig. 2.) Since approximately 2000 there have been:

- 12 acting and permanent Assistant Secretaries for Indian Affairs,
- 6 DAS-M Deputy Assistant Secretaries, and
- 8 BIE Directors or Acting Directors.

The tenure of acting and permanent assistant secretaries has ranged from 16 days to 3 years. Further, from August 2003 through February 2004 the post was unfilled. These are key leadership positions. The assistant secretary provides direction on all issues related to Indian affairs, while DAS-M, as mentioned above, provides essential administrative functions for BIE and its schools. In previous reports, we found that frequent changes in leadership may complicate efforts to improve student achievement,<sup>10</sup> and that lack of leadership negatively affects an organization's ability to function effectively and to sustain focus on key initiatives.<sup>11</sup>

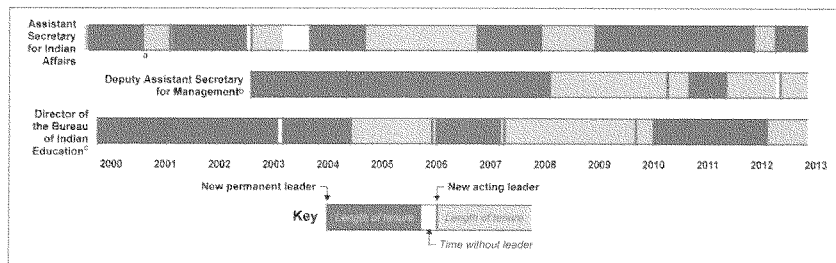
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<sup>9</sup>GAO-12-1022.

<sup>10</sup>GAO, *District of Columbia Public Schools: Important Steps Taken to Continue Reform Efforts, But Enhanced Planning Could Improve Implementation and Sustainability*, GAO-09-619 (Washington, D.C.: June 26, 2009).

<sup>11</sup>GAO, *Recovering Servicemembers and Veterans: Sustained Leadership Attention and Systematic Oversight Needed to Resolve Persistent Problems Affecting Care and Benefits*, GAO-13-5 (Washington, D.C.: Nov. 16, 2012) and *Architect of the Capitol: Committed, Sustained Leadership Needed to Continue Progress*, GAO-07-407 (Washington, D.C.: Feb. 28, 2007).

Figure 2: Leadership of Offices that Support BiE Schools



Source: GAO analysis.

\*Two Assistant Secretaries for Indian Affairs served in an acting capacity in January 2001.

†The office of Deputy Assistant Secretary for Management was created in January 2003.

‡Prior to 2006, the Office of Indian Education Programs fulfilled the responsibilities of the current Bureau of Indian Education.

Preliminary results from our work also suggest that lack of consistent leadership within DAS-M and BiE hinders collaboration between the two offices. According to our work on leadership, effective working relationships between agency leaders and their peers is essential to using resources most effectively and ensuring that people and processes are aligned to an agency's mission.<sup>12</sup> Working relations between BiE and DAS-M's leadership appears informal and sporadic. Currently, there are no regularly scheduled meetings between BiE and DAS-M leadership to discuss issues, priorities and goals. Additionally, BiE officials reported having difficulty obtaining timely updates from DAS-M on its responses to requests for services from schools. According to BiE officials, they used to have regularly scheduled meetings with DAS-M leadership to discuss operations, but the meetings were discontinued in September 2012. BiE

<sup>12</sup>GAO, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-34 (Washington D.C.: November 2007).

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now depends on ad hoc meetings to discuss issues requiring resolution. As a result, BIE officials stated there is a disjointed approach to serving schools.

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### **BIE'S Limited Governance of Schools Affects Reform Efforts**

Although BIE's responsibilities to operate Indian schools are in some respects similar to those of state educational agencies (SEA), BIE's influence is limited because most schools are tribally operated. Like an SEA, BIE administers, oversees, and provides technical support for a number of programs funded by Education. These include grants for disadvantaged children, students with disabilities, and teacher quality improvement. BIE also acts in the capacity of an SEA by monitoring, overseeing, and providing technical support to BIE schools. Yet, in contrast to states that can impose a range of reforms on schools, in tribally operated schools, which form the majority of BIE schools, tribes retain authority over key policies. This means that BIE must seek cooperation from tribal officials to implement reform. For example, BIE cannot require tribally-operated schools to adopt or develop their own teacher and principal evaluation systems. Also, although BIE could implement a curriculum for the schools it operates, BIE cannot implement a bureau-wide curriculum that would apply to tribally-operated schools. In contrast, some SEAs may be granted this authority through their state's laws.

According to BIE correspondence submitted to Education in June 2012,<sup>13</sup> the accountability system BIE is required to use, as a condition of receiving funding under Title I-A of the Elementary and Secondary Education Act (ESEA), as amended, is onerous. Like SEAs, BIE is accountable for the academic achievement of students in its schools. However, BIE schools must use the accountability measures of the 23 respective states where the schools are located unless an alternative has been approved. As a result, BIE calculates proficiency—the extent to which schools have made adequate yearly progress meeting performance goals—using the states' accountability systems. In 2008, we

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<sup>13</sup>The U.S. Department of Education has invited each SEA to request flexibility regarding specific requirements of the No Child Left Behind Act of 2001 (NCLB) in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Bureau of Indian Education, *ESEA Flexibility Request for Window 3*, Submitted to the Department of Education June 7, 2012. OMB-1810-0581.

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reported that BIE officials told us that, given the work involved, it was challenging to calculate and report proficiency levels to schools before the start of the subsequent school year.<sup>14</sup> However, under ESEA, if schools do not make adequate yearly progress toward specific proficiency levels set by the states in reading, math, and science, they may be required to pursue reforms that are best implemented at the beginning of the school year. Recently, Education allowed 16 of the 23 states where BIE schools are located to change their assessments and methodology for calculating proficiency.<sup>15</sup> Consequently, this has affected BIE's ability to calculate proficiency for its schools in a timely manner. Currently, BIE is seeking to revise its regulations that require it to use the 23 states' accountability systems.

Further complicating reform efforts, both BIE and Education consider BIE schools, unlike public schools, to have the responsibilities of both school districts and schools. BIE, unlike an SEA, treats each school as a public school district. According to BIE and Education officials, many of these individual schools are small in size and lack the organizational capacity to function as a school district. We have previously reported that smaller school districts face challenges acquiring special education services or providers because they lack the same capacity, resources, knowledge, or experience necessary to provide those services as larger-sized school districts.<sup>16</sup> BIE and Education officials acknowledge that this represents a strain on BIE's capacity to function in this manner.

BIE is one of two federal entities that directly oversees the management and operation of schools. The Department of Defense is the only other federal agency that operates elementary and secondary schools, and it does so to meet the educational needs of military dependents and children of some civilian employees. The Department of Defense Education Activity (DODEA) oversees the management and operation of 194 schools in seven states; Puerto Rico and Guam; and 12 foreign countries. Unlike BIE, DODEA has considerable autonomy over its own

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<sup>14</sup>GAO, *Bureau of Indian Education Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems*, GAO-08-679 (Washington, D.C.: June 27, 2008).

<sup>15</sup> Currently, 34 states and the District of Columbia are approved for ESEA flexibility.

<sup>16</sup>GAO, *Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*, GAO-12-543 (Washington, D.C.: June 7, 2012).

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internal management, budget, and operations. According to the Director of DODEA, the DODEA headquarters office is responsible for setting general policy guidelines, while schools and local DODEA administrative offices are charged with overseeing day-to-day operations. As a result, DODEA retains full operational control over all its schools and is therefore able to establish standardized curricula, testing, and evaluations.

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### Concluding Observations

It is critical that Indian students receive a high-quality education in order to ensure their long-term success. While BIE confronts several limitations in its ability to govern schools, its mission remains to provide students quality education opportunities. To this end, officials' roles and responsibilities must be clear, and sustained leadership is key. Additionally, it is imperative that the offices responsible for education work together more efficiently and effectively to enhance the education of Indian children. We will continue to monitor these issues as we complete our ongoing work and consider any recommendations needed to address these issues.

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Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee, this concludes my prepared statement. I will be pleased to answer any questions that you may have.

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### GAO Contact and Staff Acknowledgments

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George A. Scott  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office

Mr. Scott is a Director with the U.S. Government Accountability Office (GAO) with over 25 years of public service. He is responsible for leading GAO's work related to education issues, including K-12 education and oversight of the Department of Education. He has testified before congressional committees on a range of education and workforce issues.

Mr. Scott has received numerous GAO awards for outstanding achievement, including two GAO honor awards for meritorious service.



## OPENING REMARKS OF DR. HEATHER SHOTTON

Mr. SIMPSON. Thank you, Mr. Scott.

Dr. Shotton, the floor is yours.

Ms. SHOTTON. Thank you, Chairman Simpson.

Chairman Simpson, members of the subcommittee, I must acknowledge Representative Cole, my representative from the State of Oklahoma. Thank you for convening this important oversight hearing on Indian education. My name is Dr. Heather Shotton, and I am the president of the National Indian Education Association. I am also a member of the Wichita and Affiliated Tribes of Oklahoma, the Kyowa Nation and the Cheyenne and Arapahoe Tribes.

On behalf of NIEA, I am grateful for this opportunity to provide testimony and answering questions the subcommittee may have.

NIEA was founded in 1970 and includes a large collective membership of American Indian, Alaska Native, and Native Hawaiian educators, tribal leaders, school administrators, parents, and students. NIEA and our native education partners wish to highlight the lack of educational parity currently affecting native students. In particular, our students deserve the right to attend safe, secure, structurally viable schools that provide learning environments conducive to equipping our children for college and future endeavors.

Indian education is currently in nothing less than a state of emergency. Native children experience large disparities in academic achievement, and our students face some of the lowest high school graduation rates. This situation is increasingly dire for our students in BIE schools.

Underlying this issue of low achievement is the issue of poor conditions of many of our schools. BIA inspectors recently identified a total of 120 safety deficiencies in four BIE elementary schools on the Rosebud Sioux Reservation alone. And even more alarming is a recent Interior Department report that found that the dilapidated condition of BIE schools have the potential to seriously injure or kill students and faculty.

Some of the deficiencies that have been identified for schools in poor condition include classroom walls that are buckling and separating from their foundation; water leaks near electrical outlets and light fixtures; non-operable fire alarm systems; exposed asbestos, lead paint, mold, and water damage; and regular academic use of condemned buildings.

Native children should not have to risk their lives on a daily basis to access the fundamental right to an education. Furthermore, research tells us that the physical condition of a school affects our ability to learn. It affects student and teacher attendance, teacher retention and recruitment, child and teacher health, and the quality of the curriculum.

There are only two educational systems for which the Federal Government is directly responsible, and that is the Department of Defense and schools that are federally operated and federally funded tribal schools. And while the DOD fiscal year 2013 budget request of \$2.7 billion includes an aggressive construction plan to improve and modernize schools, the BIA fiscal year 2013 budget request eliminates new school replacement, and this leaves our al-

ready vulnerable students attending schools in the worst conditions even more vulnerable.

While BIA has recently focused on smaller projects of maintenance and upkeep due to funding constraints, this does not address the large-scale needs of many of the decrepit schools and continues to place our students and teachers at serious risk. While it is important to highlight the dire issues facing our native children, I also want to provide on behalf of NIEA to the subcommittee some sound solutions for moving native education forward.

First, NIEA would request that the BIA release an updated BIA-funded schools in poor condition index and tribal priority construction list. One main concern is that the BIA index of schools in poor condition was last released in 2009. Further, the most recent BIA school construction priority list was released in 2004. These outdated lists are unacceptable and we request that BIA update and disseminate the lists.

Secondly, NIEA requests funding for school construction and repair. NIEA understands the current fiscal climate. However, it is important to note that full funding is needed for completing the remaining construction projects and starting new construction projects to replace those facilities that are most in need. In the NIEA fiscal year 2014 budget request, our association requested school construction and repair funding to be set at \$263.4 million.

Third, we request interagency and native cooperation. There must be a collaboration at the federal level to ensure that funding is used efficiently during these times of constrained budgets. And additionally, any future Bureau streamlining must include direct regional consultations and comment periods with native partners. The Department of Interior should also establish a Tribal Advisory Committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system.

Finally, NIEA recommends that the BIA continue to upgrade the quality of the teaching force in BIE schools. This includes research-based professional development practice, including collaboration with our tribal colleges and universities.

Mr. Chairman, subcommittee members, we appreciate your work to protect the funding of native programs and your continued dedication to improving native communities and protecting native education. We hope that Congress will protect and strengthen native education programs and funding to ensure educational parity for native students with non-native students. I look forward to addressing your questions.

[The statement of Heather Shotton follows:]



**Testimony of Dr. Heather Shotton, President**  
  
**Oversight Hearing on Indian Education**  
**Before the**  
**House of Representatives Committee on Appropriations**  
**Subcommittee on Interior, Environment, and Related Agencies**

**Wednesday, February 27, 2013 at 10:00 a.m.**  
**B-308 Rayburn House Office Building**

Chairman Simpson, Ranking Member Moran, and members of the Subcommittee, thank you for convening this Oversight Hearing on Indian Education. I am Dr. Heather Shotton, President of the National Indian Education Association (NIEA), and a citizen of the Wichita & Affiliated Tribes. On behalf of NIEA, I am grateful for this opportunity to provide testimony and answer any questions that can provide important insights regarding how the federal government can better uphold its trust responsibility and bring parity to Native education. NIEA has worked for decades to keep Native education moving toward educational equity and excellence.

NIEA was founded in 1970 and includes a large collective membership of American Indian, Alaska Native, and Native Hawaiian educators, in addition to tribal leaders, researchers, school administrators, teachers, parents, and students. NIEA's mission is to advance comprehensive educational opportunities for American Indians, Alaska Natives, and Native Hawaiians throughout the United States. We accomplish this by viewing education as an integrated system consisting of federal, tribal, public, and private partners who coordinate at the federal, state, local, and tribal levels.

These education partners must work together to ensure Native students have the same opportunity for safe, secure environments that promote effective learning and success as their non-Native peers. In support of this vision, NIEA also advocates for the inclusions of traditional Native cultures and values that enable Native learners to become contributing members of their communities and strengthen Native participation in education.

**State of Indian Education:** Indian education is in nothing less than an ongoing state of emergency. Native children experience large disparities in academic achievement and educational attainment: reading and math scores are substantially lower than those of other groups; and Native students face some of the lowest high school graduation rates in the country.<sup>i</sup> Fewer Native students enroll in college, and even fewer graduate.<sup>ii</sup> The situation is increasingly dire in Bureau of Indian Education (BIE) schools. During the 2010-2011 school year, the graduation rate stood at just 59 percent and barely one-third of students performed at proficient/advanced levels in language arts and mathematics.<sup>iii</sup>

**Bureau of Indian Education Schools:** There are only two educational systems for which the federal government is directly responsible: Department of Defense (DOD) schools and federally-operated and federally-funded tribal schools. The DOD FY2013 budget request of \$2.7 billion would include an aggressive construction plan to bring all DOD schools up to a good or fair rating by 2018. The Bureau of Indian Affairs (BIA) FY2013 budget request, however, eliminates new school replacement, which ensures students attending schools in the worst condition will continue to learn in unsafe and distracting environments.

Further, the DOD military construction budget is requested at \$9.1 billion, which also includes the modernizing of aging schools with the goal of enhancing education and improving retention. In 2011, DOD even surpassed their goal of modernizing 65 schools.<sup>iv</sup> The Department of Defense understands children's need for a safe learning environment and prioritizes funding for needed construction projects. While DOD budgets are often easy to justify for military purposes, it is equally as important that Congress defends spending on Native populations to fulfill the trust responsibility. The historically inadequate BIA budget consistently inhibits the basic function of a school – providing a safe learning environment for students.

BIA inspectors recently identified a total of 120 safety deficiencies in four BIE elementary schools alone on the Rosebud Sioux Reservation. These schools are awaiting complete facility replacement, with an estimated cost of \$32.5 million.<sup>v</sup> Native children should not risk their lives on a daily basis to access their fundamental right to an education. Such problems stem from the federal government's negligence in properly maintaining BIE facilities, which are exceeding their life expectancies by decades.

On average, BIE education buildings are 60 years old, while the average age of public schools serving the general population is 40 years old. A recent Department of the Interior (DOI), Office of Inspector General Report found that the dilapidated condition of BIE schools has "the potential to seriously injure or kill students and faculty."<sup>vi</sup> The widespread health and safety deficiencies in the 2009 list of 64 BIE schools currently deemed in "poor" condition include:<sup>vii</sup>

- Classroom walls buckling and separating from their foundation;
- Water leaks near electrical outlets and light fixtures;
- Severe cracks in academic buildings;
- Non-operable fire alarm systems and no protective sprinklers;
- Improperly maintained furnaces;
- Exposed asbestos; Lead paint; Mold; and Water damage;
- Regular academic use of condemned buildings.

NIEA realizes BIA has recently focused on smaller projects, such as maintenance and upkeep, due to funding constraints. At the very least, BIA must receive adequate funding to replace the most deteriorated facilities in order to provide parity to Native students. The BIA budget request completely eliminates new school construction resources, which is unacceptable while so many students attend schools in dangerous and often life-threatening conditions.

For example, one BIE facility requiring replacement is the Bug O Nay Ge Shig School in Bena, Minnesota. The high school serves five counties and 14 communities and is in a state of deterioration, which includes structural and mechanical deficiencies, lack of proper insulation, rodent infestation, and sewer problems. Due to mold, fungus, and a faulty HVAC system, the school's air quality is poor and dangerous to those students and faculty utilizing the facility. Research shows that the physical condition of a school plays an important role in student success, affecting student and teacher attendance, teacher retention and recruitment, child and teacher health, and the quality of curriculum.<sup>viii</sup> This research supports why those parents who have the resources to do so, now transfer their children from the school in search of a safe learning environment. However, low-income families do not have the same opportunities to

move to other school districts. Funding construction and providing a safe environment at this facility – and others like it – would allow administrators and faculty to then address other issues, such as providing a strong curriculum to increase student achievement.

While BIA's focus on routine maintenance is helpful, construction projects other than total replacement do not address the overwhelming concerns for student safety. There must be additional resources available to fund total replacement projects for the numerous schools similar to this facility in Minnesota. Furthermore, single maintenance projects for facilities that require replacement are often undesirable to such schools. Native leaders worry that accepting a piecemeal construction project will push their school further down the school replacement priority list.

**Raising Outcomes for Native Students:**

**1.) Release Updated BIA Funded Schools in Poor Condition Index and Tribal Priority Construction List(s):** The index of BIA schools in poor condition was last released in 2009. With more than 60 schools indicated at that time, that list is sure to have grown. Further, the most recent BIA Education Facilities Replacement Construction Priority List citing schools most in need of repair was last released in 2004. These outdated lists are unacceptable and must be updated.

While replacement projects on the 2004 list were expected to be completed in five years, lack of funds extended the construction program beyond that timeframe. The funding shortfall has left three schools from the 2004 list under construction, two in design, and one in the planning phase. In a February 28, 2011 letter to Congress, former Assistant Secretary – Indian Affairs Larry Echo Hawk included the anticipated date for a revised priority list was to be announced in May, 2012. Yet no list has been released. NIEA and Native education stakeholders request that the Subcommittee pressure BIA to release a new Construction Priority List in the coming months to better notify Native stakeholders and appropriators about needed replacement.

**2.) Funding:** NIEA understands the current fiscal climate. However, full funding is needed for completing the remaining construction projects from the prior construction priority lists. Additionally, BIA must release its updated construction lists, so full funding can address new replacement projects. Increased equity for BIE schools and Native students would be achievable if there was coordinated communication between parties in charge of requesting and appropriating funds for addressing safety and construction needs.

The DOD understands the reasons for ensuring safety standards in schools. Otherwise, the Agency would allocate construction funding elsewhere. Without adequate funds to provide safe learning environments, students cannot be expected to excel. In the NIEA FY2014 budget request, our association expressed the need for school construction and repair funding to be set at \$263.4 million to ensure enough funds for new school construction, facilities improvement and repair, and replacement school construction. There must also be accountability for funding allocation, so funds have the most effect on providing an equitably safe learning environment. BIA must distribute information to tribes, school administrators, Native community leaders, and appropriators to guarantee correct funding allocation.

Transparency is the key to highlighting the correlation between funding new schools that decrease distractions and provide environments conducive to learning.

Likewise, funding must be directed to its intended purpose. Increasing administrative costs within an agency is unacceptable when it diminishes the facilities serving Native children. Funding the top levels of bureaucracy does not effectively utilize funding intended to make a difference in students' lives. Additionally, any future streamlining at the Bureau level must include direct, regional consultations and comment periods with tribes and Native partners to ensure all Native concerns are appropriately addressed.

**3.) Interagency and Native Cooperation:** There must be collaboration at the federal level to ensure existing education programs are effective and funding is used efficiently during these times of constrained budgets. For example, DOI currently oversees the construction of schools managed by the BIA. This can cause cumbersome delays if federal officials do not actively communicate about needed projects, associated costs, and other issues.

DOI should establish a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system. This should include a formal mechanism for tribally-operated schools to raise issues and provide substantive advice to the Secretary on a continuing basis – especially regarding the development of a budget request that addresses programs serving BIE schools. Since the schools in the BIE system are the sole responsibility of the federal government, the Secretary of the Interior should be consulting closely and regularly with representatives selected by Native partners and the school boards operating those facilities.

Further, BIA spends millions of dollars contracting with outside sources to provide professional development for the dedicated professionals who work in BIE schools. A more cost effective and culturally appropriate process would have the BIE contract with Tribal Colleges and Universities, where possible, to provide in-service teacher training and other professional development services for the pre K-12 schools it oversees. Cooperating with and enabling Native partners to work with Native youth can assure better teaching and achievement results than utilizing outside parties who may not understand the issues affecting Native students.

**Conclusion:** Mr. Chairman, Ranking Member Moran, and Subcommittee members, NIEA appreciates the Subcommittee's past and present dedication to improving Native communities and protecting Native education. With your support and through our continued collaboration, NIEA is hopeful that Congress and our federal partners will protect and strengthen programs and funding that ensures parity and safe learning environments are available to Native students. With an educated citizenry, Native communities will have the opportunity to thrive and succeed in an increasingly competitive global marketplace.

<sup>i</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2005, 2007, and 2009 National Indian Education Studies.

<sup>ii</sup> US Census Bureau, American Community Survey 2005-2009 estimates.

<sup>iii</sup> Bureau of Indian Education, "Bureau-Wide Annual Report Card, 2010-2011." Bureau of Indian Education, "Bureau-Wide Annual Report Card, 2010-2011."

<sup>iv</sup> U.S. Department of Defense. "Overview – Fiscal Year 2013 Budget Request. Department of Defense. February 4, 2012.

<sup>v</sup> Personal Communication from President Rodney Bordeaux, President of the Rosebud Sioux Tribe, and Chad Blotsky, Business Manager for the Todd County School District. April

10, 2012.

<sup>vi</sup> US Department of the Interior, Office of Inspector General. "Flash Report: Bureau of Indian Affairs and Bureau of Indian Education: Schools in Need of Immediate Action. May 2007. C-IN-BIA-0008-2007.

<sup>vii</sup> Bureau of Indian Affairs, "Indian Affairs Funded Schools in Poor Condition as Indicated by Facility Condition Index." December 31, 2009.

<sup>viii</sup> Cheng, Gracye and Steve English. "Evidence and Recommendations Concerning the Impact of School Facilities on Civil Rights and Student Achievement." July 27, 2011. Submission to the US Department of Education Excellence and Equity Commission.

Heather Shotton, Ph.D  
*Wichita, Kiowa, Cheyenne*  
President, National Indian Education Association

Dr. Heather Shotton is President of the National Indian Education Association. An Assistant Professor of Native American Studies at the University of Oklahoma, Dr. Shotton is a leading expert on improving American Indian, Alaska Native, and Native Hawaiian access to – and equity in – higher education. A board member of NIEA since 2010, Dr. Shotton previously served as the association's President-Elect.

Dr. Shotton has spent her career improving Native student access to postsecondary education. Before joining the University of Oklahoma, Dr. Shotton served as Assistant Director of Multicultural Student Affairs at Oklahoma City University, where she worked directly with Native students and coordinated the university's American Indian Scholars program. A citizen of the Wichita & Affiliated Tribes and also of Kiowa and Cheyenne descent, Dr. Shotton holds a doctorate in Adult and Higher Education from the University of Oklahoma.



## EXPECTATIONS FOR INDIAN EDUCATION

Mr. SIMPSON. Thank you. Thank you all for your testimony. I appreciate you all being here today.

You mentioned, Doctor, that the conditions in schools affects the quality of their education and went through a variety of reasons why it does that and their ability to learn stuff. The one other thing that it does is really tell young people and students whether we value them or not.

Ms. SHOTTON. Yes.

Mr. SIMPSON. Which is probably as important as all the other factors put together. I appreciate your testimony and look forward to working with you.

The subcommittee has been out on Rosebud, and while we did not go to the school, they gave us a slideshow presentation of it. If I can remember correctly, it was pretty ugly and most people would not send their kids to that condition. I have been up in Lapwai and have looked at the school that they just built on the Nez Perce Reservation and the one that they actually had to get out of because it was deemed unsafe. The conditions of the schools, I mean the physical condition of them, is really highly suspect and something needs to be done.

This committee has focused on Indian health services over the last few years to try to make sure that we meet our responsibilities there. We are not completely there yet, but we are moving in the right direction. We need to do the same thing with Indian education. At least I think that is the feeling of most members of this subcommittee.

But let me ask you, there are a lot of people who think the Federal Government should not be involved in education at all. We ought to get rid of the Department of Education and everything else. Obviously, we have a responsibility here just as we do with the DOD schools. What should we expect out of our Indian education system? We look at the fact that the standards or the measurements we use to address quality, whether it is buildings or whether it is outcomes or those other things, do not match up with other public schools and so forth.

One of the hard things to do is appropriate money into a program that you think is broken. Part of the reason it might be broken is because of insufficient funds, but part of it is also, as Mr. Scott testified to, is the organizational structure and lack of communication between a variety of—typical Federal Government if you will.

What should we expect as a committee and how can we hold the Department accountable for the dollars that we are giving them that are actually improving the quality of education? That is kind of a broad question, but is basically what this hearing is really all about. Would someone like to take that on?

Mr. WASHBURN. Well, we do have a significant responsibility to Indian children, and it is a part of our trust responsibility. In certain cases, it is actually written into treaties. Some tribes have treaties and it is written in there that we will provide education, and I presume that means a quality education.

I guess one of the things that strikes me, and being somewhat new to this, is in the rest of the world we have sort of started looking at uniformity as being overrated. We believe in diversity now and we believe in specialization. And so outside of the Indian context, there are charter schools that are focused on different things. And so I guess I feel like to some degree we need to have an education system for Indian Nations that recognizes that what is right for one tribe might be different than for another tribe or community.

And so I guess one of my concerns is that we keep flexibility in there. And that is one of the reasons I believe so strongly in self-governance. And so we have to be moving towards a system that recognizes a significant voice for native communities about what their education looks like because that will mitigate some of the problems that Mr. Scott mentioned about leadership at the Bureau of Indian Education or in the Assistant Secretary's office.

I hope he was listening to Dr. Shotton's testimony because you can imagine the challenges of leadership in this area. Who would want all the responsibilities that she mentions? You are crazy to take on this responsibility frankly. And so it makes it hard to—

Mr. SIMPSON. Is that why we have such high turnover in personnel?

Mr. WASHBURN. The job is untenable in some respects frankly. I mean it is difficult. This is difficult to take responsibility for that. I mean, the children could die on your watch. That is the kind of thing that she is saying. She is in essence saying that I am responsible for and Mr. Drapeaux is responsible for. That is high-stakes stuff. They do not pay any of us enough to be responsible for that sort of thing.

Mr. SIMPSON. It is high-stakes stuff for us, too.

Mr. WASHBURN. Well, no. I think we are together.

#### CONSIDERATION OF DEPARTMENT OF EDUCATION ROLE

Mr. SIMPSON. Let me ask you a question that I get asked by officials within the Department of the Interior. They have asked why the Department of the Interior deals with Indian education. Should that not be in the Department of Education? And why do we deal with Indian Health Services? Should not that be in—and it is pretty much over in Health and Human Services. I have had officials within the Department of the Interior ask me that question and I think I know the answer. What is your response to that?

Mr. WASHBURN. Dr. Shotton.

Ms. SHOTTON. Thank you. Well, as a professor of Native American studies, I think I have a longer historical response to that in terms of why BIE is placed within the Department of the Interior, and I think that deals with historically how natives and tribes were dealt with in terms of land management and resource management and those kind of issues. I think many of us ask that question with the education system for our tribes and our native students being placed within the BIA really speaks to what hopefully is happening more recently and more interagency cooperation to effectively deliver a quality system of education for native students.

I think those are the things that we are speaking to, making sure that we are having interagency cooperation and also consultations and corporation with our tribal leaders and those that are charged with actually delivering the system of education on our reservations and in our BIA-funded schools.

Mr. SIMPSON. Well, Doctor, you talk about interagency cooperation and Mr. Scott is talking about interdepartmental cooperation and communication and the lack of it. I look at the organizational structure in this and I think, yes, this was written by the government. It is about as confusing as you could get and makes it more and more difficult. Well, it is not my responsibility; it is Darren's responsibility. Ultimately, do we need an organizational restructuring? That is always the easy answer, but would that help or something along those lines?

Mr. SCOTT. Mr. Chairman, I certainly agree with Mr. Washburn and Dr. Shotton. This is high-stakes. These are our children that we are talking about here, many of whom are in unsafe schools and certainly not receiving an education I think we would all agree that they are due. That said, it is also important to make sure that at the federal level we hold the folks accountable who are responsible for running education.

And I think this hearing is an important step in both increasing the transparency around some of the challenges that the Bureau of Indian education faces, but also ensuring that along the way we build in some accountability and terms of moving forward. What is the plan for transforming Indian education in this Nation? Have we brought all of the stakeholders together to make sure there is an agreement about the common vision for doing that? And then having a plan in place where we have metrics and measures so that we know are we making progress or not. And to the extent we are not, making sure we hold the appropriate officials accountable.

I mean this is challenging. This is a challenging area. You know, I have been with the GAO for 25 years. This is one of the most challenging areas I have run across. That said, though, that is no excuse for not making more progress here than we have seen and ensuring moving forward that there is additional accountability for ensuring that things are done differently going forward.

Mr. WASHBURN. Chairman, thank you. It is a very important question. And frankly, we have wrestled with this at the Department of the Interior. I mean the Secretary has asked me the same question that you just posed to us. And I think that that means that it is a live question and perhaps always should be a live question because we want Indian children served by the agency that can serve them best.

I think it is still true that the BIA and the BIE have the closest relationship to tribes in the country. And at times, we have lost their trust but we are always working to retain their trust. And so, I think it is to some degree a question for Indian Country whether BIE should go to the Department of Education. And I think that they seem to have answered that question in the negative when it has been put to them.

But I have to tell you that Secretary Arne Duncan over at the Department of Education has an enthusiasm for Indian education, so I have worked hard to figure out ways that we can capture that

enthusiasm and make it work to the benefit of Indian children. Because if they are raring to go to be involved in Indian education, we want to provide them opportunities.

One of the things that we have sort of been looking at is revitalization of tribal languages, native languages. And there is money in the budget for us, for BIE to do that. There is budget money at HHS and the Administration for Native Americans, ANA. And there is money at the Department of Education for doing that. Three different places with the same goal. Money is put in different parts of the budget. And so I am not sure that that is wrong because the private sector would say that is good to get government agencies competing with one another. Who can do better?

But on the other hand, there needs to be good coordination with this because I have been around long enough to see that some, tribes that are very successful are going to get the money from all three of the agencies. You can imagine that a very well-positioned tribe might just sort of take advantage of that, and that is not necessarily what is best for Indian Country.

So we have to coordinate together to make sure that those monies for that sort of thing are spread properly and in a just fashion, not just that the tribe with the best lobbyists, went and got all the money. But it makes it harder when it is in three different pots. I am not saying that it should all be in the BIE pot. I am not sure that that is right. It has been interesting.

I am coming back into government. The last time I was in government was in 2002 and being back in government is different now because back then, and certainly throughout our history, the BIA was the face of the Federal Government in Indian Country. It is quite rewarding now to see that HUD and HHS and so many other Departments have a real role in Indian Country. And I think that that is in part a testament to the existing Presidential Administration, but it has also been building and developing over time.

And my position, Assistant Secretary for Indian Affairs, is no longer—I am still probably the point of the spear in Indian Country, but the spearhead is much broader than it ever was before, which puts burdens. There are burdens and benefits. It puts a greater onus on us to cooperate very well with them. And I know OMB has tried to get us to figure out ways to force us to cooperate better—one of the burdens is that we need to cooperate to make sure the left hand knows what the right hand is doing. But it is a benefit to Indian Country to have the whole Administration focused on Indian Country rather than just one agency.

Mr. SIMPSON. Yeah.

Mr. WASHBURN. So difficult questions.

#### SEQUESTRATION AND INDIAN EDUCATION

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Mr. Chair, there are so many questions and so many people who can help guide us as we establish policy and we talked a little bit about maybe what the future should be and we touched on the past, but I am going to focus on the present.

Right now, with sequestration, we have Impact Aid really being cut. Most of our school dollars in the Department of Education are forward-funded. Impact Aid is not forward-funded so this is real

time, real cuts to schools. And for example—I know we all have examples and this is the reason why you saw me out here with my cell phone here—I have public schools with 100 percent Indian enrollment, three of them. So that means Impact Aid. Nett Lake is one school. In fact, when the boiler went out, the State of Minnesota passed a special law to fund the boiler because it was in the middle of the winter to get it done.

I have two other public schools with majority Indian enrollment, so I have five schools that right now, as we move forward, are going to see the Impact Aid, which is not sufficient enough for educating students. And we are now, because it is not forward-funded. The checks to those districts are going to stop.

So if you could maybe comment a little bit. We have got school facilities we can talk about and things like that, but the responsibility of getting Impact Aid right for Native Americans students who are not in BIE schools as well, too, because that is also where, as statistically we know, a lot of the students are being educated.

Ms. SHOTTON. Thank you, Representative McCollum.

I think that it is a very important point when we talk about the looming threat of sequestration and particularly Impact Aid and how that will impact some of our schools, particularly when we look in terms of dollars, those schools that will immediately be impacted—Red Lake School District in Minnesota, \$900,000; when we look at Gallup-McKinley School District in New Mexico, \$2.4 million. So those are some examples. Even Mr. Drapeaux mentioned the other day how that would affect our tribal colleges and universities, particularly Haskell Indian Nations University.

When we talk about Impact Aid in particular, I think being more responsible and making sure and ensuring that those dollars actually go to native students is an issue that we have to address.

Ms. MCCOLLUM. Mr. Chairman, thank you. And the reason why I brought that up is if we are moving forward with any possibility of doing the right thing—and I know that all the people around this table are trying to come up with a solution of how sequestration—there is no doubt in my mind. I know how hard some individuals are working particularly. As we come up with things, sometimes something like that can get forgotten in part of the solution. I just wanted to put it on the radar.

#### TRIBAL CONSULTATION, REPLACEMENT SCHOOL CONSTRUCTION

So briefly, I would like to know, and the chairman touched on this, how do we get tribal consultation to help the Bureau of Indian Affairs and the Bureau of Indian Schools meet the diverse needs of tribal schools? Because one size is not going to fit all. So how do we do this to make sure all the different voices are heard at the table?

And then I will just throw my second question in to save some time and just do it now. Based on conversations that I have had with some tribal leaders, the report that I just shared with my colleague, Ms. Pingree, is pretty eye-opening. And then, you look at the concerns that I am hearing that the Office of Budget and Management has zeroed out requests for replacement of school funding. You put that together with the GAO report and people are pretty alarmed and pretty concerned.

Now, you came aboard, as you so rightly put, inheriting kind of a process that is in place. Could you maybe share with us some ideas that collectively you might have on how we really do a path forward for replacing these schools? Because we have had different lists come out. We have got this list and this school district thinks that they are on this list and then this tribal school thinks that they are on this list. Then we come up with a third one, and what we create is distrust. What we create is conflict. And that is the last thing our children should be expecting from any of us to do. So could you maybe talk about some ideas you might have on how we work with tribes to straighten that out?

Mr. WASHBURN. Thank you, Madam Ranking Member. Why don't I go first?

Tribal consultation is one of the most important things we do. And the Administration has been very focused on consulting with tribes on everything we do. There are two things going on with consultation or at least with—tribal consultation is designed to get input on what tribes think about how we run things. And when the tribes are running themselves, we do not have to do consultation. They get to run the programs. And so consultation is less important in that kind of context. Getting things in control at the tribal level will decrease some of the burdens or the pressures on consultation.

We do actively seek consultation. Those often occur in national meetings or regional meetings at least and we do the best we can anytime we are making changes to obtain consultation.

And let me pivot into the school construction report because we have methods of getting tribal consultation, but the school construction report that you are mentioning actually came about through a negotiated rulemaking process, which is a very, very formal way of getting consultation from Indian people about how we should behave. Most of the people on that negotiated rulemaking committee were non-federal officials. And so that report comes out from non-federal officials. And that is a good example of how we consult or at least get input more broadly than just talking to ourselves.

School construction is a challenge. I gather that the 2004 report was the one we have been working on for the last 10 years and we have prioritized about 14 schools that were the absolute worst for replacement. And we have, over the course of 9 years or so, replaced 11 of those 14. And there are three left on that 2004 list. What this new report does is it creates a different set of criteria for us to look at schools with. And we need to use those criteria and apply them to all our facilities in Indian Country and then come up with a new list. We do not want to leave those last three schools on the old list hanging, so we have decided that we will continue to prioritize those three as we develop our new list.

These are difficult questions. I will tell you that in general the guidance I gather that has come down in our Department is we are not taking good enough care of the buildings we have now, so why do we want to construct more? That is kind of the attitude. And that is the sensible thing, right? If you are not doing a good enough job with the buildings you have, why would you want to build more buildings? That is not the complete answer when you have got kids

going to schools that are problematic. And so I have heard you loud and clear on that. We also got to speak yesterday privately and I will take that back and look at that.

We have asked that the money not be used for school construction in our recent budgets but for repair because it is easier and quicker to repair a building than to build an entirely new one. But I am interested in looking at these issues as we continue to develop budgets.

Ms. MCCOLLUM. Thank you, Mr. Chair.

Mr. SIMPSON. I will tell you that we did the last 2 years put in at least enough money to build the next school on that list. OMB zeroed out the fund and we put money into it, and then frankly, we got fought in the Senate as we were trying to do some things. So I agree with you that the funding limits are very important.

Let me take an opportunity to introduce Congressman Rick Nolan, who is in the back of the room, from Minnesota's 8th Congressional District. And welcome. I know you have students here and interest in the subject. So thanks for coming to the hearing this morning.

#### INDIAN AND NON-INDIAN EDUCATIONAL SPENDING

Mr. Cole.

Mr. COLE. Thank you, Mr. Chairman. And before I start, first, thank you for doing this hearing. I appreciate it very much and all the work that the staff did. And I want to thank the three of you because I know you have spent a lot of time preparing for this. I know how passionate you are. The testimony was extremely helpful quite frankly.

Let me start with the very simple question that actually led to the hearing, and I will just address this to all of you. Mr. Secretary, you might want to take the first shot. But I was curious just if you compared the schools that the BIA runs, or native schools basically, with schools in surrounding state, the same state, where the resource is comparable. In other words, do we have as many dollars on a Native American kid where we have a federal responsibility as a kid right next door who has a mixture of sort of state, local, and a little bit of federal help too? If we are in Arizona on a reservation or in North or South Dakota, are there at least at the outset as many resources per student as the comparable schools that surrounding areas have?

Mr. WASHBURN. Congressman Cole, thank you. And that sounds like a simple question.

Mr. COLE. I thought it was, but it clearly was not.

Mr. SIMPSON. That was the question that started all this.

Mr. WASHBURN. Yeah, in government there are no simple questions.

I will say it varies. We have schools in 23 different states, and in some of those states, I think it is fair to say we spend more per pupil, and in some of those states we spend less per pupil. And another question is how do we do compared to DOD?

Mr. COLE. We are headed there?

Mr. WASHBURN. Okay. Well, and the answer is it is hard to have a uniform answer to that since there are 23 different states that we could compare to and far more communities that we could com-

pare it to. And so I do not know the answer to the per-pupil spending question. This is a situation of liars, damn liars, and statistics. You can kind of massage the data I think to say different things depending on what you look at. I would love to give you a simple answer to a simple question, and I cannot do that. I am told that we do well in comparison to other schools with similar populations. And I think that that is fair. But I do not know at the fine-grain level how we do on the per-pupil portion.

Mr. COLE. Mr. Scott.

Mr. SCOTT. Certainly. Thank you for that. When we looked at this issue over a decade ago, which is part of the reason you asked us to update those numbers, we did find that, on average, per-pupil expenditures are a little higher for the BIE schools. However, when you look at similarly situated schools, or nearby public schools, it was relatively comparable. We are looking forward to working with Indian Affairs to make sure we get the necessary data to try to update those numbers, because as I said, the statistics that I cited were from over a decade ago. So I want to have that context around it. We are looking forward to being able to provide an update on that analysis.

If I could just for one second circle back on a couple questions Ms. McCollum asked. In terms of tribal consultations, one of the things I would encourage folks at Indian Affairs to consider is to go beyond holding meetings with folks, and look for different opportunities to seek feedback from all the stakeholders who are involved in Indian education. This, for example, could include focus groups and some surveys because, oftentimes folks will tell you one thing face-to-face when in fact they may have some different things in mind if you give them an opportunity to provide feedback anonymously. So whether it is around administrative reorganization or some broader issues, I think it would be helpful for Indian Affairs to continue to consider a range of mechanisms to obtain feedback from affected stakeholders.

The second issue in terms of the schools' construction and moving forward with the new list, I do think as Indian Affairs moves forward, it will be very important for them to develop a communications strategy so that it is really apparent to all stakeholders what the new criteria will be as far as facilities going on the list, as well as helping them understand what the differences are. While moving forward and developing a new list is clearly important and a priority, it is also important that there be a clear communication strategy so that all affected parties really understand the difference between the old list and new list. Short of that, it is likely to create some additional questions and mistrust issues.

I think our work and the work of its own internal study has found that consistently communication within the department, as well as communication with the stakeholders, has been a key challenge for Indian Affairs. And so I think developing some long-term communication strategies to help address that issue is critically important.

Mr. COLE. Dr. Shotton.

Ms. SHOTTON. Yes, Representative Cole. I think in answering this question—and Mr. Washburn alluded to this—it seems very simple if we can compare them to other surrounding public schools.



But it is a little more complex. I think when looking at BIE students and their parity in terms of being funded the same as surrounding schools, you have to consider the cost of running boarding schools within this. And so sometimes the comparisons should be more to the cost of a private boarding school rather than surrounding public schools. So I think those are important considerations to note when you are comparing the cost per student in BIE schools.

#### CAPITAL VS. OPERATING BUDGETS

Mr. COLE. Please.

Ms. SHOTTON. No, go ahead.

Mr. COLE. Well, I was going to say another thing that strikes me in terms of the difference here—and I have a lot of areas to cover so excuse me for rushing through this. You really have two budgets, and when you look at any school system, you have an operational budget and you have a capital budget. And you clearly have a huge problem in Indian Country because we do not work capital budgets the same way. They cannot vote bond issues, they cannot tax themselves. Tribes that have a source of revenue cannot invest extra revenue on top. Our tribe does that in a variety of areas. Tribes that are not as fortunate obviously would probably want to do it and cannot and do not have any means. So I would ask when you look at your statistics if you could give us some idea of capital resources versus operating budget as well.

It seems to me that facilities are the main problem that we have. I agree very much. I want perhaps all of you to address this quickly. I believe very much, Mr. Secretary, in what you had to say about self-governance. I mean my experience in healthcare and other areas has been when tribes actually have the authority that they do a better job. And if they do not do a very good job, well, guess what? Their local tribal members know who the councilmen are and they get their fingers right around their throat and the job gets better, just like it does in government anyplace else.

But if the people making the decisions are a thousand miles away and appointed and you have no means of knowing who they are or dealing with them, it is just very difficult to make them responsive to you. So I mean pushing the decision-making down to the tribal level I think is by and large a good thing. If it does not work right the first time, over time it will because it has a means of self-correcting.

Yet, at the same time, Mr. Scott, you seem to suggest—and I am sure you are right, particularly when you look at things like capital—these decisions are made a long way away. They do not decide in a local school district, you know, on the Navajo Nation we are going to have a bond issue and we are going to do something and we are going to upgrade the school. Somebody a long way away is going to make the decision.

So how do you achieve the self-governance that I think you rightly are searching for, Mr. Secretary, and at the same time make these larger bureaucracies responsible? Because I am not sure centralizing the decision-making is all that good. Actually, that is kind of the history of decisions being made in Washington, D.C., and not being made by tribal people with tribal interests and knowledge

immediately available. I do not know what kind of structural mechanism you devise to reconcile those things.

Mr. WASHBURN. I think we have been moving towards—after our Bronner report which looked at these issues, we have been moving towards a system that puts the decisions out in the regions as far as we can, as best we can. It centralizes the accountability. And in fact here in Washington, I am accountable to you. That is why I am sitting in this chair. And I am accountable to Mr. Scott, who is looking at our programs. And so our accountability resides in Washington to a great degree. So we have got that function. We are putting our audit functions and our accountability functions. We have centralized those, but we are trying to push the decision-making out closest to the tribes and the schools as we can. And that has been one of the ways we have tried to restructure things to work better.

Mr. SCOTT. I certainly want to commend Indian Affairs for commissioning the Bronner study, but I also want to make sure that they take away the right lessons from the study. Because previously, there was a NAPA study that basically said to centralize some things even though I am not sure the NAPA study said to centralize everything. And so now you have the Bronner saying some sort of hybrid approach is really the way to go. And so, I am certainly going to defer to Mr. Washburn in terms of the ultimate decisions they want to make about this.

I do think it is critically important that as you transition to whatever new structure you have, that you build in certain things to ensure that you can measure whether you are making adequate progress in terms of having a focus on the customer, ensuring you have the right performance metrics in place so that you know whether you are meeting the customer's needs in a timely manner and that you have assurance that you have the right people with the right skills and abilities to properly execute your new mission. Absent that, reorganizing the administrative structure alone is not going to be sufficient to address some of these long-standing problems.

#### BIE SCHOOL GOVERNANCE

Mr. COLE. Can I ask you a very simple and basic question? On most BIA schools, you mentioned there is a lot of tribal control. What is the mechanism for government? What is the equivalent of the local school board for a BIE school?

Mr. WASHBURN. Well, we have tribal school boards. This has been a source of a little bit of tension, too, because we have got independent school boards for schools that compete for power a little bit with the tribal government itself. And so this is interesting. We have replicated a great deal of what we have in the counties and the cities at the tribal level. And that is a good thing in general.

When we do tribal consultation, we often go to tribal leaders. And frankly, in this area, that is not entirely adequate because tribal school boards are in control to a great degree. But we have kind of replicated all the complications that exist in the rest of the world in this area. So the mechanism is tribal school boards for a lot of these schools.

Mr. COLE. Dr. Shotton, you obviously have spent a lot of time thinking about this and studying it. What would you see as the best form of governance? Recognizing we have boarding schools and differences, and there might be a variety of them, but if you were sort of getting—how would you empower a local school district or a tribe to actually go about the business of educating native kids within the BIE system?

Ms. SHOTTON. Well, I think that we always need to advocate for tribal control of education. I think we are certainly on the same page there that when we empower our tribes to employ their self-determination and take control of the education of their own citizens, of their own tribal members, tribes know how to educate their students. However, we must also equip them to do that. We cannot continually underfund these schools and expect our tribes to be able to run them efficiently.

I think when we talk about consultations and advisory committees and those kinds of things, we must include the voice of our tribal leaders. We must also include the voice of our national native education leaders on these issues. So I think that it requires a continued cooperation and reaching out and consultation with our tribes to inform what is happening within the BIA and the BIE.

And I think that we would be interested to know if there is a current plan for restructuring and if there is a plan to release, how we would do that? And if there is, if there is a time frame for that.

#### DOD SCHOOLS

Mr. COLE. I am going to conclude pretty quickly. You have been very generous, Chairman. And I know other people have questions.

DOD, just a little bit of background history, part of that happened because our former colleague, Norm Dicks, was traveling and he has military schools and he heard complaints. I have military schools and I heard complaints, and I visited a couple of them and the complaints were very well-founded. And brilliant staff came up with the idea to do one big effective deal; fix all these schools at once. And then in that case we were going to turn them over, after we get them up to standards, to the local school systems. They were a part of them anyway in many cases. But we made a big capital investment. It was a very big bipartisan effort because I think everybody wants the children of American service people to have the very best education possible.

I do not know in this budget environment if we could ever do something like that, but that model is what worked. And it strikes me that what the chairman says is absolutely true. We do have a special responsibility. We have a trust responsibility that our government has assumed over many years.

I recognize all the problems that Assistant Secretary Washburn has to wrestle with because a lot of these kids are coming from awfully challenged environments in terms of poverty, distance and isolation. It is pretty tough. On the other hand, they ought to go to a good school. And as the chairman said, they ought to be able to walk in and know somebody someplace cares about me and the kind of education I am going to get and wants me to have the best opportunity to do whatever I can do and go as far as my skills can take me. And that probably relies more on us in these cases, as

they do with DOD kids, than any others in the country. There is somebody else to do that in most states. There is not anybody else but the Federal Government in this case. So I would hope we look to something like this.

Last point, probably should not say it, you guys have pretty good ties. You have a spectacular necklace. That is a wonderful piece of work.

Mr. SIMPSON. Ms. Pingree.

Ms. PINGREE. Thank you very much for the fashion commentary. No end to what I am going to learn on this committee.

So thank you, Mr. Chair, for holding the hearing. I am very excited to be one of the newer members of this committee and really appreciate those members who have been working on this issue for a long time. What a depth of knowledge you have. You are asking some obviously very deeply concerning questions.

I feel like I am learning a lot today and I am here to learn a lot today. So I am focusing most of my efforts on seeing how much I can absorb.

But I do have a couple of specific questions, mostly for you, Mr. Secretary.

I am lucky enough to represent Maine. We have two Members of Congress. And we have four tribes in Maine, the Penobscot, the Passamaquoddy, the Maliseet, and the Micmac. And because most of them are not in my district, I have had very little experience with some of the challenges that they have. But of course, now that I have this great opportunity to serve on this committee and learn more, I have been digging in. And I am pleased to hear that you have been to visit Maine.

#### BEATRICE RAFFERTY SCHOOL

I want to ask specifically about one of our schools. You mentioned the 2004 list, and that of the 14, 11 had been done and three are left. And one is the Beatrice Rafferty School, which is in Perry, Maine, a Passamaquoddy school. They were one of those priority question projects. So when we contacted them to say give us some more background about what is going on there, it was a little shocking to me to realize that they had been on the list for so long, that they were only in the planning stages, and had not even received any funding for design let alone construction.

And in the time that they have been waiting, in the time that they have been one of these schools that was slated for replacement, they have needed extensive repairs just to keep the building usable for those students. That means hundreds of thousands of dollars have been spent on replacing walls that fell down, replacing a portion of the roof, and conducting ongoing mold inspections, not to see if there was mold in the building, but to see if the mold in the building was one of the toxic molds that would affect the students.

So it is hard to hear that in the context of this notion that we want kids to feel valued when they go to school and we want them to be able to learn. And for the 120 students there is just clearly not a good environment. And they had the sense in their conversation with me that they are pretty much never going to hear from us again, that the school is going to continue to fall down around

them, that they are going to come up with what little they can to just keep it going, but they are asking. So what is going to happen here? Will there ever be any money for designer funding?

And I heard you say this morning that you suggested that the three schools that had not been completed from that list, even though the criteria may be changing, but those three schools will be attended to. But I would like to be able to say at least to them whether is there any possibility that this school is going to be replaced. When will they hear from someone again? What is going to happen?

And I am sorry, too, in a room full of people and stories all over that are clear that there are schools in need of help and repair. I did not want to single out just my own school for concern, but it is a great opportunity for me to learn and to be able to at least say, okay, so I am trying to learn. What is going to happen here? And I appreciated that you brought this problem up and I would love to hear your thoughts about it.

Mr. WASHBURN. Thank you, Congresswoman. What I am going to do is take back your concerns to the Secretary and the OMB and let them know I got an earful yesterday from Ms. Pingree, and we have got some friends from the—

Ms. PINGREE. It is those M states.

Mr. WASHBURN. Yeah, that is right. I think the people in the back of the room from the BUGS school would say that they are similarly in dire circumstances. And it is not something I relish but I would like to see what the next list holds as far as what other schools.

I would hope that you would not judge us on our worst schools, but we have got to solve those problems. The problems are very real at the worst schools, the schools with the greatest challenges. And I will take this back and again the conversation has been we are not taking care of the buildings we have well enough, so, we do not want to build new buildings. I know that that does not answer all the questions, especially around the schools that are in the absolute worst condition. So I will take that back and register your concerns about this.

Ms. PINGREE. Great. Well, I will certainly look forward to having a further conversation about this.

#### BIE SCHOOL CONSTRUCTION

Ms. MCCOLLUM. If you are taking money for repair and you are on a list, either the three-school list or the new list, and you start doing repair work, sometimes there is concern that that is going to move you down the list.

Ms. PINGREE. Right.

Ms. MCCOLLUM. And I know that that is a concern for people out in public schools when they start repairing it that they will not get something done. Is that going to have a negative impact? Is that something that they should be concerned about?

Mr. WASHBURN. Well, I guess when I hear that, what I hear is people are trying to game the system. I mean if you have got a repair that needs to be done, you should take the money and get the repair done. The new criteria that are in that book, maybe because the quality of the building is taken into account, and that is one

of the criteria. You should not decline the repair money and put students in jeopardy because you are trying to make the worst case for the need.

So even though it might have a tiny effect on the number of points that get scored for the building, that would be my thoughts about that.

Ms. PINGREE. Yes, thank you, Congresswoman.

In our consultations, and our conversations with our partners, they highlighted conversations that expressed the same concerns that if they began to fund individual maintenance projects, rather than replacing the much-needed replacement of the facilities, that it could potentially push their facility further down the list. And so there is some fear about only kind of having this piecemeal approach to address small projects rather than the full spectrum of what their issues are. And so I think that is a very valid concern from what we have heard in conversations with constituents.

Ms. MCCOLLUM. Thank you, Ms. Pingree.

Ms. SHOTTON. Well, thank you. I appreciate the additional question. And I guess in our further concentration, I mean that is an important question for this school. If nothing else, I think at some point they want to know—so we were on the list, we are one of those three, you know, are we never going to hear again? Do we have to find alternative means? Should we keep repairing the building? I think all those are very valid questions, and my guess is that if this is happening in one of our tiny little schools, it is everywhere else.

So thank you for your consideration.

Mr. WASHBURN. Ms. Pingree, that is certainly consistent with what we have heard in our work, particularly this issue if you go ahead and make some repairs to your school, does that affect your place on the list? And I would just encourage the folks in Indian Affairs to communicate with schools about that—

Mr. SIMPSON. Yeah.

Mr. WASHBURN [continuing]. In terms of sort of what is their long-term strategy here so that everyone is operating from the same set of assumptions about what this will mean in the long-term. I think at a minimum we owe that communication to the folks at the local level so that they really understand long-term what this process looks like and to what extent, if at all, making some interim repairs to your building will affect your long-term capital needs.

Mr. SIMPSON. Appreciate that. The gentlelady may be interested to know that the money we put in, since it was the next list on the school, the school you mentioned was the next school on the list, it would have been for that school, which ultimately got dropped in negotiations with the Senate when we could not get them to go along with that.

Mr. Joyce.

#### GUNS IN INDIAN SCHOOLS

Mr. JOYCE. Thank you, Mr. Chairman.

And I appreciate you being here, Dr. Shotton and Director Black and Assistant Secretary Washburn, and your testimony here today

in answering questions. I have a direct question for you, Assistant Secretary Washburn.

And let me preface it by saying for the last 25 years I have been a prosecuting attorney who represented school districts, and I have the misfortune of a year ago today being in one of my high schools which is a crime scene in which six kids were shot.

In looking at the Inspector General's report in preparing for today's hearing, I noticed that 6 percent of high school students and 37 percent of middle school students are bringing guns to schools. And I applaud the efforts taking place up there with the drug abuse resistance and anti-bullying programs and also doing things as far as anger management training. But I was wondering if you could update us on whether or not there has been a reduction in the number of guns being brought to school? Because I think it is important that kids are given the best education that is humanly possible in the safest environment humanly possible.

Mr. WASHBURN. Congressman, thank you for the question. And I do not have the data for how many kids are bringing guns to Indian schools. I will tell you we have taken some steps. All the schools have continuity of operations plans if God forbid, the worst happens that there is a school shooter situation or any other emergency for that matter. That is one that has been heavy on our hearts lately.

We have been doing other things that do not cost too much but help out a lot, so parking police squad cars in front of the school, it does not mean a police officer is there necessarily but it provides a visible deterrent so that people think that there is an officer there and they see the squad car, and that can sometimes be effective. And it does not cost as much because that car would be sitting in a parking lot somewhere if it was not parked at the school. That cannot be the entire strategy to prevent school shootings obviously, but we are trying to do the things that do not cost much and that might have an effect. And so we are looking to be very creative about finding ways to address these serious issues.

Mr. JOYCE. Thank you. No further questions, Mr. Chairman.

Mr. SIMPSON. Let me ask kind of a—well, a question I guess is what it is. As Congress is demonstrating this week that if we enact a law, it is difficult to change that law. The same is generally true for appropriations laws even though new bills are written each year annually. Things get into appropriation bills and then stay there forever and ever and ever, and a lot of times we do not know why they went in originally.

#### EXPANSION OF GRADES AT EXISTING SCHOOLS

A tribe recently brought to my attention the real-life impacts of language this subcommittee has carried since fiscal year 1995 prohibiting the expansion of grades at existing schools. The language forces this particular tribe to bus its sixth-grade students off reservation to the nearest public school for a year before returning them to the school to the reservation for seventh through 12th grade. Does this make sense?

Mr. WASHBURN. I have an answer. No.

Mr. SIMPSON. What are the consequences of deleting the language that prevents the expansion of grades in existing schools?

This is an example where clearly it does not make any sense to have that. Are there other consequences that we do not know about?

Mr. WASHBURN. Well, my sense is—and this language has been in there a long time, more than——

Mr. SIMPSON. 1995.

Mr. WASHBURN. Yes, I mean probably the reason that was put in there was we do not want schools expanding the grades that they are offering. If we cannot keep——

Mr. SIMPSON. We cannot afford it.

Mr. WASHBURN. Cannot afford it and cannot keep the building in shape. I mean the next thing they will want is a new building for the additional grades that they have. And so that might have been a way to put the cap on Indian education a little bit so that we are not expanding at a time when we cannot afford to build new buildings. I am just guessing that that must have been the purpose of that. In that case, at Sho-Ban, it is kind of a silly outcome honestly.

I will take that back to OMB and the Secretary and talk about that with them about whether that might be appropriate to delete that one.

Mr. SIMPSON. Get us an answer to that by the time we write our bill because we will either delete the language or probably give the Department the ability to waiver that language at their discretion. But it is a discussion we need to have because it is really one of those simple things that needs to get done.

#### LEGISLATIVE LANGUAGE PROPOSALS

Mr. Cole.

Mr. COLE. Just a couple more questions. Thank you, Mr. Chairman. And along the lines that you just covered, it would be very helpful if any of you would give us specific proposals about language that could go in the bill that would be helpful. You know, again, we have some ideas. I am particularly interested in bolstering self-governance and I am particularly interested in things that would give local schools some understanding or control over their capital budget, which I think they really probably do not have now given the way we fund Indian education. And I am not sure what that would be but your suggestions would be certainly something I would look at with a great deal of interest.

Also, I would ask that as you go forward you think about whether or not, again, a large-scale capital program—and that is probably something that would not be done this year—but, what is the utility of this as opposed to this sort of piecemeal approach? I just think we are at the bottom of a cliff we are never going to get to the top of. We have to make something to sort of get there. Now, as I recall, the Bush Administration tried to do something like that early on. I think the President actually, when he was a candidate, met with tribal leaders back in 2000 or something and made some commitment. And I know there was a rather substantial investment in 2001 or 2002 or sometime in that area.

It sounds to me like it either was not enough or we just did not get the job done or again we maybe did not have the sustained



maintenance after that. So looking back on the history of that might be somewhat helpful as well.

#### COOPERATION BETWEEN BIE SCHOOLS AND TCUS

And a final point again, and Dr. Shotton, you touched on this and might want to elaborate a little bit, I am very interested in whether and where cooperation between tribal colleges and tribally operated schools within the BIE system—what kind of relationship can we have? And are there some outstanding examples?

And one last question—and you may want to address this, too, Assistant Secretary Washburn—are there any tribes that we should look at that are just models? I mean you say, wow, this is a tribal school that is really being run really well by the tribe. I think the Cherokees Sequoyah School is an awfully good school. And that was not the history of that. And they have gotten deeply involved in investments and what have you. I have been to the facility before. It is extremely impressive. And they have clearly made this a point of pride and a point of success for their young people. So are there other places we should go look and models that we might be able to replicate or encourage?

Ms. SHOTTON. I think of that when we talk about cooperation between BIE schools and our TCUs. I think a great opportunity is with regard to professional development. Turning to our TCUs to help provide the professional development that our teachers need in our BIE schools is a prime opportunity. They understand the cultural needs of our students. They understand the perspectives. They understand the things that we need for tribal students. And I think that we turn to TCUs as ways to educate our future leaders. And that was kind of the prime reason for starting TCUs, to allow tribes to create the future leaders. And so I think that that is a great example to work more cooperatively and collaboratively with TCUs to help provide that much-needed professional development for our teachers and BIE schools.

Mr. WASHBURN. Thank you, Congressman. I guess on the model question, I am sure that there are wonderful stories out there. One that comes to mind is the Southern Ute Tribe in southwestern Colorado. They started basically a Montessori program years ago. They were troubled because their children knew who George Washington was but they did not know who the president of the tribe was and that sort of thing. And they thought we need to do a better job of educating students about our own government and our own culture and our own languages. And so that is a really neat example. It also combined early childhood education, which we know is exceedingly effective very much worthwhile expenditures because it makes long-term improvements in people's lives.

The capital budget question that you mentioned we have put about \$2 billion into Indian schools in the last 10 years or so and going back into the Bush Administration. The report that we have recently released shows that the community asserted that we needed \$1.3 billion more. But that is less than what we have put in. There has been a sustained commitment. It has not been a single infusion in a couple of years. It has been over the course of time.

But the ARRA funding also, you all spent a lot of money on Indian schools with the ARRA funding, too, and that was not a complete capital infusion, but it was a significant one.

#### JOINT VENTURES

Mr. COLE. And one last question. And this is just an idea and I do not know if you have any reaction to it or maybe we already did this. One of the most successful programs we have in healthcare—and this does not always help your tribes—is joint venturing where we literally get tribes and the feds operating together. We have seen it obviously with the Chickasaws and their healthcare program where a lot of the capital was done. They had the ability to do that but then a lot of the operational was picked up. Do we have any equivalent to that in BIE program? And would there be any merit in that approach?

Mr. WASHBURN. Let me say I do not know the complete answer to that question but I saw some really neat joint venturing recently with a state public school system and a tribe. The Kalispell tribe in Eastern Washington—they are a small tribe, 380 members or something like that—their kids go to the local state public school. They thought about having their own school but they have only got 380 members. It would not be a very big school and the school is really close. They were very comfortable with the school they went to, but they wanted more tribal cultural education and tribal language education.

So what they do is their kids go to the public school. The tribe provides the cultural and language teachers and the students that want to go—and mostly it is the Indian kids, but it is not just the Indian kids—can take those electives and go to those classes. And that is kind of a neat example. Obviously when, you know, governments can work together, it is a beautiful thing. And that seems to be a really successful example.

Mr. COLE. Thank you.

Thanks, Mr. Chairman.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair. I saw a couple of Head Start facilities where tribes that, as Mr. Cole pointed out, had resources available upgraded and were doing some fabulous things with their Head Start facilities. But you know, then there is more inequity possibly for students who, through no fault of their own, have a tribe that does not have gaming usually as a resource.

One of the things that we run across, whether it's reference to sovereignty in statutes, whether it is labor law or something like that, they might list states, municipalities, but then they do not list tribal nations. And so it is whether it was unintended or done deliberate. I was not in the room when some of these statutes were written. So there is inequity that is out there.

#### FEDERAL COLLABORATION

There is also an inequity out there when the Department of the Interior—and I think it is a good thing that HUD and some of the other agencies are reaching out and working in Indian Country, still too centralized in my opinion and not enough consultation

quite often. But here we are charged with the overall working cooperatively in a partnership with our tribal nations here.

But there are so many other agencies out there and we are just talking about education, for example. We have got the Department of Education. I recently found out the Department of Agriculture in one of its programs and one of its lines down below with rural schools can fund programs in Indian Country. So for us as appropriators to kind of have a handle on it to know what is really going on, for a tribal organization to know what is going on, and then all the grants that keep getting added that are in different spots, and then you need to be a grant writer is what is happening. One of the things that we have been working on here and that I have been requesting for a while, and finally, from OMB is a unified budget.

But I noticed even in the report from GAO, and it is no fault of your own, but you just kind of talked about this silo of dollars. What do we need to do, to do the right thing in managing the federal dollars and working in partnership with tribal leaders?

And let's just take education. I mean healthcare is another example where things are all over. Is that something that people have been struggling with or thinking about? I mean because I feel like now in order for us to do a good job with putting more money into schools, we need to watch that line in the Ag bill to make sure that they do not zero that out or lose it or we might lose broadband or internet or something like that. What are some of your struggles with that? How could we do a better job together in these dollars that have been allocated?

Mr. WASHBURN. Let me say a little bit about that.

Ms. MCCOLLUM. I mean we are all struggling with this together.

Mr. WASHBURN. Sure. Sure.

Ms. MCCOLLUM. This is no one's fault. We are all struggling with it together.

Mr. WASHBURN. We have got sort of a great example that happened in the last decade or so. The Department of Justice went out and built a whole lot of correctional facilities in Indian Country, and they are beautiful, some of them. And then they turned to the BIA and said staff them up. And we did not have it in our budget. We did not know it was coming. That was not any communication between DOJ and BIA. And so it is a neat thing that they were engaged in Indian Country but we were not coordinating very well. And so we are doing a lot better at doing that.

One of the great successes of this Administration has been the Tribal Nations Conference because once a year, every December, all of the Secretaries get together and a lot of their staff and tell Indian Country what we have been doing. And it forces us to talk to one another, too. And OMB has been interested in these. How can we make sure that you are coordinating across Departments?

And so it is a difficult task because there are so many different units. But we are convinced that we need to be working better at those things. And so we are working on that.

I have heard complaints from several people. Tribes do not want to have to choose which Cabinet-level agency they are going to go to. Whatever they need, they need it. Having to go search and find the right agency to fund that is not ideal. It would be nice if there was one United States interface and this is what we need; help us

find it. And there is not a help desk at the front of the Federal Government that says oh for that you need to go to this Department.

Mr. SIMPSON. Let me ask. Do you have an employee that is employed by the BIE that has an office over in the Department of Education or one that has an office over in the Department of Justice?

Mr. WASHBURN. No, not inside those offices. We meet with them fairly often. Around education there is the White House Initiative on Indian Education. And that has served as an umbrella organization that has really kind of helped bring a lot of people together around these issues. But no, we do not actually have physical presence within those buildings. We try to meet with them regularly.

Mr. SIMPSON. The problem is a lot of things go on in the Department of Education, and wouldn't it be nice to have someone there that you could say, well, this is what is happening in Indian Country and this is why this might work or might not work or whatever, but be part of a discussion on an everyday basis of what the heck is going on. And the same is true with the Department of Justice and other areas.

Mr. WASHBURN. No, it is true. Energy is an area where the Energy Department actually has a lot of things going on, and so what we have been endeavoring to do is try to meet very often with them to know what are they funding, feasibility studies, so that we know that we need to fund the permitting processes once the feasibility study is done and that sort of thing. So again, enormous coordination problems because we have a lot of resources in the Federal Government but they are highly spread out.

Mr. SCOTT. Ms. McCollum, I think the example you cited presents both the challenges and opportunities. Clearly, with different agencies doing different things, there is the potential to be fragmentation and duplication of efforts. That said, though, there is also an opportunity to enhance collaboration across these agencies. I spoke earlier about this idea of transforming the vision for Indian education in the country. And I think having increased collaboration across the various federal efforts would provide an opportunity to do that. Short of that, though, you do run the risk of different agencies doing different things and they may not be complementary at times. So I do think it is important for there to be some effort to look for opportunities to strengthen collaboration across the various agencies.

Ms. MCCOLLUM. Well, Doctor, how good of a dance partner are we?

Ms. SHOTTON. Fabulous. You know, that was exactly what I was going to say. The fragmentation in terms of funding for tribes and for native people, particularly around education, is an issue. I mean the funding is coming from so many different sources and you need all of those different agencies.

I think another concern that we have from our perspective is the increased funding and increase and explosive growth of bureaucracy. So the funding that is going to more administrative costs is an issue that we are really concerned about. And so I think that is also something that we have to address when we are talking about some of these funding issues.

Mr. SIMPSON. Ms. Pingree, anything else?

Ms. PINGREE. No, thank you.

Mr. SIMPSON. Do you have anything else, Tom?

Mr. COLE. No, I just thank you all.

#### FEDERAL TRUST RESPONSIBILITY

Mr. SIMPSON. Well, let me just conclude. Let me ask one question. Might as well get a little provocative here. It says, Dr. Shotton, in your written testimony you state, "While DOD budgets are often easy to justify for military purposes, it is equally as important that Congress defends spending on native populations to fulfill its trust responsibilities." In your opinion, is the problem due to the fact that most Members do not understand the trust responsibilities well enough to defend it or do you see another reason here?

And for the record, could you explain what the trust responsibilities are pertaining to Indian education?

Ms. SHOTTON. I think at the heart of that, Mr. Chairman, is that, yes, too many people do not understand the trust responsibility that the Federal Government has to tribes. As a college professor, I run into this every day. It is not something that we teach in our school systems. It is not something that we teach in our history courses. And so many of the students that I receive do not understand the role of the Federal Government and the relationship and the sovereignty of tribes and the role of the trust responsibility of the Federal Government. And these are people that are going to go on to be our future leaders. So absolutely, I think there is a real lack of understanding of the trust responsibility.

So when we talk about explaining the trust responsibility, the way that I explain it to my students in very simplified terms is it is kind of like rent. The trust responsibility was a promise to provide education, to provide healthcare, and for the well-being of natives and native children when tribes ceded lands to the Federal Government and those lands that now make up the United States. And I think in speaking to this subcommittee, I think everyone here understands that. But many of our leaders do not understand the very basics of our trust responsibility.

So essentially, it is that responsibility that is laid out in many of our treaties for the Federal Government to provide for the education, the well-being, and for healthcare of tribes for the land that they ceded to the United States.

Mr. SIMPSON. Appreciate that. Go ahead.

Mr. COLE. Just for the record and probably inappropriately, but the Chickasaws are more than willing to cede back every—if we can just have northern Mississippi and parts of Alabama back. We will call it even. All is forgiven.

Mr. SIMPSON. I knew that was a bad question to ask. No, I often hear this. And there are excuses that are made all the time for not doing what is our responsibility, not fulfilling our responsibilities. And you hear more and more from people who say, well, but they got all those casinos. They do not need funding from the Federal Government anymore because they are making money hand-over-fist, you know? And you go to some reservations and some tribes

are doing very well with casinos, and others, it is not really a benefit.

It is something we need to be able to explain to more Members of Congress so that they understand what our responsibilities are and how we are doing in meeting those responsibilities and what needs to go on to improve it.

But I appreciate all of you being here. This is a very interesting subject for this subcommittee, and we will continue to work on it.

#### COMMUNICATION BETWEEN BIE AND DASM

Mr. Scott, I look forward to your final report when you get it out because there are some things that concern me. And we talk about communication between federal agencies. As I was reading this last night, it said, "BIE officials reported having difficulty obtaining timely updates from DASM on its responsibilities to request for services from schools. According to the BIE officials, they used to have regularly scheduled meetings at DASM leadership to discuss operations, but the meetings were discontinued in September 2012. BIE now depends on ad hoc meetings to discuss issues requiring resolution. As a result, BIE officials stated there is a disjointed approach to serving schools."

So it is not just between federal agencies. It is also within the Department. And it is something that we want to help you work on because all of us in this room, every member of this committee, as well as you that testified, as well as guests, all have the same goal here, and that is to provide the best quality education that our Indian children deserve in this country, as well as the other responsibilities we have. So we look forward to working with you to address this.

Thank you for being here today. And again, welcome to the new post.

Mr. COLE. Can I have one last question?

Mr. SIMPSON. Yes.

Mr. COLE. Now that you have read Mr. Scott's turnover statistics, we have your guarantee you are going to stay here a full year and get this job done for us?

Mr. WASHBURN. But I heard Dr. Shotton's testimony, and that is a grave responsibility.

This committee's leadership has been incredible, and the Administration does appreciate the incredible leadership of this committee on Indian issues. Thank you.

Mr. SIMPSON. Thank you all very much.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Indian Education  
February 27, 2013  
B-308 Rayburn HOB

**Questions for the Record for Mr. Washburn**

Questions from the Subcommittee

**Simpson Q1.** As the Congress is demonstrating perfectly this week, once laws are enacted they are difficult to change. The same is generally true of Appropriations law, even though new bills are written annually.

A tribe recently brought to our attention the real-life impacts of language this subcommittee has carried since fiscal year 1995, prohibiting the expansion of grades at existing schools.

The language forces this particular tribe to bus its 6<sup>th</sup> grade students off-reservation to the nearest public school—for just one year—before returning to school on the reservation for 7<sup>th</sup> through the 12<sup>th</sup> grade. Common sense tells us this isn't fair, and that it is an unintended consequence of the law.

What are the consequences of simply removing this prohibition in the fiscal year 2014 bill?

**Answer:** The extent of the consequences of removing this prohibition are largely unknown beyond anticipating that it would create increased costs for staffing, school operations and maintenance. If budgetary limits remain the same without a corresponding increase for expanded grade levels, then existing budgets must absorb the costs, which would affect all school operations.

Is the solution to modify the language to give you the authority to grant waivers for situations such as these?

**Answer:** One solution would be to modify the language to provide the authority to grant waivers in cases where circumstances with the existing schools have changed and it is necessary to re-scope services to advance education goals and to meet local needs. Another solution would be to modify the appropriations language on a case by case basis to address specific exceptions to the current language.

**Simpson Q2.** How would you characterize the state of Indian education today?

**Answer:** There is currently a significant opportunity to improve Indian education. There has been a convergence of initiatives that makes the future outlook for Indian education optimistic. The development of Common Core State Standards affords all American Indian and Alaska Native students enrolled in BIE-funded schools the opportunity to be taught at a common

standard. Because of such standards, schools, states and the BIE are taking a systematic approach to improving learning. This means a focus on the fundamentals of instruction and not simply on the latest programs. Tribes are also in a better position to be partners in the education of tribal members. There is a long way to go, but more people are on the same page than ever before.

**Simpson Q3.** What grade would you give the Department of the Interior in terms of how well it is doing its job delivering a quality education?

**Answer:** With regards to the dedication and service provided by our teachers and supporting faculty staff, BIE earns an “A” in their unyielding commitment to providing a quality education to our students. These dedicated public servants give their all each school day in striving to do their best to help each student establish a learning foundation to achieve future dreams. The challenges facing most of Indian Country, including poverty, substance abuse and crime are contributing factors that lower grade rankings. We provide a quality education but the benchmark is having schools make the Adequate Yearly Progress, and by that measure, BIE needs improvement.

**Simpson Q4.** In addition to “supporting the President’s budget”, what are the two or three things that this subcommittee can do to help you succeed in leading the organization?

**Answer:** Thank you for the subcommittee’s offer to help us succeed. We appreciate the Subcommittee’s interest in Indian Education and would first ask that we continue to keep our lines of communication open on how best to improve Indian Education. As we undergo our independent evaluation, new ideas may be presented that could greatly improve our organization. In addition, it is anticipated that the tribes will take over several more schools in the next several years, which will provide additional opportunities to make changes to our structure.

**Simpson Q5.** The 1999 National Academy of Public Administration report on the BIA, and the 2012 “Bronner” report on BIA and BIE administrative support structure identified significant shortcomings in the administration of the BIA and BIE. What changes were made or are you considering making as a result of these two reports?

**Answer:** The 1999 NAPA study included many recommendations to help strengthen the delivery of administrative services to all organizational components of Indian Affairs. The core of these recommendations was to eliminate the decentralization of functions at many levels of the organization structure and centralize these functions to maximize resources to address many of the findings in the NAPA study identified as lack of internal controls. This was achieved and made a significant difference in the delivery of administrative services and the ability of Indian Affairs to meet its federal reporting obligations.

Yet as with any effort, there is always room for improvement and to address the changing needs of today. Recognizing this, Indian Affairs called for a follow up study to evaluate the effects of the changes following the 1999 report. This follow up study, commonly referred to as the Bronner report, focused on providing a balanced approach that seeks to maintain the centralization of some responsibilities pertaining to such areas as policies and procedures and



internal controls, while decentralizing other functions to Senior Managers in the field. Efforts are ongoing within the agency to make final determinations on implementation of such changes in the management of administrative functions.

How are you consulting with Tribes on these changes?

**Answer:** Pursuant to the Executive Order 13175, Consultation and Coordination with Tribal Governments, Tribal consultations were conducted at seven sites across the nation during April and May, 2012 on the findings of the Bronner study. Information was made available to Tribal leaders on the study, requesting their input. In addition, Indian Affairs had information available on its website to the general public on the Study and the consultation sessions.

What other sources of expertise outside of the agency and the Tribes do you intend to enlist to help the agency through future organizational change?

**Answer:** The Assistant Secretary - Indian Affairs has requested input from all national Tribal organizations on organizational changes; if specific programmatic needs are identified, the agency will obtain professional services from third parties specializing in the target area(s.)

**Simpson Q6.** In your view, what are the primary factors contributing to the significant turnover in leadership among the different offices within Indian Affairs

**Answer:** Departures from positions in any organization are largely personal in scope as each individual decides what is best for him/her in the pursuit of career aspirations. Further, agency positions located in certain locations in Indian Country are viewed as not the most desirable for a number of reasons. There is an inherent tension within those who leave Indian Country and move to Washington, DC. For example, the best field personnel have through the years turned down job opportunities in the Nation's Capital as they prefer life outside the Beltway or quickly left Washington, DC for the same reason. In addition, some employees have expressed frustration with the pace of "getting things done" in Washington, DC.

**Simpson Q7.** We are aware that OPM and the Bronner Group have conducted surveys of Interior's Indian Affairs' employees that have shown low morale and a lack of confidence in leadership.

How does Indian Affairs use the results of these surveys to identify specific areas for improvement?

What actions, if any, have you taken to improve employee morale issues?

**Answer:** The Bronner Group's surveys helped focus Indian Affairs on areas needing improvement, such as improved or more detailed policies and procedures for the field. Improved daily management oversight of staffing in the field was also another finding from the survey.

These findings provided the scope for the framework in which to focus the Bronner recommendations for an improved organization from the ground level up to top management.

One of the key areas recognized as making a difference in employee morale was to improve our communication with employees. Through updated websites and increased internal communication such as email to employees from the Assistant Secretary – Indian Affairs, we've taken steps forward in keeping employees abreast of changes and events in Indian Affairs.

**Simpson Q8.** To what extent has Indian Affairs identified BIE's workforce needs and determined whether it has the appropriate number of staff with the requisite skills to support BIE's mission?

**Answer:** Within BIE itself, the last DOI Workforce Analysis conducted was issued in 2001. A new analysis will be conducted for BIE as schools continue to go into grant status under P.L. 100-297, which affects the size of the Federal workforce. The Bronner Study also interviewed a large sector of BIE personnel during its development, whereby these employees expressed their needs in achieving program goals concurrent with support from the administrative support functions. BIE staff are actively participating with staff from the BIA and Office of the Assistant Secretary – Indian Affairs (ASIA) to further hone the needs of the organization to improve the delivery of administrative support services. This is a critical step in the planning and management of BIE programs and there is room for improvement in this area. Workforce analyses should be done continually depending on student enrollment and the critical needs of students.

**Simpson Q9.** How does Indian Affairs involve BIE and its schools in its strategic planning process?

**Answer:** BIE leadership provides BIE's views by directly participating in the strategic planning process, including development of the strategic plan. When appropriate, BIE also communicates the views of BIE schools and other stakeholders gathered through locally-based interactions. In particular, the Department of the Interior, in establishing its Strategic Plan for Fiscal Years 2011-2016, incorporated the views of its stakeholders, including Tribes and the agencies (e.g. BIE) themselves. The strategic plan mission area to Advance Government-to-Government Relationships with Indian Nations includes a component on strengthening Indian education and uses performance measures that include measuring how BIE schools achieve AYP, a key focal point for BIE in evaluating the quality of education it provides to our students. In addition, BIE needs to further enhance its strategic planning through the further use of performance management and will explore this option. Strategic plans and outcome goals need to be reviewed on a regular basis with the active use of measures to manage and make decisions.. Further, funds are requested (\$2 million) in the FY 2014 President's Budget Request to conduct an independent evaluation of BIE; this will greatly assist in determining the current state and options for future direction of BIE.

**Simpson Q10.** What steps has Indian Affairs taken to develop performance measures to gauge the effectiveness of its reorganization of administrative functions?

**Answer:** BIE is looking to enhance its use of performance management as it evaluates its administrative functions. Indian Affairs is currently in the development phase of implementing some of the Bronner recommendations. One of the considerations to have in place to evaluate the effectiveness of any realignment is the development and execution of performance measures for the delivery of administrative support functions. In addition, the FY 2014 President's Budget includes funding (\$2 million) for an independent evaluation of the BIE to help assess the current state of effectiveness and possible options for the future.

**Simpson Q11.** Why are there three different entities within Indian Affairs responsible for facilities construction and maintenance? What effect does this have on efficiency and oversight of this function?

**Answer:** Although George A. Scott, Director of the GAO's Education, Workforce and Income Security Issues, testified before the Subcommittee on February 27, 2013 and noted that there were three entities with responsibilities for construction and maintenance within Indian Affairs, the Office of Facilities Management and Construction (OFMC) has the delegated responsibility for the construction program on the whole. OFMC works in partnership on construction improvement and repair and operation and maintenance with the Bureau of Indian Affairs and the Bureau of Indian Education to determine priorities and the needs of the respective programs.

**Simpson Q12.** This subcommittee has been pushing for several years now for the agency to update its construction list so that, when we've completed the projects on the 2004 list, we can begin to invest in projects on the new list. When will you release a new Construction Priority List?

**Answer:** Indian Affairs (IA) is reviewing and testing the ranking criteria recommendations put forth by the No Child Left Behind (NCLB) committee report. Once the criteria testing are complete and the NCLB evaluation process is approved, IA will move forward with implementing procedures to develop a new Construction Priority List. We anticipate the process will require approximately six months to establish a new list. The schools on the list will then be presented at a public meeting for feedback before a final priority ranking list is approved.

In addition, the FY 2014 President's Budget requests \$2 million for a major, independent evaluation to determine the structure and needs of the overall school system. The results of the study may inform the construction priority list.

**Simpson Q13.** To what extent are there protocols in place to help schools know which office in Indian Affairs to contact for questions regarding administrative support, such as requests for facilities' repairs?

**Answer:** The Office of Facilities Management and Construction has published processes and procedures for Minor Improvement and Repair including the Emergency reimbursement program. The schools are provided administrative support from their Agencies and Regional facilities program to request funding for repairs and technical assistance.

**Simpson Q14.** To what extent has Indian Affairs explored alternative models for how it provides administrative support to BIE schools?

**Answer:** The current effort underway is following up on the Bronner Study recommendations. The focus of the recommendations is to improve and decentralize administrative services functions to not only improve the organization as a whole but to also improve the delivery of services to its stakeholders. The Bronner Study examined peer agencies' administrative operations to evaluate other support service delivery models that could be used to assist in meeting the challenges of Indian Affairs. In addition, the FY 2014 President's Budget requests funding for an in-depth, independent review of the BIE school system, which can look at alternative models.

**Simpson Q15.** What mechanisms are in place to ensure close coordination and communication among BIE and the other offices within Indian Affairs responsible for serving BIE schools?

**Answer:** This is an area which will be more formalized as some of the Bronner Report recommendations are implemented such as in the area of Service Level Agreements and increased efforts to strengthen the working partnership between the various layers of the organization.

**Simpson Q16.** To what extent does Indian Affairs have performance measures in place to track the amount and quality of services it is providing to BIE schools?

**Answer:** Indian Affairs (IA) has annual GPRA performance measures to ensure progress in correcting deferred maintenance backlogs at schools. Indian Affairs also has annual Internal Control Reviews to establish action plans, when needed, to address identified issues in providing services to BIE schools. Efforts also are underway to develop and implement more performance based reporting to enhance the administrative services for BIE.

**Simpson Q17.** The Family and Child Education (FACE) Program within the BIE is an early childhood/parental involvement program designed to provide culturally responsive education, resources and support for American Indian families with children from birth to five years of age.

Do you consider home literacy, parent engagement, and early childhood education - overall early interventions that target the whole family - to be a key intervention strategy to increase the educational outcomes for the populations that you serve?

**Answer:** A study of impacts of the FACE program revealed that children whose mothers did not have a high school diploma at the time of their child's birth and who participated in the FACE program enter school with average preparation for kindergarten. Children whose mothers did not have a high school diploma and who did not participate in the FACE program enter school with below average preparation. Below average preparation equated to a reading score that is 1.5 standard deviations lower than the average performance. This is a sizable gap at school entry that presents a formidable challenge for early elementary education in BIE schools when children and parents do not receive early education services; however, not all children in the FACE program attend the BIE schools. Additionally, there are no studies that have longitudinal

analysis of the effects of FACE on students in later years. This is a key missing piece of the strategy.

Do you have plans to expand the FACE program into other sites?

**Answer:** The Bureau of Indian Education currently has 44 FACE sites in operation. Efforts have focused on maintaining the programs with high expectations of implementation, fidelity to the FACE model, and accountability. There are currently no plans to expand the FACE program.

Are there any plans to expand the program into the elementary grades given the state of elementary education?

**Answer:** The FACE program currently supports both components (home and center-based), in locations the program exists, that extend the family literacy/family engagement concept into the elementary school through a Parent and Child Together (PACT) Time component in grades K-3. This parent-child interaction component, supported through research, shows that when parents are more directly engaged in their children's educational processes, children are more likely to achieve academic success.

There are two initiatives currently in process within the BIE that directly address family (parent) engagement in the elementary school – the BIE Striving Readers initiative and the BIE Birth to Age 8 Comprehensive Early Childhood Plan. While the FACE program has had direct connections to both of these initiatives, serving on the committee to write the Striving Readers plan and facilitating the work of the early childhood workgroup, not all FACE children enter into the BIE school system. The guidance provided in the Birth to Age 8 plan for supporting high-quality parent-child interaction (PACT Time) experiences and intentional family engagement to support children's academic achievement in elementary schools, will be available to all FACE and BIE-funded schools in May 2013. Schools will be encouraged to replicate this model and expand family engagement efforts in their elementary schools.

The concept and philosophy of engaging both the adult and young child in a high quality educational setting, simultaneously meeting the educational needs of both is a key ingredient in the success of the FACE program and model.

Will you keep us updated on any possible adjustments, changes or expansions to the FACE program?

**Answer:** It will be my pleasure to keep the Committee informed of any modifications to the FACE program. BIE maintains a website, [FACEresources.org](http://FACEresources.org), for current information about the program.

**Simpson Q18.** Last June, the Supreme Court issued its final ruling in the case of *Salazar versus Ramah Navajo Chapter*. The Court held that the government must pay each Tribe's contract support costs in full despite the limited appropriations. The BIE budget contains a line item for education contract support costs, which in recent years has only been sufficient to cover an estimated 65 percent of the need.

How will the Supreme Court's *Ramah* decision impact the BIE budget?

**Answer:** The Bureau of Indian Affairs' Contract Support funds and the Bureau of Indian Education's Tribal Grant Support Funds (previously known as Administrative Cost Grant Funds) are distinct and separate funds in the Indian Affairs appropriations and in the authorization legislation. Therefore, the Supreme Court's *Ramah* decision will not impact the Bureau of Indian Education (BIE) budget as the Tribal Grant Support Funds are not subject to its order and follow the statutory requirements as outlined below.

Section 1128 (Administrative Cost Grants) of Public Law 100-297, as amended by Public Law 107-110, contains provisions that:

- Establish the administrative cost grant formula.
- Specify that funding for administrative cost grants is subject to the availability of funds.
- Enable tribes and tribal organizations operating BIE-funded schools, without reducing direct program services, to provide all related administrative overhead services and operations.
- Amounts appropriated for the administrative cost grants shall be in addition to, and shall not reduce the amounts appropriated for programs.

The annual Indian Affairs Appropriations also contain the following language that limits the payment of administrative cost grant funds to the amount specified by the Congress:

“Provided further, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975 and U.S.C. 2008, not to exceed [dollar amount] within and only from such amounts made available for school operations shall be available for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2012 for the operations of Bureau funded schools, ...”

**Simpson Q19.** You testified that you sent a report to Congress about the challenges in school construction, soon after you started as the Assistant Secretary. Please provide a copy of that report for the record.

**Answer:** The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee Report is provided in Attachment 1.

**Simpson Q20.** You testified that BIE teachers perform as well as teachers at state public schools that serve similar populations with similar challenges. Please provide the information upon which that conclusion is based.

**Answer:** The information is based upon the data extrapolated from both the 2009 and 2011 *National Indian Education Study* (NIES) conducted through the National Assessment of Educational Progress (NAEP) within the National Center for Education Statistics (NCES). The NIES data addressed teacher performance as it relates to language and culture. In general, the percentage of Bureau of Indian Education (BIE) students responding reported that having some or a lot of knowledge about American Indian and Alaskan Native history and traditions was higher than their peers in public schools.

**Simpson Q21.** You testified that soon the BIE will only be running about a dozen schools and the rest will be run by tribes directly, and that this increasing proportion of tribally-run schools will be an improvement. How do you know it will be an improvement?

**Answer:** Self-governance is the principle that important decisions for tribal communities will be made at the tribal level. The Federal Government's increasing adherence to this principle reflects the most successful innovation in Federal Indian policy in 200 years. In education, having tribes run their own schools is an improvement over the status quo in the sense that more decisions involving the education of Indian children will be made at the local level by tribes and their local school boards. This is a true tenet of self-governance, a principle which reflects the single most effective change in policy in the last 50 years of Government to Government relations with Tribal Nations. Additionally, as the BIE transitions from operating schools to providing technical assistance, tribes are transitioning from being passive participants of education to being the driving force in their own education system.

What can this subcommittee do to encourage a greater proportion of tribally-run schools?

**Answer:** Given that the Navajo Nation will soon be assuming control of 31 schools, the percentage of tribally run schools will increase from 68% to 85%. The BIE will continue to look for ways to encourage the Tribes to contract the remaining schools; however, as we have seen with other programs, some Tribes prefer that the Federal Government provide the services.

Mr. Scott testified that school governance remains an issue and that BIE's influence is limited because most schools are tribally run, which seems to contradict your statement about more tribally-run schools being an improvement. If BIE could exert more influence, would tribally-run schools improve?

**Answer:** Tribally-run schools improve their ability to provide quality education due to the investment and commitment of "taking care of its own." They are the best decision-makers in recognizing and integrating standard education curriculum with cultural needs such as language immersion classes. While Indian Affairs wholeheartedly supports Tribal sovereignty and the

options provided to Tribes under P.L. 100-297 for operating BIE-funded schools under grants, like other federal statutes, there are at times a conflict of priorities and expectations that do not always coincide. To fulfill the federal mandates under P.L. 93-638, as amended, and P.L. 100-297, it must be recognized that Tribes are empowered to operate schools subject to these laws. Recognizing this authority provided by the Congress to Tribes, BIE works within these parameters.

**Simpson Q22.** The Cobell v. Salazar class action settlement creates an Indian Education Scholarship fund that is intended to assist Indian students in attending college or vocational schools. Is the amount of money that will be available to Indian students under this fund partially dependent on how quickly and efficiently the Department can repurchase fractionated interests under the \$1.9 billion Indian Land Consolidation Program (ILCP), and, if so, why?

**Answer:** The Department must transfer required funds to the American Indian College Fund quarterly with a public report outlining the number of allottee interests conveyed, the purchase price for each conveyance, and the corresponding contribution to the Scholarship Fund based on the formula as set forth in the Cobell Settlement. Contributions to the fund are based on the payments made for fractionated land interests through the Buy-Back program, according to the Cobell Settlement formula. If the amount of the land purchase is less than \$200, \$10 will be paid to the holding fund; if between \$200 and \$500, a \$25 transfer will be made; if greater than \$500, five percent of the purchase price will be donated to the fund.

The timing and size of the contributions will be based on the pace and amount of land purchased in the consolidation effort. The Buy-Back program's funds expire after a period of 10 years pursuant to the Settlement. In addition to the maximum \$60 million that can be used from the Buy-Back program funds, the principal amount of any class member funds in an Individual Indian Money (IIM) account for which the whereabouts are unknown and left unclaimed for five years, after final approval of the Settlement, will be transferred to the American Indian College Fund.

Similarly, any leftover funds from the administration of the Settlement (after all payments under the Settlement are made) will be deposited into the Scholarship Fund. The Scholarship Fund will help students across Indian Country receive a higher education, whether it's through college, graduate school, or vocational certifications. The American Indian College Fund will play an important role in providing Native American students with the post-secondary training and education they need to succeed in the workplace, marketplace, professional fields, and government.

As the recipient organization, the American Indian College Fund will devote the funds it receives to scholarships for vocational certifications, 4-year accredited bachelor degree colleges and universities, including tribal colleges that award such degrees, and graduate degrees. The American Indian College Fund will be responsible for establishing the eligibility criteria for the award of scholarships as well as for managing and administering the Scholarship Fund.

The Secretary also stipulated that 20 percent of the annual scholarships be awarded by the American Indian Graduate Center to encourage Native American college graduates to strive for



professional and doctoral degrees. The Fund will be overseen by a special five member Board of Trustees - two selected by the Secretary, two selected by the Lead Plaintiff and one selected by the non-profit.

**Simpson Q23.** You testified about the important role of charter schools in providing diversity and specialization in education, as opposed to uniformity. Do you recommend that Congress continue the appropriations language prohibiting charter schools in Indian Country, and, if so, why?

**Answer:** Yes, Indian Affairs supports the continuation of this language as included in the President's budget request. In effect, Tribes already have the same options for operating a charter school with the existing authorities for a grant school pursuant to P.L. 100-297. P.L. 100-297 authorizes Tribes to operate BIE-funded schools pursuant to their needs, including curriculum choices such as language immersion courses.

**Simpson Q24.** Once the next school replacement construction list is published, when and why would it ever change until the last school on the list is replaced?

**Answer:** The school replacement construction list is an important part of the success of the BIE system. However, we cannot simply rely on the list. Communities need to examine their active enrollments in their schools and determine the best avenue to achieve better outcomes.

The No Child Left Behind (NCLB) committee has recommended that the list be reviewed and validated every five years

If a tribe makes repairs to a school, should that school be penalized by being moved down on the school replacement construction list?

**Answer:** The overall requirement and goal of the construction and maintenance program is to provide good quality schools for all Indian students to attend. There is a potential if the tribe makes significant repairs to a school and the FCI improves from a "poor" to a "good" or "fair" condition, the school ranking may change. In addition, Indian Affairs provides \$150 million annually to improve and repair schools. The overall goal of this funding is to make schools safe for children to attend.

Additional Questions from Ms. McCollum

McCollum Q1. Mr. Washburn, your testimony included reference to the Bureau of Indian Education's (BIE) plan to move toward "a unified system of standards" for assessing adequate yearly progress (AYP). As the BIE moves toward establishing these common competency standards, a valid concern has been raised in the Indian education community regarding the potential impact on curriculum.

As we have seen in schools across this nation, one of the unintended consequences of the strict AYP standards laid out in No Child Left Behind has been a narrowing of the curriculum. As schools have been forced into a greater focus on testing, they have prioritized the common test subjects of reading and math. This has marginalized education in the arts, history, and languages for America's youth.

Within BIE schools, tribal communities have placed a priority on the education of their students in Native languages, culture, and history. I've heard from teachers and students throughout Indian Country about the strong sense of identity and community that these programs provide, which also leads to improved academic motivation and achievement.

Can you tell me how the Department of the Interior intends to maintain the integrity of tribal communities' investments in Native languages and culture within the school curriculum?

How will the development of new unified standards be undertaken with these concerns in mind?

**Answer:** The Bureau of Indian Education (BIE) provides approximately \$25 million annually to BIE-funded schools from the nearly \$400 million in the Indian School Equalization Formula (ISEF) funds "to implement Language Development programs that demonstrate the positive effects of Native language programs on students' academic success and English proficiency" (25 CFR § 39.130). The commitment of the BIE to support Native Language programs is not expected to change in light of reform initiatives sweeping the Nation that adopt common academic standards and assessments.

The BIE is also currently required by NCLB to utilize an accountability system based on reading/language arts and math academic standards and accompanying assessments utilized by the 23 states where BIE schools are located. The BIE has proposed in a Flexibility Request submitted to the U.S. Department of Education that BIE adopt a unitary accountability system based on a single set of academic standards – i.e., Common Core State Standards (CCSS) – and a single set of assessments consistent with reforms being implemented across the nation. Adoption by the BIE of a unitary accountability system does not preclude the teaching of Native languages or cultures, in fact it will enhance tribes' ability to implement Native curriculum systemically for the first time. Fifteen percent of the program under flexibility can be developed for local use, which governing school boards or tribes of tribally-controlled schools could use for Native Language and/or cultural standards and assessments. In addition, the FY 2014 President's Budget requests \$2 million for an independent evaluation of the BIE-funded schools. Once the evaluation is completed, BIE will be in a better position to determine the future direction of the school system.

Additional Questions from Mr. Valadao

Valadao Q1. Mr. Washburn, with respect to Bureau of Indian Education (BIE) operated or funded non-boarding schools, what is the BIE's per pupil spending?

**Answer:** In 2011, an internal study was released by Indian Affairs which compared the per pupil costs of BIE-funded day and boarding schools with public school data from the National Center for Education Statistics. For FY 2010 cost data, Bureau of Indian Education (BIE)-funded day schools expended approximately \$13,000 per pupil in day schools and \$15,500 per pupil in boarding schools, not including more than \$203 million from the Department of Education and funds contributed by the states and the tribes themselves. Public schools averaged \$10,176 per pupil. The study identified reasons for the increased costs in BIE-funded schools such as, isolation and transportation issues in Indian Country for BIE schools, limited English speakers coming into kindergarten and no economies of scale in rural Indian communities.

How does this compare to per pupil spending in other federally operated education systems and accepted benchmarks for district operated school systems?

**Answer:** In previous studies, the Government Accountability Office (GAO) has found that it is difficult to compare costs from BIE funded schools to the Department of Defense schools or public schools. All three school systems use different accounting categories to capture expenditures, making true comparisons almost impossible. While only 7% of Native American children attend BIE schools, BIE cannot close and consolidate schools to make the system more efficient unless a tribe agrees to the change.

Does the BIE feel its per-pupil funding is at an adequate level?

**Answer:** BIE supports the funding levels outlined in the FY 2014 President's Budget.

Assuming federal appropriations were made available, would the BIE prefer to see its per-pupil spending increase, decrease or neither?

**Answer:** BIE supports the funding levels outlined in the FY 2014 President's Budget.

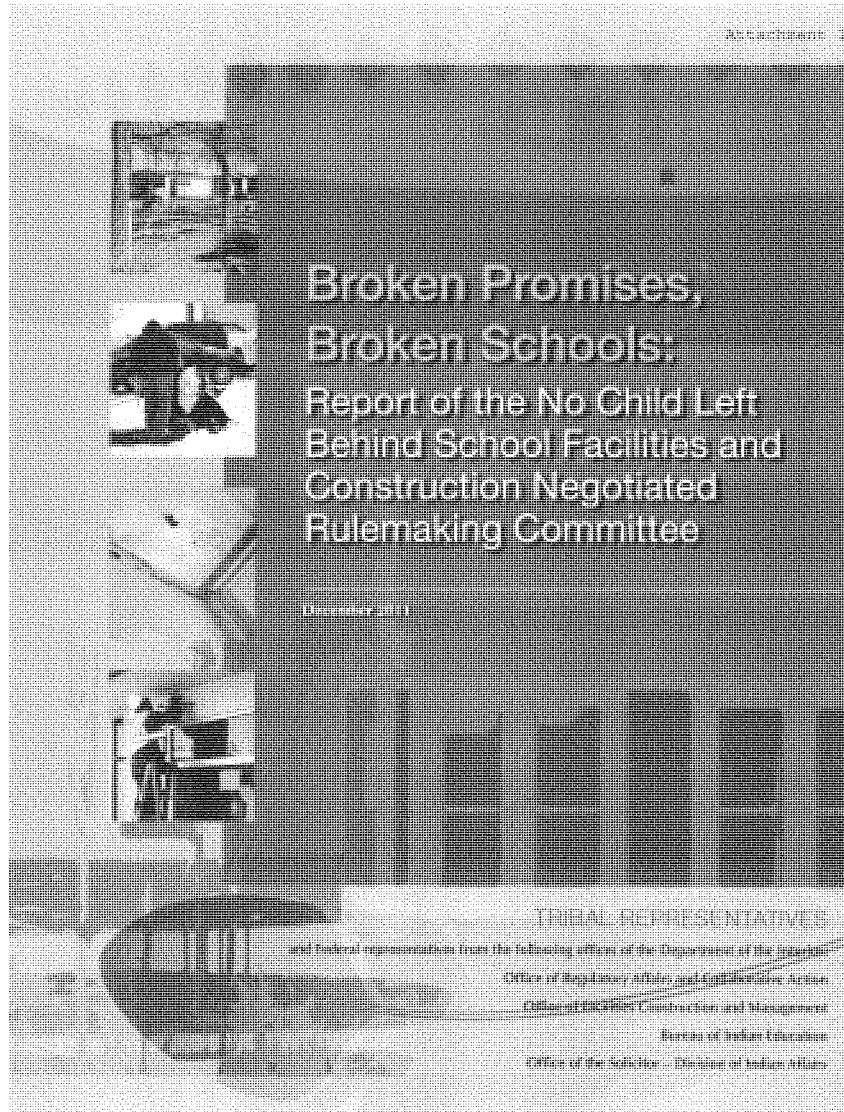
Valadao Q2. Mr. Washburn, your testimony seems to indicate that each BIE school will have independent discretion to adjust its budget in response to sequestration. Are you concerned that differing funding decisions will cause the quality of education to vary greatly from school to school?

**Answer:** For over three decades, local Indian school boards and the school administrators have had the authority to revise local budgets to meet their respective school operations requirements. Each school will have to adjust its spending pattern accordingly under sequestration and each school board can have input into how their education services will be reduced. Funding is just

one issue for improving the quality of education, and we will work with the local school boards to ensure the quality of education is protected even if funding is reduced.

How do you plan to mitigate for this?

**Answer:** Fortunately, the bulk of BIE-funding is forward funded, which allows school leaders to address immediate expenditures with the ability to plan for education and operational impacts, but this will not allow much mitigation for loss of funds. The BIE is directed to reduce funding in all line items by five percent under sequestration. Unfortunately, we won't know the true impacts of the sequester in the classroom until after the start of the new school year.



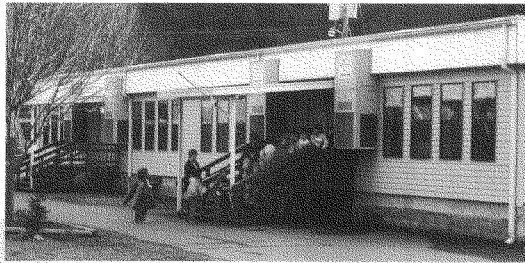
Broken Promises, Broken Schools: Report of the No Child Left Behind  
School Facilities and Construction Negotiated Rulemaking Committee<sup>1</sup>



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<sup>1</sup> See Appendix A for a list of Committee members and their biographies.



Chapter 1 Includes:

- An overview of the Committee, its task, and its process
- The Federal Government's historical duty to educate native children
- Bureau-funded schools and their unmet facility needs
- Lack of transparency in the funding allocation process
- A summary of all of the Committee's recommendations from this report

## Chapter 1: Introduction

The No Child Left Behind Act of 2001 (NCLB or the Act) includes provisions to improve the education of Native American children<sup>2</sup>. One of those provisions directed the Secretary of the Interior to employ the mechanisms delineated by the Federal Advisory Committee Act<sup>3</sup> and the Negotiated Rulemaking Act<sup>4</sup> to assemble a committee for the specific purpose of preparing a report to Congress and the Secretary of the Interior. As elaborated in 25 U.S.C. § 2005(a)(5), this report is intended to provide Congress and the Secretary comprehensive information about the conditions and funding needs for facilities at Bureau-funded schools.

Specifically, NCLB directed the committee to prepare and submit to the Secretary:

- A catalog of school facilities that:
  - incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;
  - rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;
  - establishes a routine maintenance schedule for each facility;
  - identifies the complementary educational facilities that do not exist but that are needed; and
  - makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.
- A report on the school replacement and new construction needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address those needs.

- A report on the major and minor renovation needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address such needs; and

- Revised national standards for heating, lighting, and cooling in home-living (dormitory) situations.

Per the requirements of NCLB, in the fall of 2006, DOI sought assistance from the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to convene a committee. The U.S. Institute, working with neutral contractors, conducted a convening assessment. The convening team conducted confidential interviews, reaching out to 198 individuals, representing 99 different schools.

In 2008, the BIA issued a Notice of Intent to Form a Negotiated Rulemaking Committee and to request nominations for tribal representatives on the committee. As required by the Act, the Secretary of the Interior was directed to select representatives of Indian tribes for the committee from among individuals nominated by tribes whose children attend Bureau-funded schools. To the maximum extent possible, the proportional representation of tribes on the committee would reflect the proportionate share of students from tribes served by the Bureau-funded school system. In addition, the Secretary was directed to consider the balance of representation with regard to geographical location, size, and type of school and facility, as well as the interests of parents, teachers, administrators, and school board members, in selecting tribal committee representatives. DOI received 57 letters nominating 40 tribal representatives and 14 letters nominating 12 tribal alternates. Nominees were vetted by DOI and selected, and then approved by the White House. DOI selected, according to the criteria noted above, 22 tribal representatives and nine tribal alternates, and appointed four federal representatives and alternates.

2. 107 Pub. Law 110, Part D, 115 Stat. 1425, 2007 (January 28, 2002).

3. 5 U.S.C. Appx. § 1 – 16.

4. 5 U.S.C. §§ 561 – 570a.



The Secretary of the Interior chartered the NCLB School Facilities and Construction Negotiated Rulemaking Committee (the Committee) (see Appendix A) in January 2010, roughly six years after the mandated time frame. Once convened, the Committee held seven multi-day meetings, during which they visited five Bureau-funded schools and received public comments from 12 tribal and school officials. The Committee deliberated at length upon the issues called for by Congress. The Committee also conducted five regional consultation sessions around the country, which were attended by more than 200 participants, and 16 tribes, schools, or tribal organizations submitted written comments (see Appendix B for an overview of the consultation process and findings). The Committee reviewed extensive data from federal agencies, and also submitted two data calls to Bureau-funded schools. The Committee respectfully submits the following report in compliance with the statutory mandate.

This report includes recommendations regarding how the Bureau should prioritize funding for construction work on Bureau-funded school facilities. The Committee is also submitting a catalog detailing the inventory and conditions of the facilities at each Bureau-funded school (due to the length of the catalog, drawn from a computerized database, the Committee submits the catalog as Sub-Report A). The Committee's recommendations include an analysis of this catalog and recommendations for improving its accuracy so that it can quantitatively and qualitatively guide the prioritization of repair and construction funding. A narrative summary of information contained in that Catalog and collected by the Committee is also included in this report.

The overarching conclusions to be derived from this report is that:

The funding appropriated by Congress has not been sufficient to keep pace with the deterioration of Bureau-funded school facilities—it would take \$1.3 billion to bring all Bureau-funded schools up to acceptable condition. Furthermore, inadequate use and support of the computer database on which Indian Affairs relies, as well as lack of transparency and equity in the existing decision making process, has hampered a fair and effective allocation of funds.

The Committee's findings contain strong support for extensive improvements in Indian Affairs' system of ad-

ministering school facilities and allocating construction monies for Bureau-funded schools. Recommendations for these improvements are contained in this report.

The DFO proposes, and the Committee endorses, a plan to implement the recommendations of this report as quickly as possible by incorporating these recommendations into the Indian Affairs Manual (IAM).

#### The Federal Government's Historical Duty to Educate Native Children

The historical connection of Native American Indians to the earth, air, water, and other resources has a distinct identity that has been in existence since before the United States became an independent nation. Indeed, to secure a nation independent from the English crown, early U.S. governments were obliged to enter into more than 100 treaties with American Indian tribes. Treaties have long been regarded as the most legitimate and steadfast form of agreement between two nations. According to the United States Constitution, **"...all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."**<sup>5</sup> These treaties constituted contractual agreements between sovereign nations. Through these contracts, American Indian tribes ceded vast stretches of their ancestral lands since time immemorial to the United States in exchange for specific promises and considerations. Many of those treaties included solemn commitments by the United States to accept trust responsibility for the education of American Indian children.

As Congress recently acknowledged in the Act:

*"Congress has declared that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs-funded school system that it has established on or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes toward the goal of ensuring*

<sup>5</sup> Art. VI of the Constitution.

*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, including meeting the unique educational and cultural needs of those children.*<sup>6</sup>

The federal obligation to American Indian children continues today. In December 2010, at the White House Tribal Nations Conference, the President of the United States of America reminded the public: "I said that so long as I held this office, never again would Native Americans be forgotten or ignored." The President added, "[h]istorical wrongs] serve as a reminder of the importance of not glossing over the past or ignoring the past, even as we work together to forge a brighter future. That's why, last year, I signed a resolution, passed by both parties in Congress, finally recognizing the sad and painful chapters in our shared history—a history too often marred by broken promises and grave injustices against the First Americans."<sup>7</sup>

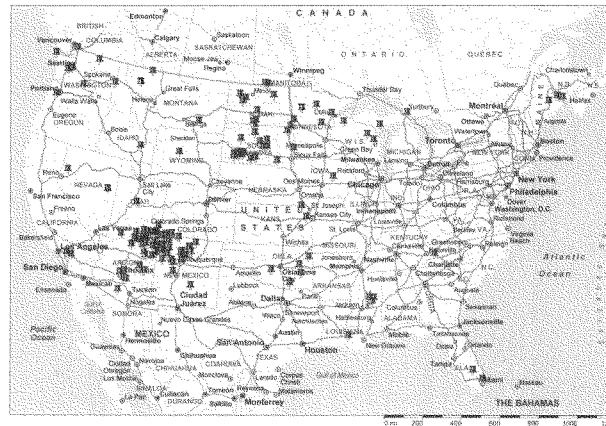
6. Pub. Law 107-110, § 1042, 115 Stat. 2007, codified at 25 U.S.C. § 2000.

7. President Barack Obama, "Remarks by the President at the White House Tribal Nations Conference," White House Tribal Nations Conference, Washington, DC, December 16, 2010.

The origins and long history of the Federal Government's trust responsibility respecting American Indian education is both complicated and unique; it is comprehensively summarized in the leading treatise, *Cohen's Handbook of Federal Indian Law*:

*Provisions regarding Indian education appear with the earliest colonial laws. Beginning with the 1794 Treaty with the Oneida, [7 Stat. 47 (1794)] over 150 treaties between tribes and the United States have included educational provisions. For almost as long a time, Congress has legislated to provide for Indian education generally. In 1819, Congress established a permanent "civilization fund," which, until its repeal in 1873, authorized the executive to spend an annual sum to employ teachers in Indian country to provide "against the further decline and final extinction of the Indian tribes ... and for introducing among them the habits and arts of civilization." Civilization Fund Act, Act of Mar 3, 1819, 3 Stat. 516.<sup>8</sup>*

8. Cohen's Handbook of Federal Indian Law, Section §22.03: Education. Copyright 2009, Matthew Bender & Company, Inc.



Pin marks show locations of Bureau-funded schools.

Beginning with the Kiowa Comanche Treaty of October 21, 1867 (15 Stat. 581), the United States entered into at least eight treaties containing identical provisions obligating the U.S. to provide school facilities for Indian education:

*"[t]he United States agrees that for every thirty children... a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher."<sup>9</sup>*

Unfortunately, as Cohen further explains, the U.S. has not fulfilled its treaty obligations to Indian education:

*[C]enerations of inadequate and inappropriate education have left a deep scar. In addition, failure to fully fund many, if not most, federal Indian education initiatives limits the efficacy of many education laws. Many Indian children attend school in facilities that are among the worst in the nation...*

*Opinions have long varied about the existence and extent of the United States legal obligation for Indian education. Today, however, Congress and the executive both agree that the federal government has a special responsibility for the education of Indian peoples. In 2001, Congress codified this responsibility more explicitly in the Native American Education Improvement Act.<sup>10</sup>*

The Commerce Clause of the United States Constitution vests Congress with plenary authority over the relationship between the Federal Government and Indian tribes.<sup>11</sup> In exercising that authority, Congress plays a fundamental role in helping – or hindering – the success of America's First Americans. NCLB included mandates to implement Congress' recognition that:

*It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with*

9. Also: Treaty with the Cheyenne and Arapaho, October 28, 1867 (15 Stat. 593); Treaty with the Ute, March 2, 1868 (15 Stat. 619); Treaty with various tribes of Sioux, and Arapaho, of 1868 (15 Stat. 633); Treaty with the Crow, May 7, 1868 (15 Stat. 649); Treaty with the Northern Cheyenne and Northern Arapaho, May 10, 1868 (15 Stat. 655); Treaty with the Shoshonees and Bannacks, July 3, 1868 (15 Stat. 673); Treaty with the Navajo, June 1, 1868 (15 Stat. 677).

10. "Cohen's Handbook of Federal Indian Law," Copyright 2009, Matthew Bender & Company, Inc. §22.03: Education.

11. Constitution Art. I, § 8, C13.

*local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.<sup>12</sup>*

#### Bureau-Funded Schools

The BIA and BIE within DOI are the federal agencies responsible for executing Congress' directives regarding American Indian education. BIA funds 183<sup>13</sup> schools serving Native Americans located on 64 reservations in 23 states. Fifty-seven of these schools are managed directly by the BIE and 126 are operated by tribes with Bureau funding. The OFMCI, under the Director of the OFECR, is responsible for recommending to the Director of the BIE the distribution of operations and maintenance funds, and for the management and funding of projects for the repair, renovation, and replacement of Bureau-funded schools.

Indian Affairs (IA) is responsible for funding, maintaining, repairing, and replacing the 183 schools educating American Indian students. IA's relationship to those schools is like that of a state educational agency to the public schools it serves. A key distinction, however, is that state educational agencies receive tax revenues from the localities of their respective schools and Federal Impact Aid money (P.L. 81-815). In contrast, Bureau-funded schools cannot draw on the local tax base; they cannot issue bonds; they are primarily dependent upon support from the Federal Government. Bureau-funded schools must abide by 23 different state standards, federal standards, and in many cases, tribal standards.

Constructing and maintaining Bureau-funded school facilities is a major component of DOI's trust responsibility to American Indians; it is a requirement of many treaties and statutes.<sup>14</sup> Breach of that responsibility constitutes a separate and significant chapter within the larger history of misuse, neglect, and violation of trust by the Federal Government in its dealings with Native Americans. Federal appropriations for maintaining and replacing Bureau-funded schools have not

12. 115 Stat. 1907; amending 20 U.S.C. § 7401.

13. There are 183 schools in BIA's inventory. While two of these do not receive funds from BIA, they are still counted in their inventory, and so are included in all discussions within this report.

14. 115 Stat. 1907; amending 20 U.S.C. § 7401.

kept pace with the deterioration of these buildings nor with changing educational needs and requirements.

The United States, in its announcement of U.S. support for the United Nations Declaration on the Rights of Indigenous Peoples, proclaimed: "The Administration is also committed to supporting Native Americans' success in K-12 and higher education."<sup>15</sup> At the White House Tribal Nations Conference, the President added: "We're rebuilding schools on tribal lands while helping to ensure that tribes play a bigger role in determining what their children learn."<sup>16</sup> This Committee's research and conclusions should help the Federal Government to fulfill these public declarations.

Average Age of Bureau of Indian Education Academic and Admin Buildings	
Schools (Buildings age 0-10)	35
Schools (Buildings age 11-20)	29
Schools (Buildings age 21-30)	36
Schools (Buildings age 31-40)	34
Schools (Buildings age 41-50)	32
Schools (Buildings age over 50)	17
	<b>183</b>

Source: OFMC, 2011

#### The Unmet Need for Quality School Facilities

In his September 8, 2011, speech on the American Jobs Act, the President declared: "How can we expect our kids to do their best in places that are literally falling apart? This is America. Every child deserves a great school."<sup>17</sup> This observation has a scientific basis—established research has explored the correlation between school facility conditions and academic performance (see Appendix C: Abstracts of Research Papers Associating School Conditions with Performance). Multiple studies have found significant links between inadequate facility conditions and poor performance for students and teachers. These studies have found that the quality of physical environments—including temperature, lighting, acoustics, and age of facilities—affects dropout rates, teacher retention, test scores, and student behavior. Direct testimony supports this correlation. For example, on September 11, 2010, in a statement to a Senate Committee on Indian Affairs hearing on Construction and Facility Needs at Bureau-funded schools, a student testified: "With an insufficient heating and cooling system, I have some classrooms that are very cold and others that are very warm. This is distracting when trying to do my work ... When students are expected to attend and work in a school like ours, it's very difficult to work and take school seriously when our building is in the shape that it is."<sup>18</sup> The principal of a different Bureau-funded school reported that structural defects in the classrooms forced teachers to

Breakdown of Number and Cost of Deficiencies by Type of School			
Type of School	Number of Schools	Number of Backlogs Entered in FMIS	Estimated Cost of Backlogs
BIE-operated	60	5,575	\$ 461,235,377
P.L. 100-297 Grant	119	6,861	\$ 497,888,744
P.L. 93-638 Contract	4	270	\$ 8,493,163
<b>Totals</b>	<b>183</b>	<b>12,706</b>	<b>\$ 967,617,304</b>

Data from FMIS as of May 2011, not including those backlogs already funded for repair or renovation. The 63 schools remaining in poor condition as of September 2011 require an estimated \$1.3 billion to elevate them to an acceptable condition. Total backlogs and costs to elevate schools from poor condition are not equivalent since many schools would require full scale renovation or replacement.  
Source: OFMC, 2011

15. "Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples," December 16, 2010.  
16. President Barack Obama, "Remarks by the President at the White House Tribal Nations Conference," White House Tribal Nations Conference, Washington, DC, December 16, 2010.

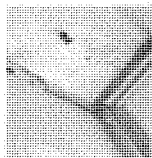
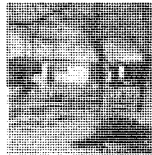
17. President Barack Obama, Speech to a Joint Session of Congress, September 8, 2011.

18. Lindsey White, Bug-O-Nay-Ge-Shig School, MN. United States Senate Committee on Indian Affairs, "Oversight Field Hearing on Preparing Our Students for Tomorrow in Yesterdays Schools: Construction and Facility Needs at Bureau of Indian Education Schools," September 11, 2010, White Earth Reservation, MN.

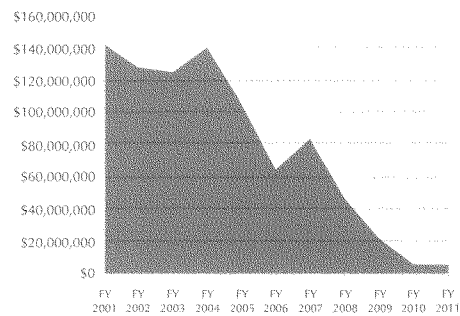


*"All thirteen years I've been told that education is very important, but it's hard for me to believe this when I see how my school looks compared to other schools."*

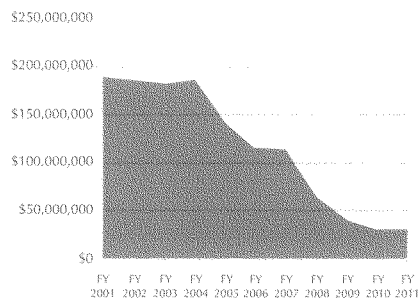
As insightfully revealed by a student at the Bug-O-Nay-Ge-Shig School



Funding for Replacement Schools\*



Total Education Construction Funding FY 2001 to FY 2011\*



These charts illustrate the dramatic decrease in funding appropriated for school construction overall and the Replacement School Program in the past decade.  
Source: OFMC, 2011.

\*Does not include FY09 ARRA Funding of \$244,239,342.

relocate students to a heated bathroom during winter. Testimony received by the Committee bolstered the conclusion that poor school facilities have negative impacts on students and teachers.

These stories are not limited to a few schools. The Bureau's failure to provide environments conducive to academic achievement is well documented and long-standing. In 1997, the GAO reported a backlog of \$754 million in needed repairs.<sup>19</sup> These repairs are not minor – in many cases the structural deficiencies at old and inadequately maintained facilities mean that schools are literally falling down. The 1997 GAO report revealed that 25 percent of Bureau-funded school buildings are more than 40 years old. This figure has increased to 27 percent in the 14 years since GAO issued that report.

Estimated Total Schooling, Classroom Building, and Classroom Furniture Replacement Costs for Schools in Poor Condition	
State	Cost
Arizona	\$663,042,527
Idaho	\$12,778,000
Louisiana	\$13,975,000
Maine	\$8,270,880
Minnesota	\$21,328,440
Mississippi	\$55,305,048
Montana	\$17,880,135
North Dakota	\$58,786,984
Nevada	\$500,000
New Mexico	\$265,633,212
Oklahoma	\$67,845,580
South Dakota	\$101,814,874
Utah	\$9,927,960
Washington	\$14,584,200
<b>TOTAL</b>	<b>\$1,311,672,840</b>

Source: OFMC, 2011

19. GAO Report, School Facilities – Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs, December 1997, GAO/IEHS-98-47.

In 2010, DOI requested only \$112 million for school facilities construction (2010 budget). With over \$967 million in estimated backlogs, this amount is clearly inadequate to address the documented needs of Bureau-funded schools. At this rate of investment, Bureau-funded schools will only fall further behind.

In recent years, construction and repair budgets for Bureau-funded schools have remained woefully inadequate, and resources are shrinking annually. DOI's budgets for school facility operations, maintenance, and construction fell from \$204 million in 2007 to \$112 million in 2010. These declining appropriations pale in comparison to the identified need.

#### Funding Levels of Bureau Schools and the New School Replacement Program Since 2001

Some classes are being held in buildings constructed more than 100 years ago. According to OFMC, at current support levels, it will take more than 60 years to replace the 63 Bureau-funded schools currently rated in poor condition. Since the planned useful life of such schools is considerably less than 60 years (industry standard is 40 years), it is clear that continued funding at these levels ensures a prolonged breach of the federal trust obligation to Native American students.

As a point of contrast, a 2001 report from the U.S. GAO<sup>20</sup> illustrates that Bureau-funded schools had significantly more building deficiencies than schools under the U.S. DODEA—the only other comparable federally-funded educational system. Furthermore, the DODEA recently introduced a plan to replace or renovate 134 schools by 2018 for an estimated cost of \$3.7 billion.<sup>21</sup> In 2010, OFMC calculated it would require \$1.3 billion to elevate the 63 schools in poor condition up to satisfactory condition.

This Committee strongly recommends that the tribes, TIBC, the AS-IA and the Secretary of the Interior request of the President, and the President include in his budget request, funding for a comparable commitment to bring all Bureau-funded schools into acceptable condition.

20. GAO survey. Source: NCEs, Condition of America's Public School Facilities: 1999, NCEs 2000-32 (Washington, DC: U.S. Department of Education, June 2000).

21. Conference call between Committee members and DODEA's Mike Smiley, September 20, 2011.

#### Lack of Transparency in the Allocation Process

Another shortcoming of the Federal Government has been the inability of DOI to distribute the funds Congress has appropriated for building and maintaining Bureau-funded school facilities in a transparent manner. Affected tribal communities have expressed great frustration both with DOI's allocation decisions and with the lack of transparency characterizing the decision-making process. The White House promotes transparency, fairness, and objectivity in all federal agencies. In a 2009 memorandum to the heads of executive departments and agencies, the President wrote: "Transparency promotes accountability and provides information for citizens about what their Government is doing."<sup>22</sup> The White House has also explained: "Objectivity involves a focus on ensuring accurate, reliable, and unbiased information."<sup>23</sup>

DOI has not lived up to the White House's assertions, and this lack of transparency and objectivity has fostered ongoing tribal mistrust of the Federal Government. A Convening Report commissioned by DOI in preparation for this Negotiated Rulemaking, along with testimony received by the Committee, illustrated that many stakeholders perceive the prioritization of funding for repairs and renovations of schools as opaque, arbitrary, and unresponsive to the pressing needs of the schools. Lack of transparent decision-making has also contributed to suspicion that DOI made funding decisions in response to political pressure, rather than strictly basing its decisions on the actual needs of the schools.<sup>24</sup>

#### Conclusion

Providing proper educational facilities is not only essential to fulfilling the academic, social, and cultural needs of Native American children, but is also a matter of trust responsibility for the Federal Government, as well as treaty rights for many tribes. Satisfying these obligations involves attention to both the condition of the facilities and the quality of the educational experience. While some Bureau-funded schools have improved in the past decade, more progress is needed. To promote successful educational experiences, children must be able to learn in environments that are safe, enriching, culturally appropriate, and technologically advanced.

To ensure the success of our most precious resources – our children and future leaders – we must provide them with exemplary educational programs in high-quality settings. Currently, more than one-third of Bureau-funded facilities are in substandard or poor conditions, un conducive to educational achievement; thus, we are unfairly restricting the opportunities for these students to receive an education on par with non-Bureau-funded school systems. As explained previously, there is a great volume of research establishing a direct correlation between facility environment and student achievement. Therefore, continued failure to provide adequate educational facilities violates long-standing and current federal obligations. The Committee hopes and believes the following report will help Congress understand the shortcomings of Bureau-funded school facilities and provide the Secretary of the Interior with processes to ensure an equitable distribution of funds.

22. President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government," January 12, 2009.

23. Office of Management and Budget, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," 66 Fed. Reg. 49,718, at 49,724, September 28, 2001.

24. Final Convening Report, Negotiated Rulemaking Committee on BIA-Funded School Facilities Construction, prepared by the Consensus Building Institute, with the U.S. Institute for Environmental Conflict Resolution, March 5, 2008.

#### Summary of the Committee's Recommendations

- Tribes, TIBC, the AS-IA and the Secretary of the Interior should request of the President, and the President should include in his budget request to Congress, funding for a commitment to bring all Bureau-funded schools into acceptable condition.

#### FMIS Recommendations

- All schools should use the Maintenance Management Schedule module in FMIS. OFMC or BIE should monitor whether schools are using this module and encourage those who are not to do so.
- OFMC and BIE should standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.
- OFMC should include educational facilities in FMIS, by surveying the current space inventory of all 183 schools and comparing existing space against existing or revised space guidelines to identify educational space deficiencies.
- OFMC should prioritize assistance for the 40 to 50 schools (e.g., not new schools and not schools known to be effective at using FMIS) that have problems with FMIS access, making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring that systems are in place in each school to maintain FMIS.
- OFMC and BIE should guarantee that all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.
- OFMC and BIE should explain the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.
- OFMC should require that minimum training for facility managers include a 40-hour FMIS certification.
- OFMC and BIE should create a matrix that defines roles and responsibilities, including communica-

tion responsibilities, for all parties involved with FMIS—from the school level up to the Central level, including local schools, BIE Albuquerque, education line offices, agencies, OFMC Albuquerque, and BIA regional offices.

- OFMC and BIE should ensure regular technical assistance and monitoring for all schools using FMIS. This support should be consistently offered for all schools, including grant and contract schools.
- OFMC and BIE should highlight the responsibility of school administrators and facility staff to guarantee that FMIS is updated. This should be reinforced from the director's office, at the assistant deputy director level, and through ELO offices. FMIS updates should be required at the same level of priority as each school's annual report and NASIS updates.
- OFMC should create expectations, deadlines, and reminders for entering and removing backlogs and offer more training in this area for school boards and administrators. OFMC should enact a policy requiring schools to use FMIS.
- OFMC should develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCOM.
- OFMC should create nine Regional FMIS support groups. This could include a roster of people in each region who are available to provide FMIS technical assistance to others in their region.
- The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.





- If something in the FMIS program is going to change, FMIS users should be given advanced notice and any necessary training before the changes take effect.
- Like NASIS, FMIS should be easily accessible for all users via the Internet (versus dedicated terminals), without compromising security. Schools should also be able to retrieve their FMIS backlogs from remote locations.
- OFMC and the CIO should respond to FMIS technical challenges more quickly and efficiently, including system issues, access and connectivity problems, and password availability.
- OFMC should warn all users via email when the system is going to be down, and for how long.
- OFMC and BIE should provide regional/agency support, or a regional assistance team, to ensure backlogs are input for all Bureau-funded schools that lack access for whatever reason.
- OFMC should improve communication between contractor and schools during the assessment process.
- OFMC should require formal entry and exit interviews between school leaders and contractor team.
- OFMC should require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.
- OFMC should require the school's facility staff to accompany the contractor during the visit.
- Thirty days prior to the arrival of the Contractor, OFMC should send the school administrator a copy of the contractor's Scope of Work and a print-out of the school's list of backlogs from FMIS.
- Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.

#### Replacement School Recommendations

- DOI should codify, and OFMC and BIE should implement detailed recommendations regarding the following:
  - Principles underlying the new approach to replacement schools
  - Eligibility requirements for applicants
  - Application review and creation of pool of schools for whole school replacement
  - A post-application process
  - A whole school replacement and renovation formula

#### MI&R Recommendations

- OFMC and BIE should emphasize to the schools the importance of timely entry of data in FMIS.
- OFMC should annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
- OFMC and BIE should publish the data call for schools to indicate their priority backlogs for MI&R funding.
- After all funding decisions are made, OFMC should issue an annual report of all regional and headquarters MI&R allocations, explaining each decision, to post and distribute.
- OFMC should convene regional committees made-up of one representative from each school in the region—grant/contract schools as well as BIE schools—to make decisions about the allocation of each region's MI&R funds.
- DOI should codify, and OFMC and BIE should implement the new MI&R formula and process.



#### FI&R Recommendations

- The Committee recommends that Congress revisit the moratorium on school expansion.
- OFMC should distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained.
- OFMC should announce the overall budget for FI&R funding each year, and annually publish the schools and projects to be funded each year along with the rankings, explaining FI&R project/school selection in more detail than location ranking in the *United States Department of the Interior Budget Justifications and Performance Information* (Green Book).
- OFMC should identify the individuals who compile and complete the ranking process for FI&R, make clear their roles and responsibilities, and publish these “roles and responsibilities” annually.
- OFMC should identify educational space deficiencies by comparing the Educational Space Criteria (and state accreditation requirements) to existing conditions at all schools.
- OFMC should add all educational space deficiencies into FMIS, categorized as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.
- The FI&R formula should factor educational space deficiencies into the overall location score.
- DOI should incorporate educational space deficiencies into the ranking factor of critical health and safety capital improvement with a ranking factor of 9 into DOI/OFMC policy to ensure future compliance.
- OFMC should normalize API scores for all school buildings to be worth 100 points.



Chapter 2 Includes:

- An overview of the condition of schools
- A brief description of the FMIS system, indicating its compatibility with the five components as set out in NCLB 25 U.S.C. § 2005(a)(5)(A)(i)
- An identification of the primary limitations of the FMIS system as the ongoing catalog for tracking the conditions of schools
- Recommendations for improving this system and process<sup>25</sup>

<sup>25</sup> The Committee includes a print-out of the current record of deficiencies contained in FMIS as of December 5, 2011, as Sub-Report A.



## Chapter 2: A Catalog of Facilities

### Summary of Recommendations from this Chapter

- Tribes, TIBC, the AS-IA, and the Secretary of the Interior should request of the President, and the President should include in his budget request to Congress, funding for a commitment to bring all Bureau-funded schools into acceptable condition.
- All schools should use the Maintenance Management Schedule module in FMIS. OFMC or BIE should monitor whether schools are using this module and encourage those who are not to do so.
- OFMC and BIE should standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.
- OFMC should include educational facilities in FMIS, by surveying the current space inventory of all 183 schools and comparing existing space against existing or revised space guidelines to identify educational space deficiencies.
- OFMC should prioritize assistance for the 40 to 50 schools (e.g., not new schools and not schools known to be effective at using FMIS) that have problems with FMIS access, making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring systems are in place in each school to maintain FMIS.
- OFMC and BIE should guarantee that all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.
- OFMC and BIE should explain the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.
- OFMC should require that minimum training for facility managers include a 40-hour FMIS certification.
- OFMC and BIE should create a matrix that defines roles and responsibilities, including communication responsibilities, for all parties involved with FMIS—from the school level up to the central level, including local schools, BIE Albuquerque, education line offices, agencies, OFMC Albuquerque, and BIA regional offices.
- OFMC and BIE should ensure regular technical assistance and monitoring for all schools using FMIS. This support should be consistently offered for all schools, including grant and contract schools.
- OFMC and BIE should highlight the responsibility of school administrators and facility staff to guarantee that FMIS is updated. This should be reinforced from the director's office, at the assistant deputy director level, and through ELO offices. FMIS updates should be required at the same level of priority as each school's annual report and NASIS updates.
- OFMC should create expectations, deadlines, and reminders for entering and removing backlogs and offer more training in this area for school boards and administrators. OFMC should enact a policy requiring schools to use FMIS.



- OFMC should develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCOT.
- OFMC should create nine Regional FMIS support groups. This could include a roster of people in each region who are available to provide FMIS technical assistance to others in their region.
- The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.
- If something in the FMIS program is going to change, FMIS users should be given advanced notice and any necessary training before the changes take effect.
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- OFMC should require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.
- OFMC should require the school's facility staff to accompany the contractor during the visit.
- Thirty days prior to the arrival of the Contractor, OFMC should send the school administrator a copy of the contractor's Scope of Work and a print-out of the school's list of backlogs from FMIS.
- Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.

### Background

The Act at 25 U.S.C. § 2005(a)(5)(A)(i) calls for the Committee to prepare and submit a catalog of the condition of school facilities at all Bureau-funded schools which:

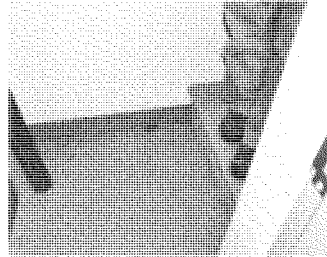
- (I) incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;
- (II) rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;
- (III) establishes a routine maintenance schedule for each facility;
- (IV) identifies the complementary educational facilities that do not exist but that are needed; and
- (V) makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

An accurate catalog tracking the conditions of Bureau-funded schools is essential to keeping facilities properly maintained and providing the basis for organizing repair and replacement projects. Such a catalog would provide a record of the conditions of Bureau-funded schools over time. It would also serve as a vehicle for ensuring the fair allocation of resources for maintenance, repair, and replacement – especially in the face of scarce resources. The Committee agrees that supporting the maintenance of a comprehensive and accurate catalog is as high a priority as all other school record keeping, such as attendance and academic achievement.

FMIS provides an acceptable basis for meeting Congress' request for a catalog of the conditions of school facilities, if improved as recommended in this report. FMIS achieves some, though not all, of the five components required by the Act.

The Committee notes that educational facility needs are absent from the current FMIS catalog. As a consequence, there has been no method for identifying educational facilities that are needed but do not exist, or highlighting insufficiencies of current educational spaces. However, the greatest limitations of FMIS are due to a lack of consistent and appropriate training, connectivity, and resources to ensure that users in the field are able to keep information current and accurate.

Therefore, to fulfill the requirements of NCLB, the Committee focused on developing detailed recommendations for changes in FMIS and IA. These modifications would allow FMIS to function as an accurate and useful catalog of the conditions of Bureau-funded schools, and thus serve as the basis for a formula to determine an equitable distribution of funds for repair and replacement.



Fiscal Year	Number of Schools		
	Replacement School	Major F&R	Replacement Facility Construction
1998-2001	10	11	-
FY 2002	5	8	-
FY 2003	5	10	-
FY 2004	8	5	-
FY 2005	9	6	-
FY 2006	4	6	-
FY 2007	0	2	2
FY 2008	0	1	1
FY 2009	1	0	1
FY 2010	0	1	2
FY 2011	1	0	1
ARRA	3	14	0
<b>Grand Total Projects</b>	<b>46</b>	<b>64</b>	<b>7</b>

Total number of schools receiving a replacement school, major renovation and repair, or replacement facilities since 2001.  
Source: OFMC, 2011.

#### Overview of the Conditions of School Facilities

Chronically inadequate funding for the operation and maintenance of Bureau-funded schools has resulted in a large backlog of repair work. As previously detailed, OFMC estimates it would require \$1.3 billion to bring the 63 Bureau-funded schools in poor condition up to adequate condition, and \$967 million to simply repair all of the reported deficiencies in the 183 schools. Compare this with the funding appropriation for 2011 of \$46 million. This amount is woefully insufficient to reduce the overall deficiency backlog of Bureau-funded schools.

Thanks to higher funding levels in the early part of the last decade, and the one-time infusion of funds under the American Recovery & Reinvestment Act (ARRA)<sup>26</sup>, the condition of many Bureau-funded schools has improved. In the past 10-year period, over \$1.5 billion in

construction and repair funds was devoted to reducing by 50 percent the number of schools in poor condition (as determined by the FCI).

In fiscal year 2002, 35 percent of schools were in good or fair condition and 65 percent were in poor condition. Upon the completion of existing construction projects scheduled in FY 2012, there will be an estimated 66 percent of schools in good or fair condition and 34 percent of schools in poor condition; 59 schools (or 31 percent) have improved from poor condition to good/fair. However, given the dramatic decrease in funding for education construction in the past 10 years, and particularly under the current budget, the Committee expects the number of schools in poor condition to rise. With inadequate maintenance and repair dollars, schools in fair condition can easily fall into poor condition once again.

ARRA provided 1A the single largest education con-

<sup>26</sup>The Replacement Facility Program began in 2007, providing a mechanism for constructing or replacing one or more buildings on a school campus, often in combination with major renovation and repair.

Indian Affairs Education Construction Funding FY 2001- FY 2011				
Fiscal Year	Replacement Schools	Replacement Facility Construction	FI&R Project Funding	Total Education Project Funding FY 2001 to FY 2011
FY 2001	\$141,238,000		\$48,962,000	\$190,200,000
FY 2002	\$127,799,000		\$61,088,000	\$188,887,000
FY 2003	\$124,409,000		\$59,100,000	\$183,509,000
FY 2004	\$139,612,000		\$48,873,000	\$188,485,000
FY 2005	\$105,550,000		\$37,021,000	\$142,571,000
FY 2006	\$64,530,000		\$50,474,000	\$115,004,000
FY 2007	\$83,891,000	\$26,873,000	\$4,670,000	\$115,434,000
FY 2008	\$46,716,000	\$9,748,000	\$7,267,000	\$63,731,000
FY 2009	\$22,405,000	\$17,013,000	\$0	\$39,418,000
FY 2010	\$5,964,000	\$17,013,000	\$6,570,000	\$29,547,000
FY 2011	\$21,462,988	\$29,465,950	\$0	\$50,928,938
ARRA	\$153,311,000	\$0	\$91,074,000	\$244,385,000
<b>Total</b>	<b>\$1,036,887,988</b>	<b>\$100,112,950</b>	<b>\$415,099,000</b>	<b>\$1,522,099,938</b>

Source: OFMC, 2011.

struction appropriation in history. As a result, \$153.3 million was allocated to replace deteriorating Bureau-funded schools, and \$91 million was assigned to repair educational facilities. Construction awards for these projects began in May of 2009; today all of the funds have been obligated, and some smaller projects have already been completed. More than 7,000 students will benefit through the use of adequate school facilities earlier than thought possible before passage of ARRA.

While significant progress has been made to correct facility deficiencies, 63 schools currently remain in poor condition, and \$1.3 billion in funding is required to bring all education facilities into acceptable condition.<sup>27</sup>

27. As stated earlier, the 63 schools remaining in poor condition require an estimated \$1.3 billion to elevate them to an acceptable condition. This figure includes more than simply fixing the deferred maintenance items in these schools. For example, if a facility has a number of leaks in the roof, ultimately it will be more economical to replace the entire roof rather than continue to fix leaks year after year. Therefore, the cost to replace the entire roof is included in the figure above, rather than the cost to mend all the separate leaks. Likewise, it may also be more cost-effective to replace an entire building or school rather than repair a number of deferred maintenance work items.

#### Background on FMIS

IA currently uses FMIS, a computer program, to catalog and document the conditions of school facilities. FMIS provides the basis for budget formulation and asset management to improve, repair, and replace school facilities. While this system is not perfect, the Committee accepts it as the best available starting point for meeting the cataloging requirements in NCLB and ensuring that the formulas for prioritizing facility construction and repair dollars is fair, efficient, and transparent. The Committee sought to identify the most pressing challenges regarding FMIS. It has developed a list of recommendations detailing how to improve both the accuracy of data and the process for updating the content of FMIS. Software systems change from time to time; therefore, these recommendations apply to both the current and any future systems.

FMIS is a tool for OFMC to collect and manage information about school facility conditions at the local level. For this system to contain accurate data,



schools must routinely input facility deficiencies. Data is verified by contractors (remotely and during school visits) once every three years. Ultimately, the information provided by FMIS is only as valid as the data contributed by contractors, local agencies, and individual schools, as verified by OFMC.

In addition to the module for entering deficiencies, FMIS includes components for project management, inventory tracking, health and safety needs, routine maintenance work tickets, and cost estimating and budgeting. Up until now, this system has not recorded the educational needs or deficiencies of facilities in meeting educational requirements – it has only tracked the condition of existing facilities, not those facilities that might be missing or insufficient. A more extensive description of FMIS can be found in Appendix D.

#### Finding as to the Five Requirements

The NCLB requires that the Committee's catalog include the five items listed on page 19 of this report. The following section describes the extent to which the existing FMIS catalog meets these requirements and suggests ways to fill in gaps where FMIS falls short.

(I) *Incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs.*

NCLB 25 U.S.C. § 2005(a)(1)-(4) called for the GAO, by January 2004, to submit the results of a national survey of the physical conditions of all Bureau-funded school facilities that would incorporate the findings from the GAO study evaluating and comparing school systems of the DOD and the BIA. GAO never issued such a report.<sup>28</sup> Therefore, the Committee is unable to incorporate any findings into its catalog regarding this requirement. The Committee recommends that GAO conduct the study mandated by NCLB.

28. In 2003, GAO issued 2 related reports: GAO-03-955, *Bureau of Indian Affairs Schools: Expenditures in Selected Schools Are Comparable to Similar Public Schools, but Data Are Insufficient to Judge Adequacy of Funding and Formulas*, and GAO-03-692, *Bureau Of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed*. Neither of these reports fulfills the requirement of NCLB § 2005(a)(1)-(4).

However, it is interesting to note that in 2010, the DOD announced a plan to spend \$3.7 billion to elevate all of their schools into acceptable condition. The appropriation for DOD school construction for FY2010 was \$235 million, and their appropriation for FY2011 was \$438 million. In contrast, the appropriation for Indian school construction was \$29.5 million for FY2010 and \$50.9 million FY2011. DODEA is also making a concerted effort to eliminate the use of portables. Furthermore, in the past three years, DOD schools have received full funding for their operations needs, while Bureau-funded schools had operations funds constrained at approximately 50 percent of need.<sup>29</sup>

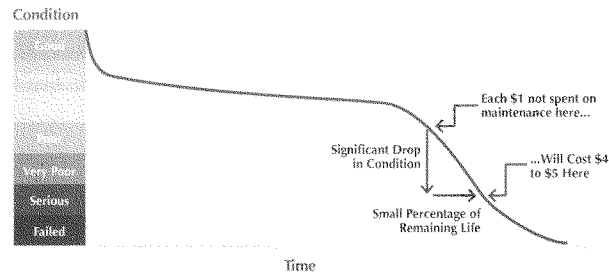
DOI has not put forward an analogous plan to spend the \$1.3 billion needed to bring Bureau schools into acceptable condition by 2015. The Committee contends the federal duty enshrined in statutes and treaties noted in the Introduction to this report mandates at least equal attention to Indian schools.

This Committee strongly recommends that the tribes, TIBC, the AS-IA and the Secretary of the Interior request of the President, and the President include in his budget request to Congress, funding for a comparable commitment to bring all Bureau-funded schools into acceptable condition.

(II) *Rates such facilities with respect to the rate of deterioration and useful life of structures and major systems.*

Because of the nature of school facilities in the often remote and harsh environments of Indian country, the rate of deterioration is not a static situation, but rather is highly dynamic. Beyond weather and environmental conditions, the largest factor impacting the rate of deterioration is the level of preventative maintenance.

29. Conference call between Committee members and DODEA's Mike Smiley, September 20, 2011.



Buildings without sufficient preventative maintenance face a steep drop in condition, and the cost of facility repairs increases dramatically as the building reaches the end of its useful life.

Source: Applied Management Engineering, Inc., 2011

Funds for preventative maintenance are appropriated with funds for operating the facilities, known as Operations and Maintenance (O&M) funding. In each of the last five years, schools have been funded with sufficient Maintenance funding based on construction industry standards, but received an average of only 50 percent of the money actually needed for operations. Operations includes non-deferrable, fixed-cost items like fuel and electricity. Consequently, schools have been left with no choice but to fund operations with money intended to pay for preventative maintenance. As a consequence, maintenance needs go unmet, deferred maintenance grows, and the quality of the physical plant deteriorates far more rapidly than it should.

By not investing sufficient resources in preventative maintenance, schools not only deteriorate more rapidly, but the cost of repairs increases. For instance, if a small leak in a roof is not addressed now, it will likely lead to further structural damage that will later cost much more to repair or replace. Over decades, this shortchanging of actual maintenance spending shortens the overall life of school buildings and will force increased costs upon the Federal Government in the future, not to mention more deplorable conditions for the next generation of children.

Many Bureau-funded school facilities are being used far beyond their useful life. Forty years is the Internal Revenue Service (IRS) figure for the useful life of buildings, yet there are 49 Bureau-funded schools over 40 years of age. The average overall age of the buildings comprising schools in poor condition, weighted by square footage, is 50 years. Investing money to keep these very old schools functional is far less cost-effective than constructing new schools; however, funding provided for replacing schools that have exceeded their useful lives is sorely insufficient.

#### Average Age of Academic and Dorm Buildings

Schools (Buildings age 0-10)	35
Schools (Buildings age 11-20)	29
Schools (Buildings age 21-30)	36
Schools (Buildings age 31-40)	34
Schools (Buildings age 41-50)	32
Schools (Buildings age over 50)	17
	<b>163</b>

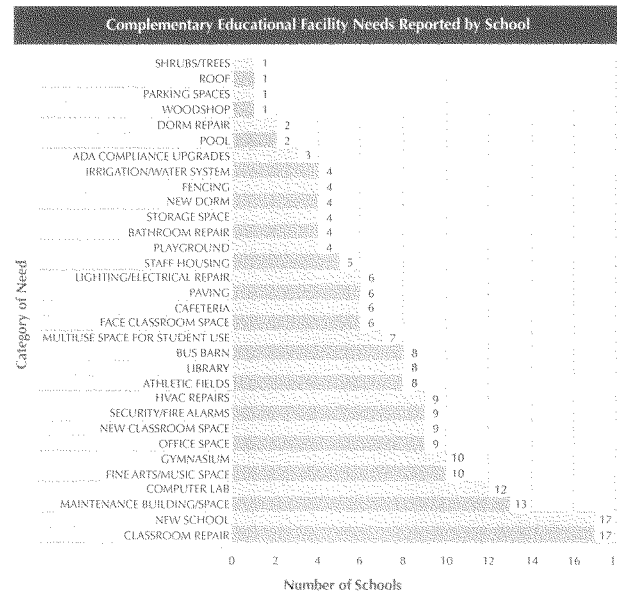
Source: OFMC, 2011

(III) Establishes a routine maintenance schedule for each facility.

FMIS adequately addresses this mandate. FMIS provides opportunities for schools to develop routine maintenance schedules through the Maintenance Management Schedule module. For instance, if all maintenance recommendations for a particular furnace model are entered into FMIS, the system will automatically generate a work ticket requesting routine maintenance at the appropriate time. This feature is used at the

discretion of local schools, but a recent survey determined that only 34 percent of responding schools enter preventative maintenance into FMIS. Thus, the data in FMIS does not provide an accurate system-wide picture of routine maintenance needs. IA needs this information for budgeting purposes. The Committee therefore advises that all schools use Maintenance Management Schedule module. The Committee also recommends that OFMC or BIE monitor whether schools are using this module and encourage those who are not to do so.

The facility needs identified by the schools can be categorized in the following way:



Source: Responses to the DFO's inquiry from 56 Bureau-funded schools regarding non-existent but needed educational facilities, August–November 2010, as summarized by CBI.

(IV) *Identifies the complementary educational facilities that do not exist but that are needed.*

Currently, FMIS does not identify complementary educational facilities that do not exist but are needed, nor is there any other inventory that makes this identification. The Committee agrees this is a fundamental shortcoming of this system that must be remedied in order to achieve a complete and accurate catalog of school conditions. In July 2010, to establish a rough sense of these needs, the DFO conducted a survey at the request of the Committee, asking each school to identify nonexistent but essential educational facilities. Fifty-six of the Bureau-funded schools responded, offering a wide range of types of facility needs.

The Committee stresses the importance of an ongoing catalog documenting essential but missing educational facilities and detailing improvements to existing facilities to make them compatible with educational needs. For example, schools could catalog a library that is too small for the school size, or a facility lacking telecommunications wiring needed for access to the Internet. Cultural spaces, reading labs, and other specialized educational facility components must be included in this system. This catalog could then serve as an effective tool for prioritizing funding for renovation, repair, and construction.

**RECOMMENDATION** The Committee recommends the following methods for achieving this inventory:

- (I) Standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.;
- (II) Survey the current space inventory of all 183 schools; and
- (III) Compare existing space against the revised guidelines to identify spatial deficiencies.

The scope of work for the 2011-2013 facilities conditions assessment contract administered by IA will include collecting data on unmet educational space needs, using the existing 2005 *Educational Space Criteria Handbook* and facility inventory data. This will create a database of educational facility deficiencies that can be incorporated into formulas for FI&R and new facility/school replacement.

(V) *Makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.*

IA uses FMIS to develop projections on the amount of O&M funds needed to keep facilities viable. However, as previously noted, FMIS does not include the deficiencies of all schools and, more importantly, FMIS does not document missing or insufficient educational facilities, as might be needed to be consistent with the accreditation standards of NCLB. Further, O&M funds are substantially constrained.



Operations & Maintenance Need vs. Funding: FY 2006 through FY 2010					
Fiscal Year	Funded Square Feet	Operations Need	Operations Funded	Operations Constrained	Percent Funding Constrained Below Need
2006	16,022,204	\$91,931,905	\$52,268,045	\$39,663,860	43.14%
2007	16,422,290	\$99,157,997	\$55,692,545	\$43,465,452	43.83%
2008	16,339,267	\$100,968,099	\$54,720,628	\$46,247,471	45.80%
2009	16,621,855	\$106,313,052	\$54,353,705	\$51,959,347	48.87%
2010	16,411,775	\$106,955,142	\$51,092,600	\$55,862,542	52.23%
Fiscal Year	Funded Square Feet	Maintenance Need	Maintenance Funded	Maintenance Constrained	Percent Maintenance Funding Above Need
2006	16,022,204	\$42,544,509	\$48,053,510	\$0	13%
2007	16,422,290	\$44,779,949	\$50,019,363	\$0	11%
2008	16,339,267	\$44,317,070	\$50,295,266	\$0	13%
2009	16,621,855	\$45,302,029	\$48,717,022	\$0	7%
2010	16,411,775	\$46,259,490	\$51,141,560	\$0	11%

Calculated funding needed and funding provided for O&M of Bureau-funded schools 2006-2010. While maintenance costs were funded at slightly above calculated need, the constraint of operations funds leads schools to spend much of their preventative maintenance dollars on operations needs.  
Source: OFMC, 2011

The chart above illustrates the yearly funding needed for O&M—based on OFMC calculations—compared to the amount of funding actually provided. As shown by the chart, although Maintenance funds have been provided to meet or exceed the needed funding, the extreme constraint of Operations funding requires schools to use preventative maintenance funds to pay for necessary operations costs (e.g., electricity, heat, and other essentials).

Therefore, without increasing the funding for O&M, schools will continue to deteriorate as they are forced to use maintenance monies to fund necessary operations. Moreover, as revealed earlier, insufficient funding for yearly maintenance inevitably leads to higher costs for repairs in the future.

#### Additional Identified Challenges and Recommended Improvements

Along with the required considerations, the Committee found several additional challenges hindering FMIS from meeting its purpose of providing information to make efficient and fair decisions about the allocation of facility repair and construction resources. This section highlights each of these challenges and provides a set of recommendations for improvement. These improvements to the FMIS Catalog are critical in order for the proposed formulas in this report to meet the Act's requirements of equitability.

#### Accuracy of the Existing FMIS Data

Although it constitutes the best record of the condition of Bureau-funded schools, the data in FMIS is incomplete for the following reasons:

- (I) Not all schools have access to enter their own backlogs due to a lack of:
  - connectivity to the FMIS server;
  - computer equipment;
  - staff trained in FMIS or with sufficient time to keep FMIS information up-to-date;
  - staffing due to high turnover or insufficient funding to hire or task appropriate staff; or
  - experience and/or support from administration.

(II) Cost estimates entered into FMIS may not reflect changing materials costs, actual cost of isolation, and increasing costs caused by economic circumstances (see Appendix E for current OFMC methodology for estimating costs).

(III) Validation of actual deficiencies by contractors occurs only every three years.

(IV) Educational needs are not currently factored in.

The Bureau recently conducted a survey regarding FMIS use, asking schools about their access to FMIS, how frequently data is updated, and other questions designed to help the Committee understand the extent of school use of FMIS.

The following charts illustrate some of the findings from this survey.

Does your school have access to FMIS?	Yes	No
BIE-operated	27	18
Cooperative Day School	1	1
Grant or Contract School	53	17
<b>TOTAL</b>	<b>81</b>	<b>36</b>

How many individuals have a FMIS account at your location?	One	Two	Three	Four	Five	None
BIE-operated	9	9	4	5	2	16
Cooperative Day School	0	1	0	0	0	1
Grant or Contract School	20	29	10	1	2	9
<b>TOTAL</b>	<b>29</b>	<b>39</b>	<b>14</b>	<b>6</b>	<b>4</b>	<b>26</b>

Where does your school use BIFs?	1. Creating more job opportunities and deferred maintenance (2.5% BIF)	2. Creating placement plans for disadvantaged hard-to-employ students	3. Creating work-study for disadvantaged students (2.5% BIF)	4. Providing up to work-study for disadvantaged students	5. Training school-leadership, information electronic, etc.	Other (cannot specify more than 2)
BIF-operated	20	20	18	24	25	11
Cooperative Day School	1	0	0	1	1	0
Grant or Contract School	48	41	17	15	54	3

In FY13, how will the existing open backlog present the basic construction needs for your district?	Very Good	Satisfactory	Not Good at All	Officer Not Sure
BIE-operated	12	18	10	5
Cooperative Day School	0	0	1	1
Grant or Contract School	19	28	15	5
<b>TOTAL</b>	<b>31</b>	<b>46</b>	<b>26</b>	<b>11</b>

Source: All four of the preceding tables are based on a survey conducted by OFMC of Bureau-funded schools in 2010.

<b>Type of School</b>	<b>Number of Schools</b>	<b>Number of Backlogs Entered in FMIS</b>	<b>Estimated Cost of Backlogs</b>
BIF-operated	60	5,375	\$ 461,235,377
P.L. 100-297 grant	119	6,861	\$ 497,888,744
P.L. 93-638 contract	4	270	\$ 8,493,183
<b>Totals</b>	<b>183</b>	<b>12,706</b>	<b>\$ 967,617,304</b>

According to FMIS as of May 2011, not including those backlogs already funded for repair or renovation.  
Source: OFMC, 2011

There is a large discrepancy in FMIS reporting between the BIE-operated schools and the grant and contract schools. The preceding chart shows the total number of backlogs in FMIS by school type. This demonstrates more facility deficiencies are recorded for BIE-operated schools than for grant and contract schools: an average of 93 backlogs per BIE-school versus 58 for contract and grant schools. One reason for this may be that facility managers at Education Line Offices enter backlogs for some BIE-operated schools, but not for grant and contract schools. Whatever the cause, this discrepancy points to the likelihood that not all deficiencies at grant and contract schools are reflected in FMIS.

**RECOMMENDATIONS:** The Committee recommends all schools be brought up to equal footing in FMIS in order for formulas to function as intended. We suggest:

- (I) All recommendations in this chapter will help ensure that FMIS accurately reflects the needs of schools.
- (II) The Committee recommends prioritizing assistance for the 40 to 50 schools (i.e., not new schools and not schools known to be effective at using FMIS that have problems with FMIS access), making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring systems are in place in each school to maintain FMIS.
- (III) Guaranteeing all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.
- (IV) Explaining the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.
- (V) Requiring that minimum training for facility managers include a forty hour FMIS certification.

#### Roles and Responsibilities

**CHALLENGE:** The division of roles between the OFMC and BIE leaves a gap at the local level; no OFMC staff are tasked with monitoring FMIS use and providing technical support to Bureau-funded schools. Schools do not know where to turn for assistance, and problems with FMIS use at many schools go unresolved. No one has the responsibility for monitoring FMIS use by Bureau-funded schools to ensure that backlogs are being entered.

According to NCLB (25 U.S.C. § 2006(b)(1)), all individuals who work at or with BIE-operated schools must be supervised by BIE. This includes custodial staff and facility managers. BIE-operated schools generally have facilities staff in charge of entering data into FMIS, but grant and contract schools may not. Bureau-funded schools are supported by local education line offices, which are staffed with individuals capable of supporting a wide range of educational needs. Yet few line office staff have expertise in FMIS, and thus cannot provide assistance to grant and contract schools needing technical support with their FMIS entry loads. Most BIA regional offices house regional facility managers employed by OFMC; however, with the exception of the Navajo region, these facility managers do not oversee grant and contract schools. Furthermore, coordination and communication between OFMC and BIE is limited. Since BIE has not been involved with FMIS, the system has not been identified as a high priority for school principals, superintendents, and ELOs. In response to this divide, BIE has recently hired a BIE facility specialist to serve as the BIE facility liaison to OFMC. Since March 2011, this liaison has been actively providing input and represents BIE at OFMC's planning sessions. Among other activities, the liaison is now participating and assisting in ensuring that school FMIS inventories are up-to-date.



**RECOMMENDATIONS:** The Committee strongly urges OFMC and BIE to develop a structure that improves communication, coordination, and teamwork to ensure that all schools receive FMIS training and technical assistance. To this end, the Committee proposes:

(I) Creating a matrix that defines roles and responsibilities, including communication responsibilities, for all parties involved with FMIS—from the school level up to the central office level, including local schools, BIE Albuquerque, agency offices\*, OFMC Albuquerque, and BIA regional offices. The matrix needs to delineate a clear responsibility to support schools with FMIS as well as a protocol for monitoring schools to verify they are using and updating the system routinely. The matrix should apply equally to contract and grant schools and their particular needs. The matrix should then be widely distributed to all school leaders, education line offices, regional offices, and other interested parties.

(II) Ensuring regular technical assistance and monitoring from OFMC and BIE for all schools using FMIS. This support should be consistently offered for all schools, including grant and contract schools, and especially where no on-site personnel have experience with FMIS.

(III) Highlighting the responsibility of school administrators and facility staff to guarantee that FMIS is updated. This should be reinforced from the director's office, at the assistant deputy director level, and through education line offices. FMIS updates should be required at the same level of priority as each school's annual report and NASIS updates. School administrators or facility staff should emphasize to school boards and other key school stakeholders the importance of FMIS as the basis for physical plant funding. Administrators or facility staff should also provide periodic reports to the school board and others regarding backlogs and information of interest to ensure up-to-date knowledge of school facilities and their importance for educational achievement.

(IV) Enacting a policy requiring schools to use FMIS. Create expectations, deadlines, and reminders for entering and removing backlogs; offer more training in this area for school boards and administrators.

#### FMIS Entry Training and Support

**CHALLENGE:** OFMC has a 40-hour introductory training in FMIS for staff of Bureau-funded schools, which is held regularly in Albuquerque and occasionally in other regions. OFMC also offers a two-day refresher training in Albuquerque. However, some schools face abnormally high turnover rates in their facility staff, leaving gaps in their school's access to FMIS. Moreover, fluency with the program may take several months of experience after completing training, and if FMIS isn't used regularly, it is difficult to maintain system competency. The challenge of accurate local data entry is exacerbated by the complexity of the database and some of the technical expertise needed to identify and estimate deficiencies. Thus, OFMC must increase training opportunities and provide further ongoing support to local schools to ensure they are using the system properly.

#### RECOMMENDATIONS:

(I) Develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCUM.

(II) Create nine Regional FMIS support groups. This could include a roster of people in each region who are available to provide FMIS technical assistance to others in their region.

(III) The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.

(IV) If something in the FMIS program is going to change, FMIS users should be given advanced notice and any necessary training before the changes take effect.

\*Most agency offices are not involved with education construction, though there are exceptions.

#### System Administration and Remote Access

**CHALLENGE:** FMIS users experience frequent challenges accessing the network. The program is only available on dedicated terminals, not via the Internet. This drastically limits school access as it requires all FMIS work to be done in one place and cuts off access if there are technical problems with that terminal. Bureau-funded schools also lack access to the information technology resources of DOI, as the Office of the Chief Information Officer of IA does not support the FMIS program. Technical problems (such as the system being down) occur without warning and may persist for long periods without response. Few FMIS users know where to turn for technical support. Compare this to the administration of the NASIS, the database used by all Bureau-funded schools to track attendance and other academic matters, which is available on the Internet through a password-protected project portal and offers extensive technical support. Reporting the condition of school facilities is critical to the success of Native American students, and FMIS should be as technically supported and conveniently available as NASIS.

#### RECOMMENDATIONS:

- (I) Like NASIS, FMIS should be easily accessible for all users via the Internet (versus dedicated terminals), without compromising security. Schools should also be able to retrieve their FMIS backlogs from remote locations.
- (II) OFMC and the CIO should respond to FMIS technical challenges more quickly and efficiently, including system issues, access and connectivity problems, and password availability.
- (III) Via email, warn all users when the system is going to be down, and for how long.
- (IV) Provide regional/agency support, or a regional assistance team, to ensure backlogs are input for all Bureau-funded schools that lack access for whatever reason.

#### Transparency of Facility Condition Assessment Contractors

**CHALLENGE:** OFMC hires a contractor to assess the condition of schools and confirms the accuracy of FMIS information by sending a team to visit each school once every three years. Many schools do not manage or update their own information in FMIS, so these contractor visits are very important as the only chance to update the deficiencies listed in FMIS.

Nevertheless, school administrators may not be well-informed about the role of the contractor. These administrators and local facility managers are currently encouraged (but not required) to meet with the contractors before and after the site visit. Thus, many school officials do not accompany the contractor during their assessment. Moreover, school leaders do not feel the contractors are accountable to their schools, and administrators are not aware of what information will be added to or changed in FMIS as a result of the visit.

#### RECOMMENDATIONS:

- (I) Improve communication between contractor and schools during the assessment process.
- (II) Require formal entry and exit interviews between school leaders and contractor team.
- (III) Require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.
- (IV) Require the school's facility staff to accompany the contractor during the visit.
- (V) Thirty days prior to the arrival of the Contractor, OFMC should send the school administrator a copy of the contractor's Scope of Work and a printout of the school's list of backlogs from FMIS.
- (VI) Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.



Chapter 3 Includes:

- An overview and critique of past New School Replacement allocation systems
- An articulation of principles underlying a new, recommended process
- A detailed description of the new process and formula recommended by the Committee for the equitable distribution of New School Replacement funds

## Chapter 3: New School Replacement Program

### Summary of the Replacement School Recommendations

- DOI should codify, and OFMC should implement, detailed recommendations regarding the following:
  - Principles underlying the new approach to replacement schools
  - Eligibility requirements for applicants
  - Application review and creation of pool of schools for whole school replacement
  - Post-application process
  - Whole school replacement and renovation formula

### Introduction

The Act at 25 U.S.C. § 2005(a)(5)(ii) requires that the Committee develop a report on school replacement and new construction needs, creating a formula for the equitable distribution of funds for school replacement. This formula is to address six factors:

- (I) Size of school
- (II) School enrollment
- (III) Age of school
- (IV) Condition of school
- (V) Environmental factors
- (VI) School Isolation

The Act at 25 U.S.C. § 2005(a)(5)(iv) also requires the Committee to identify complementary educational facilities that do not exist but are needed.

This chapter seeks to provide recommendations to this end.

Since Bureau-funded schools are found in many different demographic and environmental contexts, mathematical formulas can be complex in an effort to account for all the factors of such a diverse school system. Nonetheless, the objectivity and transparency that comes with using standard formulas to allocate scarce resources helps ensure the equitable distribution of resources.

### Overview of the Past System for Allocating New School Replacement Funding

Currently no formula or mechanism for prioritizing funding for whole-school replacement exists. In the past, OFMC used several different processes to prioritize the replacement of Bureau-funded schools. These methods were all based in part, but not entirely, on the data provided by FMIS or its predecessor database system, FACCOM. The New School Replacement Construction Program focused on projects that would replace a majority of a school campus or, in the event that the existing site could not be used, the entire campus. Prior to FY 1994, the Bureau developed a prioritized list for school replacement each year. Beginning in FY 1993, upon instruction of Congress, the Bureau (through OFMC) created a multi-year priority list for fiscal years 1993, 2000, 2003, and 2004. Costs for schools replaced under this program ranged from \$10 million to \$60 million. Please see Appendix F for a detailed listing of all schools on these lists.

To develop the FY 1993-2003 lists, as an example of previous processes to prioritize schools for replacement, the Bureau invited schools to submit applications. The Bureau weighed applications against a set of criteria with associated points or scores that included:

- Building code deficiencies (15 points)
- Environmental risks (10 points)
- Accessibility (5 points)

- Unmet educational program requirements reflected by educational space utilization, inappropriately housed students, accreditation deficiencies, and students per square foot of classroom space (20 points)
- Building and equipment condition (30 points)
- Site conditions (10 points)
- Availability of alternative facilities (5 points)
- Historical enrollment trends (5 points)

An evaluation committee reviewed applications. One subcommittee ranked applications based on facilities criteria, while another subcommittee ranked applications based on educational factors. These two subcommittees independently forwarded their rankings to a steering committee that merged the education and facilities rankings into one list. The list of priority schools was then approved by AS-IA and published in the Federal Register.

#### New School Replacement Program Problems

A review of past Federal Register notices, information presented in the Convening Report for this Negotiated Rulemaking, and the reflections of Committee members indicate the listing of prioritized schools for new construction created confusion, uncertainty, frustration, and disappointment among affected tribes and schools. Concerns raised have included but are not limited to the following:

- The application process, in some stakeholders' view, favored schools with the greatest skill in completing applications and making a compelling case for their school; it did not effectively prioritize the schools in actual greatest need.
- The process was not clear and transparent to all who participated.
- The list of priority replacement schools changed over a period of years and school replacement priority rankings shifted. Numerous lists were developed through these processes, and schools

often did not know which was the official list and whether they were on it.<sup>30</sup>

- The ranking on each list established expectations about the order of funding and construction among the schools listed; strong disappointment ensued if that ranking changed for whatever reason.
- The educational program requirements did not fully account for actual educational needs beyond a narrow set of parameters. Cultural educational needs, insufficient space for educational activities as measured against educational space guidelines, and other factors were not considered in the school replacement process.
- Although the method was adjusted over time, the initial application process did not allow for major repair and renovation of existing buildings or replacement of a few key buildings, to bring the whole school up to sufficient standards.

#### A New Approach to New School Replacement and Renovation

The Committee has developed new approaches for prioritizing schools for replacement that include both a process and a formula for generating a prioritized list of schools. The following subsections detail this new approach.

##### Principles

Formulas can be successfully used to prioritize funding if: 1) the data used for such formulas is comprehensive and accurate; and 2) the formulas are clear and fair. As demonstrated in Chapter 2, the data for formulas contained in FMIS must be improved in order for a formula based on that data to provide adequate results. The Committee has identified additional principles to guide the creation of a new formula for prioritizing school replacement. These principles include:

<sup>30</sup> Year by year, changes in the priority list may have been due to schools not being able to find suitable building sites during design, repairs made using funds from the E&R and facilities replacement program that obviated the need for New School Replacement, or other individual reasons. However, the broad view in Indian Country was that the list changed as individual tribes with political connections were able to reorganize and prioritize the list according to their needs, rather than the needs of all Bureau-funded schools.

- Funding should be needs based.
- Formulas must foster compliance with health and safety standards.
- Formulas must account for educational needs.
- The Bureau-assembled database providing the variables used in the formulas must be improved to ensure valid results.
- Formulas must be uniformly applied.
- Formulas must not be susceptible to manipulation.
- Formulas must be practicable.
- Formulas should be defensible legally and technically.
- Any decision-making process used in addition to the formulas must also be clear, consistent, transparent, and compliant with these principles.

#### RECOMMENDATIONS

Every five years (or sooner if sufficient levels of funding are allocated), the Bureau will generate a new list of schools for replacement. The list should be based on an application process, but this process should be grounded primarily on readily available data and easily measurable criteria that would increase the ability of all schools, regardless of size, resources, or grant writing ability, to participate. The Committee recommends that schools on the FY 2004 list that have not yet received funding should be replaced prior to initiating this new approach.

The general approach is as follows:

**Overview:** The New School Replacement and Renovation Program should allow for a mixture of replacement and renovation activities. Some schools can be modernized with a combination of new and renovated buildings and might not require a complete campus replacement.

#### Eligibility for Application:

(I) OFMC should generate a list of all schools whose overall FCI is "poor" based on FMIS, as well as a list of schools that are both 50 years or older and educating 75 percent or more of students in portables. Only schools on one or both of these lists should be eligible to apply for the New School Replacement Program.

(II) All schools meeting the condition(s) in (I) above should be ranked based on FCI; however, if schools do not apply, they should not be considered for new school replacement.

(III) The announcement of the initiation of the process should be well publicized and must include communication and outreach that extends far beyond the Federal Register notice process. Letters should be sent to all schools and ELOs by the Director of the BIE and to tribal leaders by the AS-IA.

(IV) During the five-year process, schools should still be eligible for M&R and F&R monies, as needed, to ensure the school can continue to operate and improve its physical condition to meet educational needs.

(V) The ability of a school to cost-share should not be a factor in the ranking of applicants. Cost-sharing should continue to be allowed in determining the final designs for a school included in the pool for funding.

(VI) The application process should be clear, relatively simple, and based on as much quantitative data as possible. The application process should also allow schools to describe their particular circumstances and needs.

#### Application Review and Creation of the Pool of Schools for New School Replacement:

(I) OFMC should review the applications for completeness and accuracy within the FMIS database, and input location scores, which are worth up to 65 points (out of 100), and remove names and identifying characteristics to prepare for review.

(II) As soon as applications are submitted, a National Review Committee should be formed made up of individuals from each of the regions, selected by the Regional M&R Committees (described in the next chapter), plus one representative each from OFMC and BIE. Each region will select one person and the Navajo region will select three people. The Review Committee members should all be knowledgeable about school facilities and shall not include anyone from schools that are submitting applications.



#### PRE-NOTIFICATION

OFMC and BIE provide a three or more month notification of pending application process along with application materials and an up-to-date FCI list. Schools asked to update backlogs.

#### APPLICATION

Application process opens and schools ranked in poor condition are provided 45 days to respond. FMIS data for calculating location score fixed at this time. Applications should be submitted online.

#### OFMC INITIAL REVIEW

OFMC reviews applications against FMIS data for accuracy and completeness and awards up to 65 points based on FMIS data (location score).

#### COMMITTEE REVIEW

A committee of educators, facility experts, and OFMC staff score applications based on the other criteria (up to 35 points). The applications are then ranked and the top 10 projects are listed in alphabetical order (not by ranking).

#### PUBLIC MEETING AND FINAL COMMITTEE DECISION

The 10 schools with the highest rankings are invited to present to the Review Committee at a Public Meeting, to make their case and answer questions. The Review Committee then completes a final ranking and the top 5 projects are forwarded to the AS-IA for acceptance.

#### AWARD NOTIFICATION

The list of the top 5 schools is published, along with the scores of all schools that submitted proposals.

#### POOL PRE-PLANNING

OFMC works with the awardees to complete a pre-planning package that addresses site readiness (NEPA, land, etc.) and begins to develop a program for each major project.

#### CONSTRUCTION SCHEDULING

Based on pre-planning, readiness, and budgets, OFMC schedules projects in an appropriate order. Should a school not be site-ready, it has 18 months to move forward or it must reapply in the next round.

A summary of the steps in the recommended Replacement School and Renovation Program.

The Review Committee should use the points in the formula (see Chart 1 on page 38) to rank applicants based on the other application criteria (worth up to 35 points). The Review Committee should identify the 10 applicants with the highest number of points.

(III) The Bureau should publish the names of the 10 schools with the highest rankings in alphabetical order and these schools should be invited to present at a public meeting in Albuquerque.

(IV) At the public meeting, schools could present their arguments regarding their rankings and the Review Committee could ask and answer questions.

(V) After deliberation, the Review Committee should select five schools for the funding pool for that five-year period. The Review Committee should be required to clearly explain its selection process in detail.

(VI) The selected pool of schools should then be reviewed by AS-IA for final approval.

(VII) In the Federal Register, the Bureau should publish a list of all schools that applied ranked by FCI and the list of schools expected to be funded in the five-year time frame. The Federal Register notice should state clearly that those in the rankings not in the top pool of schools anticipated to be funded should understand that: 1) they will not be funded in the five-year window, 2) they will have to reapply, and 3) the rankings will be recalculated based on new information in the next five-year cycle of application. The intent of this approach is to be transparent about rankings to all schools.

#### **Post-Application:**

(I) All schools in the replacement pool should then undergo initial pre-planning for readiness (e.g., site availability, soil testing, available utilities, etc).

(II) The Bureau should develop readiness criteria for the pool.

(III) Schools would then be funded for construction based on: 1) ranking, 2) readiness, and 3) budget.

(IV) The pool should be fixed for the length of the term. If the Bureau is able to fund all five schools in under five years, it should reinitiate this application process for another round sooner than five years to ensure there are no gaps in activity.

(V) If any of the selected schools are not built in the five-year period due to a lack of funding, they should be "grandfathered" into the next ranking of schools for the next time frame.

(VI) Naturally, emergencies and condemnations must be addressed in real time and could affect funding for other projects.

(VII) Pre-planning money for the schools in the pool would be provided to ascertain that:

- Tribe has certified that land is available;
- Utilities are available;
- Soils have been tested (geotechnical surveys);
- NEPA review is completed.

A reasonable timeline to get pre-planning completed would be provided.

Please note that the timing of the process should be aligned with annual federal budgets to ensure monies are available for pre-planning and programming once the pool of schools is selected.







#### New School Replacement and Renovation Formula

The formula for ranking schools should include the following criteria. Only applications from schools rated in poor condition, or 50 years and older and educating 75 percent or more students in portables, shall be reviewed.

**Chart 1**

Points	Description	Method for Calculating
65	Condition of Facilities and Educational Space Deficiencies	Overall school location score from FMIS (out of 1000) x .065. Data fixed on date application is due.
5	Crowding	Actual students per square foot divided by standard for that school in <i>Educational Space Criteria Handbook</i> (times 100). Award points based on Chart 2.
5	Declining or Constrained Enrollment Associated with Poor Facilities	Award points based on narrative provided on this criterion, based on Chart 3.
5	Inappropriate Educational Space	Award points based on percent of students in inappropriate educational space in portables, dormitory space, leased space, according to Chart 4.
5	Accreditation Risk	Award points based on the number and severity of citations in the accreditation, according to Chart 5.
10	School Age	Award points based on the average age of school's educational and dormitory buildings, according to Chart 6.
5	Cultural Space Needs	Points based on response to the following: 1) is there a specific tribal requirement; 2) is there a program; 3) is there a lack of space for that program or requirement, according to Chart 7.

The key evaluation criteria for prioritizing schools for whole school renovation and replacement.

The following section explains each of the criteria in more detail, as well as a chart showing how each will be measured.

#### Crowding

Each school would first calculate students per square foot per grade based on the averages of the last three years enrollment (per NASIS), divided by the total square feet of core educational space. This ratio would then be compared with the standard for that school (per grade) in the *Educational Space Criteria Handbook* (times 100). This would yield a crowding factor and points would be awarded based on the chart on the next page.

The application will lay this formula out for applicants in a simple way that they can fill in, using statements like: "Enter the number of students per grade." OFMC will confirm that the numbers in the application are consistent with FMIS and NASIS data.

**Chart 2**

Crowding Factor	Points Awarded
140 and above	5
130 to 139	4
120 to 129	3
110 to 119	2
101 to 109	1
100 and below	0

#### *Declining or Constrained Enrollment Associated with Poor Facilities*

Poor facilities may cause declining or constrained enrollment. Schools should explain how the condition of their facilities is causing decreasing enrollments, inability to utilize existing space, etc. Schools must support their explanation with data such as transfer data from NASIS (students requesting moves out of their geographic boundary), student/parent surveys, demographic information, waiting lists, or other data. All lists and data would be verified by the Review Committee prior to finalizing rankings.

**Chart 3**

Declining or Constrained Enrollment Associated with Poor Facilities	Points Awarded
School has closed a building due to poor conditions	5
School can demonstrate students are transferring because of poor facilities and/or because school has waiting list on day 11 according to NASIS	3

#### *Inappropriate Educational Space*

Up to 5 points will be awarded to schools with students being educated in spaces that are not designed or appropriate for instruction. This includes portables, dormitories, or leased facilities.

**Chart 4**

Percentage of Students Instructed Based on Facilities Not Designed for Instruction (Dormitories, or Leased Facilities)	Points Awarded
95% to 100%	5
80% to 95%	4
60% to 79%	3
40% to 59%	2
20% to 39%	1
Below 20%	0

#### Accreditation Risk

Applicants should identify the facilities that do not meet the school's accreditation requirements. For example, a school could note a state requirement for a chemistry lab that is nonexistent. Or, a school might document an accreditation citation for lacking a library. The applicant should provide a copy of the relevant standards in their application. The intent of this criteria would be to identify schools not meeting minimal requirements from such standard-setting bodies as: the FACE program guidelines, tribal requirements (i.e., Navajo NCA), state requirements, etc. Cultural educational space deficiencies should not be indicated in this section, but noted in the section titled Cultural Space Needs

**Chart 5**

Citations or Accreditation Issues to the Accreditation Body (documentation should be provided)	Points Awarded
Accreditation at highest risk (numerous, severe citations)	5
Accreditation at high risk (numerous citations, some severe)	4
Accreditation at risk (some citations, some severe)	2-3
Accreditation citations, not extensive nor severe	1
No citations	0

#### School Age

The average age of a school would be calculated by including the age of each building that is a dormitory or school building that the applicant intends to be replaced or renovated in the program. Buildings that are not meant to be part of the program would not be included in the average.

**Chart 6**

Average Age of School Buildings to be Replaced or Renovated Under the Application	Points Awarded
Over 60	5
50 to 59	4
40 to 49	3
30 to 39	2
20 to 29	1
Below 20	0



#### *Cultural Space Needs*

Bureau-funded schools should provide space for critical cultural programs such as instruction in tribal language, tribal culture, and traditional arts. Up to 5 points will be awarded for cultural space needs.

**Chart 7**

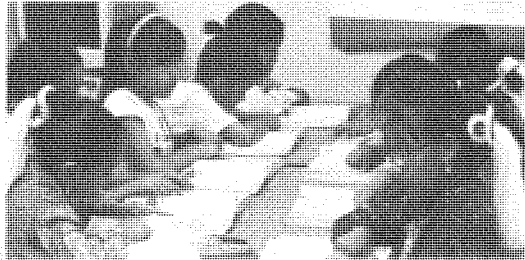
Determining Cultural Space Needs	If Yes, Points Awarded
Did the school respond yes to:	4
<ul style="list-style-type: none"> <li>Is there a requirement for native language/cultural education? (please provide the Tribal Council requirement/resolution)</li> <li>Is there a lack of adequate or sufficient space to support this program and/or requirement?</li> </ul>	
Is there an existing cultural program that requires space?	1

#### *Other Considerations*

Applicants may provide additional information about their particular circumstances and contextual details that the Review Committee should be aware of during the review process. This information may be used to break any ties in the overall ranking by points

#### *Factors Not Considered*

NCLB directs that the formula developed by the Committee include "school isolation" as a "necessary factor in determining an equitable distribution of funds." The Committee concluded that the overarching goal of basing funding prioritization on the needs of the schools would not be furthered by including isolation as a criterion. The Committee maintains that the schools in the worst condition should be fixed first, whether isolated or in metropolitan areas. Once schools are prioritized, geographic isolation will have to be taken into account regarding higher construction costs, more difficult logistics, and so forth. However, once a school is part of the funded pool, no matter how isolated, it should in no way be discriminated against in terms of setting the order of funding.



Chapter 4 Includes:

- An overview and critique of the existing MI&R and FI&R Renovation and Repair program
- Detailed recommendations for a new process and formula for the equitable distribution of MI&R funding
- Detailed recommendations for a new process and formula for the equitable distribution of FI&R funding



## Chapter 4: Formulas for Minor and Major Renovation and Repair

### Summary of MI&R Recommendations

- OFMC and BIE should emphasize to the schools the importance of timely entry of data in FMIS.
  - OFMC should annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
  - OFMC and BIE should publish the data call for schools to indicate their priority backlogs for MI&R funding.
  - After all funding decisions are made, OFMC should issue an annual report of all regional and headquarters MI&R allocations, explaining each decision, to post and distribute.
  - OFMC should convene regional committees made up of one representative of each school in the region—grant and contract schools as well as BIE schools—to make decisions about the allocation of each Region's MI&R funds.
  - OFMC and BIE should codify and implement the new MI&R formula and process.
- schools and projects to be funded each year along with the rankings, explaining FI&R project/school selection in more detail than location ranking in the *United States Department of the Interior Budget Justifications and Performance Information* (Green Book).
- OFMC should identify the individuals who compile and complete the ranking process for FI&R, make clear their roles and responsibilities, and publish these roles and responsibilities annually.
  - OFMC should identify educational space deficiencies by comparing the Educational Space Criteria (and state accreditation requirements) to existing conditions at all schools.
  - OFMC should add all educational space deficiencies into FMIS, categorized as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.
  - The FI&R formula should factor educational space deficiencies into the overall Location Score.
  - DOI should incorporate educational space deficiencies into the ranking factor of Critical Health and Safety Capital Improvement with a ranking factor of 9 into departmental/OFMC policy to ensure future compliance.
  - OFMC should normalize API scores for all school buildings to be worth 100 points.

### Summary of FI&R Recommendations

- The Committee recommends that Congress revisit the moratorium on school expansion.
- OFMC should distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained.
- OFMC should announce the overall budget for FI&R funding each year, and annually publish the

## Introduction

The Act at 25 U.S.C. § 2005(a)(5)(ii) requires that the Committee develop a report on school replacement and new construction needs, creating a formula for the equitable distribution of funds for school replacement. This formula is to address six factors:

- (I) Size of school
- (II) School enrollment
- (III) Age of school
- (IV) Condition of school
- (V) Environmental factors
- (VI) School Isolation

The Act at 25 U.S.C. § 2005(a)(5)(i)(IV) also requires the Committee to identify complementary educational facilities that do not exist but are needed.

This chapter seeks to provide recommendations for the programs of MI&R and FI&R. For each category of funding, the Committee recommends:

- (I) Communication enhancements
- (II) Engagement improvements
- (III) Formula revision

The Committee was not asked to review and make recommendations regarding the allocation of funds for routine O&M of school facilities. The Committee does note, however, that the O&M budget has a direct impact on the improvement and repair needs at Bureau-funded schools; insufficient funding for routine maintenance allows small problems to turn into big ones that draw funding from the MI&R and FI&R programs. As stated in the Catalog of Facilities Chapter (page 23), operations funds have been constrained by approximately 50 percent per year for Bureau-funded schools.

## Overview of the Current Systems for Allocating Improvement and Repair Funding

Funding for Bureau-funded school improvement, repair, and renovation is divided into several accounts or "buckets" of funding. OFMC has some flexibility to move allocations among these categories in order to best meet the needs of school facilities. The following briefly describes the current system for allocating improvement, repair, and renovation monies.

## MI&R

MI&R funds address serious health/safety and other high-priority deficiencies at Bureau-funded facilities (except teachers' quarters). Most MI&R projects correct problems that put the facility out of compliance with applicable life safety statutes, codes, and requirements including those found in: the Americans with Disabilities Act; Uniform Federal Accessibility Standards; U.S. Environmental Protection Agency requirements; and the National Fire Protection Association Codes and Standards. Such projects may address issues such as fire doors, alarms, structural repairs, etc. To qualify under MI&R, projects must exceed \$2,500 in cost and typically do not exceed \$500,000 in cost. There are special MI&R programs concerning specific components, such as roofs, energy, portables, demolition, and condition assessment.

## FI&R

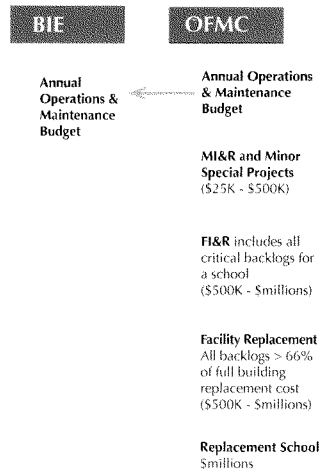
Most FI&R projects consist of major renovation of or repairs to an existing asset. As with MI&R, projects under FI&R can correct deficiencies that cause non-compliance with applicable codes and other regulatory or Executive Order requirements. FI&R projects typically address all repairs needed for a single building or all maintenance required by an entire campus. As such, rather than being one backlog or one specific project, they consist of most or all of the backlogs for a building or location. Such projects range from \$500,000 up to many millions. A detailed explanation of the current FI&R formula can be found in Appendix G.

## Facility Replacement

The Replacement Facility Construction program was established in FY 2007 to replace individual buildings when the total cost of all deferred maintenance exceeds 66 percent of the cost of replacing the building; it also provided funding for schools lacking key academic facilities required for accreditation. This program was distinct and separate from the Replacement School Program, though it can be combined with FI&R to respond comprehensively to the needs of a school campus, replacing or constructing some buildings and renovating others. Like FI&R projects, these ventures typically ranged in cost from about \$500,000 to multiple millions.



The following chart graphically explains these programs:



#### The Facility Replacement Program

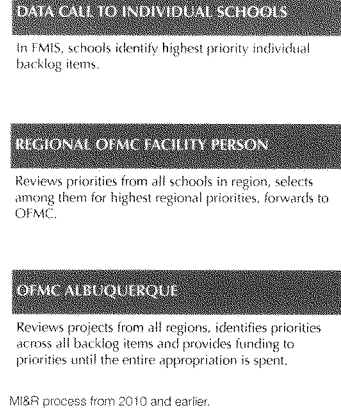
Another calculation related to the FI&R program is the FCI. FCI provides a numerical rating of the condition of a school as a whole, based on the ratio of cost of deficiencies to current plant value. It is used to determine whether a school is ranked in good, fair, or poor condition.

#### MI&R

##### Historical MI&R Process

Up until 2010, the allocation of MI&R funds was based on a process rather than a formula. Each year, OFMC requested that schools submit MI&R priorities to OFMC's regional offices, which then organized the lists of individual school priorities into a list of regional priorities. In turn, these regional priorities were reorganized at the headquarter level to establish overall MI&R spending priorities for the year across the 183 schools.

The following chart graphically displays this process:



#### 2011 MI&R Process

In 2011, OFMC made a change in its process of allocating MI&R funds to focus funding on schools in the worst condition. For 2011, 69 schools in and nearing poor condition status based on the FCI were identified for MI&R funding. Based on FCI scores, these schools were considered the schools with the "worst deficiencies." The 2011 MI&R allocation process was a collaborative effort between BIE and OFMC which used established criteria in utilizing risk assessment to justify deferred maintenance repairs. The process identified and justified viable improvement and repair priorities with an emphasis on stakeholder participation.

The FCI ranking establishes a base priority of targeted schools and identifies the worst deficiencies at these schools as viable projects by a fully documented validation process. The process identifies and prioritizes deferred maintenance backlogs that will correct major building systems and components including any urgent critical system failures (e.g., roofs, HVAC, fire alarms, electrical systems), which have the potential to close down the education program. All deficiencies selected for repair must be backlogs in the FMIS system; fund-



ing is limited so it is extremely important that backlogs targeted for repair are top priority.

A team at OFMC, with BIE and the Division of Safety and Risk Management representation, reviews the regional lists and makes recommendations to finalize the MI&R funding allocations.

#### MI&R Problems

The Committee has identified problems with the current MI&R allocation process including, but not limited to, the following:

- Schools are not informed of how OFMC prioritizes individual projects within the critical health and safety category.
- There is too little communication between OFMC and schools once the initial requests are submitted.
  - Decisions are not transparent—schools do not understand why they receive money for some projects but not others.
  - Inadequate communication gives poor results —projects that were submitted because they should be done together (e.g., replacing fire doors and fire alarms) are not funded together, with wasteful consequences.
- Ranking is done without clear and consistent criteria across regions. Without guidance from OFMC to all schools regarding what factors to take into consideration when prioritizing projects, schools identify needs that do not reflect OFMC's priorities (e.g., life and safety).
- Inadequate attention to educational facility needs. OFMC and BIE are separate offices within IA. Therefore, BIE's ELOs have no direct authority to affect OFMC's prioritization decisions for MI&R projects. This raises the concern that the need for correcting educational space deficiencies is given less weight than the need to repair and improve existing facilities, regardless of educational space deficiencies.

#### MI&R Recommendations

The Committee makes the following recommendations to improve the MI&R process:

OFMC should improve communication by doing the following:

- Emphasize to the schools importance of timely entry of data in FMIS.
- Annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
- Publish the data call for schools to indicate their priority backlogs for MI&R funding.
- After all funding decisions are made, issue an annual report of all regional and headquarters MI&R allocations, explaining each decision.
- Post the collected information on the Bureau's website, distribute to all school principals, facility managers, and ELOs, and distribute at Bureau key conferences and trainings.

OFMC should improve engagement by doing the following:

- Convene regional committees made up of one representative of each school in the region to make decisions about the allocation of each region's MI&R funds (a proportional amount of 2/3 of total MI&R funds). Representatives should include grant/contract schools as well as BIE schools.

OFMC should improve the formula for prioritizing the allocation of MI&R funds by establishing a formula prioritizing MI&R funding. The formula and process would work as follows:

- MI&R funds will be divided into two pools—a regional pool and a headquarters pool. Two-thirds of the funds will go into the regional pool to be allocated to OFMC regional offices for allocation by regional committees, and 1/3 of the funds will become the headquarters pool and be allocated by OFMC.
- The regional pool will be allocated to each region proportionately based on the square footage of all schools' educational and dormitory space in that region, based on FMIS. Regional funds not needed or unspent by a region (due to new schools, updated facilities, etc.) will be reallocated across the other regions according to the same square footage approach.



#### PRE-DATA CALL

OFMC provides a one or more month notification of pending data call for MI&R priority backlogs. Schools asked to update backlogs in FMIS.

#### DATA CALL

OFMC publishes a list of backlogs eligible for MI&R funding – S1, F2, and M1 backlogs costing between \$2,500 and \$500,000.

OFMC publishes the MI&R funding allocations available for each region (2/3 of total MI&R funds for the year, allocated to regions proportionally by square footage) and OFMC Headquarters (1/3 of total).

OFMC and BIE widely distribute the data call for schools to indicate their priorities for funding from the eligible backlogs.

#### REGIONAL COMMITTEES

Each school selects one representative to serve on a regional committee.

Regional committees convene to review the priorities from all schools in the region, select among these priorities, deliberating in a fair and transparent manner.

All priority backlogs that are not selected by the regions are forwarded to OFMC for potential funding from the headquarters fund.

#### OFMC HEADQUARTERS

OFMC selects among the backlogs prioritized by the schools not funded by the region, prioritizing schools with the highest FCI rankings.

#### MI&R FUNDING NOTIFICATION

OFMC issues annual report of all regional and headquarters MI&R allocations, explaining each decision.

Report is posted on Bureau's website and distributed to all schools and ELOs.

A summary of the steps in the recommended MI&R program.

- These regional funds will be allocated across schools in that region by regional committees consisting of one representative of each school in the region, deliberating in an open and transparent manner, and allocated to fund the eligible (S1, F2, and M1) backlogs highlighted as priorities by the individual schools that are between \$2,500 and \$500,000. Only projects within this cost range will be funded by these regionally allocated funds. If there are large critical projects over \$500,000 that the region deems as highest priority, they will bring this to the attention of OFMC. **Funds will not be allocated within a region by the school square footage, but by need. The square footage distribution of funds is only at the regional level to ensure distribution of funds across all regions.**
- Prioritized projects in each region that are not allocated by regions will be forwarded to OFMC for potential funding from the headquarters fund, (consisting of 1/3 of the MI&R funds in total).
- OFMC will allocate its portion of the MI&R funds consistent with its 2011 MI&R process, drawing from the eligible (S1, F2, and M1) backlogs highlighted as priorities by the individual schools with the highest FCI rankings but not funded by the regional funds. OFMC may fund individual backlogs over \$500,000 from their headquarters pool when necessary to cover major or special projects.

#### FI&R and Facility Replacement

The FI&R program funds numerous larger projects for schools that exceed the typical repair done with MI&R monies. These projects customarily exceed \$500,000 and may cost millions of dollars. Typical projects include replacement of plumbing, HVAC, roofs, and other systems. Sometimes, a building needs so many MI&R projects that a major rehabilitation of that building is in order, and can be done with FI&R monies. Occasionally, the combined cost of FI&R and MI&R projects for a specific building exceeds 66 percent of the replacement cost of the building. In such cases, the facility may be eligible for complete replacement.

The FI&R formula is used as a basis for determining whether a building should be replaced. Once a school ranks high for FI&R monies, as OFMC reviews that school to plan a set of construction activities, they evaluate each building with deficiencies and determine if that building should be wholly replaced versus repaired/renovated. If replacement is deemed necessary, that part of the project is then funded through the Facility Replacement program.

#### Current FI&R Process

The current FI&R process for allocating funds is based on data collected in the FMIS system:

- Individual schools enter all backlogs and costs into FMIS. The data is reviewed and revised as described in more detail in Chapter 2 of this report.
- Through a complex formula, OFMC generates an overall project score for a school, giving it a priority ranking versus all other schools in the system for facilities and repair funding (see Appendix G for detailed description of the existing approach).
- The current formula to develop an overall project score is as follows:
  - Relative weighed score of specific backlog for the facility (based on FMIS backlogs)\* 75%) + API average\* 25%) = Final Project Score.
  - API is a consideration of the criticality of the buildings with backlogs within the school to the overall educational mission. For instance, outbuildings, shops, and other non-education buildings would have lower criticality.
  - OFMC reviews these project scores generated automatically by the formula in FMIS, checks for mistakes, removes irrelevant backlogs, and "re-ranks" the school according to the same formula.
  - OFMC then incorporates rankings into a five-year project plan. To provide consistency and certainty, projects are "locked in" during the first and second years. However, the last three years' rankings are subject to change based on new information from FMIS.

- FI&R money only funds renovation of existing facilities. It cannot be used to expand square footage or fund new buildings. However, if OFMC determines that a facility must be expanded in order to correct square footage deficiencies to bring a building up to current educational standards, the existing building perimeter may be expanded up to 25 percent.

#### Key Summary Points to the FI&R Formula

While the calculations in the FI&R formula are detailed and complex, there are, in general, a few key points the Committee identified as most important in understanding this formula:

(I) The number and total cost of backlogs do not affect a school's overall FI&R score. Schools with the most backlogs or the highest costs are not necessarily ranked the highest in overall score. Small schools with large relative needs may rank higher than larger schools with more expensive but less serious needs.

(II) The FI&R score is affected by:

- The critical/essential categories of backlogs (i.e., health and safety issues);
- The relative value of those critical backlogs as compared to all backlog costs (i.e., if critical backlogs make up a large percentage of the total backlog costs in that school); and
- The criticality of the buildings with backlogs (i.e., if the buildings with critical backlogs are essential to education).

(III) The formula does not discriminate in any way based on tribe, geography, ability to pay, or size of school. The FI&R formula has no inputs relative to these items.

(IV) The formula does not prioritize backlogs against any educational criteria. Currently, the FI&R formula does not account for the critical impact of a project on a school's quality of education. Nor does it include essential educational needs that cannot be represented by deferred maintenance backlogs.

#### Expansion Moratorium

In the Department of the Interior and Related Agencies Appropriations Act of 2006, Congress provided that no funds shall be used to support expanded grades for any school beyond the grade structure in place at each school in the BIA school system as of October 1, 1995.<sup>31</sup> The law also prohibits funding any new Bureau-funded schools, preventing the creation of charter schools. This language has been included in each appropriation since then. The Committee respects Congress' underlying goal of ensuring adequate funding for existing school programs, but it is the view of the Committee that an unintended consequence of this blanket moratorium has been to block important opportunities to improve the efficiency and serviceability of some Bureau-funded schools. **The Committee recommends that Congress revisit the moratorium on school expansion.**

#### FI&R Formula Strengths and Weaknesses

The Committee has identified several strengths with the current process. The FI&R formula:

- Is specific, data-based, and reasoned;
- Does not discriminate by school size, project cost, location, or ability to pay; and
- Helps ensure a fairer allocation of money that cannot be easily changed due to politics, personalities, and individual influence.

However, the Committee has also identified several shortcomings in the current FI&R process.

- It is quite complex and not well understood by schools: most schools do not know of the formula, how it works, and what inputs or criteria are key.
- It is completely dependent on the accuracy and comprehensiveness of FMIS data to generate a needs-based ranking. The formula is only as good as the data it is based on and FMIS needs improvements as noted in other chapters.

31. Public Law 104-134, 110 STAT. 1321-171

- The formula does not account for any educational needs. The current approach has no way of accounting for two important educational space deficiencies:
  - The system does not identify backlogs that have significant negative educational impacts (e.g., inability to use a reading lab);
  - It does not account for space that is either entirely missing (e.g., we have no reading lab at all) or space that is far too small (e.g., the reading lab can only handle half of our children).
- It does not account for inappropriately housed students in portables. An FI&R ranking may be low in a school dependent on numerous portables because FI&R only focuses on the condition of buildings, not their adequacy.
- It does not calculate whole building replacement, putting even greater pressure on FI&R dollars for repair and renovation when a building is identified in the FI&R ranking as needing complete replacement under the facilities' replacement program.
- By investing in FI&R projects, a school may be improved sufficiently to make it a lower priority for a whole school replacement program.

#### FI&R Recommendations

The Committee makes the following recommendations for improvements to the current FI&R process regarding communication, consultation, and formula.

OFMC should increase and enhance communication by implementing the following recommendations:

- Distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained;
- Annually publish the schools and project to be funded that year along with the rankings;
- Announce the overall budget for FI&R funding that year along with above information;
- Explain FI&R project/school selection process in greater detail than merely the location ranking published in the Green Book; and

- Identify the individuals who compile and complete the ranking process for FI&R, and make clear their roles and responsibilities. OFMC should publish these "roles and responsibilities" annually.

OFMC would improve the formula for prioritizing and allocating FI&R monies by implementing the following recommendations. In order to identify educational needs and develop a means to rank these needs, OFMC must:

- Conduct a study of all schools, comparing the *Educational Space Criteria Handbook* (and state accreditation requirements) to existing conditions to determine educational space deficiencies (see the Catalog of Facilities Chapter of this report for further detailed recommendation);
- Add all educational space deficiencies into FMIS, and incorporate them into the FI&R formula as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.
- Factor educational space deficiencies into the overall Location Score for FI&R formula.

Including educational needs into the FI&R formula with a ranking factor of 9 should be incorporated into OFMC policy to ensure future compliance.

The Committee recommends the following revised formula:

- (Relative weighed score (based on FMIS backlogs) \* 75%) (*weighed education deficiency score is included in above*)

PLUS

- (API Average \* 25%) (*normalized so that all school buildings have an API score of 100*)

= Overall Final Project Score

This new FMIS formula will generate a prioritized list arranged worst first (combined building and educational space deficiencies), and FI&R monies will be used as available each year to fund these projects.



## Chapter 5: Appendices

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Appendix A: Committee Members and Alternates

Appendix B: Summary of Consultation Process and Findings

Appendix C: Abstracts of Research Papers Associating School Conditions with Performance

Appendix D: Extensive Description of FMIS

Appendix E: Method for Estimating for New Construction

Appendix F: Previous Whole School Replacement Priority Lists

Appendix G: Current FI&R Formula Description

Appendix H: Glossary of Terms

## Appendix A: Committee Members and Alternates

## Tribal Representatives



**Gregory Anderson** is the Superintendent of the Eufaula Dormitory in Eufaula, Oklahoma. He has

been involved in Indian education for 27 years at many levels and has served on numerous Federal committees for improvement and reform in Indian education. Mr. Anderson was appointed in April 2002 by President George W. Bush to serve on the National Advisory Council on Indian Education and was re-appointed by President Barack Obama to continue serving on NACIE in August 2010. He was selected in 2002 to serve on the Department of the Interior - Bureau of Indian Affairs first NCLB Negotiated Rulemaking Committee of 2005. He served as co-chairman for the Committee, which developed recommendations for proposed regulations for the No Child Left Behind Act of 2001. In July 2010, Oklahoma Governor Brad Henry appointed Mr. Anderson to the Oklahoma Advisory Council on Indian Education. He is involved in public service at the local level, and has served as Vice-Mayor and Council President for the city of Eufaula, Oklahoma. Mr. Anderson is a graduate of Eufaula High School and went on to earn his bachelor's degree in Journalism from the University of Oklahoma, a master's degree in Education Administration from East Central Oklahoma University and his superintendent's certification through the Oklahoma State Department of Education. He

resides in Eufaula, Oklahoma and is married to Becky Anderson. They have two children—son Brett, 17, and daughter Alex, 13—who attend Eufaula Public Schools. He is serving a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.



**Janice Azure**, a member of the Turtle Mountain Band of Chippewa Indians, has worked in education with the Dunseith Public School for 18 years. She also has worked for the tribe in the Tribal NEW program, the Tribal Work Experience Program and the Tribal Child Care Block Grant Program, rising to Tribal Secretary and Program Director. She also served two terms on the Tribal Council. She and her husband own and run a family business in Dunseith, North Dakota. Ms. Azure also volunteers her time in community fundraisers for members of the community who are ill. She is the mother of six children, and has 22 grandchildren and 2 great-grandchildren.



**Jimmie C. Begay** is a member of the Navajo Tribe and has been in Indian Education for more than 30 years as a teacher, school principal, and Executive Director of Grant/Contract Schools. He also was a Health Director for one grant school entity. He also served more than 15 years as Board of Director for the Association of Contract

Tribal Schools, a national association consisting of grant and contract schools which advocated for self determination. Mr. Begay has 20 years experience as project management for design/construction projects, namely Rock Point Community School, Jeeh deez ah' Academy Inc., Rough Rock School, and Lukachukai Community School where Validation project was done. He was involved with working with local school boards, architects, contractors and federal government to complete these projects. For the last four years Mr. Begay performed duties on the Navajo Nation Board of Education. In 2011 he was elected to four more years to serve on the board. Mr. Begay earn his bachelor's degree in Secondary Education and master's degree in Educational Administration from New Mexico Highlands University, Las Vegas, New Mexico. He also testified before Congress for legislative changes or for new legislation affecting Indian Education and advocated for educational funding.



**Margie R.S. Begay** is Navajo, and was born and raised on the Navajo reservation at Wheatfields, Arizona. Her parents are the late Tom Slim Begay and Marie N. Begay. She has eight brothers, a deceased brother, and four sisters. Margie has two children, Ashley, her daughter, and Ryan, her son, who with his wife, Aldercy, have two children, Ariyah and Seth. Her grandchildren are her pride and joy. Her interest and involvement

in education came from being a parent and her love of doing local work. Ms. Begay holds a B.A. in Administration. From 1998 to the present she has acted as School Board president to Lukachukai Community Board of Education, Inc., and as the Secretary/Treasurer of the Tsaiile/Wheatfields Chapter of the Navajo Nation. She has been president of the Associated Navajo Community Control School board Association, and vice-president of the Native American Grant School Association. She has also served as the vice president, and formerly as secretary, of the Chinle Agency Council. Ms. Begay has worked as the Chinle Agency Commissioner for the Navajo Nation to the Government Development Office. In addition to her elected and volunteer positions, Ms. Begay works as a Senior Planner to the Division of Transportation, and on her farm. Ms. Begay serves as an Alternate Tribal member of the Committee.



**Faye Blueeyes** is Program Director and Director of Finance/Special projects at Dziłth-No-O-Dith-Hle Community Grant School, where she is, amongst other tasks, responsible for special projects pertaining to facilities. Prior to this, she worked for Shiprock Alternative Schools, Inc. for 24 years, holding numerous positions, including Director of Facilities and New School Construction Project Director. In this role, she directed the completion of a \$26.9 million new school construction, and managed all school facility and FMIS data. She has provided testimony to the

House of Representatives on issues involving budget and education, and also served on an earlier No Child Left Behind Negotiated Rulemaking Committee. Ms. Blueeyes holds a master's degree in Curriculum and Instruction and a bachelor's degree in Elementary Education. Ms. Blueeyes serves as an alternate member of the Committee.



**Gerald "Jerry" Leroy Brown**

was born at the Flathead Reservation on January 7, 1940, at St. Ignatius, Montana. His mother, Dorothy Morigeau Brown was Salish and Kootenai and his father, Thomas W. Brown, Sr. was Oglala Lakota. They had eight children, seven boys and one girl. The family moved to San Francisco, CA under the BIA Relocation Program in 1957. Mr. Brown graduated from Mission High School in 1958. After serving in the U.S. Army, Mr. Brown attended college at San Francisco State College, Carroll College, Helena, Montana, University of Colorado workshop on Indian Affairs, graduating from Montana State University in 1965 with a B.A. in Sociology. After college, Jerry directed the Community Action Program for his tribe, Confederated Salish and Kootenai Tribes until he entered UCLA School of Law in 1968. He received his J.D. from UCLA in 1971. His primary professional career was in school desegregation, working in various regions of the country. He is currently retired and living on the Flathead Reservation, where he serves as chair of the Two Eagle River School Board and teaches part-time for the Salish

Kootenai College at Kicking Horse Job Corps Center. He is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.



**Fred Colhoff** is an enrolled member of the Oglala Sioux tribe, and has been involved in school facilities and maintenance for 20 years. Mr. Colhoff worked with the Head Start transportation department and the Lakota Community Homes in housing maintenance, before attending the Western Dakota Vo-Tech Institute for building and grounds maintenance. Mr. Colhoff worked as the Lady of Lords School Maintenance Supervisor for three years, and currently works as the Wounded Knee district school facility manager, where he is responsible for FMIS data entry.



**Joy D. Culbreath** graduated from Lubbock High School and attended South-eastern Oklahoma State

University where she received a bachelor's degree in Business Education and Elementary Education, master's of Behavioral Studies (Certified Professional Counselor) and master's of Administration. Joy worked for Southeastern Oklahoma State University for 27 years in TRIO programs and teaching in the Business Department. After her retirement, Joy was asked by the Choctaw Nation of Oklahoma to help build an adult education program. She began the program as its only employee, doing every-



thing from teaching GED classes to clerical work. After directing the Adult Education Program for four years, she was named as Executive Director in charge of all Education programs within the Choctaw Nation. Another program under Joy's direction is Jones Academy, a legacy school founded by the Choctaw Nation in 1891. This residential school is rapidly becoming a nationwide example of excellence in Tribally-operated schools (see [www.jonesacademy.org](http://www.jonesacademy.org)). In 1997 Chief Pyle asked Joy to build a language program for the Choctaw Nation. Other tribes have looked to this language program as they try to build their own. Joy serves as an officer on the Jones Academy Foundation Board of Directors and on the alumni board for Southeastern Oklahoma State University. Joy has a great love for children and young people. Among other awards, she was recognized by the Oklahoma State Board of Regents as the first recipient of the "Champion for Student Success" award.



**Judy DeHose** is a member of the White Mountain Apache Tribe, where she has been active in tribal development and education for her entire career. She was a Tribal Council member for the White Mountain Apache Tribe for eight years, and also has worked as the supervisor for the Cibecue Complex and as the tribe's Title VII Program Director. Ms. DeHose has served as a member of the White Mountain Apache Committee, as chair of the White Mountain Apache Health

Authority Board, as an elected Tribal Council representative for Cibecue Community on the White Mountain Apache Tribal Government, and as Cibecue Community President.



**Shirley Gross** has been Program Coordinator for the Pierre Indian Learning Center for 32 years, where she is responsible for the day-to-day management of the fiscal affairs of the organization, and managed construction of a new dormitory. She works with facilities staff on a daily basis for operations and maintenance issues and is responsible for communications with the Director of the Office of Facilities Management and Construction. Prior to her tenure at the Learning Center, Ms. Gross spent 13 years as Business Manager for the Fort Pierre Public Schools, where she was also involved in coordination for new school construction.



**Lester Hudson** currently serves as the Chief Executive Officer of Ch'ooshgai Community School in Tohatchi, New Mexico, a position he has held since 2007. Previously, Mr. Hudson worked as an Education Program Administrator for the Office of Indian Education Programs at three agencies. Mr. Hudson received his master's of Education Administration from the University of New Mexico, and a bachelor's in Science Education from New Mexico State University.

He is a licensed New Mexico K-8 Instructional Leader and a New Mexico K-12 Education Administrator.



**Bryce In the Woods** is a District I Council Representative for the Cheyenne River Sioux Tribe. He was re-elected in 2008 after serving a four year term. As Council Representative, he has served in many roles, including as Wolakota Chairman, Veterans Affairs Chairman and Education Vice-Chairman. He has also worked as a Certified Chemical Dependency Counselor for the Four Bands Healing Center and as a Youth Outreach Worker for the Cheyenne River Sioux Tribe Healthy Nations initiative. He is a veteran of the US Army. Mr. In the Woods serves as an alternate member of the Committee.



**Fred R. Leader Charge** is a member of the Rosebud Sioux Tribe, and graduated from St. Francis Indian School in 1976. Mr. Leader Charge worked at the Rosebud housing authority, now SWA Corps, rising from maintenance man to executive director over the course of his tenure. He is trained in maintenance, inspection and administration. Mr. Leader Charge returned to St. Francis in 2001 as maintenance supervisor, and in 2004 was appointed to his current position of Operations and Maintenance director. When Mr. Leader Charge started at St. Francis, FMIS was not

in use at the school, and Mr. Leader Charge has coordinated an effort to get training and technological resources in place. Mr. Leader Charge is married with three children and two step-children, and is grandfather to 10 grandchildren and four step-grandchildren. Mr. Leader Charge serves as an alternate member of the Committee.



**Frank Lujan** is the Governor of the Pueblo of Isleta, a position he has held since 2007, and is responsible for

monitoring over 32 tribal government service provider programs and supervises department directors and operations. Mr. Lujan possesses more than 31 years of professional experience in project management for facilities management and construction. He oversaw construction of the Isleta Elementary School as project manager, and worked as an engineering technician and as supervisory facilities operations specialist with the Southwest Regional Office of the Bureau of Indian Affairs. Mr. Lujan has served as an elected Tribal Council member of the Isleta Tribal Council, studied Civil Engineering at New Mexico State University, and received a certificate in Architectural Drafting from Draughton's Business College.



**Nancy Martine-Alonzo** is a member of the Ramah Band of Navajo Tribe, part Yaqui and Spanish heritage,

born and raised in Pine Hill, New Mexico. She recently retired with 37 years of services as an educator with public school, BIE schools, and state and tribal governments. She is currently the Executive Director for the Albuquerque Area Indian Health Board Inc., a consortium of seven tribes in New Mexico and Southern Colorado for Audiology and HIV/AIDS Prevention programs. In 2007, services expanded to include an Albuquerque Area Southwest Tribal Epidemiology Center (AASTEC) which serves 27 tribes in the southwest region to provide health-related research, surveillance and training to improve the quality of life of American Indians; and to provide accurate and timely health data to member tribes. She has a bachelor's degree, two master's degrees, education specialist certificate, and is an education doctorate candidate, all in the field of education and organizational administration. She holds a lifetime K-8 teaching certification and K-12 administration certification. She serves on numerous local and national education and health task forces and advisory councils, and is President of the Ramah Navajo School Board, Inc. She is the parent of seven children, and has 10 grandchildren. Ms. Martine-Alonzo serves as an Alternate Tribal member of the Committee.



**Merrie Miller White Bull** is a second term Tribal Council representative for the Cheyenne River Sioux

Tribe. She represents District 4, which is the second largest district on the Cheyenne River Reservation. Merrie was elected to the Tribal Council in December of 2006. Merrie is the chairman of the Education Committee, Chairman of the Election Board Committee, and Vice-Chairman of the Judiciary for the Cheyenne River Sioux Tribe. Merrie is married to Kevin White Bull and they have three children ages 21, 19, and 13. Merrie has a bachelor's degree in Elementary Education and is currently certified in the State of South Dakota. Before Merrie was a Tribal Council representative she worked for the Bureau of Indian Affairs at the Cheyenne Eagle Butte School. Merrie has dedicated her life to serving children, she has coached more than 150 girls as a dance coach throughout the years working at the C-EB school, and choreographs routines for the C-EB school drama club. Merrie also coached a dance team for children ages 4 to 12 years old. Merrie continues to look for ways to help out in her community. She is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.



**Betty Ojaye**, Navajo, is the Executive Director of Navajo Preparatory School, Inc., Farmington, NM.

In her 20-year leadership role at Navajo Prep School, she helped fundraise to oversee a \$40 million school campus revitalization project that included restoration of historic buildings, as well as the Navajo Nation's first LEED GOLD Certification for Construction established by the U.S. Green Building Council.



**Charles Monty Roessel** currently serves as Superintendent for Rough Rock Community School, a

position he has held since 2007. Mr. Roessel has also served as Executive Director and Director of Community Services for the school. He has coordinated and implemented the master plan for Rough Rock Community School construction needs and worked to achieve new school construction for the K-12 school campus, including construction of two dormitories, a high school, middle school and elementary school. In 2008, he provided testimony on school construction to the Senate Indian Affairs Committee. Mr. Roessel holds an Ed.D. in Educational Administration and Supervision from Arizona State University, a master's in Journalism, and a bachelor's in Photo-Communication and Industrial Arts. Mr. Roessel is a published writer and photographer, and has worked as vice-president and editor for the *Navajo*

*Nation Today* and managing editor for the *Navajo Times Today*. He is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.



**Jerald Scott House** has been employed with the Navajo Nation, Division of Community Development,

Design and Engineering Services for the past 25 years, and is responsible for project management services to plan, initiate, implement, monitor/control, and close-out capital outlay projects. This involves the planning, design, and construction of public facilities on the Navajo Nation funded by various agencies through federal, state, and tribal appropriations. Mr. House majored in Civil Engineering at the University of New Mexico and took Project Management courses from the University of Wisconsin. He is currently involved in revising the Navajo Nation's policy and procedures for project management, procurement, and contracting for project implementation and development. Mr. Scott House serves as an Alternate Tribal member of the Committee.



**Andrew Tah** has been in education for 39 years as a teacher and administrator (vice principal, principal and superintendent). He is the superintendent of schools for the Department of Dine Education, Navajo Nation, and is retired from the federal government, where he was an Education Line Officer.



**Arthur Taylor** currently serves as the Native American Tribal Liaison for the University of Idaho, and is

responsible for coordinating, planning and implementing open dialogue between members of the Native American tribes in the Northwest and members of the University of Idaho in order to best serve the people of the reservations and surrounding areas. Arthur spent five years as Assistant Director of Multicultural Student Programs and Services at the University of Notre Dame and six years on the Nez Perce Tribal Executive Committee. He holds a master's in Organizational Leadership from Gonzaga University, a master's in Cultural and Educational Policy Studies from Loyola University and is currently an Ed.D. candidate in Education at the University of Idaho. Arthur is from Lapwai, Idaho and is a member of the Nez Perce tribe.



**Willie Tracey, Jr.** served as a Member of the 21st Navajo Nation Council, 2007-2011

Education Committee, where he worked cooperatively with education providers to assure educational goals were successfully attained by Navajo Nation while establishing friendly policies, methods, procedures and laws that govern BIE, grant and charter institutions on Navajoland. He also served on the 20th Navajo Nation Council, 2001-2006 Transportation and Community Development Commit-

tee where he effectively coordinated legislative matters that administered new road / bridge construction, road maintenance and transportation system improvement planning and development. Mr. Tracey was officially appointed by the 20th Navajo Nation Council to represent the Nation on the Inter-tribal Transportation Association, which elected him Vice-President for three consecutive two-year terms. He also served as a Ganado Community Secretary / Treasurer for two consecutive terms from 1996 - 2001. Other employment positions include Senior Transportation Planner for the Navajo Department of Transportation; Planner with Apache County District II Road Department; Employee Development Officer and a Contract Analyst for the Navajo Nation Workforce Development. Mr. Tracey presently is employed with the Department of Dine Education, Office of Dine Culture, Language and Community Services, as a Project Manager to establish an alternative form of academic measuring standards.



**Jerome Wayne Witt** has worked in construction for most of his life. He worked in facilities management for the BIA Pine Ridge Agency for 18 years, becoming a facility foreman. Mr. Witt then joined the Rosebud agency as a facilities manager for the BIA and the school system. The Rosebud agency was a pilot agency for the development of FACCUM, and Mr. Witt has been involved with FACCUM and FMIS since the programs began. Mr. Witt retired from the BIA, and joined the Shannon County School

District as the maintenance director before working at the Loneman School as a special projects manager. He is now the project manager for the design and construction of the new K-8 54,000 square foot Loneman school. Mr. Witt is married with five grown children. He also raised a grandson who graduated from Loneman, and Mr. Witt works there to give back to the school. Mr. Witt is an enrolled member of the Oglala Sioux tribe.



**Catherine M. Wright** currently serves as Director of the Hopi Board of Education for the Hopi Tribe, where she works with members of the Board of Education, the Hopi Department of Education, the Bureau of Indian Education and local school boards on issues including revisions to the Hopi Education Ordinance, developing strategies for enhancing and promoting education opportunities, and surveying facility needs for local schools. She has served as a member of the Polacca Day School Board/First Mesa Elementary School Board, acted as President of the Polacca Day School Board and as Vice President of the Hopi Board of Education. An attorney, Ms. Wright worked extensively on trust asset issues involving the Hopi Tribe, acted as Senior Attorney for the Hopi Legal Services, and ran a private practice. She holds a J.D. from the University of Texas and a master's in Anthropology from Washington University. Her son Nicolas recently graduated from University of California at Berkeley after attending K-12 on the Hopi Reservation.



**Dr. Kenneth H. York** has worked in education and development over the course of his career. He served as school

principal for the Choctaw Tribal Schools for eight years, in two K-8 schools. He also worked as an Educational Planner for the Choctaw Tribal Schools and Tribal Courts, developing educational strategies and plans for youth and planning a youth/adult drug court within the judicial system. For the past five years, Dr. York has worked for the Mississippi Band of Choctaw Indians Tribal Administration, where he is currently the Director of Development Division. Dr. York holds an Ed. D in Educational Administration with collateral in American Indian Studies from the University of Minnesota, a master's in Educational Administration from the University of Minnesota and a master's in Management from Belhaven College. Dr. York is a member of the Mississippi Band of Choctaw Indians.



**Albert Yazzie** is a retired Indian educator who worked in Navajo public school education for 24 years as a teacher, principal, associate superintendent and superintendent. He was involved in school construction planning for Ganado public schools at the elementary, intermediate and high school level. Mr. Yazzie was instrumental in bringing impact aid monies to Indian public schools, working to change legislation at the national and state level. Mr. Yazzie also served as executive

director for the Wide Ruins Community School and as principal at the Rock Point High School, both grant schools. Mr. Yazzie was appointed by former president George H. W. Bush to serve on the National Indian Education Advisory Council, served on the board of the National Indian Education Association, and was president of the Arizona Indian Impact Aid Association. He is served on the U.S. Census Advisory Committee on the American Indian and Alaska Native (AIAN) Populations for the 2010 Census. In addition to his current involvement on the No Child Left Behind Negotiated Rulemaking Committee, Mr. Yazzie is giving back to the community where he grew up as a member of the Red Lake farm board, and takes care of the family ranch. Mr. Yazzie has three children—Melanie, Darryle and Tarajeau—who all work in education.



**Lorena Zah-Bahe** has been involved in education for 35 years. She holds a degree in Elementary Education, attended Northern Arizona University and Arizona State University, and was both a teacher and school administrator. Ms. Zah-Bahe's career has been in work with tribally controlled schools. She currently works at the Department of Dine Education, where she monitors and provides technical assistance to Bureau funded schools. Previously she was the Director of the Association of Navajo Community Controlled Schools; she spent more than 20 years with the organization. Her experience includes lobbying

Congress, reviewing Indian education legislation to improve the status of Indian education on a national level and working as an advocate for Indian self determination and tribally operated programs and schools. Ms. Zah-Bahe is a former president of the National Indian Education Association. She is serving as an alternate co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.

#### Federal Representatives



**Jacquelyn Cheek**  
*Special Assistant to the Director, Bureau of Indian Education*  
Ms. Cheek is the Special

Assistant to the Director, Bureau of Indian Education (BIE) at the Department of the Interior. Ms. Cheek has worked in various positions in Indian Affairs in the Department since the mid-1980s. Prior to working in the BIA, Ms. Cheek was a consultant with Native American Consultants, Inc., in Arlington, Virginia. Her first job in Washington, D.C. was as the Public Information Officer for the Presidential Commission on Indian Reservation Economies in 1984. Ms. Cheek came to Washington, D.C. by way of Boston, Massachusetts, serving as the Director of Education Programs at the urban Indian Center known as the Boston Indian Council. She has held various positions in Indian education since 1973, as a teacher's aide for summer youth programs, as an afterschool teacher for troubled youth, as the lead coordinator of a curriculum development project, a

ment consultant, and as a Head Start teacher and administrator for the Seneca Nation of Indians, just to name a few. She holds two master's degrees: one in Human Development and another in Education, from the Harvard Graduate School of Education. She also has a Bachelor of Arts degree in English from the State University of New York at Fredonia. Ms. Cheek is an enrolled member of the Seneca Nation of Indians, Allegany Reservation in New York. She continues her education in various subject areas, encourages the use of interns within her office, volunteers web publishing skills upon request, enjoys cooking, making fry bread and beadwork, and loves to dance to her Seneca songs. Ms. Cheek serves as an alternate member of the Committee.



**Regina Gilbert**  
*Regulatory Policy Specialist, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary - Indian Affairs*

Regina has earned a Bachelor of Science in Business Administration from Northern Arizona University, as well as a master's in Business Administration from the University of New Mexico. Regina worked in the private sector before joining the Federal Government in February 2003. During her time with the Office of Regulatory Affairs and Collaborative Action, Regina has performed various duties that include participating in various Indian Affairs committees, providing technical assistance to improve efficiency and effectiveness on various land trust issues, and en-

suring compliance with related laws and regulations. Regina is a member of the Hopi Tribe and returns often to the Hopi reservation to visit family and continue involvement with the Hopi culture. Ms. Gilbert serves as an alternate member of the Committee.



**Emerson Eskeets**  
*Deputy Director,  
Bureau of Indian  
Affairs Office  
of Facilities  
Management  
and Construction*

Emerson Eskeets started his career in the early 80s with the U.S. Army Corps of Engineers, and served in both the Seattle and Sacramento districts. He joined the Bureau of Indian Affairs in the early 90s. As the Deputy Director for the Office of Facilities Management and Construction, his responsibilities include management of the day-to-day operations of education, detention and housing construction projects as well as operations and maintenance across Indian country. This includes preparation of cost estimates and bids, preparing contracts and/or project administration of \$500-600 million in construction projects across Indian country. Emerson earned his Bachelor of Science in Mechanical Engineering from the University of New Mexico. He is a member of the Navajo Nation and a veteran. He enjoys outdoor activities including camping, fishing and hunting, and family time. Mr. Eskeets serves as an alternate member of the Committee.



**James Porter**  
*Attorney  
Advisor, Office  
of the Solicitor  
Division of  
Indian Affairs*  
Jim Porter

worked for 20 years in the construction trades before earning a bachelor's in English followed by a law degree, both from George Mason University. Since joining the Solicitor's Office in 2007, Jim has worked on a variety of matters affecting American Indians and their relationship with the Federal Government.



**John "Jack" Rever**  
*Director, Office  
of Facilities  
Environment and  
Cultural Resources*

As a licensed professional engineer, Jack has spent more than 40 years in the engineering, design, construction, and program management industries. He holds a B.S.E.E. from the University of Maryland and an M.B.A. with an emphasis on Financial Management from The George Washington University. During his 28 years of service in the U.S. Navy, Jack served as a member of the Civil Engineer Corps, overseeing design and construction projects in Asia, Europe, and the U.S. He is a Vietnam veteran and served in the battle for Hue during the Tet Offensive of 1968. Following his retirement from active duty, Jack was named a Vice President for one of the leading U.S. engineering firms where he managed a design office

and was later named as a Principal in a consortium of firms overseeing the design and construction of the last rail tunnel section of the original Washington Metropolitan Area Transit Authority system. Additional assignments at the engineering firm included appointment as the Director of Construction and Deputy Director of the New Construction Division for the Los Angeles Unified School District. The Los Angeles Unified School District is the largest single non-federal education construction program in the U.S. As the Director of Construction, Jack provided oversight for the design and construction of more than 330 schools in Los Angeles and as Deputy Director his oversight responsibilities included planning, design, construction and real estate acquisition. In 2005, while continuing his service to others, Jack accepted his current position with the Department of the Interior where he oversees engineering, design, and construction of schools, detention facilities and tribal support facilities across Indian country. He would enjoy more time to hunt, fish, and play golf.



**Michele Singer**  
Director, Office  
of Regulatory  
Affairs and  
Collaborative  
Action, Office  
of the Assistant

*Secretary - Indian Affairs*

Ms. Singer is responsible for the review and revision of all federal regulations governing Indian Affairs at the Department of the Interior. She is also currently charged with implementing a dispute resolution program for Indian Affairs. Ms. Singer's regulatory work began in 2005 with the largest and most comprehensive revision of trust management regulations undertaken at the Department in many years. This has involved coordination with employees from throughout the Department, tribes, individual Indians, Congress, and state and local governments. Ms. Singer first became involved in

Interior's trust management reform efforts as an attorney in the Office of the Solicitor working on individual Indian and tribal litigation matters. Then, as Chief of Staff for the Office of the Special Trustee for American Indians (OST), Ms. Singer worked on the Indian trust business process reengineering effort as well as the reorganization of both OST and the Bureau of Indian Affairs. Michele received a law degree from Georgetown University and worked as a litigator in Washington, D.C., and for the Attorney General of the Cheyenne River Sioux Tribe prior to coming to the Department of the Interior. She is a member of the California, Washington, D.C., and Cheyenne River Sioux Tribal Court Bars. Ms. Singer serves as the Designated Federal Officer for the NCLB School Facilities and Construction Negotiated Rulemaking Committee.



**David Talayumptewa**  
Deputy  
Director,  
Bureau of Indian  
Education  
David Tala-

yumptewa is an enrolled member of the Hopi tribe with more than 25 years of service with the Office of Indian Education Programs, which is now the Bureau of Indian Education. He has served as the Chief Administrative Officer for the Hopi tribe, a Business Manager and Education Line Officer for OIEP/BIE at the Hopi Education Line Office, Special Assistant to the Deputy Director, School Operations, BIE, and currently serves as the Assistant Deputy Director, Administration for the BIE. He was honorably discharged from the U.S. Army Reserves as a 1st Lieutenant.



## Appendix B: Summary of Consultation Process and Findings

The NCLB Facilities and Construction Negotiated Rulemaking Committee held five regional tribal consultations during the period of June 15 to July 19, 2011. The consultations took place in Window Rock, Arizona; Seattle, Washington; Phoenix, Arizona; Rapid City, South Dakota; and Miami, Florida. The sessions were facilitated by members of the Committee, and more than 200 participants attended. The Committee also received written comments from 16 tribes, schools, or tribal organizations.

The following is a summary of the key themes and ideas that the Committee heard during the consultations and from the written comments that were submitted. Many of the comments reinforced the findings and recommendations that the Committee had come to during their deliberations. Some comments pushed the Committee to rethink or further explore some of their draft language or recommendations. The Committee reviewed transcripts from all of the consultation sessions as well as copies of all of the written comments prior to their final Committee meeting in September 2011. They drew on this summary as a guide for their conversations in that meeting, to deliberate on the concerns raised by tribal participants and explore possible changes to their draft report. Among other changes, the final report fleshes out the mechanisms for ongoing school and regional input, to ensure that the new formulas will lead to greater transparency and engagement for tribes.

## Broad Issues

(1) Poor inter-agency communication, coordination, and planning and lack of responsiveness to state, tribal, and other guidelines:

- Communication and partnership between BIE and BIA is a serious problem. We need support for FMIS and facilities located at the ELO offices. Move the facilities and operations budget from BIA to BIE.
- Structural problem of too many different offices, programs, funding buckets, makes it difficult to get any problems solved in a comprehensive manner. Also, different agencies have different building, safety, and academic requirements and reporting lines, which confuses schools and delays funding.

- There is a discrepancy between ages funded by ISEP (age 5 by Dec. 31) and Kindergarten entry age in our state (S.D. – 5 by Sept. 1). We have service for pre-K for those between those ages. But we were denied that classroom! This should be addressed as an educational facility deficiency and added to space guidelines.

- There is an impossible loop in getting a FACE program—can't have the space without the program, denied the program if you don't have the space. This needs to be fixed.

(2) Strengthen recommendations; turn them into regulations or legislation:

- Needs stronger language on consequences for the Bureau to ensure this gets done. Report says schools "must" and "will," but Bureau "should" and "may."
- Strong desire to see recommendations turned into regulations and statutes.
- Concerns about clarity, transparency, and fairness in implementing the recommendations, and request that all processes be codified as regulations and/or statutes.
- Stay away from one-size-fits-all formulas. Formulas will work differently in remote areas versus urban areas; tailor formulas to meet specific regional and tribal needs. The government should honor its treaty to protect and educate the children of the Navajo Nation regardless of any formulas the Committee has come up with. In the introduction, strongly emphasize the uniqueness of the Navajo Nation and Native American culture and their contribution to the country. Emphasize the government's treaty with the Navajo nation, and distinguish Native Americans from immigrant or minority populations and programs, with which they are often included.

(3) Increase transparency and fairness in funding and negotiation process:

- Some regions felt underrepresented or ignored and felt that others were overrepresented on the Committee, which led to unequal representation and bloc voting. Request for a viewing of all selection criteria for Committee members.



- Concern that the consultations were not true consultations, but merely an information session since government decision-makers such as Jack Rever and Emerson Esketees were not present.

- Many advocated for funding parity with DOD schools and among Bureau-funded schools.
- More transparency in budget and spending for schools. Provide schools with a breakdown of the budget and spending.

**(4) Incentives for properly maintained schools:**

- Concern that success in doing the best you can with your limited O&M to keep up your school—or using your own money to fix critical problems—is punished, not rewarded. There should be a way to reward success and provide incentives to keep schools in good repair. Tribes who put their own money in to keep their schools going are less likely to get a new school.

**(5) Disappointment with budget for BIA school facilities:**

- Need more money. Need to fight for more money. More tribal leadership to fight for more facility money.
- Include options for cost-sharing in report, which might have positive impact on congressional funding decisions.

**Potential issues for Committee discussion:**

1. Stronger recommendations about coordination between BIA and BIE.
2. Whether curriculum and coordination issues, such as the FACE and ISEP issues, are within the Committee's charge and, if so, how to address them.
3. Additional and/or stronger language regarding increased funding from Congress.
4. Incentives that encourage or reward schools for maintenance.
5. Greater explanation about Committee selection, tribal consultation process.

**FMIS**

**(1) FMIS support for schools is not sufficient:**

- Participants at all sessions echoed the Committee's concerns about the lack of local FMIS expertise and lack of coordination between BIA and BIE, which they saw as a big problem.
- Provide additional guidance to schools to supplement face-to-face training for inputting information into FMIS (CD-ROM of step-by-step instructions, guidance on suggested monthly input activities, guidelines on time commitment required, etc).
- Participants report ongoing challenges getting access to FMIS at schools. Stories of submitting applications, getting no response, and of FMIS system being down.
- Agreement that available FMIS training on a regular basis is very important.
- FMIS trainings not offered at a time that is convenient for administrators. Offer trainings at a more convenient time. Suggest increasing the amount of trainings offered in the summer.
- Develop Bureau manpower to assist schools with inputting their backlog data. Staff time is very limited; provide additional funding for schools to hire a data-entry person for FMIS.
- Strong agreement with putting FMIS on a web-based system so everyone has access to it.
- Concerned that voluntary FMIS support committees will not be sufficient. Multiple recommendations that a FMIS expert be located at ELO offices.
- Tribal members should be able to nominate whom ever they choose to be on the FMIS committee without input or objection from OFMC, and tribal members should decide the amount of members on the committee.

**(2) Suggested changes to FMIS data entry and access:**

- Report should include specific recommendations as to how to bring FMIS up to capacity, including a timetable for implementing solutions.
- School-board members should be allowed to take the FMIS training and help with FMIS entry or oversight.



- Consider adding “geographic location” as one of the factors in the facilities index, to account for risks of weather and seismographic conditions. Consider expanding FMIS to cover funding for liability and facilities insurance, security costs, housing, and certificate of occupancy issues.
  - The formula for determining space needs should take into account birthrates of the reservation and the special needs population.
  - Revisit the space requirements in light of the growing size of students (obesity, also improved nutrition) and individual school needs for accreditation, mission, and goals.
  - FMIS should have a built-in depreciation factor as the schools age and require more maintenance, renovations, or replacement.
  - More weight given to educational environment factors such as class size, illumination, acoustical treatment, heating, cooling, ventilation, general educational space provisions, and age of facilities.
  - Explain more fully how “educational space deficiencies” would be identified, evaluated, and entered into the database. Educational space deficiencies should be established under a separate system from the FMIS system.
- (3) Increase transparency, responsiveness, and flexibility with contractors and inspectors:
- Too much time goes by without safety inspections. Ensure safety inspections every year – they aren’t happening, even when requested. Allow tribal safety officers to enter safety backlogs. Use Indian Health Service fire/safety inspectors.
  - Contractor should be giving a report to schools after assessments, but this isn’t happening. There is no accountability for the construction or work performed resulting in spending more funds to fix already funded projects.
  - Safety inspector should be giving a report to the school after assessment, which isn’t happening. One school was told they could not have the report after requesting it.
- (4) Streamline system administration; increase agency transparency and communication:
- Need better communication and transparency, and less bureaucracy (streamlining the funding!). Can’t figure out who to contact to solve problems of getting quarters, getting a FMIS terminal, getting a safety inspection, etc. Also, lack of communication between BIA, contractors, and schools leads to poorly constructed facilities that are not suited for the school’s environment or needs; decisions are made at a distance with no true knowledge of the school or community that the facility will serve.
  - Concern about manipulation; there is a “good ole boy” network and potential for upgrading of backlogs to appear more dire in order to receive more points. How can we assure that this doesn’t happen? FMIS can be manipulated by entering many backlogs into the system, which can affect school placement on the replacement list. Politics affects FMIS funding—those closer to Albuquerque and are able to make frequent visits get more funding.
  - Data entered into FMIS just sits there until you make calls to the right people who push it through to the Gatekeepers – this is a flaw in the system. BIE personnel do not input data in a timely manner, if at all. Recommend that schools receive a quarterly report on what is the status of the backlog items, possibly from the Gatekeepers.
  - Tribal chairs should be in charge of funds rather than regional offices—this would eliminate red tape and delays in funding and give schools more control over how money is spent. Give some control over the F&R funding to regional level for school input. Close down the regional office and re-direct funds to programs that serve students.
- (5) Inaccuracy of existing data in FMIS:
- All the concerns raised by the Committee about FMIS accuracy were echoed during the consultations. High turn-over, insufficient staffing, lack of connectivity, lack of capacity, etc.
  - Additional infrastructure problems are often uncovered during renovation and new construction, but by then it is too late to enter into backlog—consider reworking FMIS to capture these issues.
  - FMIS does not accurately reflect the deteriorating



condition of the schools—many schools rated in good condition, but actually falling apart. Once safety and health concerns are addressed, the systems (fire alarms, smoke detectors) are obsolete within a decade.

- Concerns about whether the existing FMIS is tailored enough to the needs of schools to be the right mechanism. Allow alternative methods of evaluating facility condition where FMIS may not be a reliable indicator.
- Update FMIS backlog costs annually and verify accuracy of the costs of the backlogs (backlogs entered at the local level are often changed by those at the regional level).
- School leaders still don't recognize the importance of FMIS. Emphasize to grant schools the necessity and rationale for entering information into FMIS. Grant and contract schools are experiencing considerably more difficulty entering the data and would be more negatively affected if funding decisions are based on FMIS.

**Potential issues for Committee discussion:**

1. Options for improving access to FMIS, including hiring additional FMIS technical support, online FMIS entry, and supplemental training such as CD-ROMs and guidance documents.
2. Development of criteria and selection process for the FMIS committee.
3. Increased reporting and distribution of FMIS data, contractor assessment reports, and safety inspection findings to schools.
4. Increased participation (including system access and funds distribution) of tribal chairs and school board members in the FMIS process.
5. Allow additional factors such as geographic location, liability insurance, housing, certificate of occupancy issues, and security costs to be entered into FMIS and calculated in the location score.
6. Revise space guidelines.

**MI&R**

**(1) Increase transparency and clarify misperceptions about formula:**

- Support the idea of an annual report clarifying why our priorities aren't funded.
- The most important word: transparency! Squeaky wheel gets help, not all principals know. Make sure the communication is clear!
- Many participants mistakenly thought MI&R regional funds would be divided evenly among schools within each region, and feared this would cause undue competition among schools and unfair distribution to larger schools.

**(2) Reopen discussion on the recommended MI&R formula:**

- Agree with the idea that schools funded for replacement are eligible for MI&R while they wait.
- Support the formula because it removes politics and manipulation.
- As a small school in a small region, we disagree with the funding of regions by square footage.
- Concern that new MI&R formula does not take existing building age and condition into consideration. The repair needs and costs for older buildings are significantly greater than newer buildings.
- Concern that new MI&R formula does not distinguish between building types or uses. Additionally, it does not allow different funding levels based on building type or use.
- Concern that new formula does not make any allowance for location conditions, climate, and weather, which can influence the rate of wear on a building.
- Concern that new MI&R formula bases funding on area, which will motivate schools to keep old, unused buildings that would otherwise be demolished in order to maintain maximum area.
- A fairer method would be to assess relative need, (e.g., by assessing the deferred maintenance backlog in each region) and allocating funding according to the largest backlogs.
- Formula does not take into account prior school



replacement and repair funding from BIA or ARRA.

- Concern that the presence of ELOs and BIA facilities managers on the regional committee will tip the allocation decisions toward BIE-operated schools.
- Allow schools receiving funding to have some say on which backlog item to remedy first.

**Potential issues for Committee discussion:**

1. Revisit the 2/3 regional, 1/3 national distribution of funds.
2. Clarify the recommendation to make clear that funding within regions will be based on critical health and safety backlogs from FMIS, and not distributed to each school based on square footage.
3. Consider addition of suggested criteria to the MI&R formula, including building characteristics (e.g., age, condition, type, and usage), climate and weather conditions.

**FI&R**

**(1) Additional criteria that the formula should take into account:**

- Accreditation risk should be a factor for FI&R, it is one of the most important things – without accreditation, we aren't a school. Also important given student mobility.
- Formula should take modular spaces, unusable spaces, age of schools, and new school funding into account.
- Concern that undersized academic spaces will not be given enough points.
- Allow schools to supplement facilities data with other evidence including the FCI, environmental reports, inspections, and regions by Bureau safety officers, etc.

**Potential issues for Committee discussion:**

1. Consider adding accreditation risk, inadequate or inappropriate spaces, school age, and new school funding as factors in the FI&R formula.

**Replacement School**

**(1) Include schools not ranked as poor:**

- If you have a significant number of students in portables, even if the school overall is rated as "good" or "fair," you should still be eligible to be considered for a new school.
- Highly over-crowded schools should be able to apply for new school even if not ranked as poor by FCI.

**(2) Additional criteria to consider in the formula:**

- Some participants supported using AYP as a factor, to reward success. Others commented that they supported not using AYP as a factor.
- Willingness to combine two schools into one should provide some extra points.
- Consider awarding more points (two or three) to account for conditions that are either unique to the individual school or have not been anticipated by the Committee (e.g., lack of comparable educational facilities, availability of alternative dormitory space).
- Consider excluding from application process schools accused of mismanagement, at risk of losing grant status, in restructuring under NCLB, or which don't have land.
- Accreditation risk deserves more points. Even if not many schools are in that situation, if they were, it would deserve more points. Others oppose using accreditation risk since each state's method is different.
- The cultural space criteria is too narrow—our whole school is a cultural space. There are many space needs schools have due to their unique relationships with tribal communities—for example, schools serving older kids need a day-care. These should be included, but need to correlate with what OFMC will actually build.
- Space in portable buildings should not be calculated as part of the space in any of the formulas (i.e., crowding, average age of building criteria) since portable buildings are temporary. However it should be a major factor in the "inappropriate space" criteria.



- “Severely overcrowded schools”: Severely overcrowded schools should be treated the same as “schools in worst condition” for the purposes of eligibility and scoring. Severely overcrowded schools should be defined as “schools in which 50 percent or more of the school’s ISEP enrollment is housed in temporary structures” or “schools whose square footage needs for new school replacement equals or exceeds their current permanent construction in the FMIS inventory.”
  - Consider weighting the average age of instructional and residential buildings higher than storage and other secondary use buildings in the “school age” criteria.
  - Concern that data on “declining enrollment” criteria could be subjective and easily manipulated since it is not captured as hard data.
  - More consideration should be given to schools that have been out of compliance for major safety violations.
- (3) Schools undergoing the construction process face many concerns:
- There needs to be a way to account for significant increases in enrollment in newly constructed schools.
  - Recommend that parents’ and community’s choice of site for new school be honored.
  - Dorms should be included as part of the construction of new schools.
  - Include a cost-of-living increase in the replacement funds since backlogs are often in the system for years and the original cost does not reflect the impact of inflation.
  - The formula should take into account environmental and infrastructure factors that affect the schools, and these repairs should be factored into new construction funding.
  - Allow newly constructed schools to build facilities for new programs that they did not have in old school.
  - Make sure every region has an education construction line officer, and provide clear lines of authority in the roles of engineers. Ensure timely response from BIE during entire construction process, particularly responses to prefunding, preconstruction, and construction process letters.
- (4) Suggestions for making new school selection process clearer, more transparent, and more fair:
- Establish clear, published criteria for how the top five will be ordered for allocation. Provide technical assistance to schools in completing the new school application and guide them through the process.
  - Confusion over rankings – “I was on the list, then wasn’t.” This could be made worse by the proposal to publish the scores of all schools that apply for, but are not granted, new schools.
  - Create a historical process document to educate people about new school replacement lists—what happened and where are we now?
  - Recommend going back to 10-year school replacement period (rather than five-year period) since school staff turnover is very high and information is not carried over from one administrator to the next, which causes a great deal of information loss.
  - Objection to listing first five schools in alphabetical order rather than by priority—there was concern that schools in most dire need may end up at bottom of alphabetical list, which will harm their chances of school replacement.
  - Application process for replacement schools should be an online process—not paper and pencil.
  - Create an automatic system that schedules anticipated replacement based on the projected life of facilities. Include a factor for unforeseen catastrophes.
  - Ensure that certain criteria are not double-weighted in the scoring process (for example, cultural space is included in the FMIS score and also receives additional points in the new school formula).
  - The Review Committee should be required to conduct site visits at each of the 10 finalist schools before the public meeting.
  - Allow the five unsuccessful schools to be grandfathered into the next round so that they do not have to apply again; they will compete against five newly qualified schools. Provide the five unsuccessful schools with any excess or unused construction funds.



- Concern about presenting at the public meeting in Albuquerque: schools with more eloquent speakers could influence the ranking, and schools in remote locations need funding to pay for travel.
  - Clear definition and criteria of how the 65 points from FMIS will be awarded, similar to the classification in the previous formula.
- (5) Suggestions for selection criteria and process of Review Committee members:
- Make sure that the people who make up the ranking committee will be neutral. Put school board members on the committee because, unlike ELOs and administrators who just follow orders from headquarters, school board members are the most likely to be neutral.
  - Rotate new members onto Review Committee every five years. Have committee members come from the tribes of the selected schools.
  - Committee member nominations should be automatically accepted, as long as they meet Review Committee criteria.
- Potential issues for Committee discussion:
1. Allow schools that are not ranked in poor condition to apply if they meet other criteria—such as overcrowded, inappropriately housed, over a certain age.
  2. Consider additional criteria such as willingness to combine schools, mismanagement, accreditation risk, and broaden culture criteria in the New School formula.
  3. Add section with recommendations to address concerns after selection—contracting and construction process.
  4. Increase education and transparency mechanisms regarding replacement list and ranking process.
  5. Consider keeping or changing alphabetical approach to replacement school listing.
  6. Develop selection criteria for New School Review Committee.
  7. Develop clear criteria for ordering the top five schools.



## Appendix C: Abstracts of Research Papers Associating School Conditions with Performance

The following collection of abstracts was edited from a website maintained by the engineering firm Fanning Howey, and was downloaded from their website (<http://www.fanninghowey.com/oakhill/research/building-conditions.pdf>) on May 6, 2011. Used with permission.

**TITLE: School Facility Conditions and Student Academic Achievement**

**AUTHOR:** Glen I. Earthman, Virginia Polytechnic Institute and State University

**PUBLICATION DATE:** October 1, 2002

**ABSTRACT:** This paper shows that the condition of school facilities has an important impact on student performance and teacher effectiveness. In particular, research demonstrates that comfortable classroom temperature and noise level are very important to efficient student performance. The age of school buildings is a useful proxy in this regard, since older facilities often have problems with thermal environment and noise level. A number of studies have measured overall building condition and its connection to student performance; these have consistently shown that students attending schools in better condition outperform students in substandard buildings by several percentage points. School building conditions also influence teacher effectiveness. Teachers report that physical improvements greatly enhance the teaching environment. Finally, school overcrowding also makes it harder for students to learn; this effect is greater for students from families of low socioeconomic status. Analyses show that class size reduction leads to higher student achievement.

1. School facility conditions affect student academic achievement.
2. School building design features and components have been proven to have a measureable influence upon student learning.
3. Among the influential features and components are those impacting temperature, lighting, acoustics, and age.
4. Researchers have found a negative impact upon student performance in buildings where deficiencies in any of these features exist.
5. Overcrowded school buildings and classrooms have been found to be a negative influence upon student performance (especially for minority/poverty students).
6. In cases where students attend school in substandard buildings they are definitely handicapped in their academic achievement.
7. Correlation studies show a strong positive relationship between overall building conditions and student achievement.

tionship between overall building conditions and student achievement.

8. Researchers have repeatedly found a difference of between 5-17 percentile points difference between achievement of students in poor buildings and those students in standard buildings (when the socioeconomic status of students is controlled).
9. Ethnographic and perception studies indicate that poor school facilities negatively impact teacher effectiveness and performance and therefore have a negative impact on student performance.
10. All of the studies cited in this report demonstrate a positive relationship between student performance and various factors or components of the built environment. The strength of that relationship varies according to the particular study completed; nevertheless, the weight of evidence supports the premise that a school building has a measurable influence on student achievement.

**TITLE: Testimony of Kathleen J. Moore, Director of the School Facilities Planning Division, California Department of Education** (to the Committee on Education and Labor, United States House of Representatives)

**DATE:** February 13, 2008

1. There is a growing body of research on the importance of school facility condition, design, and maintenance on student performance and teacher workplace satisfaction.
2. U.S. Dept. of Education cites over 40 academic research papers... Researchers have repeatedly found a difference of between 5-17 percentile points between achievement of students in poor buildings and those students in above-standard buildings.
3. Design Council of London review of 167 sources... Showed clear evidence that extremely poor environments have a negative effect on students and teachers and improving these have significant benefits.
4. Poor building conditions greatly increase likelihood that teachers will leave their school.
5. Numerous studies have confirmed the relationship between a school's physical conditions and

improved attendance and test scores, particularly in the areas of indoor air quality, lighting, thermal comfort and acoustics.

6. There is a consensus in the research that newer and better school buildings contribute to higher student scores on standardized tests.
7. Student attitudes and behavior improve when the facility conditions improve.
8. Teachers report that adequate space and access to technology are important variables to deliver curriculum.
9. Facility directors report that new and renovated schools can provide better opportunities for small schools
10. Building design such as large group instruction areas, color schemes, outside learning areas, instructional neighborhoods, and building on the student scale had a statistically significant impact on performance.
11. School quality can affect the ability of an area to attract businesses and workers.
12. The physical condition of school facilities impact student achievement and experience as well as teacher retention and community vitality.

**TITLE: Do K-12 School Facilities Affect Education Outcomes?** (Staff information report for Tennessee Advisory Commission on Intergovernmental Relations)

**DATE:** January 2003

1. Almost all of the studies conducted over the past three decades have found statistically significant relationships between the condition of a school, or classroom, and student achievement.
2. In general, students attending school in newer, better facilities score five to 17 points higher on standardized tests than those attending in standard buildings.
3. School facility factors such as building age and condition, quality of maintenance, temperature, lighting, noise, color, and air quality can affect student health, safety, sense of self, and psychological state.
4. Research has also shown that the quality of facilities influences citizen perceptions of schools and can serve as a point of community pride and increased support for public education.
5. Of special importance is the effect that facilities have on time in learning, which is universally acknowledged as the single most critical classroom variable. Every school year, many hours of

precious and irreplaceable classroom time are lost due to lack of air conditioning, broken boilers, ventilation breakdowns, and other facilities related problems.

6. It is unreasonable to expect positive results from programs that have to operate in negative physical environments.
7. The quality of the learning environment is known to affect teacher behavior and attitudes toward continuing to teach.
8. Review of 141 published studies, 21 papers presented at professional conferences, 97 published studies. Summary:
  - a. Age of Facility:
    - i. Students had higher achievement scores in newer facilities (math, reading, composition)
    - ii. Fewer disciplinary incidents in newer facilities
    - iii. Attendance records were better in new facilities
    - iv. Social climate factors perceived by students were considerably more favorable in a new school
  - b. Condition of Facility:
    - i. As the condition of the facility improved, achievement scores improved
    - ii. Stimulating environments promoted positive attitudes in students
    - iii. Higher student achievement was associated with schools with better science labs
  - c. Thermal Factors:
    - i. Eight or nine studies found significant relationship between the thermal environment of a classroom and student achievement and behavior
    - ii. Consistent pattern of higher achievement in air conditioned schools
    - iii. Excessive temperatures caused stress in students
  - d. Visual/Lighting
    - i. Light in the classroom seemed to have a positive effect on attendance rates
    - ii. Light had a positive effect on achievement
    - iii. Daylight in the classroom seemed to foster higher achievement
  - e. External Noise:
    - i. Higher student achievement was associated with schools with less external noise
    - ii. Outside noise caused students to be dissatisfied with their classrooms



- iii. Excessive noise caused stress in students
- f. Air Quality:
  - i. Poor air quality causes respiratory infections, aggravates allergies, and causes drowsiness and shorter attention spans
  - ii. When students do not feel well when they are in school, or miss school due to air quality problems, learning is adversely affected

**TITLE: Do School Facilities Affect Academic Outcomes?**  
(National Clearinghouse for Educational Facilities)  
**AUTHOR:** Mark Schneider, Professor of Political Science at the State University of New York, Stony Brook.  
**DATE:** November 2002

1. How can we expect students to perform at high levels in school buildings that are substandard?
2. Clean, quiet, safe, comfortable, and healthy environments are an important component of successful teaching and learning.
3. Synthesis of earlier studies correlated student achievement with better building quality, newer school buildings, better lighting, better thermal comfort and air quality, and more advanced laboratories and libraries. More recent reviews report similar links between building quality and higher test scores.
4. Students in newer buildings outperformed students in older ones and posted better records for health, attendance, and discipline.
5. Good facilities had a major impact on learning.
6. Research does show that student achievement lags in shabby school buildings – such as those with no science labs, inadequate ventilation, and faulty heating systems.
7. Other studies tie building quality to student behavior...Vandalism, leaving early, absenteeism, suspensions, expulsions, disciplinary incidents, violence, disruption in class, tardiness, racial incidents, and smoking all have been used as variables in these studies.
8. Good teaching takes place in schools with a good physical environment.
9. The general attitudes, behaviors, and relationships among pupils and staff are more conducive to learning in those schools which have had significant capital investments.

**TITLE: Good Buildings, Better Schools, An Economic Stimulus Opportunity With Long Term Benefits**  
(Economic Policy Institute Briefing Paper)

**AUTHOR:** Mary Filardo, founder of 21st Century School Fund

**DATE:** April 29, 2008

1. Many of the key educational initiatives designed to give the nation's children the tools and knowledge they need for the future have facility related implications.
2. Building deficiencies impair the quality of teaching and learning and contribute to health and safety problems of staff and students.
3. Building design and facility conditions have also been associated with teacher motivation and student achievement.
4. Classroom lighting and thermal comfort are commonly cited by teachers as determinants of their own morale and the engagement of their students.
5. 53 studies linked design features to student achievement.

**SOURCE: National Clearinghouse of Educational Facilities**

**AUTHORS:** Jack Buckley and Mark Schneider

**DATE:** February 2004

1. A myriad of factors clearly affect teacher retention, but most teaching takes place in a specific physical location (a school building) and the quality of that location can affect the ability of teachers to teach, teacher morale, and the very health and safety of teachers.
2. Many schools suffer from "Sick Building Syndrome" which in turn increases student absenteeism and reduces student performance.
3. Ability to control classroom temperature as central to the performance of both teachers and students.
4. Teachers believe thermal comfort affects both teaching quality and student achievement.
5. Classroom lighting plays a particularly critical role in student performance.
6. The consensus of 17 studies is that appropriate lighting improves test scores, reduces "off task" behavior, and plays a significant role in the achievement of students.
7. Good acoustics are fundamental to good academic performance.
8. Higher student achievement is associated with schools that have less external noise.
9. Outside noise causes increased student dissatis-



faction with their classrooms and excessive noise causes stress in students.

10. Teachers believe that noise impairs academic performance.

**TITLE:** *The Effects of the School Environment on Young People's Attitudes Towards Education and Learning* (Summary report for England's National Foundation for Educational Research)

**AUTHORS:** Peter Rudd, Frances Reed, and Paula Smith  
**DATE:** May 2008

1. There is a good deal of evidence to indicate that student attitudes had become more positive after the move into a new school building.
2. Those students who "felt safe" most or all of the time increased from 57 to 87 percent.
3. Those students who "felt proud" of their school increased from 43 to 77 percent.
4. Those students who "enjoyed going to school" increased from 50 to 61 percent.
5. Those students who perceived that bullying was a big problem decreased from 39 to 16 percent.

**TITLE:** *Acoustics in Schools* (Ceilings and Interior Systems Construction Association white paper report)  
**DATE:** November 2009

1. Children, especially those younger than 13 years of age, have an undeveloped sense of hearing, making the impact of background noise on hearing, comprehending, and learning more pronounced for children than adults.
2. Students with learning, attention, or reading deficits are more adversely affected by poor acoustic conditions than the average student.
3. Loud or reverberant classrooms may cause teachers to raise their voices, leading to increased teacher stress and fatigue.

**TITLE:** *Relationship Between School Facility Conditions and the Delivery of Instruction; Evidence From a National Survey of Principals* (*Journal of Facility Management*)

**AUTHOR:** Ibrahim Duyar  
**DATE:** 2010

1. Six of ten facility conditions are statistically and positively associated with the delivery of instruction.
2. Facility conditions accounted for 43 percent of the explained variation on the delivery of instruction with medium sized effect.

3. The paper supported the notion that educational facilities do matter and they affect the delivery of instruction.

**TITLE:** *Teacher Attitudes About Classroom Conditions* (*Journal of Educational Administration*)

**AUTHORS:** Glen I. Earthman and Linda K. Lemasters  
**DATE:** 2009

1. Differences between the responses of teachers in satisfactory buildings are significant compared to those of teachers in unsatisfactory buildings (responses concerning attitudes and impressions).
2. Physical environment influences attitudes of teachers, which in turn affects their productivity and these effects could cause morale problems in the teaching staff.
3. The conditions of the classroom can cause morale problems with teachers.

**TITLE:** *Having an Impact on Learning* (*School Planning and Management*)

**AUTHOR:** Deb Moore  
**DATE:** August 2009

1. Facilities DO impact learning.
2. Research shows that facilities can be an asset or a detriment to the educational process and to student achievement.
3. Researchers have repeatedly found a difference of 5–17 percentile points between achievement of students in poor buildings and those students in above-standard buildings. (When controlled for socioeconomic status). The average is around 10 points.
4. Building age, windows in the instructional area and overall building condition were positively related to student achievement.
5. Results showed a direct correlation between better facility conditions and student outcome.
6. (1,100 schools in Canada)... shows substantial differences between schools with different facility conditions.
7. In all cases, schools in top-ranked facility condition have better learning environments than schools in bottom ranked condition. Students work with more enthusiasm. The morale of teachers is higher. There is less disruption of classes by students. Teacher expectations of students are higher.
8. Facilities are one of the things we can change that will positively affect students and staff.



#### Appendix D: Extensive Description of FMIS Source: OFMC, 2011

##### FMIS – Facility Management Information System

FMIS was developed by IA/OFMC as a modernized facility/asset management application to carry out IA's responsibility for planning, designing, constructing, operating and maintaining Bureau-funded facilities.

FMIS is used to assist IA, BIE and tribal staff in managing the entire Indian Affairs Facilities Management Program. The data is used to identify, plan, perform and evaluate all facilities program-related work. All major facilities management work processes are supported in FMIS including planning, scheduling,

designing, constructing, operating, and maintaining facilities.

FMIS is used for recording improvement and repair needs, health and safety issues, abatement plans for the health and safety issues, and the execution of new and renovation construction projects from conception through project completion.

FMIS serves as an ongoing communication link with all of its users. It provides management planning, engineering, operations and maintenance and fiscal control to central office, regional offices, agency offices and school locations.

##### FMIS Features and Benefits

- Provides concise, organized information to make value-based decisions
- Improves project planning and management of construction activities
- Provides cost-justified project management and construction management
- Automates project prioritization and ranking capabilities
- Fosters continuous maintenance improvement practices
- Delivers instant retrieval of data online
- Promotes strategic planning – meeting IA's five year planning requirements
- Allows ability to track level of commitments, obligations and expenditures
- Improves project capitalization of assets
- Allows ability to apply inflation indexing for inventory asset replacement

- Contains values and backlog items to improve project cost estimating
- Improves cost estimating process that conforms with industry standards
- Improves automation and procedural support for employee quarters program
- Improves reporting for environmental, health and safety programs and provides for accurate accounting of resources utilized on these and all facility management programs

##### FMIS Modules

- **Inventory**  
FMIS inventory module manages all IA inventory including all buildings, towers, sites, and utilities. Site inventory also includes inventory of equipment, landscaping, roads, sidewalks, etc.

##### • Backlog/Inspections

FMIS backlog module collects the specific work items needed to improve and repair buildings, towers, sites and utilities. The work items are tracked from identification of the need through all stages to completion

##### • Project Management

Project management tracks all stages of projects from planning, design and construction including warranty

##### • Budget

Budget module provides an accounting of funds appropriated to operate, maintain repair, or construct new IA facilities

##### • Work Ticket/Work Planning

This module is used for the day-to-day operations and maintenance activities for planning, scheduling and executing corrective work on the building assets, equipment and infrastructure

## Appendix E: Method for Estimating for New Construction Source: OFMC, 2011

**Step 1. Determine Student Enrollment** - In January 2004, BIA implemented a new enrollment projection policy. This methodology uses the sum of least squares linear regression analysis which results in a more realistic assessment of the future enrollment and square footage requirements. Once the student enrollment is determined in joint efforts with BIE and OFMC, project the education program requirements space needs utilizing the *Education Space Criteria Handbook*.

Establish base cost/square foot (sf) for specific building types: academic (schools), dormitories, employee quarters and maintenance shop/bus garage. The base cost is for the building cost/sf only. RS means construction cost  $\frac{1}{4}$  cost/sf data is used for this purpose. The RS means  $\frac{1}{4}$  cost column indicates that 75 percent of the indicated project type had lower costs and 25 percent had higher costs. Why does BIA use the means  $\frac{1}{4}$  cost? The  $\frac{1}{4}$  cost data is used, in lieu of the median cost, due to the following factors not accounted for in the geographic indexing factor described below:

- a. **Indian Preference.** All construction projects on reservations must comply with federal and tribal laws requiring Indian or tribal preference in hiring and training of Indian construction workers and subcontractors.
- b. **Federal Minimum Wage (Davis-Bacon Act) Requirement.** All construction over \$2000 must comply with the Act. Wages not less than those specified in a wage determination must be paid and the appropriate recordkeeping by the construction contractor must be maintained. Contractors claim the reporting requirements are an administrative burden that adds to the cost of construction.
- c. **Tribal Courts.** Generally speaking, all lawsuits under a construction contract must be tried in tribal courts if the contract is between a tribal organization (tribe, grantee, school board) and a construction contractor. Contractors claim they do not get fair treatment in tribal courts and add costs to their bids to cover this risk.
- d. **Social Programs.** Federally funded construction requires compliance with certain programs such as: veterans preference, woman-owned business preference, small business preference. Contractors claim there is a cost involved in complying with these requirements.
- e. **LEED Compliance.** Contractors must provide extensive documentation relative to materials installed so that the architect can apply for LEED certification. This requirement adds, although minimally, to the cost of construction.

**Step 2.** Using geographic indexing factors developed by Hanscomb Associates for BIA-OFMC, the base cost/sf is adjusted to the specific project location, not just the closest city.

**Step 3.** The geographically adjusted cost/sf is further adjusted by adding in the following additional factors:

- a. **Building Size.** Buildings smaller than the typical size in the RS means cost book cost more per square foot. Buildings larger than the typical size cost less due to economies of scale. The adjustment factor varies based on building type and size.
- b. **Special Foundations.** Because of poor soils conditions at most BIA school locations, special foundations must be constructed (concrete pier and grade beam, "waffle slabs") or special engineered fill (dirt or gravel) material must be hauled long distances to the site. A five percent factor is used for this additional cost. (Under review—this factor is probably more than indicated.)
- c. **Energy Policy Act of 2005.** Energy efficient mechanical and electrical systems are required to meet the energy reduction requirements of the Act and could add approximately five percent to the cost of construction. The BIA does not feel that current RS means cost/sf adequately reflects this policy requirement. (Under review—this factor is probably more than indicated.)
- d. **LEED Compliance.** OMB Circular A-11 and BIA-OFMC require compliance with the U.S. Green Building Council's LEED Green Building rating system. BIA estimates that this requirement adds ap-



proximately three percent to the cost of construction. The Resource Conservation and Recovery Act requires federal agencies to give preference in the use of recycled materials for construction. Compliance with additional Executive Orders; (e.g. E.O. 13101, Greening the Government through Waste Prevention, Recycling and Federal Acquisition; E.O. 13123, Greening the Government through Efficient Energy Management; and E.O. 13148, Greening the Government through Leadership in Environmental Management), adds to the cost of construction.

e. **Tribal Taxes and Fees.** The cost/sf is further adjusted to add applicable tribal sales taxes and Tribal Employment Rights Ordinance fees.

f. **Inflation.** The cost/sf is further adjusted to mid-point of anticipated construction. BIA uses the *Engineering News-Record* annual rate for building construction, unless there are compelling reasons to use a different rate.

Step 4. After the cost for each building type is established, the site and utilities costs are factored in.

Step 5. Establish total cost by adding "soft costs." Soft cost descriptions and their respective percentages are identified below. The soft costs factor is multiplied by the sum of the building cost to arrive at the total soft cost. The soft cost is added to the building cost to get the total building cost.

Soft Costs (Indirect Costs)

Calculated as a percentage of direct construction cost for the building. They include:

**Planning Phase Costs:** 2%

Preparation of education specifications, program of requirements (architectural programming), topographic and legal survey of construction site, National Environmental Protection Act compliance, archeological survey and report, historic preservation compliance (Section 106 of HPA), flood hazard determination, environmental assessment; sub-surface soils investigation and geotechnical report; utilities survey, assessment and report; determination of required easement and road Right of Way. Preparation of site master plan, preliminary architectural and engineering requirements. Preparation of preliminary construction estimate. Tribal administrative costs during planning phase (includes tribal or school board

staff salaries and benefits, project manager, travel, audit, board meeting costs). These costs are necessary under PL 93-638 contracts with tribes or PL 100-297 grants with Bureau-funded school boards.

**Design Phase Costs:**

Architect-engineer (AE) fees for production of drawings and specifications	6%
Value engineering, LEED and commissioning services during design, AE reimbursable expenses (travel, printing, etc.)	2%
Tribal administrative costs during design (includes tribal or school board staff salaries (percent of time basis) and benefits, project manager, travel, audit, board meetings)	2%

**Construction Phase Costs:**

AE construction administration, inspection, materials testing, commissioning services during construction, LEED costs during construction phase	10%
Furniture, fixtures and equipment including technology equipment	8%
Contingency during construction (covers unforeseen costs during construction and overbids). Includes change orders or shortfalls in other line items	10%
Tribal administrative costs during the construction phase (includes tribal or school board staff salaries, percent of time basis) and benefits, project manager, travel, audit, board meetings	2%

**Project Management by BIA staff or by Contract for all phases of project (includes salaries, benefits, travel, supplies, and training):**

Planning Phase	2%
Design Phase	10%
Construction Phase	+ 30%
Current BIA Soft Cost Rate	42%
Project Management/Administrative OH by BIA or by Contract	+ 12%
<b>Total Soft Costs (as a percentage)</b>	<b>54%</b>

## Appendix F: Previous Whole School Replacement Priority Lists

## Table of Priority List Schools for Whole School Replacement FY 1993 to FY 2004

The following table lists the schools that were identified by the BIA in a Federal Register notice as prioritized for funding for whole school replacement. Please note that all schools listed, with the exception of those in red, have been funded and construction is either under way or complete.

As of January 2011, construction has not begun at schools listed in red below.

Rank	FY 1993 Priority List [58 FR 379; 1/6/93]	FY 2000 Priority List [66 FR 1689; 1/9/01]	FY 2003 Priority List [68 FR 4098; 7/9/03]	FY 2004 Priority List [69 FR 13870; 3/24/04]
1	Pinon Community School Dorm	Tuba City Boarding School	Turtle Mountain High School	Dilcon Community School
2	Eastern Cheyenne River Consolidated School	Second Mesa Day School	Mescalero Apache School	Porcupine Day School
3	Rock Point Community School	Zia Day School	Enemy Swim Day School	Crown Point Community School
4	Many Farms High School	Baca/Thoreau (Dlo' Ayazhi) Consolidated Community School	Isleta Pueblo Day School	Muckleshoot Tribal School
5	Tucker Day School	Lummi Tribal School	Navajo Preparatory School	Dennehotso Boarding School
6	Shoshone-Bannock/Fort Hall School	Wingate Elementary School	Wingate High School	Circle of Life Survival School
7	Standing Pine Day School	Polacca Day School	Pueblo Pintado Community School	Keams Canyon Elementary School
8	Chief Leschi School Complex	Holbrook Dormitory	Bread Springs Day School	Rough Rock Community School
9	Seba Dalkai Boarding School	Santa Fe Indian School	Ojo Encino Day School	Crow Creek Elementary/Middle/High School
10	Sac and Fox Settlement School	Ojibwa Indian School	Chemawa Indian School	Kaibeto Boarding School
11	Pyramid Lake	Conehatta Elementary School	Beclabito Day School	Blackfeet Dormitory
12	Shiprock Alternative School	Paschal Sherman Indian School	Leupp School	Beatrice Rafferty School
13	Tuba City Boarding School	Kayenta Boarding School	-	Little Singer Community School
14	Fond du Lac Ojibwe School	Tiospa Zina Tribal School	-	Cove Day School
15	Second Mesa Day School	Wide Ruins Community School	-	-
16	Zia Day School	Low Mountain Boarding School	-	-
17	-	St. Francis Indian School	-	-
18	-	Turtle Mountain High School	-	-
19	-	Mescalero Apache School	-	-
20	-	Enemy Swim Day School	-	-



A few points to note:

- Prior to FY 1993, the Bureau developed an annual prioritized list of schools needing complete replacement; however, this generated multiple yearly lists, and many schools on these lists went unfunded due to a changing list the next year. Consequently, Congress directed the Bureau to create a continuous multi-year priority ranking list for new school construction as of FY 1993.
- For both FY 2000 and FY 2003, the Bureau (through the OFMC) administered an application process allowing all interested schools to apply. OFMC provided detailed application instructions, created a comprehensive scoring system, and selected, via an evaluation committee, prioritized schools in rank order.
- In FY 2004, Congress requested that the Bureau develop another list of priorities for new school construction to identify a sufficient number of schools to allow continual replacement through FY 2007. The Bureau, via OFMC, created this FY 2004 list by reviewing FMIS data and identifying likely schools in need. In turn, OFMC retained a contractor who conducted a site review and rating of visited schools.

Appendix G: Current FI&R Formula Description Source: OFMC, 2011

The following appendix provides detailed background on the existing FI&R scoring and rankings processes.

FMIS Categories and Ranking

FMIS itself, based on policies applied to the entire DOI, categorizes each proposed construction or maintenance project into one of nine "ranking categories" (e.g., "Critical Health and Safety Deferred Maintenance"). Each of these categories has a weighting factor of from 1 to 10.

DOI Weighting Factors that IA-OFMC Uses		Weighted Factor
CHSDm	<b>Critical Health and Safety Deferred Maintenance</b> - A facility deferred maintenance need that poses a serious threat to public or employee safety or health. Examples: <ul style="list-style-type: none"> <li>• Repair fire alarm</li> <li>• Fire sprinkler protection system repair</li> </ul>	10
CHSci	<b>Critical Health and Safety Capital Improvements</b> - A condition that poses a serious threat to public or employee safety or health and can only be reasonably abated by the construction of some capital improvements. Examples: <ul style="list-style-type: none"> <li>• Install a fire alarm or sprinkler system where one does not exist</li> <li>• Repair or replacement of a facility with structural failure</li> </ul>	9
EPHPBSci	<b>Energy Policy, High Performance, Sustainable Buildings CI</b> - Policy Act of 2005 or the guiding principles of the Memorandum of Understanding for High Performance and Sustainable Buildings Deferred Maintenance and/or Capital Improvement Needs.	5
Cmdm	<b>Critical Mission Deferred Maintenance</b> - A facility-deferred maintenance need that poses a serious threat to a Bureau's ability to carry out its assigned mission. Examples: <ul style="list-style-type: none"> <li>• Replacement of facility's deteriorated generator that supplies power to a mission-critical asset</li> <li>• Repair of deferred maintenance items that if not accomplished quickly compromises the public's investment in the structure</li> </ul>	4
CCci	<b>Code Compliance Capital Improvement</b> - A facility capital improvement need that will meet compliance with codes, standards, and laws. Example: <ul style="list-style-type: none"> <li>• Providing accessibility to comply with ADA</li> </ul>	4
Odm	<b>Other Deferred Maintenance</b> - A facility deferred maintenance need that will improve public or employee safety, health, or accessibility; complete unmet programmatic needs and mandated programs; protect natural or cultural resources, or improve a facility's ability to carry out its assigned mission. Examples: <ul style="list-style-type: none"> <li>• Facility repair or rehabilitation to increase program efficiency</li> <li>• Repair or maintenance of existing systems or system component</li> </ul>	3
Oci	<b>Other Capital Improvements Health and Safety Deferred Maintenance</b> - Other capital improvement is the construction of a new facility or the expansion or rehabilitation of an existing facility to accommodate a change of function or new mission requirements. Examples: <ul style="list-style-type: none"> <li>• Construction of a new school or dormitory</li> <li>• Major alterations to a school dormitory to convert its function to academic classroom use</li> </ul>	1



#### Relative Weighted Score per Backlog

The FI&R formula then weights each backlog in the system for a particular school. For instance, imagine a school with a Critical Health and Safety deferred maintenance backlog at an estimated cost of \$26,196. To get the relative weighted score for this backlog, the estimated cost of the backlog is divided by the estimated total cost of all backlogs for this school multiplied by the category weighting (in this case 10, the highest ranking or weight). So, if the estimated total cost of all backlogs for a school is \$492,495, then this particular backlog has a weight of 0.5319. To keep the scores clear, this initial weighting is multiplied by 100 to get the final relative weighted project score. The formula and our example:

- (Backlogs cost/total cost of all backlogs) x weighted factor for that backlog x 100 = weighted relative score for that backlog
- (\$26,196/\$492,495) X 10 X 100 = 53.19

Location Name	FCI	Category	Rank	FCI Category	Weight Factor	Number of Backlogs	Backlog Cost	Backlog Weight	Weighted Relative Score
School A	0.11046	E	3	EPHPBSci	5	1	\$ 6,657	0.81%	6.76
School A	0.11046	H	1	CHSdm	10	4	\$ 26,196	6.36%	53.19
School A	0.11046	M	1	CHSdm	10	13	\$ 342,778	83.25%	696.00
School A	0.11046	M	2	CHSdm	4	7	\$ 44,049	4.28%	35.78
School A	0.11046	M	3	Odm	3	9	\$ 72,815	5.31%	44.35
<b>TOTALS</b>							<b>\$ 492,495</b>	<b>100%</b>	<b>836.08</b>

Two things to note: 1) if the backlog is not entered into the FMIS system, it is never given a score, and this may affect the school's overall eligibility for FI&R funding, and; 2) accurate cost estimates are important because if they are inaccurate, the project score is inaccurate as well.

#### Relative Weighted Score per School

Once the relative weighted scores per backlog are calculated, the calculation for the school as a whole is simple. All of the relative weighted project scores are added to get the total relative weighted score per school. There are a few important things to note about this calculation. The relative weighted score per school is not affected by the number or cost of backlogs. A school rated in high need under the FI&R formula would have several critical backlogs in health and safety (i.e., high category weights) relative to the school's overall backlogs and their cost. Schools with the most backlogs or the highest scores do not necessarily come out with the highest relative weighted score per school across the system. For instance, in a past fiscal year, the Yakama Tribal School had the highest overall FI&R ranking with a total estimate backlogs cost of just under \$500,000. There were several schools with much more costly total backlogs (in the millions) who ranked lower in the total scoring, but whose expensive backlogs had lower weight factors.

Also, it is important to note that this score does not account for any critical educational need. Scores are based on facility or physical issues such as health and safety, energy, and so forth. There is not a category for important or essential educational needs. So, for instance, a critical mission-deferred maintenance backlog has a lower category ranking than a health and safety backlog. A room essential for teaching first graders reading may not be usable without a critical mission backlog project, but since that project has a lower category score (4 versus 10), it is possible it won't get funded for some time. And, if the reading room is in suitable condition (i.e., no backlogs) but is simply too small to be useful for the number of students, then that educational need is in no way captured by the current FI&R formula.

## Asset Priority Index

In addition to the relative weighted score per school, the FI&R formula takes into account how critical the particular buildings with backlogs in that school buildings are to the overall educational mission. To do this, an API is also calculated. Every building within a school is given an asset priority ranking. That ranking is based on the criticality of building to overall education (e.g., maintenance shed as less critical than a classroom building). Each building can have a maximum API score of 100. The ranking has three components: mission criticality (is it critical to education?); operations (is it critical to the functioning of the school?); and substitution (can the function be done in a different building?). Each building with a backlog is scored and these individual building scores are combined. Then, to scale or average the scores, the sum of the individual building scores is divided by the total number of buildings. This yields an API average. For instance, in our example school, there are six buildings, all with an API score of 100, and so the school as a whole has an API of 100.

## Overall School or Location Score (Final Project Score)

To get the final score used to compare a school against all other schools with backlogs in the FMIS system, the two scores need to be added together—the relative weighted score per school and the API. The FI&R formula gives a greater weight to the weighted relative score than to the API. To get the complete school or location score, the API is multiplied by 25 percent (X 10 again just to keep the same relative scale in numbers) and the relative weighted score is multiplied by 75 percent. In our example, the school relative weighted score of 836.08 is multiplied X 75 percent and added to 100 X 25 percent X 10 to yield an overall location or school score of 877. The formula and our example:

- (Weighted relative scores of all backlogs x 75%) + (API Average (the priority of all the buildings with backlogs in that school X 10 for scaling) X 25%) = final overall project score
- $836.08 \times 75\% = 627$  and  $100 \times 25\% \times 10 = 250$ .  $627 + 250 = 877$

The following matrix illustrates the calculations to obtain this overall location score in more detail.

Location Name	FCI	Category	Rank	DOI Category	Weight Factor	Number of Backlogs	Backlog Cost	Backlog Weight	Weighted Relative Score
School A	0.11046	E	3	EPHPBSci	5	1	\$ 6,657	0.81%	6.76
School A	0.11046	H	1	CHSdm	10	4	\$ 26,196	6.36%	53.19
School A	0.11046	M	1	CHSdm	10	13	\$ 342,778	83.25%	696.00
School A	0.11046	M	2	CHSdm	4	7	\$ 44,049	4.28%	35.78
School A	0.11046	M	3	Odm	3	9	\$ 72,815	5.31%	44.35
TOTALS							\$ 492,495	100%	836.08 627
API	Building	Building Type	Mission Criticality	Operations	Substitutability	Total API	API Average		
School A	1T	School, Day	60	20	20	100			
School A	2T	School, Day	60	20	20	100			
School A	3T	Office	60	20	20	100			
School A	4T	Office	60	20	20	100			
School A	5T	School, Vocational Shop	60	20	20	100			
School A	6A	Office	60	20	20	100			
TOTAL						600	100	250	
FINAL PROJECT SCORE 877									

#### Comparison of Schools

Once the location or school score is determined, it can be compared to all the other school location scores to prioritize projects across the system. An example of a location score ranking from a previous fiscal year is included below:

Location Name	Fiscal Year	Location Score	Location FCI	Number of Backlogs	Total Backlog Cost
Yakama Tribal School	2009	833.3794	0.1105	34	\$492,495
Cibecue Community School	2009	632.5658	0.2577	78	\$2,709,091
Lukachukai Boarding School	2009	629.8443	0.3817	74	\$2,942,192
Coeur D'Alene Tribal School	2009	628.6586	0.0861	22	\$957,673
Bug-O-Nay-Ge-Shig School	2009	606.2827	0.0243	27	\$411,524
Kin Dah Lichi'i Olta (Kinlichee)	2009	579.9163	0.1935	17	\$798,118
Hotevilla Bacavi Community School	2009	567.9706	0.5464	70	\$2,383,182
Sho-Ban School District No. 512	2009	559.0765	0.0382	9	\$296,514
Cottonwood Day School	2009	554.0987	0.3174	4	\$619,294
Marty Indian School	2009	551.4163	0.0614	48	\$1,339,255
T'lis Nazbas Community School	2010	547.4448	0.3834	204	\$7,778,987
Nenahnezad Boarding School	2009	528.4948	0.2418	117	\$3,464,395

#### Facilities Condition Index

The FCI is a separate index that uses a different formula for calculation. Note that "facility" in this usage means an entire school and not a particular building. It is related to the FI&R rankings in that, if a school does not have a "poor" condition as determined by the FCI, then it is not likely to receive FI&R monies even if its FI&R score and ranking is high. Thus, the FCI serves as a kind of "check" to make sure schools in most need are receiving the limited funding available.

#### The FCI formula is:

$$FCI = \text{Cost of Deficiencies} / \text{Current Replacement Value}$$

The FCI provides a simple, valid, and quantifiable indication of the relative condition of a facility or group of facilities for comparisons with other facilities, and groups of facilities: the higher the FCI, the worse the condition. In general, the condition of the schools is based on FCI values as follows:

- 0.0-0.05 = Good condition
- 0.06-0.10 = Fair condition
- > 0.10 = Poor condition

Because this facility index is calculated for an entire school, not a particular building within that school, the FCI ranges from less than .05 to as high as in the .50s. A general construction practice is that individual buildings whose backlog costs are equal to or greater than 66 percent of the replacement cost of the whole building should simply be replaced, not renovated or repaired. The FCI, since it's a reflection of an entire school campus, not a building, rarely exceeds that 66 percent threshold because at least some buildings on campus are likely to be in fair or good condition. That does not mean, however, that individual buildings in a school do not need to be replaced and it does not mean that a whole new school is not needed.

## Appendix H: Glossary of Terms

**Asset Priority Index (API)** API is a measure of the importance of a constructed asset to the mission of the installation where it is located. API is a numeric range from one (1), for little or no importance, to one hundred (100), for very important.

**Assistant Secretary - Indian Affairs (AS-IA)** The Office of the AS-IA is the primary policy setting and management oversight organization for IA functions, responsible for fulfilling U.S. trust obligations to the federally recognized American Indian tribes and Alaska Natives, and individual Indian trust beneficiaries.

**Adequate Yearly Progress (AYP)** The NCLB requires states to develop objective criteria for measuring school performance, and to establish targets for annual improvements in school performance as a condition for receiving federal grant aid. 20 U.S.C. § 6311. NCLB requires that school performance improves each year, as measured by standardized tests. AYP is the amount of improvement required by NCLB. The Act sets out criteria for defining AYP, but directs each state to craft its own definition of AYP. Per DOI regulations, each state's definition of AYP applies to the Bureau-funded schools in that state. 25 C.F.R. § 30.104.

**Bureau of Indian Affairs (BIA)** The principal bureau within Indian Affairs responsible for the administration of federal programs for federally recognized Indian tribes, and for promoting Indian self-determination.

**Bureau of Indian Education (BIE)** The BIE is responsible for all IA education program activities necessary to provide quality education opportunities and safe, secure, and healthy learning environments to all students attending Bureau-funded schools.

**Bureau** As defined in 25 U.S.C. § 2021 (Bureau of Indian Affairs Programs), 25 U.S.C. § 2511 (Tribally Controlled School Grants), 25 U.S.C. § 2801 (Indian Law Enforcement), and 25 U.S.C. § 3202 (Indian Child Protection and Family Violence Prevention), "Bureau" means the Bureau of Indian Affairs.

**Bureau-funded School** One of the 183 schools funded by the BIA. 125 Bureau-funded schools are operated by Tribes; the rest are operated by BIE.

**The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee (The Committee)** The Committee was chartered to serve as an advisory committee subject to the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, under the authority of 25 U.S.C. § 2005(a)(5) for the purpose of preparing a catalog and report regarding the physical conditions of Bureau-funded schools.

**Consensus Building Institute (CBI)** A not-for-profit organization specializing in public collaboration and dispute resolution, hired by the U.S. Institute to facilitate the NCLB Facilities and Construction Negotiated Rulemaking Committee.

**Complementary Educational Facilities** NCLB at 25 U.S.C. § 2005(a)(5)(A) directed the Committee to identify educational facilities that are needed, but do not exist.

**Cultural Space** Space required to provide an academic program specific for native language/cultural education. This could be a requirement placed on the school through a tribal resolution.

**Designated Federal Officer (DFO)** A federal employee charged with responsibility for managing a rulemaking committee. 5 U.S.C. appx. § 106e. The DFO for the Committee is Michele Singer, Office of Regulatory Affairs and Collaborative Action. See Appendix A.

**United States Department of Defense Educational Activities (DoDEA)** DoDEA operates 194 schools in 14 districts located in 12 foreign countries, seven states, Guam, and Puerto Rico. All schools within DoDEA are fully accredited by U.S. accrediting agencies. Approximately 8,700 educators serve more than 86,000 DoDEA students.

**United States Department of the Interior (DOI)** The Department that manages the United States public lands and minerals, and is the agency charged with primary responsibility for carrying out the Federal government's trust responsibilities to Indian tribes and Alaska Natives. This mission is accomplished through the coordinated efforts of the Department's bureaus and offices, other Federal agencies, and the tribes. The Department's other responsibilities include managing and protecting the 20 percent of the Nation's

land set aside as national parks, national wildlife refuges, and other public lands; providing access to public lands and the Outer Continental Shelf for renewable and conventional energy development; supplying and managing water resources in 17 western states; and managing hydropower resources on federal lands.

**Education Line Officer (ELO)** An employee of the BIE at one of 22 offices located around the country, who is the point of contact between Bureau-funded schools and the federal government. The ELO is responsible for the administration and implementation of the BIE education programs and activities, including school operations.

**Facilities Condition Index (FCI)** The ratio of the cost of performing accumulated Deferred Maintenance (DM) to the Current Replacement Value (CRV) for a constructed asset.  $FCI = DM/CRV$ . FCI is a calculated indicator of the depleted value of a constructed asset to determine a condition value (e.g., good, fair and poor). The range is from zero (0) "best," for a newly constructed asset, to one (1.0) "worst," for a constructed asset with a DM value equal to its CRV. An acceptable rating for BIA schools is under 0.10. All schools with ratings above 0.10 are deemed as being in poor condition. All those with ratings between 0.05 and 0.099 are deemed as being in fair condition. Those with ratings below 0.05 are deemed as being in good condition.

**Facilities Construction, Operation and Management (FACCOM)** The information system for tracking conditions of Bureau-funded school facilities prior to development of FMIS.

**Family and Child Education (FACE)** A BIE program implementing a comprehensive family literacy model of lifelong learning. FACE educates mothers about proper prenatal nutrition, developmental milestones, and early literacy through book sharing; prepares 3- to 5-year-olds for school entry; fosters parental involvement in their children's education; and promotes continuing education for the parents themselves.

**Facilities Improvement and Repair (F&R)** A funding category in the OFMC budget. F&R includes major renovation or repair of an existing asset in order to restore

**Leadership in Energy and Environmental Design (LEED)** An internationally recognized green building certification system, providing third-party verification that a building or community was designed

**Office of facilities Management and Construction (OFMC)** An office within Indian Affairs, under the Director of the OFECR. The mission of OFMC is to ensure the efficient and effective stewardship of resources for new construction, renovation, and maintenance of Bureau-funded facilities.

**United States Institute for Environmental Conflict Resolution (U.S. Institute)** A program within the Udall Foundation, an independent federal agency. Congress established the Institute in 1998 to help resolve environmental disputes that involve the federal government by providing mediation, training and related services.



G A O

Accountability • Integrity • Reliability

United States Government Accountability Office  
Washington, DC 20548

March 21, 2013

The Honorable Mike Simpson  
Chairman  
Subcommittee on Interior, Environment, and Related Agencies  
Committee on Appropriations  
House of Representatives

Dear Mr. Chairman:

It was a pleasure to appear before your subcommittee on February 27, 2013, to discuss the preliminary results of the work you requested on management of the Department of the Interior's (Interior) Bureau of Indian Education (BIE) schools.<sup>1</sup> This letter responds to your request that I provide answers to questions for the record from the hearing. The questions, along with my responses, follow.

#### Questions from Chairman Simpson

##### 1. Relative to other measures, how critical is per pupil funding as a measure of whether the federal government is doing enough to educate American Indians?

###### Answer:

Per pupil funding is significant, but not the sole measure to consider when assessing the adequacy of federal support for Indian education. It is important to consider the full range of funds that may be available to BIE schools, including those from the Department of Education and other agencies. Also, it is difficult to compare funding for BIE schools to that for public schools because BIE schools have expenditures that public schools do not, including housing some students in boarding facilities.

##### 2. Are Department of Defense schools in better condition than BIE schools?

###### Answer:

Since we were not asked to examine the condition of DOD schools, we have not conducted the work necessary to answer this question.

<sup>1</sup>GAO, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, (Washington, D.C.: February 27, 2013).

**3. Do Department of Defense students score higher on tests than BIE students?**

**If so, do you think the Department of Defense school system's ability to retain full operational control over all its schools, and therefore its ability to establish standardized curricula, testing, and evaluations, is a contributing factor?**

**Answer:**

According to data from the Department of Education, students attending Department of Defense (DOD) schools score significantly higher than BIE students and higher than the national average on the National Assessment of Educational Progress. For 2011, the scores were as follows:

**National Assessment of Education Progress Scores, 2011**

	National Average	DOD Schools	BIE Schools
Math, Grade 4	240	241	213
Math, Grade 8	283	288	249
Reading, Grade 4	220	229	182
Reading, Grade 8	264	272	234

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics

Department of Defense Educational Activity (DODEA) officials reported that they are currently undertaking a study to determine whether its organizational structure allows it to provide services as efficiently as possible. However, it is difficult to determine to what extent DODEA's autonomy affects student achievement.

**4. According to your written testimony, the 1999 National Academy of Public Administration (NAPA) report<sup>2</sup> recommended that BIA should *centralize* some administrative functions. After 13 years and no less than \$4 million invested by this subcommittee to implement those NAPA recommendations, a follow-up study known as the Bronner report<sup>3</sup> recently recommended *decentralization*.**

**How is any organization expected to make sense of these seemingly conflicting recommendations, and how does it avoid repeating mistakes of the past?**

**Answer:**

GAO's research has found that a high-functioning organization must have a clear and compelling mission, focus on the needs of its clients, and manage staff strategically.<sup>4</sup> In

<sup>2</sup>National Academy of Public Administration, *A Study of Management and Administration: The Bureau of Indian Affairs* (1999).

<sup>3</sup>Bronner Group, *Final Report: Examination, Evaluation, and Recommendations for Support Functions* (March 2012).

<sup>4</sup>GAO, *21st Century Challenges: Transforming Government to Meet Current and Emerging Challenges*, GAO-05-830T (Washington, D.C.: July 13, 2005).

1999, the NAPA study recommended the centralization of some administrative functions. In response, Indian Affairs centralized all administrative functions into a separate office, the Deputy Assistant Secretary of Management (DAS-M). The Bronner report sought to correct what it considered to be over-centralization of functions by recommending some decentralization. Bronner recommended a hybrid structure, in which a smaller DAS-M organization would be responsible for setting the standards for functional performance and establishing Indian Affairs' office support policies, procedures, and processes and providing automated solutions. In addition, authority over and accountability for local administrative functions would be delegated to the BIA Regional Directors and the BIE Associate Deputy Directors in the field.

**What sort of experience does GAO have in helping agencies such as Indian Affairs through organizational change?**

**Answer:**

GAO has conducted a broad body of work that can assist agencies undergoing organizational change. This includes reports on organizational transformation and performance measures. For example, we have undertaken a body of work to help the Department of Homeland Security (DHS) with its transformation, particularly in the area of management. Although GAO still includes "Strengthening DHS's Management Functions" on our 2013 high risk list,<sup>5</sup> the agency has made progress in implementing reforms in close communication with GAO (for additional information on the high risk list, see [www.gao.gov/highrisk](http://www.gao.gov/highrisk)). Another example includes reviews we conducted in 2008 and 2009 examining the District of Columbia's efforts to reform its public school system.<sup>6</sup> We examined what the District has done to improve accountability and performance of the D.C. public schools and made recommendations for further improvements.

**5. As part of this ongoing study, have you seen any evidence to suggest that some of the funds appropriated for Indian Education by this subcommittee are wasted?**

**Answer:**

Our study is ongoing; if we find instances of waste or abuse, we will notify this subcommittee and refer our findings to the appropriate oversight body, primarily Interior's Office of the Inspector General.

**6. Your written testimony states that as part of this ongoing study that you visited several public schools and BIE schools.**

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<sup>5</sup>GAO, *2013 High-Risk: An Update*, GAO-13-359T, (Washington, D.C.: February 14, 2013).

<sup>6</sup>GAO *District of Columbia Public Schools: While Early Reform Efforts Tackle Critical Management Issues, A District-Wide Strategic Plan Would Help Guide Long-Term Efforts*, GAO-08-549T (Washington, D.C.: March 14, 2008) and *District of Columbia Public Schools: Important Steps Taken to Continue Reform Efforts, But Enhanced Planning Could Improve Implementation and Sustainability*, GAO-09-619 (Washington, D.C.: June 26, 2009).



**Would you please compare and contrast what you witnessed at those various schools, in terms of the condition of the facilities, the resources and materials available to the students, and any other characteristics you'd like to include?**

**Answer:**

Our findings to date are preliminary. In the course of our study, we will look at BIE school facilities, operations, and teacher recruitment and retention. To date, we have visited BIE schools and public schools that serve the Oglala Sioux Tribe in Pine Ridge, S.D. and the Mississippi Band of Choctaw Indians, where we interviewed administrators and teachers. We plan to conduct an additional site visit in the spring of this year to complete our work.

**Do you intend to visit Department of Defense schools as part of this study?**

**Answer:**

We are only visiting public schools in proximity to BIE schools. There are no DOD schools located near BIE schools..

- 7. Please elaborate on the statement from your written testimony that tribal school officials in Mississippi are unsure whether they should invest in repairs or rent additional modular classrooms as they have not been told when or if the department will construct new facilities.**

**Answer:**

School officials reported that they are not kept informed of their status on the Replacement School Priority List, nor when they can expect to obtain additional resources/funding for construction. This may be because the most recent Replacement School Priority List was developed in 2004, and no updates have been made since that time. One school we visited was originally built for a student population of 350, but is now serving 650 students. Although the school is in need of expansion, the principal is under the impression that if she makes repairs or expands capacity by purchasing mobile units, the school will move further down on the school replacement priority list. She also continues to hope for a new school in the near future and is reluctant to spend needed funds on repairs to a building that may soon be torn down. BIE officials reported that recent funding for construction has been used for building additions to schools, rather than building entirely new schools. This conflicting information indicates there is a lack of communication between BIE schools and the Indian Affairs' officials who develop the Replacement School Priority List.

- 8. With respect to Indian education, would you please compare and contrast Indian Affairs' major management challenges within its control versus those that are largely out of its control?**

**Answer:**

There are a range of mechanisms that federal agencies can use to lead and implement interagency collaboration, improve communication, and strengthen accountability. Within Indian Affairs, there are two offices that support BIE schools: BIE and the office of the Deputy Assistant Secretary for Management (DAS-M). There is evidence that there are incompatible procedures and a lack of defined roles between these two entities that may

result in delays in BIE schools and students obtaining needed services. Indian Affairs could better define and agree on the roles and responsibilities of the offices responsible for supporting BIE schools. We have previously reported on a range of mechanisms that could improve interagency collaboration, such as working groups and regularly scheduled meetings.<sup>7</sup> Further, Indian Affairs does not know if DAS-M staff have the requisite expertise needed for working on BIE-related tasks. We have previously reported on the importance of strategic workforce planning, such as performing a workforce analysis to determine if agencies have the appropriate number of staff with the right skills.

To a large extent, BIE must seek cooperation from tribes to make reforms in tribally-operated schools which make up the majority of BIE funded schools. BIE and the Department of Education (Education) are exploring through an interagency committee ways to support BIE's efforts to monitor and enforce compliance with the requirements of the funding Education provides to BIE, particularly to tribally-operated schools. Indian Affairs could take a similar approach for funds provided by Interior to support BIE funded schools.

**Which of those management challenges out of Indian Affairs' control might be within the purview of either the Administration or Congress?**

**Answer:**

The Office of Management and Budget could work with the Department of the Interior (Interior) to help ensure that they are meeting their goals related to Indian education, including strategic planning, and performance and accountability measures. Congress could work with Interior to set priority goals for Indian education as well as determine what plans and reports would be useful to congressional committees in their policy making, including reports on the physical condition of BIE funded schools

**9. How would you grade the BIE in terms of whether it is achieving its mission to provide quality education to American Indian students, and what statistics and other facts are you using to arrive at that grade?**

**Answer:**

As I indicated in my written statement, there are significant gaps in educational outcomes for American Indian students in BIE schools compared with public schools.<sup>8</sup> Specifically, fourth and eighth grade reading and math scores were higher for Indian students in public schools than those in BIE-schools. Additionally, the high school graduation rate for BIE students for the 2008-2009 school year was 52 percent, compared to the national average for public school students of 76 percent.<sup>9</sup>

**In your opinion, what statistics and other data are not being collected now that could help evaluate the BIE in the future?**

<sup>7</sup>GAO, *Managing For Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

<sup>8</sup>U.S. Department of Education, National Center for Education Statistics, *National Indian Education Study 2011*, (July 2012).

<sup>9</sup>Bureau of Indian Affairs Office of Indian Education Programs, *Bureau-Wide Annual Report Card 2008-2009*, and National Center for Education Statistics, *The Condition of Education 2012* (May 2012).

**Answer:**

As I discussed in my written statement, BIE uses the accountability measures of the 23 respective states where its schools are located. Recently, Education allowed 16 of 23 of these states to change their assessments and the methodology for calculating their schools' proficiency level. This has affected BIE's ability to calculate the proficiency of its schools in a timely manner. Currently, BIE is seeking to revise its regulations that require it to use the 23 states' accountability systems.

**10. In your written testimony, you state that in previous studies GAO found that frequent changes in leadership may complicate efforts to improve student achievement, and that lack of leadership negatively affects an organization's ability to function effectively and to sustain focus on key initiatives. Is leadership turnover within Indian Affairs generally more frequent than a government-wide average, or about the same?**

**Answer:**

GAO does not have sufficient information on whether leadership turnover in Indian Affairs is greater than that in other federal agencies. We have conducted extensive research on both management and education issues and found that organizational results and transformational efforts, like those needed to improve student achievement or address long-standing management challenges, can take years to achieve.<sup>10</sup> Further, high turnover, especially among politically appointed leaders, can make it difficult to follow through with organizational transformation for the same reason, the length of time often needed to provide meaningful and sustainable results.

**In your opinion, what is causing the turnover at Indian Affairs?**

**Answer:**

Although we are uncertain about the specific reasons for turnover at Indian Affairs, one former BIE Director told us that his departure was influenced by his perception that BIE could not function effectively because it had no control over many of the components that would be necessary to improve education for Indian students. In a memo to the Secretary, he also stated that the challenges facing BIE cannot be overcome until basic structure and governance issues are addressed and resolved.

**11. Your written testimony states that both BIE and the Department of Education consider BIE schools, unlike public schools, to have the responsibilities of both school districts and schools, even though many of these individual schools are small in size and lack the organizational capacity to function as a school district. Can you**

<sup>10</sup>GAO, *District of Columbia Public Schools: Important Steps Taken to Continue Reform Efforts, But Enhanced Planning Could Improve Implementation and Sustainability*, GAO-09-619 (Washington, D.C.: June 26, 2009); GAO, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-34 (Washington, D.C.: November 1, 2007); GAO, *Recovering Servicemembers and Veterans: Sustained Leadership Attention and Systematic Oversight Needed to Resolve Persistent Problems Affecting Care and Benefits*, GAO-13-5 (Washington, D.C.: Nov. 16, 2012) and *Architect of the Capitol: Committed, Sustained Leadership Needed to Continue Progress*, GAO-07-407 (Washington, D.C.: Feb. 28, 2007).

**please clarify? Which individual BIE schools—tribally operated, BIE operated, or both—are treated as school districts and why?**

**Answer:**

According to an MOU signed by BIE and Education in Dec 2012, all BIE-funded schools have the responsibility of both a school and a school district. However, we have not as yet conducted the work necessary to answer this question.

**12. You testified that management challenges such as fragmented administrative structures and frequent leadership turnover have continued to hinder efforts to improve Indian education. Is it probable that the high turnover at BIE could be at least partially attributed to management challenges such as fragmented administrative structures—in other words is the turnover more of a symptom than a cause of these management challenges?**

**Answer:**

BIE officials have expressed concern about their lack of authority over administrative responsibilities that impact learning, such as school facilities and contracts for educational services. At least one BIE official questioned whether a bureau that does not have control over its resources or people dedicated to the success of its mission could be successful. While there have been several BIE directors and acting directors since 2000, one individual we spoke with who have held this position told us he faced challenges dealing with the lack of continuity elsewhere in Indian Affairs. Based on these views, one may surmise that administrative challenges may contribute to leadership turnover within BIE.

**Given that education responsibilities are divided between the BIE, the BIA, and the Assistant Secretary's office, is it understandable if the BIE director feels all of the responsibility without having all of the authority?**

**Answer:**

The BIE director is responsible for directing and managing all education functions, including forming policies and procedures, supervising all program activities, and approving funding for education functions. However, when compared with state education agencies and the Department of Defense Education Activity, which have responsibility for administrative functions, the BIE and its director have limited authority over several functions that may critically affect educational outcomes.

**13. You testified that school governance remains an issue, in that BIE's influence is limited because most schools are tribally operated—implying that tribally operated schools would perform better if BIE could exert more influence. Yet Mr. Washburn testified that increasing the proportion of tribally-run schools would be an improvement. Are these contradictory conclusions, and, if so, how does the subcommittee rectify them?**

**Answer:**

It may be possible to increase the number of tribally operated schools, while allowing BIE to exercise an appropriate level of influence over schools. As referenced in my written statement, BIE administers, oversees, and provides technical support for a number of programs. As noted above, BIE is working with Education officials, under an MOU signed

by the agencies in December 2012, to support BIE responsibilities to monitor and enforce compliance with requirements of Education programs, as well as meet other SEA responsibilities, particularly with respect to tribally controlled grant and contract schools. Having accountability mechanisms in place for both Education and BIE-funded programs for tribally controlled schools is critical for ensuring federal funds are used for their intended purpose and with the overall goal of improving student performance. For example, BIE and Education are exploring the option of having Education establish conditions for the funding it provides to BIE consistent with applicable laws.

**Question from Mr. Valadao**

**14. You note BIE's abilities to influence BIE funded schools are limited because most schools are tribally operated. Respecting each tribe's rights to sovereignty, how do you propose the BIE address this issue to improve student education and outcomes?**

**Answer:**

As noted above, having accountability mechanisms in place for both Education and BIE-funded programs for tribally controlled schools is critical for ensuring federal funds are used for their intended purpose and with the overall goal of improving student performance. We may obtain additional information on these issues as we complete work for our report to be issued later this year.

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If you or other members of the subcommittee have any additional questions about the preliminary results of our work on management of the Department of the Interior's (Interior) Bureau of Indian Education (BIE) schools, please contact me at (202) 512-7215 or [scottg@gao.gov](mailto:scottg@gao.gov).

George A. Scott  
Director, Education, Workforce and Income Security

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Indian Education  
February 27, 2013  
B-308 Rayburn HOB

**Questions for the Record for Dr. Shotton**

Questions from the Subcommittee:

**School Conditions**

- Q1. Your written statement stresses the need for increased funding to improve the condition of BIE schools, and rightfully so, because nobody should be in a school that, as the Inspector General has said, has “the potential to seriously injure or kill students and faculty.”**

**In your opinion, if this subcommittee somehow could come up with an additional \$1 million, or \$10 million, or even \$100 million for Indian Education, is the first priority to improve the condition of the schools before addressing other influencing factors both on- and off-campus?**

Answer:

Regardless of any increase in appropriations, a holistic approach is necessary for the success of our children. The National Indian Education Association (NIEA) believes this approach should include culturally-respectful curricula and adequate teacher training to ensure those teaching Native children understand cultural traditions and the importance of culture-based learning. To provide such an approach, however, the school must first be a facility that ensures safe learning. Children must have a safe, structurally-sound facility that is free from distraction. Native students cannot be expected to increase student achievement unless there are adequate conditions in which to learn.

There is currently a school in Representative McCollum’s district that was originally intended to be temporary structure. However, the facility is still in use after a number of years. The school can barely keep out the harsh cold of the Minnesota winters, are unsatisfactory and a danger to the students they serve. This problem is prevalent across many Native communities. While NIEA agrees there are other influencing factors affecting Native education, the federal government must first provide a safe environment in which to learn.

**Trust Responsibility**

- Q2. In your written testimony, you state, “While DOD budgets are often easy to justify for military purposes, it is equally as important that Congress defends spending on Native populations to fulfill the trust responsibility.”**

**In your opinion, is the problem due to the fact that most Members don’t understand the trust responsibility well enough to defend it or do you see another reason here?**

**For the record, please explain the trust responsibility as it pertains to Indian education.**

**Is the Indian education trust responsibility specific about building and maintaining schools?**

Answer:

Defense costs are often easy to justify due to military needs around the world. Within such costs, there is a necessity to provide services, such as education and family assistance, for the service members who serve this country so courageously. NIEA supports such education services that provide support to military families. Further, there is a disproportionately high number of Natives serving in the armed forces whose families benefit from such programs.

The current congressional misunderstanding or ignorance of the United States' trust responsibility is a problem that maintains inequality between the United States two federally-funded school systems – Department of Defense Schools and federally-funded Native serving institutions. Native students attending such schools should have the same educational opportunities as those of other U.S. citizens. This includes the ability to participate in the benefits of all U.S. education programs and services.

Congress must understand that unlike other populations, providing education to our Native populations is a federal obligation because of the unique legal status of Native Americans under the United States Constitution. When Native populations ceded certain lands – lands which now constitute the United States – agreements were made between tribes and the United States government that established a "trust" responsibility for the safety and well-being of Indian peoples in perpetuity. A number of treaties – the 1858 Treaty entered into with the Yankton Sioux Tribe, the 1868 Ft. Laramie Treaty entered into with the Sioux Nation, and the 1858 Treaty with the Ponca Nation, among others – specifically outlined the provision of general education, nutrition, and health care. Therefore, the federal trust responsibility for Native education – and the inclusion of providing a safe learning environment – must be recognized in all education policies.

#### **School Construction and Maintenance**

**Q3. In your written testimony you state that, "single maintenance projects for facilities that require replacement are often undesirable to such schools. Native leaders worry that accepting a piecemeal construction project will push their school further down the school replacement priority list."**

**Are you saying that there is a disincentive to try and maintain an old facility because, the better shape it is in, the less likely it will be a priority for eventual replacement?**

Answer:

NIEA membership and our tribal partners have highlighted that in BIE conversations, they were told that completing individual maintenance projects, rather than much-needed facility replacement, could potentially push their facility farther down the school priority list as it is upgraded by individual projects. There is no disincentive to maintain a proper facility, but tribes worry that accepting projects in a piecemeal fashion will not address the spectrum of issues, such as overall structural integrity, that affect numerous facilities across the country.

The necessary action is replacement. Our Native partners worry that fragmentary solutions will address only a few issues, while ignoring larger concerns. Focusing solely on maintenance and repair will not address the replacement needs for schools in poor condition. Tribes and schools will have to wait longer until the bulk of the issues affecting that facility are addressed.

**Q4. You mention the need for BIA to update and publicly release two lists: “BIA Funded Schools in Poor Condition” and “Tribal Priority Construction”.**

**Please explain how these lists currently work, how they’re supposed to work, and how tribes use these lists for planning purposes.**

**As mentioned, there are two lists: the Tribal Priority Construction List and the index of BIA schools in Poor Condition.**

Answer:

**Tribal Priority Construction List**

The Bureau of Indian Education (BIE) school construction priority list determines the order in which the Bureau of Indian Affairs (BIA) requests Congressional appropriations to fund the major repair and replacement construction of BIE academic facilities. The priority list forms the basis for five year construction and facilities programs. In order to have sufficient time for planning and design, the list is formulated prior to Congressional appropriation of funds for construction. Funding and scheduling for these projects is contingent on the Congressional budget process.

The current priority list for replacement school construction was last formulated in 2003 and published in 2004. The BIA anticipated the program to last for five years. However, because Congress did not make sufficient appropriations to cover all of the projects, the program announced in 2004 continues to be underway, with three incomplete projects on the current list.

All BIE schools and facilities are considered for the construction priority list. The BIA conducts a condition assessment of every school and identifies those schools with critical health and safety concerns. Then, through a competitive bid process, the BIA selects an independent contractor experienced in facilities construction to conduct a site review of each of the identified schools' core academic and/or dormitory facility. The contractor then rates each school based on the following criteria, in order of priority:

- 1) Health and safety deficiencies
- 2) Environmental deficiencies
- 3) Accessibility for persons with disabilities
- 4) Condition of existing utilities and site improvements

The schools are ranked from worst to better condition. Those in the worst condition take first priority on the list. Because the condition of all BIE schools and facilities are automatically assessed to be a part of the priority list, tribes cannot actively do anything to get their school(s) on the priority list.



NIEA and our partners expected an updated priority construction list early in 2013, but from recent discussions, this timeline was extended. The new list must be developed according to recommendations from the NCLB School Facilities and Construction Negotiated Rulemaking Committee. The three incomplete projects on the current 2004 list will remain at the top of the list, followed by the next priority of projects.

Due to insufficient funds in recent years for major BIE school construction projects, the BIA has decided to direct all available construction funds to minor repair and improvement of BIE facilities. While this action will not improve school conditions, it theoretically will prevent further deterioration. Based on the BIA focus on maintenance, in March 2013, the Senate moved the Fiscal Year 2013 Continuing Resolution forward, which eliminated the BIE School Replacement Program by striking \$17 million in funds. The elimination of this program will only continue to put Native children in harm's way.

Native education stakeholders are pushing the Agency to release an updated list, to not only highlight the dire need for construction projects to appropriators, but also give tribes more transparency on possible cost sharing opportunities, funding matches, and future operations costs of new schools. Without adequate funding, the current backlog for new projects only grows longer.

#### **Index of BIA Schools in Poor Condition**

In late 2009, the Bureau of Indian Affairs released a list of BIA Funded Schools in Poor Condition as Indicated by Facility Condition Index. That list put the potential cost of construction for schools in poor condition at \$1.3 billion. This huge number highlights the current conditions of schools serving Native students. Even more worrisome is this list is sure to have grown since 2009. It is critical that federal officials update and release a new list to highlight the current index of schools in poor condition.

- Q5. Several years ago this subcommittee attempted a school construction program somewhat similar to the joint venture facilities construction program in the Indian Health Service, whereby the government agrees to fund operations if the tribe funds the construction. It was discontinued shortly thereafter.**

**What worked and didn't work with that school construction program?**

**Should we attempt something like that again, and if so, what should we do differently?**

Answer:

The Indian Health Service (HIS) Joint-Venture Program is extremely popular. The program basically provides that where a tribe makes a substantial infrastructure commitment, the United States in turn, promises to provide agreed upon levels of staffing.

This is a model that, for those tribes that could afford to build a school, would make a lot of sense. The main issue is that most tribes with BIE schools are not necessarily the

tribes with the funding capacity to construct a new school, even with the promise that it will be staffed or provided other levels of support by the federal government.

Based on the popularity of the IHS Joint Venture Program, NIEA recommends that under the right circumstances, such a model could be used again. However, only a handful of tribes would be able to take advantage of the program. And such a program would not alleviate the issues facing many of the tribes with schools in the worst condition due to geographical isolation and lack of capacity for such ventures. The tribes in the worst situation would see relatively little benefit, while funds would be redirected to tribes with the capacity and money to fund such construction projects. Tribes that cannot afford to build or participate in joint ventures, should not face seeing their schools pushed further down the priority construction list in order to preference joint-venture opportunities.

#### **Funding Allocation**

- Q6. Your written statement says, “BIA must distribute information to tribes, school administrators, Native community leaders, and appropriators to guarantee correct funding allocation.”**

**For the record, please list all the information that you believe the BIA must distribute and why.**

**What do you mean by “correct” funding allocation?**

Answer:

Regarding language in the written testimony, NIEA suggests that agencies should be as transparent as possible and should continually keep Native partners briefed and educated through the release of timely, accurate information, such as construction lists. This would help Native partners understand the needs or timelines of potential projects as well as provide important information to appropriators so congressional members have an accurate and constant understanding of funding allocation and how appropriations will positively address the hardships facing Native students.

#### **Administrative Costs**

- Q7. Your written statement says, “Increasing administrative costs within an agency is unacceptable when it diminishes the facilities serving Native children.”**

**What increasing administrative costs do you mean? For fiscal year 2013, Indian Affairs proposed a \$13 million *reduction* in administrative costs.**

Answer:

While there have been recent calls for addressing administrative costs, for instance the reductions in FY 2013. Previously, there was a trend in growth for the BIE’s management budget. As recently as 2010, there was testimony submitted during a Tribal Consultation Meeting at Pine Ridge High School by Theodore L. Hamilton, a BIE superintendent, who specified in his testimony about the explosive growth of bureaucracy. On pages 22 and 23 of that testimony, there is a graph illustrating 165% growth in the BIE management budget between FY 2005 - FY 2010. Hamilton goes on to say that, “put simply, from a funding perspective, the BIE has been slowly starving the schools of resources while

building a ‘state’ infrastructure.”

NIEA is happy to see recent efforts to reduce bureaucracy. However, there must be assurances and protections from future bureaucratic growth and inefficiencies. Funding administrative costs must be avoided, so resources can more effectively impact our Native children locally. NIEA and our partners ask this Subcommittee to provide important oversight to protect from increasing administrative costs in the future.

- Q8. Your written statement says, “DOI should establish a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system.”**

**There is already a Tribal/Interior Budget Council (TIBC). Why is there a need for another advisory committee?**

Answer:

NIEA understands the Tribal/Interior Budget Council (TBIC) has been a successful and important committee, which addresses issues and provides a forum for the government-to-government relationship between tribes and the federal government. However, NIEA would like to see the establishment of a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development specifically for the BIE school system.

There has never been a formal, established mechanism for tribally-operated schools to raise issues and provide substantive advice to the Secretary on an on-going basis – especially on the development of the budget request for programs serving BIE schools. While TBIC provides an outlet and forum for discussion of topics regarding the entire Department of the Interior, it encompasses too many different funding issues. There should be a more focused discussion regarding BIE and the welfare of our Native Students. Also, TIBC representatives tend to be tribal leaders, not education leaders, so they are not in the best position to provide guidance on how to maximize expenditures with a focus on student outcomes. There must be knowledgeable partners at the table who understand the intricate nature of the BIE budget to consult directly with the Secretary on needed issues.

- Q9. In your written statement, you recommend that BIA contract with Tribal Colleges and Universities to provide professional development for the dedicated professionals who work in BIE schools, instead of contracting with “outside” sources.**

**Are those contracts generally open for competitive bidding, and do Tribal Colleges and Universities compete for those contracts?**

Answer:

Through NIEA’s work with the American Indian Higher Education Consortium (AIHEC) who serves as a network for the nation’s 37 tribal colleges and universities (TCUs), our organization understands that such contracts have not been competitive in the past. The funding is given to the individual schools, and they ultimately decide how to spend the money. Often these school districts generally use for-profit firms. Ensuring that TCUs have the opportunity to compete for such grants, where applicable, would help guarantee

professional development is provided by people and institutions who understand Native students and culture.

Additional Questions from Mr. Valadao:

#### **Coordination Challenges**

**Valadao Q1.**

**The GAO's testimony notes that coordination issues rooted in tribal sovereignty play a role in the educational challenges BIE faces in implementing performance goals. Your testimony, Dr. Shotton, states that one way to improve Indian Education would be to solicit more tribal input through an advisory panel. Do you believe this advisory panel could help overcome some of the coordination challenges BIE is facing across schools?**

**How could an advisory panel be used most effectively to improve student outcomes?**

Answer:

As mentioned previously, NIEA understands the Tribal/Interior Budget Council (TBIC) has been a successful and important committee, which addresses issues and provides a forum for the government-to-government relationship between tribes and the federal government. This consistent consultation model is critical to ensure coordination and accountability for the BIE.

Through the establishment of a tribal advisory committee specifically focused on the BIE school system, the panel could ensure better coordination and the inclusion of education leaders' knowledge for addressing longstanding issues that decrease Native student achievement. A formal, established mechanism to raise issues and provide substantive advice to the Secretary of the Interior on an on-going basis is critical to guarantee program effectiveness and oversight on budget concerns and policy issues. Because BIE schools serve numerous tribal nations across the United States, bringing education leaders from the different regions of the U.S. who understand the varying concerns, such as needed school replacement, will help the Agency address important issues and factors negatively affecting student outcomes.

[The following statements were submitted for the record:]



**RAMAH NAVAJO SCHOOL BOARD, INC.**

P.O. BOX 10 \* PINE HILL, NEW MEXICO 87357 \* 505-775-3256 \* FAX: 505-775-3240

**RESPONSE TO FEBRUARY 27, 2013, STATEMENT  
OF KEVIN K. WASHBURN, ASSISTANT SECRETARY – INDIAN AFFAIRS  
DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE OF REPRESENTATIVES**

**March 15, 2013**

In his February 27, 2013, statement before this Subcommittee, the Honorable Kevin K. Washburn, testified that:

The [Bureau of Indian Education] met with the Navajo Nation and Department of Diné Education to discuss a possible realignment of the educational program on the Navajo Nation. There are currently 31 BIE-operated schools and 35 grant or Public Law 93-638 contracted tribally operated schools within the Navajo Reservation. The concept is to move all Navajo BIE-funded schools under on Public Law 100-297 grant with the Navajo Nation. This concept would allow the Tribe to have more direct impact on the way all of the BIE-funded schools are administered and operated on Navajo Nation lands. This would provide more local educational control, increase jobs at the local educational level, and advance BIE education through the Navajo Nation's exercise of self-determination over the education of their children in BIE-funded schools.

The Ramah Navajo School Board, Inc. (RNSB), vehemently opposes this "concept" because in fact it would provide less local educational control, decrease jobs at the local educational level, and harm BIE education.

RNSB urges the Subcommittee and the full Committee to oppose any concept that would place the grant schools administered by RNSB under the control of the Navajo Nation and to prohibit the Assistant Secretary from implementing that concept with respect to RNSB's schools.

**RNSB's Role in Indian Self-Determination**

RNSB pioneered Indian self-determination in 1970. In 1968, after the State of New Mexico closed the only accessible public high school for their children, the Ramah Navajos created their own school and built a paved road to get to it. In so doing, they created the first Indian-controlled school started from scratch by an Indian community in

the United States since the 19th Century. Later that same year President Nixon cited the Ramah Navajo achievement as a model for his new Indian self-determination policy.<sup>1</sup> Five years later that policy became law; it has been the central pillar of Federal-Indian relations ever since.

RNSB is a non-profit, tax-exempt organization incorporated in the State of New Mexico. RNSB is also a school board under the laws of the Navajo Nation and a “local school board” within the meaning of 25 U.S.C. § 2021(14). RNSB was organized and is controlled by the members of the Ramah Navajo Chapter, a subdivision of the Navajo Nation, a federally-recognized Indian tribe. RNSB is a tribal organization authorized by the Navajo Nation to contract with the Federal Government under the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450 *et seq.*, and its companion statutes, including 25 U.S.C. §§ 2501 *et seq.* RNSB provides federally-funded educational, health, and charitable programs and services to the members of the Ramah Navajo community.

The Ramah Navajo community has continued to lead the struggle for Indian self-determination. In 1978, it established the Pine Hill Health Center, the first health clinic be contracted under ISDA. It established community radio station KTDB, the first public radio station operated by an Indian tribe. The Ramah Navajo community has won a number of court decisions that set favorable precedents for Native Americans across the nation.<sup>2</sup>

#### **Local Control and the Ramah Navajo Community**

The Ramah Navajo community is located in Cibola County in western New Mexico. The land of the Ramah Navajo Band of Indians is geographically separated from the main body of the Navajo Nation by over 100 miles. Its territory of about 300 square miles is “checkerboarded” into tracts owned by the Ramah Band, by Ramah Navajo allottees, by individual non-Indians, by the Navajo Nation, by the State of New Mexico, and by the Federal Government.

The Ramah Navajo land is often referred to as a “reservation” and has been regarded as “Indian country” by the Navajo and federal courts. However, it has never been part of the formal Navajo Reservation.

To safeguard and consolidate the land base and Ramah Navajo identity, the BIA under John Collier in 1942 directed that the Ramah Navajos, while recognized as Navajo Indians and part of the Navajo Nation, be served by the Zuni Sub-Agency, part of the United Pueblos Agency. Ramah thus became the only Navajo community not within the Navajo Region of the BIA or, until recently, of the BIE.

<sup>1</sup> Special Message to the Congress on Indian Affairs (July 8, 1970), Public Papers of the Presidents: Richard Nixon, 1970, at 564.

<sup>2</sup> See, for example, *Ramah Navajo Chapter v. Salazar*, 567 U. S. \_\_\_, 132 S. Ct. 2181 (2012); *RNSB v. New Mexico Bureau of Revenue*, 458 U.S. 832 (1982); *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455 (10th Cir. 1997); *RNSB v. Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996); *RNSB v. Sebelius*, U.S.D.C. N.M. No. 6:07-cv-00289, doc. 47 (Feb. 6, 2008) & doc. 99 (Sept. 28, 2011).

On petition from the Ramah Navajos after the formation of the RNSB community-controlled contract school, the Interior Department in 1972 created the Ramah BIA Agency, one of only a few Navajo Chapters to have its own agency and the only one of three Navajo communities not within the main territory of the Navajo Reservation to have a separate BIA agency.

In 1980 and again in 1983 Congress added federal lands to the Ramah Navajo land base, declaring that the land was to be held in trust for the Ramah Band of Navajo Indians.<sup>3</sup>

In 1992 BIA Albuquerque Area Director Sidney Mills, reviewing the history of the Ramah Band of Navajos and its “largely independent Chapter Administration” “which acts as a local government to the Ramah Navajo people” and argued that the Ramah Band of Navajos should be recognized as an “Indian tribe” for certain purposes.<sup>4</sup> He went on to say that “the Ramah Navajo Chapter (RNC) bears exclusive responsibility, with no assistance from the Navajo Nation, for providing educational, health, social and community services for the Ramah Navajo people.”<sup>5</sup>

Over time, the Ramah Navajo community has come to rely on the relationships and course of dealing that have arisen between it, the Ramah Navajo Agency, and the Albuquerque offices of the BIA and the BIE. There has been a *de facto* Government-to-Government relationship. The Ramah Navajos are the only Navajo community within the administrative orbit of the BIA and BIE regional offices in Albuquerque. RNSB considers its relationship with the Albuquerque BIA and BIE offices to be vital to protecting its self-determination prerogatives and its very existence as a functioning self-reliant Navajo community.

In 2008 the BIE transferred RNSB from the jurisdiction of its Albuquerque office to its office in Gallup, New Mexico serving the Navajo Nation. The Ramah Navajos vigorously protested this move and filed a lawsuit to reverse it.<sup>6</sup> The BIE subsequently restored RNSB to the Albuquerque office and the lawsuit was settled.

### **The Single Grant Concept**

Congress has confirmed that not only tribal control, but community and local control is essential to Indian self-determination, especially in the educational context.

In the Indian Self-Determination Act, Congress found that “parental and community control of the educational process is of crucial importance to the Indian people.”<sup>7</sup> In the

<sup>3</sup> Public Law 96-333, 94 Stat. 1060 (1980); Public Law 97-434 § 1(a), 96 Stat. 2280 (1983), codified at 25 U.S.C. § 459(c).

<sup>4</sup> Sidney L. Mills, Area Director, Albuquerque Area Office, Bureau of Indian Affairs, memorandum to Deputy Commissioner of Indian Affairs, *Treating the Ramah Navajo Band of Indians (Ramah Navajo Chapter) as a tribe for Certain Purpose* (Nov. 3, 1992).

<sup>5</sup> *Id.*

<sup>6</sup> *RNSB v. Salazar*, U.S.D.C. N.M. No. 6:09-cv-00774.

<sup>7</sup> 25 U.S.C. § 450(b)(3).

Tribally Controlled School Grants Act, Congress declared that “a national goal of the United States is to provide the resources, processes, and structure that will enable tribes *and local communities* to obtain the quantity and quality of educational services and opportunities that will permit Indian children (1) to compete and excel in areas of their choice; and (2) to achieve the measure of self-determination essential to their social and economic well-being.”<sup>8</sup>

RNSB has been successfully operating its schools since 1970. Hundreds of students have graduated from the Ramah Navajos’ Pine Hill Schools. Many dozens of them have gone on to post-secondary education. Before the creation of the Pine Hill Schools only one Ramah Navajo had ever gone to college.

The Department of Diné Education has never operated any school. The Navajo Nation’s administration of the Head Start program<sup>9</sup> does not inspire confidence that it will be able to successfully operate K-12 schools.

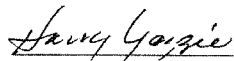
Transfer of the RNSB schools to the Department of Diné Education will not only adversely affect the schools. The schools are the core of RNSB’s operation, but that operation is integrated with Head Start, scholarship assistance, adult education, and other education programs that are not part of the Public Law 100-297 grant. Also adversely affected by transfer of RNSB’s schools would be RNSB’s other programs, including the Pine Hill Health Center, radio station KTDB, housing assistance, behavioral health and social services, employment training and assistance, and many other ancillary programs.

#### **Conclusion**

The “concept” of placing all Navajo grant and contract schools in a single contract awarded to the Department of Diné Education would be devastating to the Ramah Navajo community, destructive of its local self-government and community control of education. It would transfer jobs from the community to an administrative bureaucracy far away that has no actual experience in running schools. The Subcommittee should reject this concept in its entirety.

\* \* \*

Respectfully submitted on behalf of the Ramah Band of Navajo Indians and the Ramah Navajo School Board, Inc.



Harry Yazzie, President of the Ramah Navajo Chapter

<sup>8</sup> 25 U.S.C. § 2501(c) (emphasis added).

<sup>9</sup> See, e.g., *Navajo Head Start Director on Leave*, Farmington (N. Mex.) Daily Times, June 24, 2011; *Feds Refuse to Lift Suspension of Head Start*, Gallup (N. Mex.) Independent, Aug. 1, 2006; *Navajo Headstart Program in Limbo*, Farmington Daily Times, June 19, 2006.



**Written Testimony By:** Dave Archambault, Board Member, Standing Rock Community School.

March 14<sup>th</sup>, 2013

United States House Appropriation Committee  
Attn: Chair Hal Rogers  
B-308, Rayburn HOB  
Washington, DC 20515

Dear Representative Rogers

There is language in the United States Interior Agency House Appropriations Title I Language for Bureau of Indian Education administrative provisions, that is in violation of "Equal Rights" for American Indians, which requires no funding to fix.

Specifically, I quote this prohibitive language, "...**Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school ...**". This language effectively restricts Bureau of Indian Education funded schools from engaging in the alternative offerings of Charter School educational provisions. In doing so it is very clear that all citizens in the USA may have Charter School status except American Indians.

This is wrong, bias, and an obvious mistake by BIE officials that can be corrected easily.

Reasons/Rationale to the Obvious or Why language should be amended:

1. "Making Changes For the Future of American Education" – This is what U.S. Representative Paul Gosar stated in his support to repeal this appropriations language in 2012. He believes charter school programs to be a positive step in improving Indian Education.
2. American Indian have the highest drop-out % in America, which varies but is always above 50%, which means over ½ of American's first citizens will be well below poverty guidelines that leads to Welfare and Social Dysfunction ( Crime/Poor Health/Suicide), which are drags on society. Tribes, States, and the Federal government all feel the terrible consequences of poor education levels.

3. Sitting Bull said, "It was not necessary for Eagles to be Crows !". This is a natural living law of uniqueness by the Creator. The demand for sameness in education is unfortunately misguided if one considers this. So it is appropriate that 42 States allow for alteration to following federal law also called, "One Size Fits All". Charter Schools initiate creative, meaningful, schooling strategies.

In order to change this restrictive and unnatural language, please accept this request to insert the following sentence, in Interior Appropriation as another exception to the **grandfathering** provision in the Bill; .....**Except funds made available under this Act may be used to establish a Tribally Charter School at a Bureau-funded school. Such a charter school shall be understood to fully recognize and support a Tribe with its right to Self-Determination for the purpose of empowering tribal schools and their communities with the ability to design and implement alternative learning strategies for their students that conform to the Tribes established educational codes .....**

Thank you for considering this written testimony.

PO Box 4339  
San Felipe Pueblo, NM 87001



Phone: (505) 867-3381/3382  
Fax: (505) 867-3383

**Office of the Governor**

Written Testimony  
Of  
Governor Jimmie Cimarron  
Pueblo of San Felipe  
San Felipe Pueblo, New Mexico

To

Subcommittee on Interior, Environment, and Related Agencies

Committee on Appropriations

U.S. House of Representatives

March 11, 2013

Thank you Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee for allowing me to submit written testimony for the record to the Subcommittee's hearing on Indian education held on February, 27, 2013.

I am Governor Jimmie Cimarron for the Pueblo of San Felipe, one of 19 Pueblos located in the State of New Mexico. Our Pueblo is located less than 30 miles north of Albuquerque and is one of the most culturally conservative of all Keresan speaking tribes. We are located at the foot of the Mesa de Tamita and have existed on this land since the mid to late 12<sup>th</sup> century.

The state of Indian education, as a whole, is dismal and specifically on our Pueblo, we can and should be doing much better. Our students at the Pueblo Elementary School, which is operated by the Bureau of Indian Education (BIE) lag behind their peers in non-BIE schools. In the 2010-2011 school year, 27 percent of our students were proficient in reading compared with 43 percent in non-BIE schools; 19 percent were proficient in science compared with 42.1 percent in non-BIE schools; and, an alarming 15 percent were proficient in math compared with 38.7 percent in non-BIE schools. The statistics are not promising. Fewer Native Americans graduate and enroll in college or University compared with their peers at non-BIE schools.

What's especially troubling is that it does not seem the BIE is capable of educating the thousands of Native children in BIE schools. Since the year 2000, there have been nine directors or acting directors at BIE and the Bronner Report issued last March states the BIE doesn't coordinate effectively and communication is poor. The Report goes on to state that the procurement process utilized by BIE schools is inefficient and causes major delays in important materials such as textbooks and other supplies.

Under the Native American Education Improvement Act 2001, Section 1131: Policy for Indian Control of Indian Education states, *"it shall be the policy of the United States acting through the Secretary, in carrying out the functions of the Bureau, to facilitate Indian Control of Indian Affairs in all matters relating to education."* Therefore, we will begin the transition of moving into a Grant operated school under the Tribally Controlled Schools Act of 1988. The Pueblo of San Felipe and its Tribal Departments are working diligently to create seamless servicing for the community at-large, and we are prepared to work alongside entities at various levels, including University, State, District, and the private domain, to begin the process of entering into a 638 Contract.

While I appreciate the efforts of the BIE, there is nothing more important than improving the lives, through education, of our Pueblo youth. We will re-evaluate the effectiveness and usage of the existing school plan; seeking strong input from current teaching staff, administration and student supports as we begin this process. We will establish realistic and effective means for measurement of our students' progress in the education process through local design. We will identify the appropriate learning styles of San Felipe Pueblo children and employ teaching methods for effectively teaching to the

various learning styles of all of our children. We will teach our children in a way that will compliment and possibly advance the National Standard of Common Core and use the data effectively to measure the true performance of our children.

The Pueblo of San Felipe will work to implement Tribal Priorities in an interdisciplinary approach of curriculum design and delivery through creating feasible and practical timelines around School Improvement efforts to meet State and Federal demands that would improve our Adequate Yearly Progress status.

And, perhaps most importantly, we will define a tiered approach to develop Community-Based, Culturally-relevant Curricula to parallel the National Standards around a Common Core; Strategize methods of Intervention and Curricula Support Systems for Core Areas of Study; Advance and enhance Bi/Multi-lingual programs and Student Services that currently may not exist, all while establishing the framework, policy and governing structure that will allow for full accountability of the educational vision, mission, outcomes and measurable successes for the Pueblo of San Felipe, while purposely integrating the cultural life ways of our people.

By informing this Committee our intentions and plans for educating our own children, I am hopeful that in a way, this leads to improvements at BIE. After all, there are still hundreds of Native schools under the BIE and it is my sincere hope that all Native children throughout this nation receive the best possible education.

Thank you.

March 9<sup>th</sup>, 2013

U.S. House Appropriations Committee  
Attn: Chairman Hal Rodgers – Kentucky Representative  
B-308, Rayburn HOB  
Washington, DC 20515

Dear Congressional Representative Rogers,

You have a reputation for caring about the education of all Americans and are aware of the benefits of a good education for the Nation's children. It is for this reason that we institutions of creative educational change are appealing to your good judgment.

Please accept this letter as a petition to urge you and your committee to amend the Interior Appropriations Language that constrains Bureau of Indian Education (BIE) schools from enjoying the freedom and latitude of implementing innovative strategies at their schools, if the communities choose to do so.

The Interior Appropriation Language states, “**...Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school ...**” We the schools and teacher training centers signing this petition believe this restriction is an unfortunate mistake, probably made in frustration and haste. Certainly, there are at least two fundamental reasons this charter prohibition is a mistake. First, it is apparent from the BIE's most recent data regarding AYP that Indian children find great difficulty in successfully matriculating through the educational system designed for mainstream America. Depending on other research or studies, it is safe to say that over 50% of the Indian student population will drop out of school. This fact alone cries for an alternative approach to the problem.

Next, the criticism of the NCLB legislation is that it desires conformity for accountability. Especially in this situation of schooling American Indian children, we believe this conformity intent of the law to be a tragic mistake. American Indian children are incredibly gifted and talented but by nature of the way they are, they made to conform in our standard system, which reveals a cultural and linguistic alienation. This is no one's fault and this may not be easy to understand but it is the way it is. Although it is not without reason that the Creator made all people equal but wonderfully different, which simply means perhaps American Indian Tribes, their schools, and their children should have the opportunity to implement new learning methods that our schools and other charter schools around the Nation are successfully implementing.

As institutions of innovative teacher training and schooling initiatives, we do believe Charter School strategies offer many advantages that will help our First American children with their special learning attributes. Therefore, we implore your support in allowing Indian Schools the blessings that Charter School programs offer.

SIGNED:

Rebecca Warren  
Principal



March 15, 2013

To Whom;

It has been brought to my attention that Bureau of Indian Affairs appropriations may not be used for charter schools serving BIA schools (see below). This is puzzling and confusing from the perspective of native population advocates and those of us who believe that native students deserve every chance to be successful. At the very least, it sends a message that other students can benefit from the innovation and success of charter schools, but native students can't and do not deserve the same opportunities. One of the purposes of chartering is to explore potential strategies for school improvement. BIA schools need those strategies now!

Thank you for your consideration of this matter.

Sincerely,

Doug Thomas

.....Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.....

#### SUGGESTED LANGUAGE CHANGE

.....Except funds made available under this Act may be used to establish a Tribally Charter School at a Bureau-funded school. Such charter school shall be understood to fully recognize and support a Tribe with its right to Self-Determination for the purpose of empowering tribal schools and their communities with the ability to design and implement alternative learning strategies for their students that conform to the Tribes established content and standards.....



## NATIONAL CONGRESS OF AMERICAN INDIANS

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

### OVERSIGHT HEARING ON INDIAN EDUCATION

March 15, 2013

### TESTIMONY OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

#### INTRODUCTION

On behalf of the National Congress of American Indians (NCAI), thank you for holding this important hearing to highlight the challenges currently facing Indian education and, in particular, the Bureau of Indian Education. We are also grateful for the opportunity to provide written testimony proposing solutions to those challenges.

NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation.

Providing Native students with an excellent education is a top priority for tribal nations. President Obama has repeatedly stressed that improving American education is an “economic imperative.” For tribes, the stakes are just as high, if not higher. Education not only provides tribal economies with a more highly-skilled workforce, but also directly spurs economic development and job creation. The profound value of education for Native nations extends beyond just economics, however. Education drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to maintaining tribes’ cultural vitality and to protecting and advancing tribal sovereignty.

Despite the enormous potential of education for transforming Native communities, Native education is in a state of emergency. American Indian and Alaska Native students lag far behind their peers on every educational indicator, from academic achievement to high school and college graduation rates.<sup>1</sup> The situation is even more dire in BIE schools, where during the 2010-2011 school year, the graduation rate stood at 59 percent and barely one-third of students performed at proficient/advanced levels in both language arts and math.<sup>2</sup>

To address this urgent situation and provide tribal nations with the critical foundation for economic success, the federal government must live up to its trust responsibility by providing adequate support for Native education. The requests below detail the minimum appropriations needed to maintain a system that is struggling and underfunded.

#### EXECUTIVE COMMITTEE

##### PRESIDENT

**Jefferson Keel**  
*Chickasaw Nation*

##### FIRST VICE-PRESIDENT

**Juana Majel Dixon**  
*Pauma Band of Mission Indians*

##### RECORDING SECRETARY

**Edward Thomas**  
*Central Council of Tlingit & Haida Indian Tribes of Alaska*

##### TREASURER

**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

#### REGIONAL VICE-PRESIDENTS

##### ALASKA

**Cynthia Ahwinona**  
*Naríe Eskámo Community*

##### EASTERN OKLAHOMA

**S. Joe Crittenden**  
*Cherokee Nation*

##### GREAT PLAINS

**Robert Shepherd**  
*Sisseton Wahpeton*

##### MIDWEST

**Matthew Wozniak**  
*Pokagon Band of Potawatomi*

##### NORTHEAST

**Lance Gumbis**  
*Shinnecock Indian Nation*

##### NORTHWEST

**Fawn Sharp**  
*Quinault Indian Nation*

##### PACIFIC

**Don Arnold**  
*Scotts Valley Band of Pomo Indians*

##### ROCKY MOUNTAIN

**Ivan Posey**  
*Crow Tribe*

##### SOUTHEAST

**Larry Townsend**  
*Lumbee Tribe*

##### SOUTHERN PLAINS

**George Thurman**  
*Sac and Fox Nation*

##### SOUTHWEST

**Joe Garcia**  
*Ofikiy Owáingeh*

##### WESTERN

**Ned Norris, Jr.**  
*Tohono O'odham Nation*

#### EXECUTIVE DIRECTOR

**Jacqueline Johnson Pata**  
*Tlingit*



## INDIAN COUNTRY'S FUNDING REQUESTS FOR THE FY 2014 INTERIOR -ENVIRONMENT APPROPRIATIONS BILL

### Tribal Education Departments

- Provide \$5 million to fund Tribal Education Departments.

Five million dollars should be appropriated to the Department of the Interior to support tribal education departments (TEDs). This funding assists TEDs, which are uniquely situated at the local level to implement innovative education programs that improve Native education. Because they are administered by tribes, TEDs are best equipped to deliver education programs tailored for Native students. TEDs would use this much-needed funding to develop academic standards, assess student progress, and create math and science programs that require high academic standards for students in tribal, public, and Bureau of Indian Education schools. Tribes exercising self-governance over their citizens' education have been very successful because they better understand the circumstances of their populations and can develop initiatives that meet local needs. Adequately funding TEDs would create the most return on federal dollars spent.

### School Construction and Repair

- Provide \$263.4 million for Bureau of Indian Education (BIE) school construction and repair.

This funding category includes school construction, facilities improvement and repair, and replacement school construction. Schools operating within the BIE system are woefully outdated and in some cases, dangerous for student and staff. Over 60 BIE schools are currently rated in "poor" condition, which puts Native students at an unfair disadvantage. Students cannot be expected to succeed in environments that are dilapidated and unsafe. Further, moratoriums on new construction only exacerbate the already large backlog of construction projects. The federal government must uphold its trust responsibility to Native education and fund construction and repair projects.

### Johnson O'Malley

- Provide \$36 million to the Johnson O'Malley program.

The Johnson O'Malley program has provided grants to supplement basic student needs since 1934. It is currently being used across the country in innovative ways to assist with the unique cultural and academic needs of Native students. However, current funding provides less than \$50 per student. These funds are often the only source through which Native students—including those in public schools—can engage in basic activities expected of all American students. Some examples include, but are not limited to, the acquisition of musical instruments for use in classrooms, essential school supplies, and educational field trips. Furthermore, Johnson O'Malley should be converted to a forward-funded program to ensure the timely execution of budgets and management of program operations.

### Student Transportation

- Provide \$73 million for student transportation in the BIE system.

BIE schools incur significant costs in transporting Native students to and from school. These costs are considerably higher than most school systems due to the often-rural location of BIE facilities. Additionally, the poor road conditions that link the BIE-funded schools increase vehicle maintenance costs. These high costs often lead to funding shortfalls, which then must either go unpaid or be funded by diverting funds from other education programs.

### Tribal Grant Support Costs

- Provide \$73 million for tribal grant support costs for tribally-operated schools.

Tribal Grant Support Costs fund the administrative costs of existing tribally-operated schools. The current funding level only pays 65 percent of the current need and must not be reduced in the

upcoming budget cycle. This funding also help tribes expand self-governance and tribal control over education programs by allocating monies for administrative costs such as accounting, payroll, and other legal requirements. Cuts must be avoided. Otherwise, schools must then divert critical teaching and learning funding to cover any shortfalls in operational costs.

#### Facilities Operations

- Provide \$109 million for BIE facilities operations.

BIE schools use this funding for costs such as electricity, heating fuels, communications, vehicle rentals from the General Services Administration, custodial services, and other operating expenses. For years, schools have only received roughly 50 percent of funding needed for these expenses. This shortfall is unacceptable as costs continue to rise for vital services.

#### Facilities Maintenance

- Provide \$76 million for BIE facilities maintenance.

BIE schools use this funding for the preventative and routine upkeep, as well as for unscheduled maintenance of school buildings, grounds, and utility systems. Underfunding of maintenance continues to be an issue as buildings are in poor conditions and cannot maintain proper standards.

#### Indian School Equalization Formula (ISEF)

- Provide \$431 million for the Indian School Equalization Formula.

These funds provide the core budget account for BIE elementary and secondary schools by covering salaries for teachers, aides, principals, and other personnel. ISEF funds are often reallocated to cover the program cuts in other areas of education. ISEF must have adequate funding to ensure all program needs are fulfilled.

#### Juvenile Detention Education

- Reinstate \$620,000 for juvenile detention education in BIA-funded facilities.

These critical funds were eliminated in FY 2012. This essential funding was used to provide educational services to detained and incarcerated youth at 24 BIA-funded juvenile detention facilities. One of the best methods to rehabilitate individuals is through education. Eliminating this program only exacerbates the issue and creates additional costs. Eliminating a program that was utilized to decrease the rate of repeat offenders does not save money and is short-sighted.

#### Tribal Colleges and Universities' Institutional Operations

- Provide \$94.3 million for Titles I and II under the Tribally Controlled Colleges and Universities Assistance Act.

Title I: Fully funding Title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (Tribal College Act), which provides day-to-day operating funds for 26 TCUs, would require \$77.3 million. Since the Act was first funded in 1981, the number of TCUs has more than quadrupled and enrollments have increased by more than 325 percent. Currently, Title I TCUs receive \$5,665 per Indian student toward their institutional operating budgets. Accounting for inflation, the program's funding level is more than \$1,500 less per Indian student than it was under the program's initial FY 1981 appropriation, which was \$2,831 per Indian student. Despite the constraints of the current economy, Congress has an obligation to make these critical institutions whole now rather than continuing to make hollow promises for the future.

Title II: Diné College has indicated a need for \$17 million to operate its multiple campuses and education sites located on the Navajo Nation in Arizona and New Mexico.

Five other TCUs receive institutional operating funds through the annual Department of the Interior Appropriations measure, under separate various authorities. To support the basic day-to-day operating budgets of these TCUs, we request the following:

- \$9 million for institutional operations of tribally-chartered career and technical institutions under Title V of the Tribally Controlled Colleges and Universities Assistance Act of 1978;
- \$9,369,000 for operations of the Institute of American Indian Arts in New Mexico under the American Indian, Alaska Native, and Native Hawaiian Culture and Arts Development Act of 1986;
- Adequate funds for continued and expanded operations of Haskell Indian Nations University in Kansas and Southwestern Indian Polytechnic Institute in New Mexico under the Snyder Act of 1921; and
- \$27.7 million for a one-time appropriation, equal to 75 percent of the current combined funding of the institutional operations grants of those TCUs not funded under Titles I or II of the Tribally Controlled Colleges and Universities Assistance Act of 1978, necessary to transition these programs to forward funding.

#### SUPPORT FOR NIEA TESTIMONY

NCAI also supports the proposals outlined in Dr. Heather Shotton's testimony from the National Indian Education Association (NIEA). NIEA offered a number of non-funding proposals, including:

- Release the updated BIA funded schools in poor condition index and tribal priority construction list(s).
- Promote federal agency collation to ensure existing education programs are effective and funding is used efficiently.
- Establish a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system.
- Direct the BIE to contract with tribal colleges and universities when possible for professional development, rather than funneling these resources to non-Native, outside entities.

#### CONCLUSION

Thank you for your consideration of this testimony. For more information, please contact Amber Ebarb, NCAI Budget and Policy Analyst, at [aebarb@ncai.org](mailto:aebarb@ncai.org) and Katie Jones, NCAI Legislative Associate, at [kjones@ncai.org](mailto:kjones@ncai.org).

<sup>1</sup> For example, the 2011 National Indian Education Study found that Native students continue to score significantly lower than their peers in reading and math in grades four and eight. Only 18 percent of Native fourth graders and 22 percent of Native eighth graders scored proficient or advanced in reading, and only 22 percent of Native fourth graders and 17 percent of Native eighth graders scored proficient or advanced in math. (*National Indian Education Study 2011*, NCEES 2012-466. *National Center for Education Statistics, Institute of Education Sciences, United States Department of Education*.) The crisis of Indian education is perhaps most apparent in the Native high school dropout rate, which is not only one of the highest in the country, but is also above 50 percent in many of the states with high Native populations. (*School Year 2010-2011 Four-Year Regulatory Adjusted Cohort Graduation Rates, Department of Education*.)

<sup>2</sup> Bureau of Indian Education, "Bureau-Wide Annual Report Card, 2010-2011."

THE NAVAJO NATION


 BEN SHELLY (PRESIDENT)  
 REX LEE JIM (VICE PRESIDENT)

*TESTIMONY OF NAVAJO NATION VICE PRESIDENT  
 REX LEE JIM*

*OVERSIGHT HEARING ON INDIAN EDUCATION  
 BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS  
 SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES*

March 14, 2013

It is my privilege to submit the following testimony regarding Education on the Navajo Nation to the House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies concerning the February 27, 2013 Oversight Hearing on Indian Education.

**I. Sovereignty in Education.**

We must have first access to the minds of our children.

As Congress looks at revamping education policy, where tribes want to be able to do so, they must be allowed to exercise sovereignty over the education programs serving their children.

For almost 150 years, responsibility for the education of Navajo children has been in the hands of others. Federal and State governments have failed to properly educate our children and prepare them for the future. During the 2010-11, 64% of BIE schools did not make Adequate Yearly Progress (AYP) towards the proficiency goals of *No Child Left Behind*. Approximately 65% of students in these schools failed meet academic standards.

Many children graduate unable to read or write, and those that pursue higher education require extensive remedial education before they can succeed.

The education of Navajo children is, and should be, the responsibility of the Navajo Nation. In 2005, the Navajo Nation passed a law making it official policy to pursue control over education on the Navajo Nation while respecting the legitimate authority of the actual education provider.

There is no greater act of sovereignty than speaking our language. Native students thrive when culture and language are incorporated into their learning experience. The Rough Rock School experiment proved this. No one is better equipped to design programs for Navajo children and assess their efficacy than the Navajo government.

The 2005 law commits the Navajo Nation to the exercise of sovereignty in education. It is working to develop an educational system that emphasizes its culture and history, sustains its language, and promotes the academic success of its children and adults.

## **II. State Education Agency Status and Authority.**

The children of the Navajo Nation are its future. The Navajo Nation absorbs the impact on the lives and livelihoods of children when the education system designed to empower them as productive and vital citizens fails. We have the greatest stake in the academic outcomes of our children, and should be empowered to control education policy.

State Education Agency (SEA) status and authority is the best way to maximize Navajo control over education policy; including the ability to develop standards and assessments, accredit schools, and certify teachers. The first step to achieving SEA status is to have an academic accountability workbook to guide the administration of all tribally controlled schools under the Navajo Nation. In January 2011 the Navajo Nation submitted an accountability plan to the Bureau of Indian Education (BIE) that outlines in detail how to improve education on the Navajo Nation. As of this date, no decision has been made on this important document. The lack of action on this document is unfair to the Navajo people.

SEA status will allow Navajo leaders, educators, and stakeholders to implement school improvement strategies designed to improve the academic outcomes of Navajo children in a manner not possible now. The current patchwork of educational standards from the three surrounding states and the BIE prevents the uniform and accurate assessment of the academic outcomes of Navajo children. This is unfair to the Navajo students but confounds any attempt to systematically improve the educational goals of the Navajo people.

SEA authority for the Navajo Nation is logically consistent with current legislative and executive trends. For example, within the last 2 months alone, laws have been enacted treating tribes as states for purposes of disaster relief, and recognizing inherent tribal criminal authority with regard to crimes of domestic violence.

## **III. Tribal Education Departments.**

Congress must appropriate funding for Tribal Education Departments, and to develop the capacity of tribes to administer SEA functions. The current U.S. Department of Education's State-Tribal Education Partnership (STEP) Pilot is a good example funding that supports tribes interested in building their capacity to meaningfully govern schools. However, more funding for capacity building is necessary if these goals are going to be fully realized.

## **IV. Amend FERPA.**

An amendment to the Family Educational Rights and Privacy Act (FERPA) authorizing tribes seeking data on Indian children within their territory and at schools serving member students is a necessary step towards empowering tribes to assess and have a meaningful role in improving student educational outcomes.

## **V. Common Core and Navajo Academic Standards.**

The Navajo Nation supports common core standards, but only if they leave room for Navajo curricula and assessments.

In its Accountability Workbook, under review by the Departments of Education and the Interior, the Navajo Nation has developed a Navajo curriculum emphasizing culture, language, history, governance, and character (k'e). This curricula would emphasize and expand on core academic content in reading, writing, math, and science.

Despite having had an alternative accountability plan under review for years, it has not been approved. We are concerned that the government is not living up to its obligation to empower us with our own accountability plan.

#### **VI. Race to the Top Funding.**

The Navajo Nation should be eligible for Race to the Top competitive grant funding as a tribal SEA would be. At present, Race to the Top funds are restricted to Local Education Agencies (schools) and State Educational Agencies (SEA). As such, the Navajo Nation is not recognized as and LEA or and SEA, although the Navajo Nation oversees 34 tribally controlled BIE grant schools and performs functions of an LEA and SEA. It is unfair that the Navajo Nation is not eligible for these resources when our needs fit the criteria for funding.

#### **VII. Indian Education Programs Must Be Held Harmless.**

The Navajo Nation understands the need to reduce spending, but due to historic underfunding, across the board cuts disproportionately affect education programs on the Navajo Nation. In anticipation of the sequester, the Navajo government took extraordinary steps to reduce its own spending by up to 10%. As the blunt instrument of the sequester is replaced by targeted spending cuts, Indian education programs must be held harmless. The historic underfunding and underachievement of these programs must be taken into account as Congress considers appropriations. It has been the common practice that Indian Education Program get funded at 65% of their capacity. Full funding of Indian Education programs need to be realized.

#### **VIII. Forward Funding for Scholarships.**

Through the *Snyder Act*, the BIA provides contracts to run scholarship programs. Every time Congress approves a continuing resolution instead of an actual budget, the release of scholarship funds is delayed, leaving higher education dreams in peril. The Navajo Nation endorses forward funding authorization for tribal scholarships to secure timely distribution of scholarships.

#### **IX. Navajo Nation Opposition to a BIE Flexibility Waiver.**

The Navajo Nation sternly opposes the recently enacted BIE Flexibility Wavier. On June 20, 2013 the Navajo Nation submitted to BIE an official document NOT supporting BIE Flexibility Wavier. BIE schools have tremendously failed the children of the Navajo Nation. Empowering BIE to avoid the requirements of NCLB is not the appropriate response to its failures. A waiver will only lead to lowered standards at BIE schools, and to another generation of Navajo children lost. The Navajo Nation has submitted to the U.S. Department of Education the Navajo Nation Accountability Workbook that

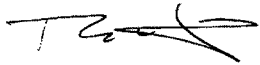
on the Navajo Nation. Without hesitation the Navajo Nation's Accountability Workbook must be approved swiftly, and those standards applied at tribally controlled schools.

I appreciate the Committee taking the time to consider this testimony. Please feel free to contact myself, or the Navajo Nation Washington Office, if you have questions or need more information on the above points or any other matter.

As a final matter, I invite all of you to come out and see for yourselves the reality of education on the Navajo Nation.

*A'hee'he*

Sincerely,

A handwritten signature in black ink, appearing to read 'Rex Lee Jim', with a stylized flourish at the end.

Rex Lee Jim, *Vice President*  
THE NAVAJO NATION

March 14<sup>th</sup>, 2013

United States House Appropriation Committee  
Attn: Chair Hal Rogers  
B-308, Rayburn HOB  
c/o Darren Benjamin  
Washington, DC 20515

Dear Representative Rogers

There is language in the Interior House Appropriations Language that is in violation of “Equal Rights” for American Indians. Specifically, I quote this prohibitive language, “...**Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school ...**”. This language effectively restricts Bureau of Indian Education funded schools from engaging in the alternative offerings of Charter School educational provisions. In doing so it is very clear that all citizens in the USA may have Charter School status except American Indians.

This is wrong, bias, and an obvious mistake by BIE officials that can be corrected easily.

Reasons/Rationale to the Obvious or Why language should be amended:

1. “Making Changes For the Future of American Education” – This is what U.S. Representative Paul Gosar stated in his support to repeal this appropriations language in 2012. He believes charter school programs to be a positive step in improving Indian Education.
2. American Indian have the highest drop-out % in America, which varies but is always above 50%, which means over ½ of American’s first citizens will be well below poverty guidelines that leads to Welfare and Social Dysfunction ( Crime/Poor Health/Suicide), which are drags on society. Tribes, States, and the Federal government all feel the terrible consequences of poor education levels.
3. Sitting Bull said, “It was not necessary for Eagles to be Crows !”. This is a natural living law of uniqueness by the Creator. The demand for sameness in education is unfortunately misguided if one considers this. So it is appropriate that 42 States allow for alteration to following federal law also called, “One Size Fits All”. Charter Schools initiate creative, meaningful, schooling strategies.

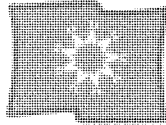
In order to change this restrictive and unnatural language, please accept this request to insert the following sentence, in Interior Appropriation as another exception to the **grandfathering** provision in the Bill; .....*Except funds made available under this Act may be used to establish a Tribally Charter School at a Bureau-funded school. Such a charter school shall be understood to fully recognize and support a Tribe with its right to Self-Determination for the purpose of empowering tribal schools and their communities with the ability to design and implement alternative learning strategies for their students that conform to the Tribes established educational codes .....*

Thank you for allowing the written testimony. Please call 701-455-7246 for any further questions.

Yours in a Good Way !

Dave Archambault, Lakota Patriot  
Standing Rock Community School Board

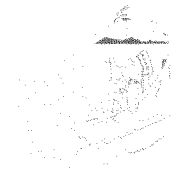




## Oglala Sioux Tribe

### Office of the President

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bryan@oglala.org



**Written Testimony By:** Bryan V. Brewer, President, Oglala Sioux Tribe

March 14, 2013

United States House of Representatives  
Committee on Appropriations  
Subcommittee on Interior  
Oversight Hearing: Indian Education  
B-308, Rayburn House Office Building  
Washington, DC 20515  
e-mail: [INApprop.Details@mail.house.gov](mailto:INApprop.Details@mail.house.gov)

ATTN: Honorable Representative Hal Rogers – Committee Chair

Dear Honorable Rogers,

There is language in the United States Interior Agency House Appropriations Title I Language for Bureau of Indian Education administrative provisions, that is in violation of “Equal Rights” for American Indians, which requires no funding to fix.

Please accept this letter as a request to you and your committee to allow a change in the Interior Appropriations Language that constrains Bureau of Indian Education (BIE) schools from enjoying the freedom and latitude of implementing Charter School innovative strategies at BIE schools.

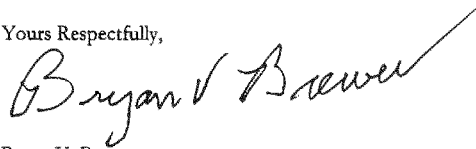
There are at least three fundamental reasons this charter prohibition is a mistake. First, it is apparent from the BIE’s most recent data regarding AYP, that Indian children find great difficulty in successfully matriculating through the educational system designed for mainstream America. Depending on other research or studies, it is safe to say that over 50% of the Indian

student population will drop-out of school. This fact alone cries for an alternative approach to the problem.

Next, the criticism of the NCLB legislation is that it desires conformity for accountability. Our Tribe believes this conformity intent of the law to be an error in honest and well-intended judgment. American Indian children are incredibly gifted and talented but by nature of the way we are, we find it very difficult to conform to strict standards, which reveals a cultural and linguistic alienation. This is no one's fault and this may not be easy to understand but it is the way it is. The Creator made all people equal but wonderfully different, which simply means perhaps American Indian Tribes, their schools, and their children should have the opportunity to implement different learning methods that charter schools address the conformity or "One Size Fits All." Issue in a positive way.

Our Tribe desires the opportunity to explore several exciting educational initiatives currently being undertaken in the United States. We believe that it is our Right to adopt and implement such practices if we believe it would assist our students to achieve successful educational goals. And please keep in mind, if such innovative approaches are adopted now, the school and community would lose their funding.

Yours Respectfully,



Bryan V. Brewer  
President, Oglala Sioux Tribe

### Tribal Education Departments National Assembly



P.O. Box 18000  
Boulder, CO 80308  
[info@tedna.org](mailto:info@tedna.org)

#### Officers and Directors FY 2013

Quinton Roman Nose, Executive Director  
Dr. Gloria Sly, *Cherokee Nation*, President  
Angeline Bouley, *Sault Ste. Marie Tribe of Chippewa Indians*, Vice-President  
Sally Brownfield, *Squaxin Island Tribe*, Secretary  
Adrienne Thunder, *Ho-Chunk Nation*, Treasurer  
Kerry Venegas, *Hoopa Valley Tribe*  
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Dr. Wayne Johnson, *Muscogee Creek Nation*  
Norma Bixby, *Northern Cheyenne Tribe*  
Joseph Davalos, *Suquamish Tribe*  
Patricia Whitefoot, *Yakama Nation*

### House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies

#### Testimony Requesting FY '14 Funding for Tribal Education Departments March 15, 2013

The Tribal Education Departments National Assembly (TEDNA) is a national non-profit membership organization for tribal education departments/agencies (TEDs/TEAs). TEDNA respectfully requests \$2 million for TEDs/TEAs in the Department of the Interior appropriations for Fiscal Year 2014. TEDs/TEAs are executive branch level agencies of American Indian tribal governments responsible for tribal education matters. There are an estimated 200 TEDs/TEAs located in 32 states that serve over 700,000 American Indian students from cradle-to-grave.

Funding for TEDs/TEAs through the Department of the Interior has been authorized since 1988. In the authorization, Congress envisions TEDs/TEAs facilitating tribal control over education; coordinating education programs; developing and enforcing tribal education codes, policies, and standards; and, providing support services and technical assistance to schools and programs. The No Child Left Behind Act of 2002 retained the TED/TEA appropriation authorization of \$2,000,000 in Title X, Section 1140 (25 U.S.C. Sec. 2020).

#### JUSTIFICATION FOR TED/TEA FUNDING

*The national dropout rate of American Indian students is double that of their non-Indian peers. In some states the high school dropout rate of American Indian students is over 50%. American Indian students drop out of high school at a higher rate and score lower on achievement tests than any other racial/ethnic group. American Indian 8th grade students are 18% more likely to read or perform in mathematics at a "below basic" level than their non-Indian peers. American Indian students also have the highest rates of absenteeism, suspension, and expulsion.*

TEDs/TEAs are uniquely positioned to improve these statistics because they are located at the local level and as a result, are aware of the cultural, social, and economic conditions that affect American Indian students. Many TEDs/TEAs have seen successes already. For example, the Hoopa Valley Tribe of California TED operates a learning center that works with at risk

students. The TED identifies K-12 students at risk, pairs the students with mentors and develops student learning plans. Students are tutored in target academic areas and coached in life skills. This program alone has improved student academic performance by two letter grades in core academic areas. As another example, the Rosebud Sioux Tribe of South Dakota TED decreased student dropout rates by 30% by operating tutoring services and afterschool math and reading programs. However, tribes alone cannot sustain and expand vital education programs. Federal support is needed to assist these and other tribes across the country in implementing similar programs.

Currently most TEDs/TEAs operate on extremely small budgets provided annually by tribal funds. They may receive limited federal funding for specific contract, grant, and program administration. Tribal funding, if any, may be earmarked to meet critical immediate needs such as scholarships or student clothing and school supplies. This means that TEDs/TEAs do not have funds for operational expenses and staff to conduct education research and planning, or to develop tribal education initiatives and materials like truancy and tutoring programs and curricula. These are the core areas of education that tribes need to impact in order to "change the numbers" and close the reported achievement gaps. Tribes that are able continue to annually fund TEDs/TEAs, but most tribes need federal financial support to move beyond administering scholarships and supplemental education contracts and grants, and to be involved directly in the core areas of education.

The requested \$2 million for TED/TEA appropriations will improve American Indian academic success by providing funding for TEDs/TEAs to directly affect the education of Native American students. With federal funding, TEDs/TEAs will maintain and share electronic data regarding American Indian students, develop tribal education codes and policies, coordinate federal education programs with schools and states, and institute programs to increase graduation rates and post-secondary school readiness.

TEDNA respectfully requests your support in providing \$2,000,000 to fund TEDs/TEAs in the Department of the Interior in the Interior, Environment, and Related Agencies Fiscal Year 2014 appropriations bill.

Should you have any questions, please contact Joel West Williams at (202) 785-4166 or [Williams@narf.org](mailto:Williams@narf.org).

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TESTIMONY  
BEFORE THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES  
INDIAN EDUCATION  
FY2014 Budget

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Statement of  
Ryan Wilson (Oglala Lakota)  
President  
National Alliance to Save Native Languages

**THE NATIONAL ALLIANCE TO SAVE NATIVE LANGUAGES**

Chairman Simpson, Ranking Member Moran and Members of the Committee: I am Ryan Wilson, an enrolled member of the Oglala Sioux Tribe and President of the National Alliance to Save Native Languages (NASNL). On behalf of the Alliance, I would like to thank you for the opportunity to submit written testimony to the House Interior Appropriations Committee on the importance of Indian education. Specifically, I would like to address the importance of Native languages, culturally based education and their vital importance to the academic success of Native learners in the Bureau of Indian Education system. I would further like to offer a special acknowledgment to Chairman Simpson, and committee members Tom Cole and Betty McCollum for visiting my community on the Pine Ridge Indian Reservation and other Lakota communities in the summer of 2011.

**About the National Alliance.** The National Alliance to Save Native Languages was founded in October of 2006 for the exclusive purpose of promoting the revitalization of Native languages. Creation of the Alliance was precipitated by broad-based concern in Indian country that the rapid decline in Native language acquisition by Native children and youth was hurting our Native learners academically, culturally, socially and physically. The National Alliance to Save Native Languages is a coalition of stakeholders who share a desire to see the revitalization of Native languages. The Alliance is comprised of tribes, schools, individuals, regional and national organizations. It is the only National Indian organization dedicated solely to the recovery of Native languages.

**The National Alliance to Save Native Languages is requesting that 4million in the FY2014 BIE budget be designated for accelerated Native language immersion efforts in BIE funded schools.** The Alliance believes this request is consistent with allowable authorizations used as statutory vehicles to fund BIE schools. This request honors the mission of BIE that speaks to whole person education and cultural/spiritual needs of the tribal community. Tribal leaders have repeatedly through formal and informal consultation hearings and meetings prioritized immersion and Native language opportunities. The National Advisory Council on Indian Education has prioritized Native immersion and language instruction in their annual recommendations. National Indian education organizations have prioritized this issue as have Secretary Duncan's and Salazar's

Indian education advisors. President Obama's Executive Order on Indian Education and White House Initiative on Indian Education promises "the opportunity for Native Students to learn their Native languages". The Alliance believes that the only way for this to happen is that the Interior Appropriations Committee must stipulate in their appropriations report language that ***"No less than 4 million of the entire 753 million allocation to BIE must be used for implementation of culturally responsive education utilizing Native languages as the medium of instruction for BIE schools who have the desire and capacity of speakers to effectively engage in immersion instruction."***

#### **Authority**

Several statutes exist that grant authority for designated report language that invest in Native language instruction. The Snyder Act of 1921, the Indian Reorganization Act of 1934 both advance and supported the teaching of language and culture in Bureau funded schools. In contemporary times the Indian Self Determination and Education Assistance Act of 1975 (P.L. 93-636), The Education Amendments Act of 1978 (P.L. 95-561) and most notably the Tribally Controlled Schools Act of 1988 (P.L. 100-297)

Not only does authority exist through authorizations to fund such a "language initiative" authorizations also exist to support an Indian students right to receive linguistically appropriate education through both the Native American Languages Act/ Esther Martinez Native Language Preservation Act and the Indian Education Act (title VII ESEA- P.L. 107-110).

While there exist a wealth of federal policy that promotes Native language instruction and active statutes the Bureau of Indian Education has chosen to focus on restrictions within the ESEA that diminish opportunities for Native language instruction. Assistant Secretary Washburn recently offered testimony to this committee and sighted the following: ***" BIE responsibilities include providing instruction that is aligned to the academic standards set forth in the Department of Interior regulations regarding its standards, assessments and definition of Adequate Yearly Progress, achieving compliance with the ESEA and the Individuals With Disabilities Education Act (IDEA), working with the Department of Education to administer education grants, providing oversight and accountability for school and student success."***

What Assistant Secretary Washburn has left out in his testimony to this committee is that the BIE also has a responsibility to mitigate incongruence in federal law that applies to both Tribal control of Indian Education and Culturally Responsive Education that promotes heritage language instruction. It appears the BIA/BIE have interpreted the incongruence of federal law to the highest restrictive degree at the expense of both Congressional Intent and findings in the Tribally Controlled Schools Act (P.L. 100-297).

The BIE is now promulgating a policy that allows 1/8 of the school day or 15% to be utilized for instruction focusing on tribal histories, culture and languages. The Alliance interprets this effort as an attempt to pacify requirements in the EO on Indian Education and White House Initiative on Indian Education as well as the overwhelming concern of tribal leaders for further Native language instruction. This attempt however is actually antithetical to both Congressional intent and the White House Initiative on Native languages.

This committee must consider that a small amount of BIE funded schools wish to engage in heightened Native language instruction but are being hogtied by the promulgation of rules and regulations from both the Department of Interior and the Department of Education. Therefore it is of vital importance that the committee remove ambiguities through report language and carve out the opportunity for schools to access Enhanced Program dollars that will fund serious Native language instruction in BIE schools.

#### **Indian Education**

Funding for Indian education and Department of Defense schools is the sole responsibility of the Federal Government while traditional public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bond initiatives in order to build or repair local school facilities. Tribal and Bureau of Indian Affairs (BIA/BIE schools), on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. The extent to which the federal government has assumed this responsibility can be exemplified in the backlog of construction and repair / renovation needs which exceeds \$1.5 billion. The area of school construction and

repair remains problematic even more troubling is the fact that Native learners continue to rank at, or near, the bottom of every educational indicator. Both the Department of Interior and the Department of Education serve as trustees in executing the federal governments trust relationship in Indian Education. Native learners are the beneficiaries of this trust relationship. By all measurable trust standards the federal government has failed in its trust duty to Indian education.

Only 50% of the estimated 41,000 BIE students will graduate from high school, of that figure only 10% will graduate with the skill set to compete in mainstream institutions of higher learning. By all measurable performance indicators our students are not achieving. These sad statistics are as they have been in the past demonstrating that despite the loadable goals of No Child Left Behind Indian education has not been positively impacted. The BIE has used and forced programs such as Read First and Math Counts on their schools and invested millions of dollars on these programs without any tangible results in academic growth measures. Indian education can be turned around but only with a balanced approach that continues to provide the opportunity for culturally responsive education and Native language instruction. The Appropriations process provides an opportunity to improve drastically the federal government's investment and coordination of Indian education programs in spite of these difficult budget challenges the Alliance believes Indian education can be a wise investment if done properly.

#### **The Elementary and Secondary Education Act and Department of Education**

The Elementary and Secondary Education Act (ESEA) of 1965 is due for reauthorization. Regardless of Congressional action on the ESEA reauthorization, improvement in Indian education through investment in existing statutory vehicles can and will impact positively Indian education. Indian Country cannot wait and nor should the appropriations committee for the ESEA to be reauthorized.

Empirical foundations of educational research have traditionally experienced challenges in measuring cognitive growth in Native learners. Indian educators have long expressed apprehension towards high stakes testing or singular growth models as well as packaged curriculum.

The Institute of Educational Sciences released its Native American data from the National Assessment of Educational Progress from a 2005-2009 study. The results have sent shock waves throughout Indian Country. Despite the loadable goals of NCLB, packaged curriculum such as "Reads First" and all of the punitive sanctions for underperforming schools test scores in math and reading for fourth and eighth grade students has remained stagnate. The published results also indicated that 43% of eighth grade students had no plans on attending college and that one in five Native students intended on joining the military. Combined with epidemic dropout rates and the continued mass graduation of Native learners who do not possess the academic skills to compete in mainstream universities the only conclusion any law maker, parent, educator, tribal leader can make is that No Child Left Behind has completely left Indian students behind. NCLB however cannot be held singularly culpable; it is symptomatic of a deeper malice within the federal governments' approach to Indian education. Beneficiaries' (Native students) of the federal trust responsibility for Indian education have been subjected to constant policy shifts within each changing administration and Congress. The cumulative effect has been inconsistent funding, lack of leadership in key positions and incoherent promulgation of rules, policies and initiatives surrounding Indian education. NCLB itself is antithetical to President Obama's and President Bush's Executive Order on Indian Education, the Indian Education Act, PL 638, PL 561, and PL 297.

#### **Conclusion**

There exist a major incongruence of federal laws involving Native learners and the various jurisdictions that touch Indian education. Appropriators can provide direction by making important investments in culturally based education and Native Language Instruction. In recent years Indian country has solidified its collective voice in support of Native language instruction, immersion schools and culturally based education. We remain confident that the extraordinary benefits to Indian country and America of Native language instruction will earn continued and enhanced investment.

Testimony before this committee indicates that the movement by BIE to one unified assessment based on Common Core Standards is offering a preview of BIE priorities. In restructuring the BIE accountability and assessment system it is important that these broader efforts do not interfere with the desired expression of a small handful of BIE schools to engage in Heritage language instruction. This committee can continue to invest in these BIE priorities but also include investment in the BIE schools who wish to pursue Immersion/Native language instruction. Both Native children and Native languages are national treasures. As we have entered the 59<sup>th</sup> minute of the last hour in saving our languages we have realized both our children and our languages need each other to secure strong, secure, culturally intellectual tribal communities. I have enclosed an appendix offering research support as a separate attachment for committee use and review. I thank you for holding this crucial hearing and allowing for Indian country to be heard.



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 Testimony of Dr. Roger Bordeaux

## Topic One

### History Teachings

In 1966, Rough Rock Demonstration School (Az.) started the tribal school movement for elementary and secondary tribal learners. This revolution to allow tribes and tribal communities local decision making was restricted by specific language in Buy Indian Act contracts. The Indian Education Act of 1972 provided funds for new school demonstrations and the Indian Self Determination and Education Assistance Act of 1975 created a vehicle for tribes and tribal organizations to practice sovereignty by taking over Bureau of Indian Affairs schools or start their own. This opportunity was supposedly strengthened by the Tribally Controlled Schools Act of 1988. The law specifically stated that **“Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.”** These efforts required the tribal governing body to determination if they wanted to be the contractor/grantee or transfer that authority to a tribal organization such as community school boards. Today, approximately 1/3 of the 125 tribal schools are managed directly by tribal governing bodies and 2/3's are managed by tribal organizations.

However, even with these progressive attempts at local control, the federal government has worked tirelessly to undermine true sovereignty, tribal self-determination, and local control. The Congress has restricted further tribal school development by not allowing appropriations for any new tribal schools. The No Child Left Behind Act of 2002 created a “tail wagging the dog” Indian Education policy for tribal schools. NCLB allowed tribes and tribal organization to waive certain parts of the law, but the Bureau of Indian Education has not worked with the tribes and schools to create the waivers, instead BIE created delay and diversion tactics for over 11 years. Now, the proposed Bureau of Indian Education NCLB Waiver request to the U. S. Department of Education continues to restrict local tribal control and sovereignty.

**I contend that these repeated actions of domination, placed by the federal government on tribes and tribal organizations, have created a generation of minimal progress in student success in many of the 125 tribal community schools where more than 30,000 students have not been truly allowed to use their culture to learn and teach.**

### The Solution

The Tribally Controlled Schools Act needs to be changed so that the tribes and tribal organizations can truly be sovereign, practice self-determination and implement local control. The most important change to the law is (red = delete and blue = add):

**SEC. 5204. COMPOSITION OF GRANTS.**

(a) IN GENERAL- The grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of —

- (1) the total amount of funds allocated for such fiscal year under sections 1127 and 1128 of the Education Amendments of 1978 with respect to the tribally controlled schools eligible for assistance under this part which are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs;
- (2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination Act, or any other provision of law, all other facilities accounts for such schools for such fiscal year (including but not limited to those referenced under section 1126(d) of the Education Amendments of 1978 or any other law); and
- (3) the total amount of funds that are allocated to such schools for such fiscal year under —
  - (A) the Elementary and Secondary Education Act of 1965;
  - (B) the Individuals with Disabilities Education Act; and
  - (C) any other Federal education law, that are allocated to such schools for such fiscal year including federal funds that flow through state governments.

(b) SPECIAL RULES-

(1) IN GENERAL-

(A) APPLICABILITY OF CERTAIN LAWS- Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, directive, assurance, general or special grant condition, or limitation that is imposed by the Department of Education and Department of Interior Bureau with respect to funds provided under —

- (i) the Elementary and Secondary Education Act of 1965, as amended;
- (ii) any Federal education law other than title XI of the Education Amendments of 1978.

(B) APPLICABILITY OF BUREAU PROVISIONS- Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any regulations, guidance, requirements, obligations, restrictions, or limitations imposed by the Department of Education and Department of Interior Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A)., and

(C) The grantee will be subject to the Individuals with Disabilities Education Act, as amended.

(2) SCHOOLS CONSIDERED CONTRACT SCHOOLS- Tribally controlled schools for which grants are provided under this part shall be treated as contract schools for the purposes of allocation of funds under sections 1126(e), 1127, and 1128 of the Education Amendments of 1978.

(3) SCHOOLS CONSIDERED BUREAU SCHOOLS- Tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools for the purposes of allocation of funds provided under —

- (A) title I of the Elementary and Secondary Education Act of 1965;
- (B) the Individuals with Disabilities Education Act; and
- (C) any other Federal education law, that are distributed through the Bureau.

### Topic Two

There is approximately 56,200,000 acres (<http://www.bia.gov/FAQs/index.htm>) of tribal and individual owned tribal member land held in trust by the federal government. Eight of the 10 poorest counties in the United States have a significant amount of trust land. The land held in trust does not generate any local tax revenue to support the cost of educating the tribal students. There are 630+ federally impacted Tribal land school districts that provide education services to approximately 115,000 tribal students. Many of the public schools within tribal lands rely on upwards to 50% or more of their total revenue from the federal government. The federal government provides Impact Aid basic support in the amount of \$ 430 Million plus additional support for students with disabilities. The current Impact Aid basic support payments could face an 80% decrease if the Balanced Control Act is fully implemented over the next 10 years.

### Topic Three

#### The Big Lie

The Bureau of Indian Affairs reports they fund students at a total of **\$ 20,739** per Average Daily Membership student (<http://www.bia.gov/cs/groups/xocfo/documents/text/idc016444.pdf>, page 198).

#### The Truth

The Bureau of Indian Education funds 183 schools including 125 tribal contract or grant schools which are underfunded by approximately \$ 2,000/student. The schools have a total enrollment of 49,000 students. (<http://www.bie.edu/cs/groups/xbie/documents/text/idc016697.htm>, page 1) The enrollment includes approximately 14,000 students who reside in dorms/boarding schools, of which 7,000 go to public schools.

The schools receive funds from the following sources:

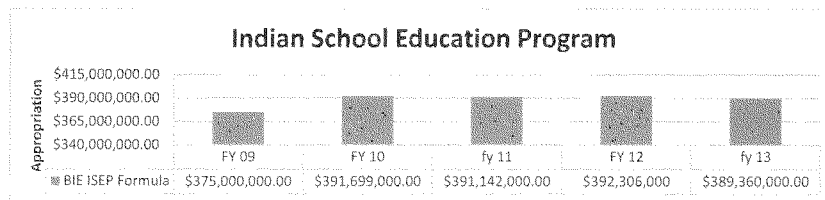
Indian School Equalization Program	\$ 389,000,000	
Facilities Operations	\$ 58,000,000	
Facilities Maintenance	\$ 51,000,000	
Transportation	<u>\$ 52,000,000</u>	
Sub-total A		\$ 550,000,000

Tribal Grant Support Costs	<u>\$ 48,000,000</u>	
Sub-total B		\$ 48,000,000
ESEA, Title I	\$ 100,000,000	
ESEA, TITLE II, Part A	<u>\$ 12,000,000</u>	
Sub-total C		\$ 112,000,000
Other BIE (targeted services)	\$ 32,000,000	
Other ESEA Programs	\$ 20,000,000	
IDEA	<u>\$ 73,000,000</u>	
Sub-total D (categorical funding)		<u>\$ 125,000,000</u>
<b><u>TOTAL</u></b>		<b>\$ 835,000,000</b>

(These funds could be reduced by 75% if the Budget Control Act is fully implemented)

I believe that you have to use the total enrollment plus the residential enrollment (times 2, because these student require 24/7 services), therefore the total Full Time Equivalent Student number is 77,000. Sub-totals B, C, and D is not provided for all students. When you divide the Total revenue by the Full Time Equivalent Student you find that the product is less than the National Public School Per Pupil Expenditures for school year 2008-09; ([http://nces.ed.gov/programs/digest/d11/tables/dt11\\_191.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_191.asp))

$$\underline{\$ 835,000,000 / 77,000 = \$ 10,844}$$



**WRITTEN TESTIMONY OF EVANETTE SOCKYMA, VICE PRESIDENT,  
NATIVE AMERICAN GRANT SCHOOL ASSOCIATION  
REGARDING STATEMENT OF KEVIN K. WASHBURN  
BEFORE THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED  
AGENCIES, COMMITTEE ON APPROPRIATIONS U.S. HOUSE OF  
REPRESENTATIVES ON FEBRUARY 27, 2013**

The Native American Grant School Association ("NAGSA") respectfully submits this written testimony regarding the Statement of Kevin K. Washburn, Assistant Secretary, Indian Affairs, Department of the Interior, before the Subcommittee on Interior, Environment and Related Agencies, Committee on Appropriations U.S. House of Representatives on February 27, 2013. It is NAGSA's position that the Statement is incorrect, opposed by Native American people and not in the best interest of Native American children.

NAGSA is a long-standing, collaborative organization of P.L. 100-297 and P.L. 93-638 Grant and Contract Schools and homeliving programs ("Grant Schools") that is organized to act in the best interest of Grant Schools and the children they serve. NAGSA is a multi-tribal organization of approximately 21 schools, programs and members organized, in part, to act on matters of common interest to Grant Schools and Native American students. Navajo schools make up more than half of the NAGSA membership. NAGSA strongly supports local control and governance of Grant Schools through locally elected, autonomous school boards to ensure the unique characteristics and needs of local Native American communities are preserved and met. The above positions mirror the policies and purposes underlying P.L. 93-638 and P.L. 100-297, as originally promulgated.

NAGSA has observed the erosion of local control of Grant Schools. A key in this erosion of local control is that funding and authority is being diverted to tribal executive departments away from the local schools and communities. The One Grant System espoused by Mr. Washburn on page 4 of his 2/27/13 testimony would exacerbate and accelerate this deviation from the principles underlying P.L. 93-638 and P.L. 100-297 and the loss of Native Americans' local control over the education of their children.

NAGSA takes issue with numerous statements in Mr. Washburn's testimony to the Subcommittee; however, of particular concern is Mr. Washburn's statements regarding the "One Grant System" to which he euphemistically refers as a "realignment of [the] educational program on the Navajo Nation." The One Grant System espoused by Mr. Washburn is a radical departure from the purposes and policies of Public Laws 93-638 and 100-297 (hereinafter "638 and 297") which include "community control" of Native American education, an educational system that is "responsive to the needs and desires of Indian communities," and an educational system which recognizes "that Indian people have special and unique educational needs" ("638 and 297 Principles").

The BIE, in compliance with P.L. 100-297, has historically, directly funded individual Native American and individual Navajo Nation Grant Schools. As Mr. Washburn himself notes at page 3 of his 2/27/13 statement, under 638 and 297 the Department of Interior has provided "funds

directly to tribally operated schools, empowered Indian school boards, encouraged local hiring of teachers and staff. . . . The One Grant System reverses this process of funding and replaces it with all funds going to a Navajo Nation tribal, appointed, executive department based in Window Rock, Arizona. The One Grant System also replaces local Native American school boards as grantees with the Navajo Nation Department of Diné Education ("DODE"). Under the One Grant System, promoted by Mr. Washburn, funding which has heretofore gone directly to the individual schools which are in the front lines actually educating children, will be diverted to fund DODE. There is no known plan for this radical departure, no safeguards in place to ensure these funds will find their way to the schools, how much funding will eventually get to the schools, and how much will be retained to fund DODE. These schools are critically underfunded now; the One Grant System will only exacerbate this problem.

The BIE has not performed due diligence to determine the functional capabilities of DODE, nor has it created a workable plan for this new "concept." The BIE is rushing to find a simplistic alternative to performing its trust responsibility to honor "community control" and fulfilling its obligation to be "responsive to the needs and desires of Indian communities."

Individual Grant Schools have been the direct grantees in grants from the U.S. Government since the inception of the 638 and 297. The One Grant System will divert money and resources which heretofore went directly to grantee schools and children to a new grantee; an appointed tribal department. This will be, in effect, a de facto retrocession of the present 35 Grants and Contracts with no consultation with those Schools, no alleged wrongdoing, no due process and no other way for those directly affected to respond. The individual Navajo Grant School grants will be abrogated without cause, without due process and with no consideration to the "unique needs and desires of those Indian communities."

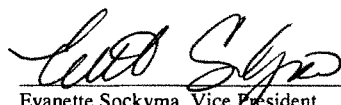
Mr. Washburn's statement avoids the reality that the federal government, pursuant to the One Grant System, is shedding its trust and statutory obligation to fund, provide technical assistance and support local communities and local grant schools. In its place, the BIE will write one large check to a tribe and pronounce its job done. This is not what the policies and purposes underlying 638 and 297 require and it is not in the best interest of Native American education.

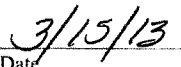
Mr. Washburn is correct on one point. This "concept" as stated on page 4, will allow the tribe to have a more direct impact on the way all of the BIE-funded schools are administered and operated on Navajo Nation lands. Indeed, the tribe will have absolute control over Grant Schools and their funds; not local school boards, local administrators, and local communities. The Navajo Nation is composed of numerous chapters representing distinct and unique communities. The one-size-fits-all premise of the One Grant System does not work for the Navajo Nation, as it will not work for most Native American Nations. The One Grant System represents a further misunderstanding of Native America by those in Washington.

The consolidation of the administration and operation of Navajo education at the tribal capitol in Window Rock will have a dire impact on local communities. In consolidating functions and responsibilities, local jobs will be lost as those functions and responsibilities are transferred to the tribal capitol. More disastrous and disheartening is that local control and empowerment will be taken from these communities without their input and without recourse.

As can be seen from the foregoing, the One Grant System proposed by Mr. Washburn is not in the best interest of Native American education, is not compliant with the policies and purposes underlying P.L. 93-638 or P.L. 100-297, and is not supported by Navajo and other Native American people. The One Grant System should not be imposed on Navajo Nation or other Native American Grant Schools.

NAGSA continues to strongly support direct funding and local control and governance of P.L. 93-638 and P.L. 100-297 Contract and Grant schools. Such a system ensures the unique characteristics and needs of local Native American communities are preserved and met; such a system serves the law established by P.L. 93-638 and P.L. 100-297. The proposed One Grant System subverts the policies of P.L. 93-638 and P.L. 100-297 and ends the direct funding and local control of Grant Schools. We ask that you reject the One Grant System and affirm local control of Native American education by local Native American communities. Thank you for your consideration of this testimony.

  
Evanette Sockyma, Vice President  
Native American Grant School Association

  
Date



*Mid-America Montessori Teacher Training Institute*

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Written Testimony by: **LaVonne Plambeck, PhD., Mid-America Montessori Teacher Training Institute**

March 15, 2013

U.S. House Appropriations Committee  
Attn: Chairman Hal Rogers - Kentucky Representative  
B-308, Rayburn HOB  
Washington, DC 20515

Dear Congressional Representative Rogers,

**There is language in the United States Interior Agency House Appropriations Title I Language for Bureau of Indian Education administrative provisions, that is in violation of "Equal Rights" for American Indians, which requires no funding to fix.**

You have a reputation for caring about and working to better the education of all Americans. Obviously you are well aware of the benefits of a good education for the Nation's children. It is for this reason that we institutions of creative educational change are appealing to your good judgment.

Please accept this letter as a petition to urge you and your committee to amend the Interior Appropriations Language that constrains Bureau of Indian Education (BIE) schools from enjoying the freedom and latitude of implementing innovative strategies at their schools, if the communities choose to do so.

The Interior Appropriation Language states, "... Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school. . . ." We the schools and teacher training centers signing this petition believe this restriction is an unfortunate mistake, probably made in frustration and haste. Certainly, there are at least two fundamental reasons this charter prohibition is a mistake. First, it is apparent from the BIE's most recent data regarding AYP, that Indian children find great difficulty in successfully matriculating through the educational system designed for mainstream America. Depending on other research or studies, it is safe to say that over 50% of the Indian student population will drop-out of school. This fact alone cries for an alternative approach to the problem.



Next, the criticism of the NCLB legislation is that it desires conformity for accountability. Especially in this situation of schooling American Indian children, we believe this conformity intent of the law to be a tragic mistake. American Indian children are incredibly gifted and talented but by nature of the way they are, they are made to conform in our standard systems, which reveal a cultural and linguistic alienation. This is no one's fault and this may not be easy to understand, but it is the way it is. Although it is not without reason that the Creator made all people equal but wonderfully different, which simply means perhaps American Indian Tribes, their schools, and their children should have the opportunity to implement new learning methods that our schools and other charter schools around the Nation are successfully implementing.

As institutions of innovative teacher training and schooling initiatives, we do believe Charter School strategies offer many advantages that will help our First American children with their special learning attributes. Therefore, we implore your support in allowing Indian Schools the blessings that Charter School and Montessori programs offer.

*Affiliated with*

▲ the American Montessori Society  
 M and the Montessori Accreditation Council  
 S for Teacher Education (MACTE)

**STATEMENT OF THE AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM**

Submitted to the U.S. House of Representatives

Committee on Appropriations

Subcommittee on Interior, Environment, and Related Agencies

Regarding the Oversight Hearing: Indian Education convened February 27, 2013

On behalf of the nation's 37 tribally and federally chartered colleges and universities, which collectively are the American Indian Higher Education Consortium, we are writing to discuss the relationship of the Department of the Interior, Bureau of Indian Education, and *Tribal* Higher Education and to offer some recommendations for the future.

Tribal Colleges and Universities (TCUs) are an essential component of American Indian/Alaska Native education – cradle to career and beyond. The 37 TCUs operate more than 75 campuses and sites in 15 states, within whose geographic boundaries 80 percent of American Indian reservations and federal Indian trust land lie. They serve students from well over 250 federally recognized tribes, more than 75 percent of whom are eligible to receive federal financial aid. In total, the TCUs annually serve about 88,000 American Indians/Alaska Natives (AI/AN) through a wide variety of academic and community-based programs. TCUs are accredited by independent, regional accreditation agencies and like all U.S. institutions of higher education must undergo stringent performance reviews on a periodic basis to retain their accreditation status.

**TCUs provide critical access to vital postsecondary education opportunities.** Tribal Colleges and Universities provide access to higher education for American Indians and others living in some of the nation's most rural and economically depressed areas. In fact, seven of the nation's 10 poorest counties are home to a TCU. The U.S. Census Bureau, American Community Survey indicates the annual per capita income of the U.S. population is \$27,100. However, the annual per capita income of AI/ANs is just \$13,300, about half that of the general population.

**TCUs are producing a new generation of highly trained Native teachers, tribal government leaders, entrepreneurs, engineers, nurses, computer programmers, and other much-needed professionals.** By teaching the job skills most in demand on their reservations, TCUs are laying a solid foundation for tribal economic growth, with benefits for surrounding communities and regions. In contrast to the high rates of unemployment on so many reservations, graduates of TCUs are employed in "high need" occupational areas such as Head Start teachers, elementary and secondary school teachers, and nurses/health care providers. Just as important, the vast majority of tribal college graduates remain in or near their tribal communities, applying their newly acquired skills and knowledge where they are most needed.

For example, in 2002, Oglala Lakota College (OLC), on the Pine Ridge Reservation in South Dakota, established a Master's degree in Lakota Leadership and Management with an emphasis in Education Administration, to prepare state-endorsed school principals. Since then, the college has graduated 49 principals, 90 percent of whom are employed in schools with a majority of Indian students on North and South Dakota reservations. As of January 2013, there were 136 Native teachers of a total of 322 teachers teaching in elementary schools on the Pine Ridge

Reservation. Of those Native teachers, 123 or 90 percent are OLC graduates. The college has also graduated 123 Associates in Elementary or Early Childhood Education who work as paraprofessionals in the local schools and as Head Start teachers.

OLC, together with Salish Kootenai College, another TCU - located on the Flathead Reservation in Montana, lead the nation in producing American Indian/Alaska Native nurses, with more than 90 percent of their nursing graduates certified as RNs and working in local communities. Of the 70 nurses currently working on the Pine Ridge Reservation, 50 are Indian nurses and of these nurses, 80 percent are OLC graduates.

In addition to providing strong and responsive academic and career programs, TCUs are training the next generation of American Indian entrepreneurs, engaging in international outreach, providing training for tribal, federal, and regional employers and governments, working with tribal judicial systems, operating day care and Head Start centers, and in some cases, even running the bus service for the entire reservation. They are building and providing housing for tribal communities, constructing "green" buildings, and helping to bring the promise of renewable energy to Indian reservations.

**Despite a proven track record of success, TCUs still face serious disparities in institutional operations funding.** We are living in very difficult economic times and everyone must do their share to address the nation's budget deficit and to make the most of every dollar invested and spent. Discretionary programs have already shouldered the lion's share of this balancing effort. As a result of the Budget Control Act of 2011, non-defense discretionary funding has already been reduced to its lowest level on record as a share of GDP since the mid-1960s. It would be counterproductive to indiscriminately cut programs that have proven to be a solid investment. With that in mind, AIHEC would like to take this opportunity to offer the following four recommendations that could greatly help the TCUs to continue to provide high quality, culturally relevant higher education opportunities to their various communities:

- (1) **Address the Longstanding TCU Inequalities in Federal Programs:** The Administration requests and Congress appropriates over \$200 million annually to operate Howard University (exclusive of its medical school), *the only other MSI that receives its institutional operating funds from the federal government*. Howard University's current federal operating support exceeds \$19,000/student. In contrast, most TCUs receive just \$5,665 per Indian Student (ISC). TCUs have proven that they deserve an investment equal to at least the congressionally authorized level of \$8,000 per ISC, or 42 percent of the federal share now appropriated for operating Howard University.

We respectfully ask that the Committee hold the Administration accountable for its unwillingness to address the disparities in federal investments in tribal higher education. Specifically, the BIE should be directed to articulate a process for achieving the Congressionally authorized level of federal investment in TCUs by a date certain.

- (2) **Transition the remaining education institutions, funded by the Department of the Interior, to forward funding:** In FY 2010, the 26 TCUs funded under Titles I and II of the Tribally Controlled Colleges and Universities Assistance Act of 1978 received a one-time

appropriation necessary to transition their Department of the Interior institutional operating grants to being forward funded. However, the five remaining TCUs that receive institutional operating funds under Interior authorities are not yet forward funded. These TCUs must begin each academic year without sufficient operations funding because of delays in the Federal appropriations process and the lengthy internal BIE process of disseminating the operating funds. They often do not receive their full appropriation until well into the second half of the academic year. Having the necessary resources at the beginning of an academic year is critical to effective and innovative planning for any institution of higher education; yet, these five TCUs are currently not afforded that opportunity. Securing a one-time additional payment of approximately \$26 million to transition the institutional operating grants of all five of these TCUs to a forward funded program would correct this unfortunate cycle. It is important to note that this appropriation, in the long run, will not add to the federal budget deficit, as it would simply appropriate the funding *sooner*, but not at a higher level.

- (3) **Enter into more cost effective contracts for professional development:** The BIE preK-12 school system spends millions of dollars annually contracting with outside for-profit sources to provide professional development for the educators and other professionals who work in BIE schools. A more cost effective and culturally appropriate process would be for the BIE schools to contract with TCUs to provide in-service teacher training and other professional development services for their employees.
- (4) **Dual Credit:** Nearly all of the TCUs currently engage in dual credit programs, designed to keep American Indian/Alaska Native high school students engaged in school, graduate, and pursue higher education goals. Some of the programs are quite extensive. Nearly all of them are free for the students and high schools. TCUs – without any compensation in most cases – offer this service at their expense because they know it is one of the most effective ways for improving the dismal AI/AN high school graduation rates.

TCUs will continue to offer these life-changing (and often life-saving) programs, but we want to encourage the BIE and Department of Education to work with us to expand these programs and level the playing field. Currently, states reimburse tuition costs for dual credit high school students attending state public institutions of higher education. Although TCUs are public institutions and the state colleges/universities accept the TCU credit on transcripts, several **states do not reimburse TCUs for the tuition costs** of public high school students attending TCUs. This is the case even where there is no other public institution of higher education within a hundred miles or more for the high school student to attend.

The same holds true for the BIE. Some BIE high school students earn dual credit at TCUs, but TCUs are not reimbursed the tuition and book costs, and of course the students cannot be factored into the TCUs' "Indian Student Count" for determining a college's share of operations funding.

We recommend: (1) The BIE should be directed to reimburse TCUs for the cost of dual credits earned by BIE high school students; (2) the BIE should be directed to work with TCUs to expand this proven-successful program, which could significantly improve BIE high

school graduation rates; and (3) the BIE and the Department of Education should be encouraged to join the TCUs' effort to gain state reimbursement for dual credits provided to state resident high school students, just as the states currently reimburse other public institutions of higher education.

Once again, thank you for this opportunity to discuss our concerns and offer our recommendations for strengthening our collective efforts to continue to provide high-quality, culturally-relevant education opportunities – cradle-to-career– to the nation's American Indians and Alaska Natives.



WEDNESDAY, MARCH 13, 2013.

**WATER INFRASTRUCTURE FINANCING OVERSIGHT  
HEARING**

**WITNESSES**

**MIKE SHAPIRO, ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF  
WATER, DEPUTY ASSISTANT ADMINISTRATOR**

**ALFREDO GOMEZ, GOVERNMENT ACCOUNTABILITY OFFICE, DIREC-  
TOR OF NATURAL RESOURCES**

**AUREL ARNDT, GENERAL MANAGER, LEHIGH COUNTY AUTHORITY,  
ON BEHALF OF AMERICAN WATER WORKS ASSOCIATION**

**BEN GRUMBLES, U.S. WATER ALLIANCE, PRESIDENT**

**HOWARD NEUKRUG, COMMISSIONER, PHILADELPHIA WATER DE-  
PARTMENT, ON BEHALF OF NATIONAL ASSOCIATION OF CLEAN  
WATER AGENCIES**

**JEFF STERBA, PRESIDENT, AMERICAN WATER, ON BEHALF OF NA-  
TIONAL ASSOCIATION OF WATER COMPANIES**

**THAD WILSON, M3 CAPITAL PARTNERS, LLC, VICE PRESIDENT**

**OPENING REMARKS OF CHAIRMAN SIMPSON**

Mr. SIMPSON. Good morning, and welcome to today's hearing on water infrastructure financing. We have a number of witnesses on two panels, so I will keep my remarks brief so that we may hear from everyone, and quickly move into question and answer session, where I expect a robust discussion. I would like to ask the members and witnesses to do the same thing.

The intent of today's hearing is to discuss what we on the Appropriations Committee have appropriated to date to the Clean Water and Drinking Water State Revolving Funds and current balances in State Revolving Funds, and what that means for the number of loans and projects funded annually. Today's discussion is about how do we get from point A to point B, and then where are we going, and from where we are to where we need to be.

In 2010, the Congressional Budget Office analyzed public spending on transportation and water infrastructure and found that state and local governments account for about 75 percent of the total public spending on transportation and infrastructure, and the federal government accounts for only about 25 percent. Since 1987, the first year of the Clean Water Revolving Fund, the committee has appropriated a total of \$52.3 billion to the SRFs. This includes last year's appropriation of \$2.38 billion for the Clean Water and Drinking Water State Revolving Funds.

In 2002, EPA's GAP analysis identified a \$533 billion shortfall between the assessed need and the level of investment over a 20-year period. EPA's most recent clean water needs assessment in 2007, and most recent drinking water needs assessment in 2008, identified a combined \$633 billion in infrastructure needs through 2028. And that need is only certain to grow as population pressures

increase, as chemical and other contaminants infiltrate, and as infrastructure continues to age.

This is a nationwide issue that creates very real local challenges. States and cities are reviewing their budgets and trying to find ways to pay for these infrastructure projects to ensure a clean and safe drinking water supply for their residents, while also maintaining critical services. Meanwhile, rate payers cannot afford to see their water bills increase when struggling to make ends meet with their mortgages and higher food and gas prices.

At the federal level, if SRF funding is maintained at the fiscal year 2012 mark, we would not meet identified needs using federal funds for more than 250 years. That is 250 years.

Mr. MORAN. Repeat that sentence once more, Mr. Chairman.

Mr. SIMPSON. At the federal level, if SRF funding is maintained at the fiscal year 2012 mark, we would not meet the identified means using federal funds for more than 250 years.

Mr. MORAN. I do not know about you, but I may not be around.

Mr. SIMPSON. I plan on being around. I plan on seeing that happen, at the same time I see us finishing our appropriation bills by October 1.

Mr. MORAN. And living on the Moon.

Mr. SIMPSON. At the same time we have a massive federal debt of more than \$16 trillion, which demands that we reduce federal spending. So we, too, face tough choices.

Some argue that one cannot find solutions using the options currently available to us, and most agree that there is not one single approach that will serve as a “magic bullet”. Therefore, we need some out-of-the-box thinking, and all options need to be on the table.

We also need to be thinking about how to use existing funds and infrastructure more efficiently. The Congressional Budget Office estimates that many urban drinking water systems lose 20 percent of their water through pipe leakage. The American Society of Civil Engineers estimates the resulting loss of 7 billion gallons of drinking water per day. Further, EPA estimates that there are at least 240,000 water main breaks each year in the United States. In the Washington DC area, there were 2,211 breaks last year, which was the lowest level in the past 6 years. So we have significant challenges to address both for capital infrastructure and for the operations and maintenance. And I reiterate that I hope that we can collectively bring some innovative thinking to the discussion today.

EPA serves as the federal manager for the SRF funds. The GAO has analyzed various infrastructure financing options and implementation challenges from a nationwide perspective. We appreciate and look forward to the testimony. We then have a second panel of witnesses that represent national, county, and city levels that have been thinking about both federal and non-federal investment opportunities and other innovative approaches to paying for water infrastructure projects. We appreciate the expertise that they bring to bear along with their respective policy and legislative ideas for members of this subcommittee to consider.

Mr. SIMPSON. Mr. Moran, do you have any opening statement?



## OPENING REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. Yes, I do, Mr. Chairman, and I want to tell you in advance, I have got to go to two more hearings where I am giving testimony, but I want you to carry this on. This is an oversight hearing, and so it is preferably appropriate for only one—oh, you have got Mr. Serrano just in time. So Mr. Serrano will represent our side.

Having said that, I do not think there really is one side or the other, and that is one of the reasons for this hearing. Because while we may differ to some extent on the way to get there, I think we both agree on the objective of making our water cleaner and safer for everyone, and making the investment that is necessary in the infrastructure to bring that about.

I want to welcome Mr. Shapiro, who is head of the Office of Water at EPA, and Mr. Gomez from the GAO, the director of its Natural Resources Division, and the other panelists that will be joining us on the second panel.

This subcommittee's jurisdiction does include the federal government's two main programs for financing drinking water and wastewater infrastructure. The Drinking Water and Clean Water State Revolving Funds combined totaled almost \$2.5 billion in fiscal year 2012. It was 28 percent of EPA's total appropriation. I want to say, Mr. Chairman, that the Senate appropriations mark yesterday of these programs was very disappointing, and in my view, irresponsible. As difficult as it was to make the cuts that this subcommittee did, we made them in as responsible a way as possible, but the appropriations for EPA and the Interior appropriations bill itself is significantly above the Senate mark, and for that, I am very disappointed and I think the Senate, at least in that respect, did a disservice to the public in terms of water safety particularly.

But given the fiscal environment of austerity in the Congress, it will be even more difficult for us in the future to adequately fund State Revolving Funds. This is just the first year of the implementation of the Budget Control Act. We have got another 9 years to go, and the sequester is not going away, nor do I think the reduced levels of funding will go away, and they will be reflected in the fiscal year 2014 budget.

So that is why this hearing is ever more important, because I think that the fiscal cliff deal, as it was called, is also irresponsible on the part of the Administration to accept 82 percent of budget cuts that were all deficit financed, and not to resolve the sequester and the debt ceiling at the time. But there was a Minority that felt that way. But now we are dealing with the repercussions of that. I also think we need to address entitlement programs, because if we do not, there will be no money for any discretionary programs.

But that is why this hearing is so important to not only discuss whether there is an adequate level of federal investment, but how much investment is needed in terms of public and private sector investment. EPA surveys, as you said, Mr. Chairman, indicate that we need about \$635 billion over the next 20 years. Between the 2009 Recovery Act and the fiscal year 2009 and 2010 Interior appropriations bills, we provided about \$13 billion for State Revolving Funds. Now, they may have been historic levels, but they were

grossly inadequate levels of funding, leaving a \$500 billion funding gap that was reported by EPA back in 2000, and that EPA recognizes and that this country should recognize.

I do support your efforts, Mr. Chairman, to look at the alternative financing, and we are going to hear about that today from experts who know more than we do, and we need their expertise and insight. But I do think that public-private partnerships, which have been around for years, are still underused by municipalities, and when they cannot turn to the State Revolving Fund anymore because of the reduction in federal funding, I think they are going to have to turn to other more innovative ways of funding needed infrastructure. We are going to hear why they have not done that today, I am sure, particularly from the second panel.

I think the idea of a national infrastructure bank, and taxing bottled water—both of those ideas, I think, have some merit to meet the need, but the concourse is unsustainable. One of the problems is that we are spending billions on the back end to correct what is happening on the front end. At one point, it was thought if you just let all this fertilizer and stuff go into the water that dilution is the solution to pollution, people thought. Well, hardly. That stuff washes down the Potomac, it gets into the Chesapeake Bay, to use a local example, and then it puts the plant life on steroids and when it decomposes, sucks all the oxygen out of the water so nothing else can live. You have only to look at the District of Columbia to highlight our Nation's water ills. I mean, that is where we spend most of our time, Members of Congress and the federal government, and yet, this highlights the problem.

Everybody wants to have clean water. It is 75 percent of our bodies, but are we willing to pay to stop the sewer overflow after rainfalls from going into the Chesapeake Bay? DC's Clean Rivers Project would cost \$2.6 billion, and The Brookings Institution indicated that rate payers are not able or willing to pay that, and that is just a typical case of many urban, suburban, and rural communities. So how do you finance these needed improvements without having sufficient support from rate payers. In fact, there is good reason why they could not support the kind of increases in rates that would be necessary.

Now we have this tradition of providing a quote that sometimes is relevant. There is a guy by the name of Fuller, Thomas Fuller. He was 17th century—and I am sure Tom Cole has read him extensively—but he said, "We never know the worth of water until the well is dry." There is another one that I will offer for you all's benefit, Mr. Chairman, which takes a somewhat lighter approach. W.C. Fields said, "You really can't trust water because even a straight stick turns crooked in it." So I am not sure what the relevance of that is, other than it is talking about water, but when the staff finds it, I have to use it. So yes, a stick turns crooked in water, and so W.C. Fields thought that you cannot trust it—it was not meant to be particularly deep.

With that, we can get to the hearing, Mr. Chairman. Again, I appreciate you having the hearing. I am going to have to leave in a few minutes, but thanks a lot for having such an important hearing.

Mr. SIMPSON. Thank you, Mr. Moran.

I would like to ask that Mike Shapiro from the EPA, followed by Alfred Gomez from GAO, to offer their testimony, and we will expeditiously move into questions for this session. Mike.

#### OPENING REMARKS OF MR. MIKE SHAPIRO

Mr. SHAPIRO. Chairman Simpson, Ranking Member Moran, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the state of the Nation's drinking water and wastewater infrastructure, as well as the accomplishments of the Nation's primary sources of low-cost infrastructure financing, the Clean Water and Drinking Water State Revolving Loan Fund Programs. I have a longer statement that I have submitted for the record. I will give you a summary here.

Clean water and safe drinking water contribute to our public health and to the welfare and economic well-being of our families and communities. We have come a long way in improving protection for public health, water quality, and the environment under the Clean Water Act and the Safe Drinking Water Act. Our Nation's drinking water meets standards as protective as any in the world, and we have improved water quality and increased public health protection in streams, lakes, bays, and other waters nationwide.

We have achieved this progress in large measure through our ability to construct and maintain a robust infrastructure for the provision of drinking water and collection and treatment of wastewater. Nevertheless, major challenges lie ahead. Our Nation needs significant water and wastewater infrastructure investment. According to the EPA surveys, America needs \$300 billion in wastewater and \$335 billion in drinking water infrastructure improvements over the next 20 years. These resources are needed to address challenges which include repairing and replacing aging facilities, managing increased demand from population growth, reducing nutrient pollution, controlling pollution from stormwater runoff, controlling pathogens, and dealing with the challenges of improving infrastructure, security, and resilience.

Two of the Nation's most important sources of water infrastructure financing are the Clean Water and Drinking Water State Revolving Loan Fund Programs, the SRFs. These programs are low-interest loan programs that give states flexibility in financing projects. The EPA provides capitalization grants to the state SRF programs. States contribute an additional 20 percent of what EPA provides, and they are required to make loans at below market rates. This results in a substantial interest savings for communities, typically providing the equivalent to a grant covering approximately 20 percent of the cost of the project.

One of the most important features of the SRFs is that repayments are recycled back into the program to provide an ongoing funding source for additional water projects. Additionally, states have the ability to leverage federal grant awards through the sale of bonds. Twenty-eight clean water SRF programs and 22 drinking water SRF programs have leveraged by issuing bonds.

The SRFs fund projects based on each state's assessment of greatest need, which often includes small systems and those serv-

ing disadvantaged communities. In other words, systems that have few options for financing infrastructure improvements.

In 2012, the SRF provided \$7.7 billion in funding to more than 2,600 communities across the country. Total funding contributed by federal appropriations and by states over the life of the two programs is closing in on \$120 billion, with only \$52.6 billion of these funds having come from federal appropriations.

Under the drinking water SRF authorization, states were given the authority to use a portion of their capitalization grants for additional subsidization in the form of principal forgiveness or grants. Similar authority has been available under the Clean Water SRF program since the passage of the American Recovery and Reinvestment Act, ARRA. This valuable authority has allowed states to provide critical resources to our most-needed communities that could not afford SRF loans, even at subsidized rates.

Another important feature of the SRF programs is the Green Project Reserve, first introduced under ARRA, which helps utilities function in more environmentally sound ways. One of the benefits of the Green Project Reserve is the increase in funding and visibility for green infrastructure. Green infrastructure techniques utilize natural systems or engineered systems that mimic natural landscapes to capture, cleanse, and reduce discharges using plants, soils, and microbes.

As Representative Moran pointed out, investment alone is not sufficient in managing our infrastructure. In addition, we need to plan those investments and operate them in ways that are sustainable, and a lot of EPA's efforts in supporting our infrastructure programs over the last several years has focused on developing tools, techniques, and sharing best practices so that the money that we invest is used as wisely and sustainably as possible.

In conclusion, the SRF programs are clearly focused on actions and funding to achieve compliance with environmental and public health standards, but are confronted with significant challenges. Addressing these challenges will take effort from the EPA, states, communities, and other partners, and will require us to use more innovative and sustainable tools to solve significant challenges.

We look forward to working with members of the subcommittee, our federal and state colleagues, and our many partners, stakeholders, and citizens to continue progress in providing safe and clean water for all Americans. Thank you again for inviting me to testify, and I will be happy to respond to any questions.

[The statement of Mike Shapiro follows:]

**TESTIMONY OF MICHAEL H. SHAPIRO  
DEPUTY ASSISTANT ADMINISTRATOR,  
OFFICE OF WATER  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED  
AGENCIES  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**MARCH 13, 2013**

Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the state of our nation's drinking water and wastewater infrastructure, as well as the accomplishments of nation's primary Federal sources of low-cost infrastructure financing, the Clean Water and Drinking Water State Revolving Fund programs.

Clean water contributes to our public health, our drinking water supplies, and to the welfare of our families and communities, whether in large cities, small towns, or rural America. It is also vital to the economy as polluted waterways decrease tourism, property values, commercial fishing, and harm many of the businesses that depend on clean water. The range of businesses that we depend on—and who, in turn, depend on a reliable and plentiful supply of clean water—include tourism, farming, fishing, beverage production, manufacturing, transportation, and energy generation, just to mention a few. We have certainly come a long way in improving protection for public health, water quality, and the environment under the Clean Water Act and Safe Drinking Water Act since the creation of the EPA over 40 years ago. Our nation's drinking water meets standards as protective as any in the world, and we have

improved water quality and increased public health protection in streams, lakes, bays, and other waters nationwide. However, significant challenges remain.

### **Challenges Facing our Nation's Water Infrastructure**

Our nation needs significant water and wastewater infrastructure investment.

According to the EPA's surveys, America needs \$300 billion in wastewater<sup>1</sup> and \$335 billion in drinking water<sup>2</sup> infrastructure improvements over the next 20 years.

Despite the progress made since passage of the CWA and SDWA in constructing and operating wastewater treatment facilities and drinking water systems and pipe, the nation will continue to face water pollution and safe water challenges related to water infrastructure in the years ahead. The Census Bureau projects a 35% increase in U.S. population by 2050 with resultant demands on both CWA and SDWA programs and the infrastructure they support.

By 2025, increasing population growth combined with other factors will result in a projected rate of biochemical oxygen demand (BOD), a conventional pollutant under the CWA, being discharged by Publicly Owned Treatment Works (POTWs) at a level about equal to the rate experienced in 1968 (21,280 metric tons per day), the year when the discharge of oxygen-demanding material from POTWs had reached its historical peak.<sup>3</sup> This projection underscores the importance of investing in wastewater treatment infrastructure to maintain and improve pollutant removal efficiencies. Many of the environmental successes of the past three decades may be overwhelmed by future demands. These trends also have implications for drinking water

<sup>1</sup> EPA, "Clean Watershed Needs Survey 2008 Report to Congress,"

<http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm>

<sup>2</sup> EPA, "2009 Drinking Water Infrastructure Needs Survey and Assessment: Fourth Report to Congress,"

<http://water.epa.gov/infrastructure/drinkingwater/dwns/index.cfm>

<sup>3</sup> EPA, "Progress in Water Quality: Technical Report," Executive Summary, 2000,

<http://water.epa.gov/polwaste/wastewater/treatment/benefits.cfm>

utilities with respect to the quality of their source waters. These drinking water and wastewater infrastructure challenges will be faced by systems across the country, both in our large and growing urban centers as well as our rural towns.

The complexity of the challenges facing water utilities also continues to increase. For example, many wastewater treatment facilities have had to add nutrient removal technologies in order to restore and maintain water quality. Another example is stormwater pollution, which is one of our nation's most challenging water quality problems and is a significant contributor to the impairment of the country's streams, rivers, and watersheds. Unlike pollution from industry or sewage treatment facilities, which is caused by a discrete number of specific sources, stormwater pollution derives from a very large number of point and nonpoint sources. Rainwater and snowmelt runs off landscaping, parking lots, streets, buildings, farms, and construction and industrial sites. This water picks up fertilizers, soil and sediments, pesticides, oil and grease, heavy metals and many other pollutants on the way to our rivers, lakes, and coastal waters. The impermeable surfaces of our traditional urban and suburban landscapes also result in increased stormwater volume. In addition to these problems, many older cities (including many of our nation's largest cities) have combined sewage and stormwater pipes which periodically—and in some cases frequently—overflow due to precipitation events affecting the quality of water supplied to downstream drinking water facilities.

Implementing the projects that are needed to maintain and upgrade our existing water and wastewater infrastructure will be a critical challenge in the years ahead to ensure that our infrastructure continues to provide us with clean drinking water and healthy rivers, lakes, and streams.

**Tools for Protecting Public Health and the Environment***Financing*

Two of the nation's most important sources of water infrastructure financing are the Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF) programs. In 2012 the SRFs provided \$7.7 billion in funding to more than 2,600 communities across the country. Through FY 2012, total funding contributed by Federal appropriations and by states over the life of the two programs is closing in on \$120 billion, with only \$52.6 billion of these funds having come from Federal appropriations.

The CWSRF program supports the overarching goal of protecting public health and aquatic systems throughout the country. The CWSRF program has made available approximately \$97 billion for loans, and more than 32,000 individual loans have been made. Over the last 3 years, the CWSRF program has provided on average \$6 billion per year to communities. Projects include wastewater treatment, nonpoint source pollution control, and watershed and estuary management. About half of the CWSRF funds – more than \$50 billion since the program's inception – has gone towards improving wastewater treatment plants and advanced treatment practices. More than \$20 billion has helped address sewer overflow issues and more than \$15 billion in funding has gone towards new sewers. An additional \$4 billion has gone towards addressing non-point sources of water pollution and protecting and restoring our estuaries.

The DWSRF program helps to ensure that the nation's drinking water remains safe. Since its inception, the DWSRF program has provided approximately \$23.7 billion in assistance through nearly 10,000 loans that have improved public health protection for millions of people.



Over the last 3 years, the DWSRF program has provided on average \$1.9 billion per year to communities. These funds provide drinking water systems with critical support to comply with Safe Drinking Water Act regulations and provide people with clean and safe water.

The SRFs are low-interest loan programs that give states flexibility in financing projects. The EPA provides capitalization grants to the State SRF programs as an investment in the nation's infrastructure. States also contribute an additional 20 percent of what the EPA provides, further enhancing the size of the program. States make loans at below market rates, at an average of two percentage points below market over the last several years. This results in a substantial interest savings for communities, providing the equivalent to a grant covering approximately 20% of the cost of a project. States even have the flexibility to charge no interest over the life of a loan. Both SRF programs operate on the basis of cost reimbursement. Even though a grant is made directly to a state by the EPA, no funds leave the Treasury until costs are incurred. The programs emphasize a low-cost planning process that leverages and stretches every dollar expended by investing in sustainable solutions, endorsing a "fix it first" approach that focuses on system upgrades and replacements, and preserving natural resources or use alternative approaches to integrate natural or "green" systems. One of the most important features of the SRFs is that repayments are recycled back into the program to provide an ongoing funding source for additional water projects. Additionally, states have the ability to leverage federal grant awards through the sale of bonds. A very basic example of bond leveraging is a state that receives a \$10 million annual capitalization grant. The state then uses the grant funds as security for a \$20 million bond sale, of which all of the proceeds are used to fund needed infrastructure projects. Twenty-eight CWSRF programs and 22 DWSRF programs have

leveraged by issuing bonds. The net proceeds of these bonds have provided approximately \$38 billion in additional funding for critical projects.

Since the passage of the American Recovery and Reinvestment Act (ARRA), states have been given authority in both programs to use a portion of their capitalization grants for additional subsidization, in the form of principal forgiveness or grants. This valuable authority has allowed states to provide critical resources to our most needy communities that could not afford SRF loans, even at subsidized rates.

The SRFs fund systems based on the State's assessment of greatest need, which often includes small systems or those serving disadvantaged communities. More than \$2 billion in funding from the SRFs this year reached more than 1,800 communities of 10,000 or fewer people. These communities typically have fewer options for financing infrastructure improvements, and SRF funding enables them to make necessary investments to help protect public health in their communities.

#### *Green Infrastructure*

Another important feature of the SRF programs is the Green Project Reserve, first introduced in the ARRA, which helps utilities function in more environmentally-sound ways. This feature was continued in subsequent requests and appropriations, and has increased funding and visibility for green infrastructure.

Green infrastructure is a promising approach for reducing stormwater pollution from its diverse sources and can help catalyze significant improvements to our nation's water quality, ensuring that drinking water sources are protected. Green infrastructure techniques utilize natural systems, or engineered systems that mimic natural landscapes, to capture, cleanse and reduce stormwater discharges using plants, soils and microbes. Green infrastructure can also

support reuse of rainfall, thus also reducing the volume and impacts of stormwater discharges to water quality.

On a regional scale, green infrastructure consists of a network of open spaces and natural areas (such as forested areas, floodplains and wetlands) that improve water quality while providing recreational opportunities and wildlife habitat. When discussing green infrastructure at large geographic scales, it is also important to consider the value of open space preservation and natural resource protection for purposes of wildlife habitat and other ecological functions. On the local scale, green infrastructure consists of site-specific management practices, such as rain gardens, porous pavements, green roofs and cisterns, that are designed to maintain natural hydrologic functions by absorbing and infiltrating precipitation where it falls, and by returning it to the atmosphere via plants.

Green infrastructure has a number of other environmental and economic benefits in addition to improving water quality, including recharge of ground water and surface water supplies; cleaner air; reduced urban temperatures; reduced energy demand; carbon sequestration; reduced flooding; and community benefits, such as improved aesthetics; improved human health; additional recreational and wildlife areas; and potential cost savings associated with lower capital costs compared to building large stormwater collection and conveyance systems.

#### *Sustainability*

While SRF funds play an important role in addressing the nation's infrastructure needs, the EPA is also playing a broader role in working to ensure that investments by federal, state, and local governments and the private sector are used as effectively as possible. To this end, the EPA has been stressing the concept of sustainability to plan for future drinking water and wastewater

needs. The EPA is working with partners across the water sector and beyond to provide the knowledge and tools to ensure that the investments we make in our water infrastructure move us toward a more sustainable footing. The goal can be achieved through strong infrastructure planning and management practices at water utilities. We are targeting our resources toward helping systems achieve results in the following areas:

- Promoting an asset management framework that ensures that the right investments are made at the right time.
- Promoting water and energy efficiency to ensure that water sector systems adopt sustainable practices and technologies for improving their efficiency, reducing costs and addressing future needs.
- Promoting infrastructure financing and providing options to pay for water infrastructure needs, including through full-cost pricing.
- Promoting alternative technologies and assessment to ensure that systems are using the best and most innovative solutions when investing in water infrastructure.

We are committed to promoting sustainable practices that will help assure that communities continue to enjoy the benefits of clean and safe water. In October 2010, we issued a Clean Water and Safe Drinking Water Infrastructure Sustainability Policy. The Policy represents the next step in our efforts to increase the sustainability of water infrastructure. The Policy informs our water infrastructure activities funded through the SRF programs but is also intended to guide our efforts more broadly. Based on the principles laid out in the Policy, we will promote sustainability on three interrelated fronts—the sustainability of water infrastructure, the broader sustainability of water and wastewater utilities, and the role these play in fostering

the overall sustainability of communities. We will also work closely with the states to promote the use of SRF funds to support all of these fronts.

The Policy places significant emphasis on promoting planning by utilities that results in infrastructure investments that also support other relevant community goals. The Policy encourages a robust analysis of various infrastructure options, including green and decentralized approaches; and encourages utilities to implement management strategies and rate structures that support systems' necessary water infrastructure investments and operations and maintenance. We will also continue to work with utilities to ensure they have the technical, financial, and managerial capacity to effectively manage all aspects of their operations. Finally, under the umbrella of the HUD-DOT-EPA Partnership for Sustainable Communities, we will work to help coordinate federal infrastructure investments with these other federal partners.

#### **Conclusion**

The CWSRF and DWSRF programs are clearly focused on actions and funding to achieve compliance with environmental and public health standards. Addressing these challenges will take effort from the EPA, states, communities, and other partners, and will require us to use more innovative and sustainable tools to solve these significant challenges. We look forward to working with Members of the Subcommittee, our federal and state colleagues, and our many partners, stakeholders, and citizens who are committed to continuing our progress in providing clean and safe water to all Americans. Thank you again for inviting me to testify and I would be happy to respond to any questions you may have.

**Michael H. Shapiro**  
**Deputy Assistant Administrator**  
**Office of Water**  
**U.S. Environmental Protection Agency**

Michael Shapiro joined the Office of Water as the Deputy Assistant Administrator in November 2002. Prior to that, he was the Principal Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER). Mr. Shapiro has also served as Director of the Office of Solid Waste, and Deputy Assistant Administrator for the Office of Air and Radiation, where he directed implementation of the 1990 Clean Air Act Amendments. From 1980 to 1989, Mr. Shapiro held a variety of positions in the Office of Pesticides and Toxic Substances, where one of his responsibilities was developing EPA's Toxic Release Inventory.

Mr. Shapiro has a B.S. in Mechanical Engineering from Lehigh and a Ph.D. in Environmental Engineering from Harvard. He has also taught in the public policy program at the John F. Kennedy School of Government.

Mr. SIMPSON. Thank you, Mike. Alfredo.

OPENING REMARKS OF MR. ALFREDO GOMEZ

Mr. GOMEZ. Mr. Chairman, Ranking Member Moran, and members of the subcommittee, good morning. I am pleased to be here today to discuss the infrastructure needs facing the Nation's drinking and wastewater systems.

The U.S. faces costly upgrades to aging water infrastructure. The most visible signs of this problem are frequent sewer overflows into rivers and streams, and as noted earlier, water main breaks in the Nation's largest cities. Several approaches have been proposed to help bridge the gap between projected infrastructure needs and current funding. My statement today summarizes the results of our reports on these approaches. I will focus on three main areas: EPA's Clean Water and Drinking Water State Revolving Fund Programs—the SRF programs, stakeholder views on three alternative financing approaches, and three, issues in financing drinking water and wastewater infrastructure.

First, EPA's SRF programs are the largest sources of financing. EPA uses federal appropriations to provide grants to states, which in turn provide low or no interest loans to local communities or utilities to pay for water infrastructure.

Second, to better understand the three alternative approaches, we surveyed industry and government stakeholders. So the first approach is a clean water trust fund, which would provide a dedicated source of funding for wastewater projects. Stakeholders identified key issues that would need to be addressed, such as how a trust fund would be administered and used, what type of financial assistance should be provided, and what activities should be eligible to receive funding. A majority of stakeholders said that a trust fund should be administered through EPA in partnership with the states, but they differed on how a trust fund should be used.

Another approach mentioned earlier, a national infrastructure bank, would use public and/or private funds to finance infrastructure projects through a variety of loans, loan guarantees, and other mechanisms. A majority of stakeholders that we interviewed supporting creating such a bank, but also identified several issues that should be considered. These are the bank's mission and administrative structure, its financing authorities, and project eligibility.

The last approach is public-private partnerships that involve private investment and infrastructure projects. We identified seven municipalities that had entered into these partnerships for wastewater projects. For example, the city of Santa Paula, California, entered into a contract with a private company to design, build, finance, and operate a wastewater treatment facility. Stakeholders identified advantages for all of the partnerships that we reviewed, such as having access to other sources of financing. They also identified challenges, such as dealing with local opposition that may arise from concerns about private companies not being as responsive.

A third area that we focused on deals with efficiently financing water infrastructure. So as the Nation faces limited budgets, it is important to target federal funds to communities with the greatest need, such as those that are economically disadvantaged. EPA's IG

and GAO found that EPA has limited information about how states target these communities for funding. A recent report on rural water infrastructure found inefficiencies when state-level programs did not cooperate in funding projects. Officials from two USDA state offices had to deobligate more than \$20 million that they had committed to projects because they were not aware that the state SRF programs had committed to fully fund the same projects.

Also, our past work highlights the importance of asset management tools to help utilities manage existing and future assets more efficiently and effectively. EPA has implemented our recommendations to improve its promotion of asset management to utilities; however, it is up to utilities to use these tools and we have not assessed the extent to which they now do.

In summary, the funding needs for upgrading the Nation's water infrastructure require attention. In considering the various funding approaches, it is helpful to consider how an entity will be administered and funded, how we will finance projects, and what projects will be eligible. It would also be important to consider how to target funds to those with the greatest needs and to spend funds efficiently.

Mr. Chairman, this completes my statement. I would be pleased to respond to any questions.

[The statement of Alfredo Gomez follows:]



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**GAO**

United States Government Accountability Office

Before the Subcommittee on Interior,  
Environment, and Related Agencies  
Committee on Appropriations  
House of Representatives

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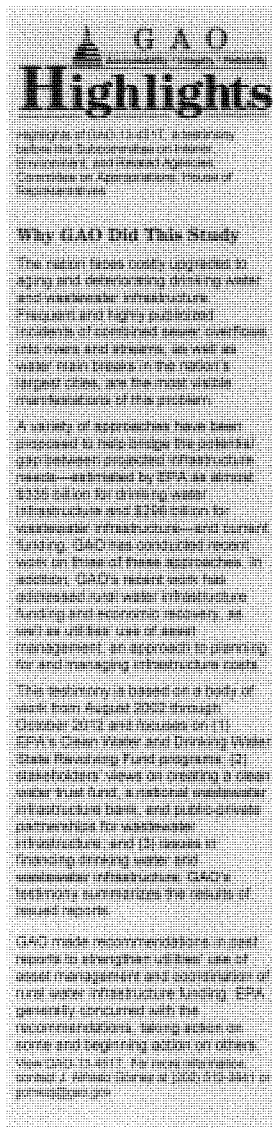
## **WATER INFRASTRUCTURE**

### **Approaches and Issues for Financing Drinking Water and Wastewater Infrastructure**

Statement of J. Alfredo Gómez, Director  
Natural Resources and Environment



SCAN  
COPY



March 2013

## WATER INFRASTRUCTURE

### Approaches and Issues for Financing Drinking Water and Wastewater Infrastructure

#### What GAO Found

The Environmental Protection Agency's (EPA) Clean Water and Drinking Water State Revolving Fund (SRF) programs are the largest sources of federal assistance to states and local communities for funding drinking water and wastewater infrastructure. In fiscal year 2012, EPA funded the Clean Water SRF program \$1.5 billion and the Drinking Water SRF program \$918 million from congressional appropriations. EPA grants capitalization funds to states, which in turn provide low- or no-interest loans to local communities or utilities to pay for water distribution pipelines, treatment plants, sewer lines, and other similar infrastructure.

GAO reviewed three of the approaches proposed to pay for the nation's drinking water and wastewater needs, each of which offers a different means to fund and finance projects. To understand these approaches as they apply to wastewater infrastructure, GAO surveyed stakeholders, including industry representatives and associations and federal, state, and local government officials. GAO's reports identified the following issues with each approach:

- A *clean water trust fund* would provide a dedicated source of funding, such as an excise or other tax, for wastewater infrastructure. Stakeholders identified three main issues that would need to be addressed in setting one up: how a trust fund should be administered and used, what type of financial assistance should be provided, and what activities should be eligible to receive funding. A majority of stakeholders said that a trust fund should be administered through EPA in partnership with the states, but they differed in their views on how a trust fund should be used.
- A *national infrastructure bank* would use public and/or private funds to finance infrastructure projects through a variety of loans, loan guarantees, and other mechanisms. A majority of stakeholders supported the creation of such a bank but also identified three issues that should be considered in designing a bank: mission and administrative structure, financing authorities, and project eligibility and prioritization.
- *Public-private partnerships* encourage private investment in infrastructure projects. GAO identified seven municipalities that have entered into privately financed partnerships for wastewater infrastructure. Municipal and company officials identified advantages to these partnerships, such as having access to sources of financing other than traditional sources, but also identified challenges to using partnerships. Local opposition is one challenge, as is the complexity and difficulty of contracting involved.

GAO's work on asset management, among other things, highlights the importance of targeting federal funding to communities with the greatest need and spending funds efficiently. For example, in 2004, GAO identified opportunities for EPA to improve its promotion of asset management to utilities—an approach that could give utilities the information and analytical tools they need to manage existing assets more effectively and to plan for the future. Since then, EPA has implemented GAO's recommendations on asset management by, among other things, holding workshops and coordinating initiatives to provide asset management information.

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Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee:

I am pleased to be here today as you consider the infrastructure needs facing the nation's drinking water and wastewater systems. As you know, the nation's water utilities face the task and costs of upgrading aging and deteriorating infrastructure in both drinking water plants and wastewater treatment systems, including collection systems, treatment plants, and distribution systems. Frequent and highly publicized incidents of combined sewer overflows into rivers and streams, as well as water main breaks in the nation's largest cities, have been perhaps the most visible manifestations of this infrastructure problem. In its most recent needs surveys, the Environmental Protection Agency (EPA) estimated that the funding need for drinking water infrastructure totaled \$335 billion (in 2007 dollars) and wastewater infrastructure needs totaled \$298 billion (in 2008 dollars).<sup>1</sup> These needs are made more daunting by the limited resources and budgets facing all levels of government.

A variety of approaches have been proposed to help bridge the potential gap between projected future infrastructure needs and current levels of funding. My testimony today will draw from our reports reviewing three of these approaches, including a clean water trust fund,<sup>2</sup> national infrastructure bank,<sup>3</sup> and public-private partnerships.<sup>4</sup> My testimony also draws on reports that we have issued on rural water infrastructure,<sup>5</sup> utility

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<sup>1</sup>The most recent drinking water needs assessment is EPA, *Drinking Water Infrastructure Needs Survey and Assessment: Fourth Report to Congress*, EPA 816-R-09-001 (Washington, D.C.: February 2009) and the most recent clean water needs assessment is EPA, *Clean Watersheds Needs Survey 2008: Report to Congress*, EPA-832-R-10-002 (Washington, D.C.). EPA conducts a separate survey and assessment for each type of infrastructure, drinking water and wastewater, on separate 4-year schedules. The costs shown reflect the year that each survey was conducted.

<sup>2</sup>GAO, *Clean Water Infrastructure: A Variety of Issues Need To Be Considered When Designing a Clean Water Trust Fund*, GAO-09-657 (Washington, D.C.: May 29, 2009).

<sup>3</sup>GAO, *Wastewater Infrastructure Financing: Stakeholder Views on a National Infrastructure Bank and Public-Private Partnerships*, GAO-10-728 (Washington, D.C.: June 30, 2010).

<sup>4</sup>GAO-10-728.

<sup>5</sup>GAO, *Rural Water Infrastructure: Additional Coordination Can Help Avoid Potentially Duplicative Application Requirements*, GAO-13-111 (Washington, D.C.: Oct. 16, 2012).

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asset management,<sup>6</sup> and EPA's existing programs to finance drinking water and wastewater infrastructure (water and wastewater infrastructure).<sup>7</sup> These reports have generally been informational, and we have not made recommendations to EPA, but in cases where we did and EPA provided an opinion, it generally concurred with our recommendations. My statement today is based on our prior work issued from August 2002 through October 2012 and focuses on (1) EPA's Clean Water and Drinking Water State Revolving Fund (SRF) programs; (2) views of stakeholders on creating a clean water trust fund, a national infrastructure bank for wastewater, and public-private partnerships for wastewater infrastructure;<sup>8</sup> and (3) issues facing federal agencies, states, local communities, and utilities in financing drinking water and wastewater infrastructure. Detailed information about scope and methodology can be found in our issued reports. We conducted this work in accordance with generally accepted government auditing standards.

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## Background

Drinking water and wastewater infrastructure improvements are largely paid for by communities or utilities and their ratepayers, through the water and sewer rates they pay. Drinking water infrastructure involves treatment plants, distribution pipelines, and other equipment needed to take water from natural sources, such as rivers, lakes, and groundwater aquifers, treat it, and then provide it to households, businesses, and others for drinking and other uses. Wastewater infrastructure includes collection systems, tanks, treatment equipment, and other related equipment that all transport wastewater from homes, businesses, and other sources for treatment and discharge, generally, into a nearby body of water.

A number of federal agencies provide funding to assist communities and utilities in financing water and wastewater infrastructure construction and

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<sup>6</sup>GAO, *Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments*, GAO-04-461 (Washington, D.C.: Mar. 19, 2004) and GAO, *Water Infrastructure: Information on Financing, Capital Planning, and Privatization*, GAO-02-764 (Washington, D.C. Aug. 16, 2002).

<sup>7</sup>See GAO, *Recovery Act: Funds Supported Many Water Projects, and Federal and State Monitoring Shows Few Compliance Problems*, GAO-11-608 (Washington, D.C.: June 29, 2011).

<sup>8</sup>Stakeholders include individuals and groups from the water and wastewater industry and federal, state, and local government with knowledge of water and wastewater infrastructure issues.

rebuilding projects. In addition, the federal government subsidizes infrastructure projects through the tax exemption for municipal bonds, which reduces localities' borrowing costs. Table 1 describes the assistance provided by the different federal agencies.

**Table 1: Federal Agencies Providing Financial Assistance for Local Water and Wastewater Infrastructure**

Agency, Program	Financial assistance provided
EPA, Clean Water State Revolving Fund	Grants funds to states that provide loans to communities of all sizes for wastewater treatment infrastructure, nonpoint pollution management, and estuary programs.
EPA, Drinking Water State Revolving Fund	Grants funds to states that provide loans to communities of all sizes for drinking water infrastructure.
Department of Agriculture, Rural Utilities Service, Water and Waste Disposal Program	Provides funding for water and wastewater infrastructure projects in communities with populations less than 10,000.
Department of Housing and Urban Development, Community Development Block Grant	Provides block grant funds to states for distribution to communities, and to certain metropolitan areas; communities use funds for a broad range of activities including water and wastewater infrastructure. According to department officials, about 10 percent of funding is used for this purpose.
Department of Commerce, Economic Development Administration, Public Works and Economic Development Program	Provides grants to small and disadvantaged communities to construct public facilities, including drinking water and wastewater facilities, to alleviate unemployment.
U.S. Army Corps of Engineers	Provides assistance for water and wastewater infrastructure projects, typically for specific locations as authorized by Congress.
Bureau of Reclamation	Provides assistance for water supply projects through individual projects and under its rural water supply program.
Indian Health Service	Provides funding for water and wastewater infrastructure on tribal lands.
Department of the Treasury, Internal Revenue Service	Administers provisions for tax-exempt bonds issued by local governments to finance qualified projects.

Source: GAO.

The issue of how the federal government should help to finance the nation's water and wastewater infrastructure involves several considerations. First, the entity to administer the assistance can include a federal agency, a special-purpose entity, or a public-private partnership. Special-purpose entities include government corporations and

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government-sponsored enterprises.<sup>9</sup> A second consideration in financing the nation's infrastructure is the source of funding for the financial assistance provided. Such funding can be public, such as appropriations from the federal, state, or other governments, or private, such as private investment or revenues and other income from the enterprise. Third, the financing provided for infrastructure projects can come in a variety of forms: grants, loans, loan guarantees, debt or equity purchases, insurance for project costs, bonds, and others. And, finally, projects eligible to receive financing can be public and/or private and can include one or more aspects of a project, including design, capital construction, and other support.

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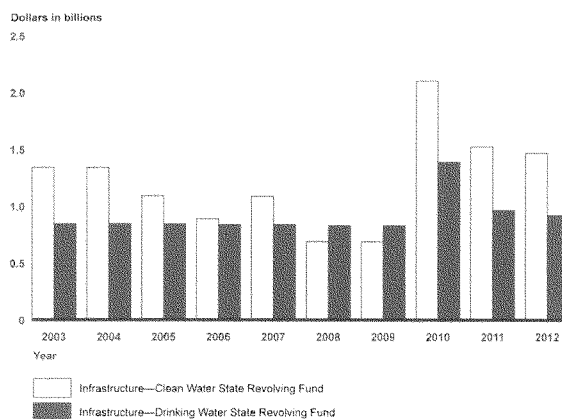
#### **EPA's Clean Water and Drinking Water State Revolving Funds Capitalize State-Managed Revolving Funds**

EPA's Clean Water and Drinking Water SRF programs are the largest sources of federal assistance to states and local communities for funding drinking water and wastewater infrastructure. EPA receives federal appropriations that are then, in turn, granted to states to use in conjunction with state funds to provide loans for improvements at communities' water and wastewater treatment systems. From fiscal years 2003 through 2012, appropriations for the Clean Water SRF averaged about \$1.2 billion annually and about \$913 million annually for the Drinking Water SRF. Figure 1 shows the total appropriations to EPA for the two programs for fiscal years 2003 through 2012.

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<sup>9</sup>Government corporations are not completely alike but have generally been established by Congress to provide market-oriented public services, such as the Commodity Credit Corporation, which stabilizes and protects farm income and prices. Government-sponsored enterprises are privately owned, for-profit financial institutions that have been federally chartered for a public purpose, such as facilitating the flow of investment to specific economic sectors.

**Figure 1: Appropriations for EPA's Clean Water and Drinking Water State Revolving Fund Programs, Fiscal Years 2003 through 2012**



Source: GAO analysis of Congressional Research Service data.

Notes: EPA administers the Drinking Water State Revolving Fund (SRF) program, which provides annual funding to states to finance projects for publicly and privately owned drinking water treatment systems, and the Clean Water SRF program, which provides funding to states to finance projects for constructing, replacing, or upgrading publicly owned municipal wastewater treatment systems.

The funding in this table represents annual appropriations and does not include funds appropriated in the American Recovery and Reinvestment Act. The Clean Water SRF was appropriated \$4 billion from the Recovery Act and the Drinking Water SRF was appropriated \$2 billion.

The Clean Water and Drinking Water SRF programs provide states and local communities with an independent and sustainable source of financial assistance by providing capital for state SRF funds. The states are required to match 20 percent of the federal grant money.<sup>10</sup> From these federal and state funds, states then typically provide assistance in

<sup>10</sup>State grants for the Clean Water SRF program are to be made on the basis of a statutory allocation formula. The Drinking Water SRF grants are to be allocated to states on the basis of current needs assessments, with a minimum allocation of 1 percent per state.

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the form of low- or no-interest loans to communities or utilities, repayment of which replenishes the funds and provides the ability to fund future loans for additional projects.

The Clean Water SRF was established in 1987 in amendments to the Clean Water Act, which was enacted to protect the nation's surface waters, such as rivers, lakes, and coastal waters and to maintain and restore the physical, chemical, and biological integrity of these waters. Funds can be used to pay for projects such as constructing or upgrading secondary or advanced wastewater treatment facilities, construction of new sewers or storm sewers, and similar projects, among other things.<sup>11</sup>

The Drinking Water SRF was established in 1996 in amendments to the Safe Drinking Water Act, which was enacted to establish national enforceable standards for drinking water quality in public water systems and to require such systems to monitor water to ensure compliance with standards, among other things. Funds can be used to pay for upgrading or replacing infrastructure to address violations of drinking water regulations or to replace aging storage facilities, distribution pipelines, treatment facilities, and similar projects related to public health protection. Unlike the Clean Water SRF,<sup>12</sup> assistance can be provided to privately owned community water systems, as well as publicly owned community water systems, and nonprofit noncommunity systems.<sup>13</sup>

In addition to annual appropriation funding provided to the programs, the American Reinvestment and Recovery Act of 2009 (Recovery Act) provided a large influx of funding for the SRF programs—in total \$6 billion: \$4 billion to the Clean Water SRF program and \$2 billion to the

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<sup>11</sup>Wastewater treatment involves several processes, including primary treatment to remove suspended solids; secondary treatment to further remove contaminants using biological processes; and tertiary or advanced treatment to remove additional material in wastewater, such as nutrients or toxic chemicals.

<sup>12</sup>Clean Water SRF funds used for financial assistance for construction or upgrades of treatment plants may be provided only to municipal, intermunicipal, and interstate agencies.

<sup>13</sup>A community water system is one that has more than 15 connections used by year-round residents or that regularly serves 25 year-round residents. Cities, towns, and communities such as retirement homes are examples. A noncommunity system is a public water system that is not a community water system and serves a non-year-round population of at least 25 individuals daily for at least 60 days of the year. Schools and churches are examples.



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Drinking Water SRF program. The act, which was passed in February 2009, required that projects funded with Recovery Act program funds had to be under contract within 1 year of the act's passage, or February 17, 2010. We reported in June 2011 that states had awarded contracts and obligated this funding, which they used to pay for major infrastructure projects.<sup>14</sup>

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**Stakeholders  
Identified Issues to  
Consider in Designing  
a Clean Water Trust  
Fund, a National Bank  
for Wastewater  
Infrastructure, and  
Public-Private  
Partnerships**

A variety of approaches have been discussed to pay for the nation's water and wastewater infrastructure needs. In May 2009 and June 2010, we reported on the views of stakeholders, including individuals and groups from the wastewater industry and federal, state, and local governments with knowledge of water and wastewater infrastructure issues,<sup>15</sup> of what is needed to create three of these financing approaches.

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**Clean Water Trust Fund**

A clean water trust fund would provide a dedicated source of federal funding for wastewater infrastructure, similar to federal trust funds such as the Highway and Airport and Airways Trust Funds, which are used to account for funds that are dedicated for spending on a specific purpose. As authorized by law, the federal government may control a trust fund, as well as its earnings, and raise or lower future trust fund collections and payments or change the purposes for which the collections are used. Stakeholders concluded that a number of issues need to be addressed in

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<sup>14</sup>GAO-11-608.

<sup>15</sup>See GAO-09-657 and GAO-10-728.

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creating a clean water trust fund.<sup>16</sup> The issues identified were (1) the administration and use of the trust fund, (2) the type of financial assistance that should be provided for projects, and (3) the activities eligible for funding.

*Administration and use of a trust fund.* Stakeholders told us that designing a clean water trust fund would involve deciding what agency or entity would administer the fund and whether the trust fund would be used to fund the Clean Water SRF or a separate program. A majority of stakeholders (15 of 20) expressed the view that a trust fund should be administered through an EPA-state partnership like the current Clean Water SRF program. Four of the remaining stakeholders thought that another entity should administer the fund, and one had no opinion on the matter.

Stakeholders had mixed views on how a trust fund should be used. About one-third (7 of 20) thought that a trust fund should be used to only fund the existing Clean Water SRF. These stakeholders said that they had an interest in building on the success of the existing program, avoiding redundant administrative costs associated with establishing a new program, and providing a dedicated source of funding for the existing program. Three of 20 stakeholders said that a trust fund should fund a separate and distinct infrastructure program from the Clean Water SRF. Some said that a separate program was needed because Clean Water SRF loan amounts can sometimes be inadequate to fund needs in large urban areas and that smaller communities may lack the administrative capacity to go through the process. However, five of 20 stakeholders said they favored using a trust fund to both fund the Clean Water SRF and to fund a separate program. In contrast, other stakeholders (3 of 20) opposed the creation of a trust fund because they said that utilities should be self-sustaining through the rates they charge their customers and by

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<sup>16</sup>The stakeholders we interviewed on the creation of a clean water trust fund included 50 individuals and groups with knowledge of water and wastewater issues, including industry associations; federal, state, and local government officials; and industry representatives. Based on the information gathered from these interviews, we developed a questionnaire and sent it to 28 national organizations with expertise in financing wastewater projects, constructing and maintaining wastewater projects, local and state wastewater infrastructure needs, and environmental protection. Twenty-two stakeholders responded to our questionnaire; however, because not all stakeholders answered every question, the total number of respondents can vary for each question. See GAO-09-657 for detailed information on our scope and methodology.

more efficiently managing their systems. The remaining stakeholders said the fund should be used for other purposes.

*Type of financial assistance.* Another design issue that stakeholders identified was specifying the type of assistance—grants or loans—that a clean water trust fund would provide. More than half of the stakeholders (13 of 21) favored distributing funding through a combination of grants and loans. The type of assistance provided by a trust fund, according to many stakeholders, should be tailored to the applicant's needs and capacity. Other stakeholders said that while loans impose discipline on borrowers, grants may be needed for certain communities that cannot make loan repayments, such as those with declining or low-income populations. In contrast, a few stakeholders thought that either loans or grants should be provided from a clean water trust fund.

*Eligible activities.* Stakeholders said that designing and implementing a clean water trust fund would involve determining the type of wastewater infrastructure activities that the fund would support. The majority of stakeholders supported using funds to pay for planning and designing wastewater projects (18 of 21) and for capital costs of projects (19 of 21), similar to the Clean Water SRF.

*Funding a Clean Water Trust Fund:* Our May 2009 report identified potential sources of revenues for a clean water trust fund, but each of these faces obstacles to implement. A variety of options could be enacted, including excise taxes on products that contribute to the waste stream, additional taxes on corporate income, a water use tax, and an industrial discharge tax. However, it may be difficult to raise substantial sums for a clean water trust fund from any one source. Table 2 summarizes the options we identified and the implementation obstacles.

**Table 2: Options for Funding a Clean Water Trust Fund and Obstacles to Implementation**

Option	Description	Obstacles
Excise tax on products that contribute to the waste stream	A tax on products that contribute to the wastewater stream, such as beverages, fertilizers and pesticides, flushable products, pharmaceuticals, and water appliances and plumbing fixtures	Excise taxes require precise definitions of the products to be taxed, including a decision on per unit or percentage basis of tax  Internal Revenue Service would have to modify its excise tax collection and enforcement framework, update forms, train staff, and increase audit responsibilities
Additional tax on corporate income	Similar to the Corporate Environmental Income Tax to fund the Superfund program (until 1995)	Corporate income tax requires defining the types of corporations and the portions of income to be taxed

Option	Description	Obstacles
Water use tax	A tax on water use using volume-based charge or flat charge added to local residential, commercial, and industrial water utility rates paid by customers	Developing a tax collection system, structuring the tax, and determining the tax base would be necessary
Industrial discharge tax	A tax on industrial discharge by levying a fee on National Pollutant Discharge Elimination System permits or a tax on toxic chemical releases reported by industrial facilities	No federal system exists to charge such a tax Determining the tax base—permits or toxic discharges—would be necessary

Source: GAO.

### National Wastewater Infrastructure Bank

A national infrastructure bank could finance wastewater infrastructure through a variety of mechanisms, such as directly loaning money to eligible projects, guaranteeing municipal bonds to lower costs, and pooling loans from numerous smaller municipalities to lower costs. The majority of stakeholders responding to our questionnaire about creating a national infrastructure bank to fund wastewater projects supported the concept overall, but they identified three key areas that would need to be considered in designing such a bank.<sup>17</sup> The three areas identified by stakeholders are similar to those raised in creating a clean water trust fund: mission and administration, financing authorities, and project eligibility.

*Mission and administration.* A majority of stakeholders supported the creation of a bank, but their views varied on its mission and administrative structure. Of the 20 stakeholders who supported creation of a bank, about two-thirds (13) said its mission should be to fund infrastructure in multiple sectors, such as transportation, energy, water, and wastewater. The reasons for their views included that it would allow for coordination across sectors and that financial experts at such a bank would be able to apply their expertise to a wide range of projects. In contrast, one-third of

<sup>17</sup>To obtain stakeholders' views of a national wastewater infrastructure bank, we surveyed 23 (18 replied) national organizations with expertise in one of the following areas: financing and operating wastewater projects, constructing and maintaining wastewater infrastructure, local and state wastewater infrastructure needs, or environmental protection. In addition, we also sent the questionnaire to 14 (11 replied) financing experts to solicit additional views on this topic. See GAO-10-728 for detailed information on our scope and methodology. While a total of 29 organizations and individuals responded to the questionnaire, not all stakeholders rated each criterion. Thus, the total number of respondents varied for each question. See the report for the full results of our questionnaire.

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stakeholders (7 of 20) said that the bank's mission should be focused only on water and/or wastewater infrastructure.

Stakeholders did not agree on whether a bank should be administered as a new responsibility for an existing federal agency, structured as a government corporation, or structured as a government-sponsored enterprise. As we have previously reported, an entity's administrative structure affects the extent to which it is under federal control, how its activities are reflected in the federal budget, and the risk of exposure of U. S. taxpayers.<sup>18</sup>

*Type of financial assistance:* Most stakeholders also agreed on some of the mechanisms that a bank should offer for financing projects. In particular, a majority of stakeholders said that a bank should issue direct loans to projects (19 of 29) and loan guarantees (15 of 29) for projects.<sup>19</sup> Almost half of stakeholders (14 of 29) supported pooling loans for infrastructure projects into a larger bond to lower borrowing costs.

*Eligible projects.* Stakeholders differed in their views of what projects to fund through a national infrastructure bank but they agreed on how the projects should be prioritized, such as whether a bank should be used exclusively for large projects. Half of stakeholders (12 of 24) said projects of all sizes should be eligible for bank financing, while a third (8 of 24) noted that only large projects should be eligible.<sup>20</sup> One reason for supporting larger projects for financing was that these are beyond the capacity of the Clean Water SRF to fund. In addition, a majority of stakeholders agreed that a bank should prioritize projects for funding that address the greatest infrastructure need (18 of 29) and that generate the greatest public health (17 of 29) and environmental benefits (15 of 29).

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<sup>18</sup>See GAO, *Federally Created Entities: An Overview of Key Attributes*, GAO-10-97 (Washington, D.C.: Oct. 29, 2009) and GAO, *Fannie Mae and Freddie Mac: Analysis of Options for Revising the Housing Enterprises' Long-term Structures*, GAO-09-782 (Washington, D.C.: Sept. 10, 2009).

<sup>19</sup>Stakeholders could select more than one mechanism that a bank could offer, and thus, the total number of respondents selecting mechanisms may be greater than 29.

<sup>20</sup>The remaining four stakeholders replied "other" on the size of project that would be eligible.

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*Funding.* A majority of the stakeholders we surveyed agreed on the financing authorities for a national infrastructure bank, including how it should be funded and how it should finance projects. Specifically, most stakeholders (20 of 22) agreed that the federal government should provide all or some of the initial capital for a national infrastructure bank, though four suggested that federal funds should be augmented by private funds. Further, most stakeholders (21 of 23) agreed that a bank should be authorized to generate its own funds for operating expenses and lending, using multiple financing mechanisms (15 of 23). Some of these stakeholders stressed the need for a bank to have access to low-cost capital through borrowing from the Department of the Treasury and issuing tax-exempt bonds. However, we noted that the Internal Revenue Service said that these guaranteed bonds are not exempt, so a statutory exemption to allow tax-exempt, guaranteed bonds would be needed to accomplish this.

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**Public-Private  
Partnerships for  
Wastewater Infrastructure**

A third approach for financing wastewater infrastructure is to encourage private investment in projects, including through public-private partnerships at the municipal level. A privately financed public-private partnership, as defined in our June 2010 report, is a contractual agreement in which the private partner invests funds in the wastewater project, but the agreement does not include full privatization, in which the municipality sells its wastewater infrastructure assets to a private partner.<sup>21</sup> In that report, we identified and reviewed only a few privately funded public-private partnerships developed for wastewater since 1992, concluding that the use of such approaches is still uncommon for wastewater.<sup>22</sup> Stakeholders from municipalities and private companies engaged in such partnerships cited several advantages and challenges in their use.<sup>23</sup> The seven partnerships we identified and reviewed, the

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<sup>21</sup>GAO-10-728.

<sup>22</sup>This result echoes the results of a study by the Congressional Budget Office. See CBO, *Issues and Options in Infrastructure Investment* (Washington, D.C.: May 2008).

<sup>23</sup>To obtain views on public-private partnerships, we interviewed officials from municipalities involved in six of seven partnerships we reviewed. We also interviewed officials from other municipalities in the states where four partnerships are located: Alaska, California, New Jersey, and Ohio. In addition, we interviewed officials at six of the largest private companies involved in water and wastewater public-private partnerships. See GAO-10-728 for detailed information on our scope and methodology.

parties administering the partnership, the eligible activities and assets, and the form of financial assistance are described in table 3.

**Table 3: Wastewater Public-Private Partnerships Developed since 1992 Identified by GAO**

Municipality	Company	Year initiated	Type	Initial term (years)	Assets included	Up-front payment
Arvin, CA	U.S. Filter (now Veolia Water)	1999	Lease and DBFO <sup>a</sup>	35	Lease: existing plant DBFO: upgraded treatment plant components	Yes
Cranston, RI <sup>b</sup>	Triton Ocean State LLC (now Veolia Water)	1997	Lease	25	Treatment plant, collection system, pumping stations, industrial pretreatment	Yes
Fairbanks, AK	Golden Heart Utilities	1997	Lease and asset sale <sup>c</sup>	30	Lease: treatment plant Asset sale: collection system	Yes
Franklin, OH <sup>d</sup>	Wheelabrator EOS (now Veolia Water)	1995	Lease and asset sale <sup>e</sup>	20	Lease: one process within treatment plant Asset sale: treatment plant	Yes
North Brunswick, NJ <sup>f</sup>	U.S. Water (now United Water)	1995	Lease	20	Collection system and pumping stations <sup>g</sup>	Yes
Santa Paula, CA	Santa Paula Water, LLC <sup>h</sup>	2008	DBFO	30	New water recycling facility	No
Woonsocket, RI <sup>i</sup>	U.S. Filter (now Veolia Water) with third-party financing through LaSalle Bank and ABN AMRO	1999	DBFO	20	Upgrade of existing treatment plant	Yes

Source: GAO.

<sup>a</sup>DBFO refers to an agreement to design-build-finance-operate.

<sup>b</sup>Since officials from Cranston declined to speak with us, this information about Cranston's privately financed public-private partnership is derived from publicly available sources.

<sup>c</sup>The city of Fairbanks leased its wastewater treatment plant, which falls within the report's definition of a privately financed public-private partnership. Fairbanks sold its collection system, which falls outside of the scope of the report.

<sup>d</sup>The wastewater treatment plant involved in the 1995 lease and asset sale was originally owned by the Miami Conservancy District, a flood-control agency in southwestern Ohio. The treatment plant serves the communities of Franklin, Carlisle, and Germantown, as well as unincorporated areas of Warren and Montgomery counties.

<sup>e</sup>The city of Franklin leased a portion of its wastewater treatment plant, which falls within the report's definition of a privately financed public-private partnership. Franklin sold other parts of the treatment plant.

<sup>f</sup>The North Brunswick lease was terminated in 2002.

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<sup>a</sup>North Brunswick also leased their drinking water assets, including a treatment plant, as well as the distribution system.

<sup>b</sup>Santa Paula Water, LLC, is a partnership between PERC Water and Alinda Capital.

<sup>c</sup>The wastewater treatment plant involved in the 1999 DBFO serves multiple communities: Woonsocket, Rhode Island; North Smithfield, Rhode Island; Cumberland, Rhode Island; Bellingham, Massachusetts; and Blackstone, Massachusetts.

Officials from the municipalities and companies we interviewed reported advantages of privately funded public-private partnerships, including faster delivery of facilities or upgrades, access to alternative sources of financing, cost and operational efficiencies, access to expertise and technology solutions, up-front payments to municipalities, and increased focus by local governments on their other functions. For example, two of the municipalities we interviewed were facing regulatory deadlines that required them to upgrade their facilities or pay fines. Company and municipal officials said that private procurement may be faster because it is more streamlined than public procurement. Other municipal officials said that they could not access the bond market to pay for their project, and another community official said that it was difficult to get the public to approve their bonds, and the public-private partnership offered an alternative source of financing.

Challenges that municipal and company officials reported included public and political opposition, higher costs to borrow with private financing, difficulties with combining public and private financing, loss of municipal control over a project, lack of experience with public-private partnerships, costly and difficult contracting, and legal issues.

- The challenge most often cited by municipal and company officials was public and political opposition. The public is often concerned about the possibility that a company would not be as responsive to ratepayers as a municipal government; other public concerns are about job losses and sewer rate increases. For example, one community we reviewed terminated its agreement in 2002 because, in part, of a public reaction to rate increases. In another case, public opposition derailed the development of a partnership.
- Financing challenges include the fact that private financing generally costs more than public financing and that combining public and private financing is difficult. In our June 2010 report, we cited a National Research Council study that said private financing may be 20 to 40 percent more expensive than public financing, although officials said that tax rules allowed companies to depreciate capital and find cost savings over the long term. In addition, the public entity must



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follow Internal Revenue Service tax rules to avoid changing the status of existing tax-exempt municipal bonds to taxable bonds, and may have difficulty meeting the requirements to issue tax-exempt bonds in the future.

- Several municipal and company officials told us that they had concerns with losing control over their facilities and rates. For example, officials in Santa Paula, California, told us they experienced a loss of control over plant design, choice of equipment, and construction costs after entering into their design-build-finance-operate agreement. The terms of this kind of agreement determine the extent to which a municipality may retain control in a public-private partnership.
- Municipal and company officials also said that they lack experience with developing partnerships and that this might limit development of any such partnerships. Related to this is costly and difficult contracting, another challenge cited by municipal and company officials. Finally, state and federal laws may raise difficulties in entering into public-private partnerships. For example, EPA officials stated that prior to accepting private financing, municipalities must repay any remaining federal investment for facilities built under the construction grants program of the 1970s and 1980s, as well as any other federal grants.<sup>24</sup>

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### Issues with Efficiently Financing Water Infrastructure

As the nation faces limited budgets and funding for federal programs, the importance of targeting federal funds to communities with the greatest need and spending funds efficiently increases. Part of this effort, as our work and that of EPA's Inspector General shows, is determining which communities and utilities have the greatest need for funding and targeting federal funds to help these communities. One way to target funds is to provide them to communities that are economically disadvantaged. The Drinking Water SRF program requires states to consider household affordability, among other factors, in prioritizing drinking water projects, and it also allows states to provide extra subsidies to disadvantaged communities, under some conditions (the Clean Water SRF allows states to consider community financial need in prioritizing funds for projects, but does not require it). As we reported in June 2011, however, EPA has

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<sup>24</sup>Prior to the creation of the SRF programs, EPA provided grants to states for infrastructure construction.

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limited information about how states target disadvantaged communities for SRF funding.<sup>25</sup> Furthermore, while the Recovery Act did not require states to provide funding to disadvantaged communities, it did require them to provide a portion of Recovery Act Clean Water and Drinking Water SRF funds to communities without the requirement to repay the funds—a concept called principal forgiveness—and states targeted this principal forgiveness to entities that they determined were economically disadvantaged. While some states had data, according to an April 2011 EPA Inspector General report, EPA did not have the overall data to ensure that Recovery Act SRF funds were targeted to the disadvantaged communities.<sup>26</sup>

Our October 2012 report on rural water infrastructure funding shows the potential for greater efficiency in federal funding.<sup>27</sup> One group of communities that has a difficult time paying for infrastructure improvements is small, often rural, communities that have 10,000 or fewer residents. Unlike large communities, which can spread costs across a broader public, small, rural communities often cannot pay for infrastructure improvements through rate increases because they have a low number of ratepayers to bear the costs. Rural communities also often lack access to bond markets and cannot, therefore, raise their own capital to pay for projects. As a result, they are more dependent on federal financial assistance to help pay for their projects.

In October 2012, we reported on the three largest sources of federal funding for rural water infrastructure and identified opportunities for these programs to coordinate and lower the costs to communities applying for funding from more than one program and agency. Our analysis showed that program overlap among EPA's Clean Water and Drinking Water SRF programs and the Department of Agriculture's Rural Utilities Service Water and Waste Disposal program, which provides funding for both drinking water and wastewater projects in low-income rural communities of 10,000 or less, can result in potential duplication of communities' efforts to prepare funding applications and related documents, including preliminary engineering reports and environmental analyses. Engineers

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<sup>25</sup>GAO-11-608.

<sup>26</sup>OIG, *EPA Faced Multiple Constraints to Targeting Recovery Act Funds*, Report No. 11-R-0208 (Washington D.C.: Apr. 11, 2011).

<sup>27</sup>GAO-13-111.

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we interviewed estimated that preparing additional engineering reports could cost anywhere from \$5,000 to \$50,000 and that the cost of an environmental analysis could add as little as \$500 to a community's costs or as much as \$15,000. The additional time and resources add costs to projects.

Further, we found that inefficiencies in funding projects arose when state-level programs did not cooperate in funding projects. Specifically, the officials with the Rural Utilities Service in Colorado and North Carolina reported needing, or expecting, to deobligate more than \$20 million that they had committed to fully fund projects because they were unaware that the state SRF programs had also committed to fully fund the same projects. The two Rural Utilities Service state offices could not meet internal agency deadlines to fully obligate their available funds and, as a result, had to return these funds to a central headquarters pool for reallocation. We recommended several actions to improve coordination among the agencies and programs, such as completing an effort to develop guidelines to assist states in developing their own uniform preliminary engineering reports to meet federal and state requirements and starting an effort to create uniform guidelines for environmental analyses that could be used, to the extent appropriate, to meet state and federal requirements. EPA and USDA neither agreed nor disagreed with these recommendations, but they have implemented one action and have begun to take steps on the others.

Part of the effort to efficiently finance water and wastewater infrastructure funds is managing existing infrastructure efficiently to manage costs of repair and replacement. As we reported in March 2004, comprehensive asset management is an approach that could give utilities the information and analytical tools they need to manage existing assets more effectively and to plan for the future.<sup>28</sup> Using asset management concepts, utilities and other organizations responsible for managing capital infrastructure can minimize the total costs of designing, acquiring, operating, maintaining, replacing and disposing of capital assets over their useful lives. The steps involved, as we cited in our March 2004 report, include the following:

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<sup>28</sup>GAO-04-461.

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- Collecting and organizing detailed information on assets. Collecting basic information about capital assets helps managers identify their infrastructure needs and make informed decisions about assets. An inventory includes descriptive information about assets, an assessment of the assets' condition, and information on the assets' value.
  - Analyzing data to set priorities and make better decisions about assets. Under asset management, managers apply analytical techniques to identify significant patterns or trends in the data they have collected on capital assets, help assess risks and set priorities, and optimize decisions on maintenance, repair, and replacement of assets. This can include a life-cycle cost analysis or risk assessment.
  - Integrating data and decision making across the organization. Managers ensure that the information collected within an organization is consistent and organized for the people who need it.
  - Linking strategy for addressing infrastructure needs to service goals, operating budgets, and capital improvement plans.

Our 2004 report recommended various actions that EPA could take to promote asset management, and EPA has taken those actions, including holding workshops for utilities and coordinating its ongoing initiatives. In addition, in its SRF sustainability policy, EPA supports asset management as an approach to increase the longevity of infrastructure. The last time we reviewed utilities' use of asset management was in 2002.<sup>29</sup> At that time, we found that, of large utilities (i.e., those with over 10,000 users), one-quarter did not have asset management plans. We have not updated this work and do not know the extent to which more utilities, including smaller utilities, now have plans. Those utilities that did have asset management plans reported benefits such as being able to better justify rate increases and bond ratings. In addition, utility officials believed that such plans would slow the rate of growth of their costs for capital, operations, and maintenance.

In conclusion, Mr. Chairman, the funding needs for upgrading the nation's drinking water and wastewater infrastructure require attention. Much of this burden will be borne by local communities and utilities and the

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<sup>29</sup> GAO-02-764.

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ratepayers using the services provided. Given the magnitude of our projected infrastructure needs nationwide, it is important that utilities adopt a strategy to manage the repair and replacement of key assets as cost-effectively as possible, as well as a plan to sustain their infrastructure in the long term. The states and federal government have played a long-time role in assisting local communities and utilities, and will likely continue to do so. In considering approaches for providing continued federal assistance, it is helpful to consider how an entity providing assistance will be administered and funded, how it will finance projects, and what projects will be eligible. It will also be important to consider how to target funds to those with the greatest needs and to spend funds efficiently.

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This concludes my prepared statement, Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee. I would be pleased to answer any questions you have at this time.

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#### GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact me at (202) 512-3841 or [gomezj@gao.gov](mailto:gomezj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Susan Iott (Assistant Director), Liz Beardsley, Mark Braza, Cindy Gilbert, Scott Heacock, Rich Johnson, Micah McMillan, Janice Poling, and MaryLynn Sergent made key contributions to this testimony.

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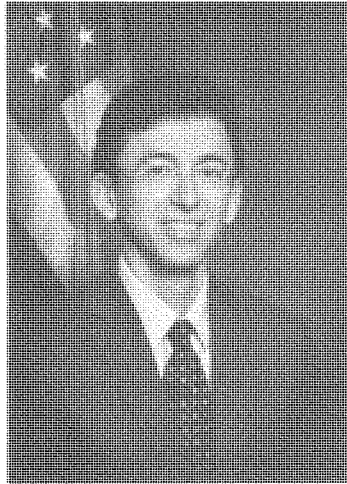
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J. Alfredo Gomez serves as a Director in the Natural Resources and Environment (NRE) team of the U.S. Government Accountability Office. He is responsible for overseeing the team's work in environmental protection and food safety issues. His environment portfolio currently includes work in cleanup of hazardous substances, drinking and clean water issues, ecosystem restoration, pesticides, toxic chemicals and climate change. Mr. Gomez recently returned to the NRE team after completing a 1-year rotation with the International Affairs and Trade team where he led a body of work related to international trade issues. Mr. Gomez has also produced numerous reports and testimonies addressing the safety of imported food, selected countries food safety systems, dietary supplements, and agencies' strategic planning and management. Mr. Gomez began his career in the Chicago Regional Office in 1991 working on environmental protection issues. He left GAO for a number of years to work for the Honolulu City Council where he conducted audits of local government agencies. Mr. Gomez returned to GAO headquarters in 1998. Mr. Gomez holds a bachelor's degree in Chemical Engineering from Rice University and a master's degree in Public Policy Studies from the University of Chicago.



## CLEAN WATER INFRASTRUCTURE FUNDING BACKLOG

Mr. SIMPSON. Thank you, both of you, for your testimony.

This is a really perplexing problem that we face. In fact, I think it is one of the great challenges that we face, not only water infrastructure systems, but infrastructure in general, and a lot of these systems are meeting their lifespan.

The concern I have is two-fold. One is being able to address this overwhelming need when you look at, what did you say, \$635 billion in clean water and safe drinking water needs assessment out there, and the fact, as I said in my opening statement, we are putting \$2 to \$3 billion in there every year, and we can address this in about 250 years. And if nothing gets worse over 250 years, then we will have fixed it in 250 years. I do not think anybody thinks that is realistic.

So on the one hand, what we are appropriating is not meeting the needs to address the backlog and keep up with this infrastructure. Secondly, in an environment of reduced budgets, there is more and more pressure being placed on every aspect of our budget. We are financing now with appropriated dollars going into the revolving loan funds. It puts pressure on all the rest of the budget. So we do not do an adequate job there, and we do not do an adequate job of addressing the problem.

And what I have been frustrated with over the years is how do we get out of that? You mentioned several different types of alternative financing, whether it is the trust fund such as, I suspect, the highway system uses, or a national infrastructure bank, which was discussed for a number of years when Chairman Oberstar was chairman of the Transportation Committee, or the public-private partnership arrangements. But certainly, Congress needs to take up some way to create a way of financing these systems for the future. I do not have the answer for it, obviously.

I think Earl Blumenauer and I introduced a bill a couple of years ago that essentially created a trust fund. The question is, what do you tax? With the highway trust fund, we can tax gasoline or something that is pretty easy to do. Trying to address it by creating a tax on clean water is a little more difficult. So we looked at the industries that benefit the most by having clean water, things like that, and having some tax revenue from them going into a trust fund. But it is one of the challenges that I think Congress faces in general.

You mentioned that we have spent, since the life of the program, \$120 billion, us and local units of government, all together.

Mr. SHAPIRO. That was the total outlay. The \$120 billion is total outlays from the State Revolving Fund Programs, so that includes the federal capitalization money, the 20 percent state match, any of the funds that are recycled into the system through repayments, as well as, in some cases, some interest that accrues as states manage the resources in their funds. So it really emphasizes the power of leveraging the dollar through the recycling of those dollars back into the funds as loans are paid off.

In addition, though, you very correctly point out that in many cases, especially in larger projects, there are other sources of fund-

ing that support infrastructure, municipal bonds being a principal resource, and that would be in addition to the \$120 billion.

Mr. SIMPSON. As I read the history of all of this, when they created the State Revolving Loan Funds, I get the impression that the idea was at the time that we would put these resources into it as kind of seed money to start these revolving loan funds, and that you would build up enough in these revolving loan funds that eventually the federal government would not be putting any more money into them, that they would be self-sustaining with the revenue coming back in to fund other projects and so forth. Was that the idea behind the revolving loan funds, and if so, how much is the federal government going to put into it?

Mr. SHAPIRO. Well, I think conceptually, and I was not around when these provisions—

Mr. SIMPSON. That is why I said reading the history of it.

Mr. SHAPIRO. But I think the idea was that they would, over time as the funds build up, you would decrease perhaps the relative need for federal dollars. I do not know whether the thought was ever that they would come to absolute zero. I think there are a couple of, you know, issues that we have to address first as deciding ultimately what the right level would be for revolving funds, and then even in the situation where we reach that level, there are certain uses of the funds that would deplete the base over time. If states want to continue to provide low-interest loans, which is the key, there is going to be some erosion. Set-asides for grant or loan forgiveness, which is very important to many of the poorer income communities, would reduce the size of the funds in the systems.

So if we are talking about achieving some stable level of funding over time, there will always be some erosion that one would have to attend to, but again, there is a significant public policy question over what level is the right level.

And just to sort of clarify one point you made, although it is easy to compare the \$600 billion-plus in total needs over 20 years, with the small annual federal appropriation, as I mentioned, in the most recent year there was about \$7.7 billion of outlays, and so if you multiply that over 20 years, it is very simplistic, but you see that the funds, the revolving funds can address a significant, not maybe the majority, but a very significant percentage of total projected cost. It is a testament, I think, to the design of those funds and their management by the states that they are providing such an important resource.

And just one other point, because of the different history of when the funds began and how much capital they have accumulated over time through annual appropriations, you really have to look at the clean water funds and the drinking water funds a little bit differently, since their capitalization is much different. The clean water fund has had more time and more money.

Mr. SIMPSON. But as you say, \$7.7 billion was invested in this over last year, and if you look over the next 20 years if the same rate of investment went on, you are talking about \$150 billion, somewhere in that neighborhood. Over the next 20 years, what do you anticipate, or do you anticipate that backlog need would have grown? Would it have grown more than the \$150 billion we invested?

Mr. SHAPIRO. Well as I said, our current 20-year surveys suggest that the need we can account for is about \$636 billion. Now, there are good reasons, and many people will probably proffer additional ones, why those numbers could well be low. They only account for projects that are fairly certain in terms of our ability to survey, so once you get out beyond 5 years, it is harder and harder to get accurate estimates, and I think a lot of people believe, for that reason, that those might be underestimates of the actual ultimate 20-year need.

Mr. SIMPSON. Do we have any idea on what the growth rate of that needs assessment has been? When is the last time we did the GAP analysis?

Mr. SHAPIRO. Well, there are two different things. The surveys take place roughly every 4 years. The results that I cited were from reports generated in 2008 and 2009. We have new survey results from the drinking water survey that should be coming out this year, and we have another round of survey information that will be coming out under the clean water survey in the near future. The GAP analysis that people referred to was one that was developed, I think, in 2002 and is based on a separate set of information and analyses. We have not repeated that GAP analysis.

Mr. SIMPSON. When I was reading kind of the history of this, the first GAP analysis that was done—I do not know if it was a GAP analysis or if it was the 4-year survey that went on—by the time the next one was done, the need had grown by about \$100 billion, in spite of the investment that was made over that time between the surveys. So I guess the question is, is while we can say we are going to put \$150 billion into it totally over the next 20 years, if the need assessment is going to grow by \$200 billion, we are losing ground.

Mr. SHAPIRO. There is no question that certainly if you compare the most recent survey information that I cited with the previous survey, there was a significant increase in needs reported, and that, you know, we will have to see what the results of the next cycle are. But needs have been growing, that is correct.

#### ASSET MANAGEMENT

Mr. SIMPSON. Are there ways to reduce the cost of the infrastructure building that we are doing, and what are those and what are the new technologies and so forth that are being used to reduce the cost of what these systems cost?

Mr. SHAPIRO. Well, as GAO has pointed out, managing assets more efficiently and effectively should help reduce the total costs needed to provide good service.

Mr. SIMPSON. What do you mean by managing assets more efficiently?

Mr. SHAPIRO. Replacing pipes that are wearing out at the right time before they break and destroy streets, managing the replacement of infrastructure so that you are replacing it as it is needed in an effective way as opposed to either too early or too late, by doing a good job of cataloging and inventorying the assets in place, and a good process of auditing and updating the information so that you have a better sense of where the investments are needed more effectively.

Another tool that we think will have growing importance is, especially in dealing with the expenses associated with managing stormwater and combined sewer overflows, is the use of green infrastructure, as I mentioned, more natural approaches to using green space and infrastructure that deals more naturally with the flow of water to reduce the size of the gray infrastructure, the holding tanks, the storage facilities, that might be needed to deal with surge capacities associated with storms. That should reduce costs. So there are a number of tools that we have at our disposal to help mitigate some of the cost increases, and a lot of it comes down to being smart about using the best tools that are available, and smart about using and planning for a sustainable approach to asset management.

Mr. GOMEZ. Mr. Chairman, if I could provide an example here.

So in the work that we did looking at asset management, we talked to a lot of utilities and reported benefits from using asset management. For example, the improved decision making that they had about their capital assets, such as getting better understanding of maintenance as was mentioned, rehabilitation, and replacement needs. So for example, we heard the Seattle Public Utilities used asset management to target its maintenance resource. In particular, they used a risk-based approach to target pipeline repairs. So for example, they were looking at the age of the pipes, they were looking at the material, they were looking at the proximity to historic landfill, street slopes, to calculate the risk of ruptures.

And so using that information, they were able to identify 15 percent of the pipes that were at high risk of rupture, and they were able to focus and repair those. So it allows them to get a good sense of their inventory, what the condition of that inventory is, and then focus their dollars on it.

Mr. SIMPSON. Years ago when I sat on city council, I can remember we sent some of those monitors down some of our wastewater lines and water lines and all of that kind of stuff, and I was surprised to see that they were made of brick, a lot of them. And Idaho is a relatively new state compared to a lot of them. But tree roots had grown in and all of that type of thing. And we then went to steel and so forth. Are there other types of materials that could hopefully address this problem that would be cheaper or last longer or anything like that?

Mr. GOMEZ. Not that we have discussed, but it is possible from your second panel that folks may have some ideas about newest technology. We also learned from using asset management that it provided for a more productive relationship with the governing authorities, rate payers, and others. So for example, the Louisville Water Company was able to use asset information to convince its governing board that it needed to increase rates because they would not be able to cover the expected costs. So I think it gives utilities the information that they need to make those cases to either increase rates or to focus attention on those areas that need it most.

Mr. SHAPIRO. And as I understand, there has been continual improvement in the materials that are used for the underground infrastructure to improve their strength and durability. There has

also been some real progress made in what is so-called in situ approaches to relining or even fully replacing pipes without having to dig up the city streets and incur the huge costs and disruptions associated with that. So industry has been responding, I think, creatively in figuring out how to do these jobs better and more efficiently.

#### REGULATORY COSTS

Mr. SIMPSON. Last question. Do you know what the cost of—I want to say the cost of regulation, but all of it is due to regulation, I suspect, of some sort of another. But as that gap or that needs assessment grows, how much of that is growth because of increased regulations of new findings or new chemicals or the like? I think specifically if we lowered the arsenic standards to what is it, 10 parts per billion now, and we lowered that from 50 parts per billion, which put increased pressure on small communities particularly to reduce that arsenic level, which has cost them an awful lot of money. Do we know the extent of the cost of the regulations?

Mr. SHAPIRO. I do not have the information right in front of me, but our needs surveys do provide some estimates associated with costs incurred to meet regulations. But I would also have to say that typically those are not the majority of the costs that we are dealing with. The basic provision of, you know, the infrastructure in the case of drinking water to treat it to a point where it meets basic standards, get it distributed to residences or businesses, and the maintenance and continued upgrading of that is a large share of the total cost, and likewise in wastewater. The basic infrastructure for collecting and providing basic treatment is also a substantial cost.

There is no doubt that as we identify important health-related reasons to lower our standards or to regulate materials that have not previously been regulated, there typically are additional costs, which we evaluate in the course of the rulemaking and try to be as accurate as possible in forecasting.

Mr. GOMEZ. Mr. Chairman, I just wanted to add to that point.

So in our work, we did not focus on that particular issue, linking it to the regulations; however, what we did find, though, is that a good amount of that cost is due to the aging and deterioration of the infrastructure.

Mr. SIMPSON. I just found out that the EPA and the states arrived at an estimate of \$52 billion in regulatory costs versus the \$282 billion in non-regulatory costs.

Mr. Serrano.

#### DISASTER RELIEF

Mr. SERRANO. Thank you, Mr. Chairman. I had a couple of questions myself, and then I inherited Mr. Moran's binder, so I will mix and match here, Mr. Chairman, and you tell me when my time is up, so I will try to do the best I can here.

Let me ask you a question that I had in two parts. The first part is the waterways and shorelines of my region in New York that were severely impacted by Hurricane Sandy. Rebuilding efforts are just getting underway and it is important that we do it in the smartest and most cost-effective way possible. Could you both

speaking about the ways in which the restoration and rebuilding from Hurricane Sandy is an opportunity to use green infrastructure projects, not just to filter and cleanse runoff but also to protect and secure communities against future storms.

And the second part is what role do you folks play in a situation like that? Is it like FEMA where FEMA comes in and gets involved, or do you wait for the municipality to call you? We have had 9/11—New York years ago went through something that it never thought it would see, and we always saw graphics on TV about these kinds of storms but never saw them upfront. So now it is the issue of water and not just for the beaches but the water for drinking. So number one, or number two, you go in, what is happening, and what is the best way to deal with this as we rebuild?

Mr. SHAPIRO. Well, I will answer number two first and then I will go back to number one. But EPA has a significant role as part of the overall plan for any emergency response situation. We are a member of the team and are typically called upon in situations which almost always occur in hurricanes, other kinds of natural disasters where there may be releases of pollutants or toxic chemicals. My own office, the Office of Water, works very closely with our emergency response colleagues at EPA as well as FEMA and other federal, Corps of Engineers in looking at issues of infrastructure damage and assessing responses that are needed either during the course of the emergency or in the recovery period that follows.

So again, our exact role varies from emergency to emergency but in the case of Hurricane Sandy, we had EPA staff deployed to the federal response centers in New Jersey and New York to deal with a number of issues, among them assisting in assessing the availability and damage to water and wastewater infrastructure, so that is a very important part of our role.

In the case of Hurricane Sandy, we have really been involved much more intensively in the recovery efforts than we have in the past, and as you know, Congress in its appropriations for recovery from Hurricane Sandy appropriated \$600 million through the revolving loan programs to assist, and this is really unique, to assist not in the reconstruction of water and wastewater facilities that were damaged, because FEMA has resources to do most of that, but actually to look beyond, you know, kind of simply building the same things that were there before but rather enhancing as appropriate facilities and the infrastructure in ways that make them safer against hurricanes and flooding and other natural disasters and increase their resilience in the event that there is another—which there will be inevitably—another major hurricane or other natural disaster. So we are working closely with the states to figure out how to implement that unique piece of legislation through the revolving fund programs, and we hope, and the plan really is to integrate various federal resources so that our money gets used in a way that is appropriate but complements resources that would be available from FEMA as well as HUD in community development block grants, for example, that are being made available.

Mr. SIMPSON. Will the gentleman yield?

Mr. SERRANO. Sure.

Mr. SIMPSON. So let me get this straight. FEMA pays for the construction, if you will, that was done by the hurricane to wastewater and water treatment facilities?

Mr. SHAPIRO. FEMA has the authority to pay for restoring facilities that have been damaged, you know, once there is a natural disaster declaration, and the resources have been made available through the Hurricane Sandy appropriations to fund a substantial portion of that work. My understanding is, now they are in the process of assessing the damages and coming up with appropriate estimates. I am sorry. Should I continue?

Mr. SERRANO. Sure.

#### GREEN INFRASTRUCTURE

Mr. SHAPIRO. So that moves into green infrastructure, and we are very much hoping that we will be able to work with the states and through EPA's regional office as well as with other federal agencies so that the restoration activities that take place do provide a model for the use of approaches, green infrastructure and other complementary approaches, that enhance the resilience and protect the facilities in a more effective way than we were able to do in the past, so as my testimony points out, green infrastructure allows us to use natural features of the landscape as well as engineered structures like porous pavement and green roofs to slow down the surge of floodwater, to absorb it, to get part of it returned to the groundwater, part of it is lost through evapotranspiration so that there is less of a surge and a slug of pollutants that occurs during the storm.

There are also aspects of green infrastructure such as use of either engineered or natural wetlands that can aid in resisting the surge of the ocean during a storm, absorb excess runoff and absorb pollutants so in general, to accomplish both the protection and resiliency goals in a way that is more effective and also as a benefit often provides attractive green space that enhances communities at the same time and deals with some other problems like helping to clean the air. So it is not a panacea for every problem but we see green infrastructure as being a major component of our infrastructure vision for the future.

Mr. SERRANO. Mr. Gomez.

Mr. GOMEZ. So we have some upcoming work that is looking at how states and locals and the federal government are adapting to these kinds of events, and in particular we are looking at how utility efforts are adapting to storm damage. Rebuilding is a really good opportunity to see how you can better adapt to these events, so it is an excellent opportunity for folks to see what they can do to improve on the existing infrastructure.

In terms of how else GAO can help is, GAO usually is asked to go in and look at the progress of the federal rebuilding efforts, so we have done that in the past and that is something where we could also see in this effort with Superstorm Sandy how the federal effort is progressing.

Mr. SERRANO. Well, I thank you both for a very thorough answer.

When I first got involved in politics a long time ago in the state assembly in New York, Mr. Chairman, water and so many other issues were issues not related to New York City, certainly not to

the Bronx. Water was something that came through the faucet and that was it. We thought meat came from the supermarket. And then as you grow up and you understand what is going on, you realize how important it is. What has really changed is that, number one, people in crowded cities have in the last generation, or at least 10, 15 years, and we have done with the Bronx River, and the Bronx, as you know, Mr. Chairman, just getting much more involved in using what is around them for recreation and making very serious statements about using that. And secondly, when you see a situation like this, more and more the urban centers are dealing with water issues, water availability and water pollution and so on and so forth. Now, these issues bring us together. They are not issues for someplace out West or in the South. They are also for the urban centers. So I thank you.

#### CHESAPEAKE BAY RESTORATION

And Mr. Chairman, with your permission, I will ask one more question from Mr. Moran's binder, because it affects us. Around here, you always see New York bagels, New York pizza. That is to tell you that they are selling a good product. In the Bronx, we have Maryland crabs, because if you put Bronx crabs, it may not go over that big, so we exploit our pizza and so on.

So the question, Mr. Shapiro, is, you know that the Chesapeake Bay is on a "pollution diet" and our State of Virginia along with Delaware, D.C., Maryland, New York, West Virginia and Pennsylvania have to implement changes to reduce pollution into the bay watersheds. How much of the pollution problem in the bay is related to issues with wastewater treatment? And as Mr. Moran mentioned in his statement, D.C. needs to spend \$2.6 billion to fix their combined sewer overflow problem that affects the bay. So we have a total figure for infrastructure needs to get the bay in compliance. And before you answer that question, if there is any reporter here, please do not get me in trouble in the Bronx. We do have other things that we offer other than crabs.

Mr. SHAPIRO. Before I begin my response, I just want to compliment the work that has been done on the Bronx River. I think we really point to that as one of the models in the country for how in an urban area communities have come together around water and—

Mr. SERRANO. You know, a beaver came back after 200 years to New York City.

Mr. SHAPIRO. Did he stay?

Mr. SERRANO. He stayed. Ask me the beaver's name.

Mr. SHAPIRO. What is the beaver's name?

Mr. SERRANO. Jose.

Mr. SHAPIRO. I learned something. Thank you.

Getting on to the Chesapeake Bay, what we found in looking at the sources of pollution in the bay that the large wastewater treatment plants including Blue Plains but also others in the urban areas of the bay are a substantial source of nitrogen and phosphorus. The states at this point have stepped forward and put together a comprehensive plan for addressing the point sources, the wastewater treatment plants, and significantly reducing their loads of both nitrogen and phosphorus. At Blue Plains, the investments



that are going on there as well as in cities across the bay watershed, really are testimonies to the willingness of communities to step up to help address the problems in the bay. But the wastewater treatment plants alone in managing their nutrients will not solve the problems, and our pollution diet that you referred to really calls for significant reductions from a variety of sources including agricultural sources, which have been contributing nutrients as well.

Mr. SERRANO. Thank you, Mr. Chairman.

Ms. HERRERA BEUTLER [presiding]. Madam Chair.

Mr. SERRANO. Madam Chair.

Ms. HERRERA BEUTLER. That will probably be the only time I get to say that. It is pretty exciting.

Mr. SERRANO. It comes sooner than you think.

#### CLEAN WATER ACT REGULATIONS

Ms. HERRERA BEUTLER. Well, I guess I am the next to ask a question.

There was a couple of thoughts I had as I have been listening to this, and you have been sharing your comments about the urban water challenges and how you are addressing those. I come from a different situation in southwest Washington State. On the west side of the state, we actually get quite a bit of water, so much water that it is hard for us to imagine not having it. And one of the challenges, as you are talking about this and talking about the aging infrastructure, I was thinking about in one of my counties, we have seven very small cities and then a larger city. I do not know if you are familiar with the Western Washington Stormwater Manual. It is a step well beyond the Clean Water Act and what we have received even from the EPA. We have asked, is this under Clean Water what we are supposed to be doing, and we have had informal confirmation that no, that is the state going beyond. And what we are dealing with is, so I have got these small cities who have this aging water infrastructure and would like to update it, change it. And we have sewer needs just like everybody else, but the stormwater fees that are being added to these cities, these tremendous amounts of money have more to do with meeting a new regulatory standard that is not getting us the better, newer infrastructure. It is just more punitive in nature.

So I was very interested in seeing—and the chairman asked the question about regulation versus just updating maintenance and doing what we need to do. Is there any way I could get some specific information about our region or Washington State in terms of the regulatory cost versus the aging infrastructure and the maintenance? Because that seems to be more where you all are focusing. Is that possible to get that information?

Mr. SHAPIRO. I do not know how much specific detail we have in our surveys concerning just your part of the state because they are surveys, especially on the Clean Water side. We can check to see.

#### FUNDING ARRANGEMENTS

Ms. HERRERA BEUTLER. I would be happy with statewide information as well. We just have very different parts. I mean, the west side is very different than the east side of the state. I assume that

you keep some sort of information on that. Because that would allow us then to move into a place where we can put money into the maintenance.

The other question I had, Mr. Gomez, your testimony was talking about different approaches to financing this infrastructure, one being some sort of a trust fund, a clean water trust fund. Immediately I was thinking about some of the infrastructure funds that we currently have—harbor maintenance trust fund, highway trust fund—all good, important uses that over the course of time and the wisdom of some have diluted those uses. I do not know if that is the right way to say it, but that money gets spread from its initial intended purpose. Do you envision ways or safeguards we can put into place if we were to create some sort of a trust fund that would specifically target this money so that we are not 10 years from now going back and saying well, this money was for—and yet we are not meeting our infrastructure needs.

Mr. GOMEZ. Certainly. I mean, that was one of the issues that we raised in our report with the trust funds, one of the issues that stakeholders told us about is how are you going to structure it, how are you going to set it up, what are you going to finance. So it is all about how Congress sets it up. I mean, with the trust fund, you have a dedicated source of funding, but as we mentioned earlier too, I believe, the chairman noted it, is the difficulty of getting those funds in. You know, there are different various financing approaches that we looked at for the trust fund and different taxes, you know, taxes on bottled water, on pharmaceuticals, flushable items, but you raise the key point about what areas do you focus on. Some of the stakeholders said that it could complement, for example, the Clean Water SRF. Others said that it should be separate. So it all depends on how you structure it and how it is administered, and that would be one of the key issues.

Mr. SIMPSON. Mr. Joyce.

Mr. JOYCE. Thank you very much for being here today. Mr. Shapiro, I would like to ask you a question in sort of maybe follow-up to what our chairman was asking. You talked about the American Recovery and Investment Act and that the states were having authorities apportion their capitalization grants for additional subsidization, that is, principle—you said loan surplus. In these difficult economic times, do you think allowing private utility companies to join in and use these revolving funds that would be similar to the Safe Water and Drinking SRFs would expand programs that otherwise might not be expanded due to these tight times?

Mr. SHAPIRO. Well, actually, to be clear, again, there are two funds. There is the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund. Under the Drinking Water State Revolving Fund, privately owned community water systems can access the SRF money through loans. Under the Clean Water, they cannot. That is restricted to municipal wastewater utilities. And again, Congress made different judgments obviously. The Drinking Water Revolving Fund was created later in 1996. The Clean Water Fund was created in 1988, I believe.

So some of that may reflect different perceptions about the nature of drinking water versus wastewater responsibilities on the part of government but the experience we have had under the

drinking water program is that good projects have been put forward from both private and public utilities and each state makes its own decisions about how to rank and select projects but in general, both kinds of entities have been able to access funds through that mechanism. Again, I think it is sort of a public choice as to how you perceive the role of public sector versus the private sector for providing these kinds of infrastructure services.

Mr. JOYCE. In follow-up to that question then, sir, you said the previous one, that would be the 1988 Clean Water Act, do you think that needs to be updated then to allow that to occur?

Mr. SHAPIRO. I do not have a view on whether it needs to be updated. I think if we want to provide the ability for the fund to do that, it would clearly need a reauthorization, given the way that the statute is currently structured.

Mr. JOYCE. But the latter one is working so it might be something to look into?

Mr. SHAPIRO. It might be something that you would consider.

Mr. JOYCE. Thank you. I yield back.

Mr. SIMPSON. Let me ask one other question. Has the Administration or the EPA—I guess they are the same—proposed any form of financing this infrastructure differently along the lines of what was proposed or what was suggested by the GAO, whether it is an infrastructure bank or trust funds or whatever?

Mr. SHAPIRO. As far as I know, there have been no alternative proposals put forward by the Administration for financing. I think we may have provided some technical assistance on questions that were asked about some of the different approaches and some of the legislative vehicles that have been explored but the Administration has not taken a position on any of them.

Mr. GOMEZ. Mr. Chairman, I just wanted to bring attention to one of the alternative approaches that actually is being used but not as often, and that is what we talked about earlier in public-private partnerships, and so as I noted earlier, we looked at seven. All of those seven involve private financing so it is a private company that is coming in and investing resources in a particular part of that infrastructure, and generally it is through a lease agreement or some type of contract. The communities do get an upfront payment, and so the lease terms range anywhere from 20 to 35 years. We are not really sure why it is not used as often. I think the last one that we noted was used in 2008. All the others were back in the 1990s, whether it is the need for more education, but it is another mechanism that is out there that communities could use.

Mr. SIMPSON. Sort of like a toll road. You mentioned during your testimony some of the pros and cons or the concerns that some people have about the public-private partnership. Of the seven that you looked at, are they working well? Are people happy with them? I know it is a hard standard to meet.

Mr. GOMEZ. Well, one of them we learned actually terminated its contract because of difficulties that they were having but the others as we know are working at this point. We have not gone back to see. I believe this work we issued in 2010. But as we know, we talk to the cities, we talk to the folks that are doing these, and except for one that terminated, they are working. We did note all of the

challenges. You know, there were some challenges in terms of things that people—there was public and political opposition from rate increases. There is also the issue of financing challenges, so because you have public and private monies coming together, how do you deal with tax exemption and IRS rules, so that was one of the challenges. One of the municipalities talked about a loss of control, so for example, once the lease is over, one of the communities that had a facility built and designed was not as familiar with the design and so they were just concerned that once the lease expires they are going to have to take it over, and they were not as comfortable at that point. So those are things that they are working through.

#### RURAL COMMUNITY WATER INFRASTRUCTURE

Mr. SIMPSON. One of the other challenges we have in Idaho, like many other states, there are a lot of small communities. It is substantially probably more expensive per unit to deliver clean water and wastewater treatment to a town of six or seven or five or four or three thousand people than it is to a very large community. Are these public-private partnerships mostly in larger communities?

Mr. GOMEZ. I believe the ones that we looked at, it was a mix. There were some smaller communities and—

Mr. SIMPSON. What do you mean by small?

Mr. GOMEZ. Well, usually the definition, I believe, is under 10,000 people.

Mr. SIMPSON. I grew up in Idaho, and at the time, the eighth largest city in Idaho was just under 10,000. That is a challenge.

Mr. SERRANO. I had 10,000 in my apartment building.

Mr. SIMPSON. Are there specific—within the SRFs and so forth, are there ways to target some of these to smaller rural communities? Because I find they have the—especially I dealt with several of them trying to deal with the Arsenic Rule where it just becomes cost prohibitive for them to do anything with it. Do we target resources to some of the smaller rural communities?

Mr. SHAPIRO. Well, I think there are two points.

Mr. SIMPSON. And when I talk about rural communities, I am not talking about rural ones in New York.

Mr. SHAPIRO. Right. Many states do in fact target smaller communities for technical assistance, especially under the Safe Drinking Water Act and the revolving fund that supports that. They can set aside resources to provide technical assistance to help smaller communities figure out what might best meet their needs. Often they have a lot of trouble getting to the point where they can put forward a good, solid proposal because they do not have the history and the in-house expertise to do the preliminary work and figure out the best alternatives. So we try to—the states try and we try to help through our efforts these smaller communities getting access to information and tools they need to plan, and then states in their priority-setting process are able to select communities that have a greater need for resources and often rural communities tend to both have high per-capita costs of service, as you pointed out, and in many cases are also not as wealthy as some of the larger communities. So the states have the ability to use the loan forgiveness provisions in both SRFs now to help those communities as

well as select through their prioritization process preferences for communities that are more economically disadvantaged and have less access to other sources of capital. And our records show that—again, I have to use the 10,000 benchmark, but a substantial portion of the total SRF monies go to communities or projects serving communities less than 10,000.

Mr. GOMEZ. So I just wanted to add to my comment earlier about public-private partnerships. So from our table in my statement, we do have Fairbanks, Alaska, which is probably over 10,000 people, probably a couple of apartment complexes. The PPPs that we looked at, some of them were small communities, and the reason being why they would look to these partnerships is because they do not have the capacity to manage so they were looking for others with that expertise, and that is one thing that we also learned is these private companies do have the expertise, they invest resources in research and development.

But another point that I wanted to make in terms of what is out there for rural communities or these smaller communities, and that is that both EPA, as Mr. Shapiro mentioned, provides monies through the existing SRFs but also the U.S. Department of Agriculture through their Rural Utility Service targets communities under 10,000 people. So that is another area that is out there. And we did do work looking at rural utilities. And so we found that both EPA and USDA are working together now, more to streamline the application process because, historically, communities had to do two applications for these grants but we want to make sure that it is just one grant application so they do not do two engineering reports, two environmental analyses; they can just do one. Because that is an added cost to these utilities that we do not believe that they have to do.

Mr. SIMPSON. Other questions for this panel? If not, we thank you for your testimony.

Mr. SERRANO. Mr. Chairman.

Mr. SIMPSON. Yes.

Mr. SERRANO. If I may, Mr. Chairman, would it be possible, with your permission, you know, that this subcommittee has been better than any other subcommittee in dealing with the issue of the territories, if they could at a later date report to us just what involvement the agency has in the territories so that we have a better understanding?

Mr. SIMPSON. I did look at that in the GAO report because it also had the list of the needs in the territories. It also had the list of the needs on Indian reservations throughout the country and Alaska Native reservations. So we can get that for you.

Mr. SERRANO. Okay. Thank you, Mr. Chairman.

Mr. SIMPSON. You bet. Thank you very much. We appreciate it.

The second panel is Mr. Aurel Arndt, General Manager of the Lehigh County Authority in Pennsylvania. Mr. Arndt is testifying on behalf of the American Water Works Association. Ben Grumbles, the President of the U.S. Water Alliance. Howard Neukrug, Commissioner for the Philadelphia Water Department. Mr. Neukrug is testifying on behalf of the National Association of Clean Water Agencies. Jeff Sterba, President of American Water, New Jersey. Mr. Sterba is testifying on behalf of the National Association of

Water Companies. And Thad Wilson, Vice President of M3 Capital Partners in Chicago. Welcome, and thank you for being here today. Mr. Arndt, I guess we will start with you.

OPENING REMARKS OF MR. AUREL ARNDT

Mr. ARNDT. Thank you, Mr. Chairman. Members of the subcommittee, good morning.

I am here today representing the American Water Works Association and its 50,000 members across the United States. I am General Manager, as has been announced, of Lehigh County Authority, which provides water and wastewater service in the Lehigh Valley Region of Pennsylvania, which is about 40 to 50 miles north of our suburbs to the south in Philadelphia.

One of the roles that I played over the years is, I have been a board member of the Pennsylvania Infrastructure Investment Authority, which is Pennsylvania's SRF, also known as PennVest, so I can bring you some perspective in that regard.

My comments today are going to focus on three things. I am going to talk a little bit about the water infrastructure investment need, I am going to talk about some current tools that we use to finance that infrastructure, and I am going to also introduce a new tool that we are strongly supporting, which we believe can help to enhance the pool of capital available for water infrastructure. We have all heard about the importance of water earlier here today, and not to diminish the importance of public health protection, environmental protection, public fire protection, but I think there are a couple of key economic findings that are also important related to water infrastructure.

The Department of Commerce has estimated that for every dollar spent on water infrastructure, \$2.62 is created in the economy as a result of that investment. In addition, every job in the water workforce actually creates 3.6 jobs in the national workforce, so it has a significant multiplier effect in the economy.

About a year ago, the American Water Works Association produced a report which is called "Buried No Longer: Confronting America's Water Infrastructure Challenge." I believe we have provided copies of that report to the subcommittee. That report reveals that to restore our aging infrastructure, the buried infrastructure, which is largely the pipes, and to meet the needs of a growing population that we will have to spend \$1 trillion over the next 25 years, a significant sum and certainly greater than the number that you heard earlier. It is important to point out, as I mentioned, that this is only our buried infrastructure. In addition to that, we have our above-ground facilities, we have wastewater facilities, we have stormwater facilities and other water infrastructure which are at least as great as that. And to determine the total magnitude of investment needs, you need to add those two numbers to come up with the real scope of what is in front of us.

The American Water Works has had a longstanding position that water systems should be financed through customer rates and self-sustaining through customer rates and charges. In that way, the customers make much better use decisions in terms of their water and wastewater usage, and in addition, communities make better investment decisions. But the funds that are available from those

sources are sometimes inadequate. As an example, many times it is difficult to finance large regional or national-scale water infrastructure projects because of the sheer magnitude of those numbers, and the current tools that we have are not adequate to address those types of projects, among others.

So the real question is, what tools do we need going forward? And our association has supported the development of a robust toolkit which includes a variety of different approaches that can be used for financing that water infrastructure. Among them, the current tools that we have available are the use of tax-exempt bonds, Build America bonds, private activity bonds, and the state revolving loan funds. I am not going to comment on all of these. I believe some of our other panelists are going to address some of those items. However, I do want to point out that tax-exempt bonds are used by at least 70 percent of the water utility systems across the country. The dependence on that source of funding, which is the primary source of capital to invest in our infrastructure, is critical and we need to preserve that. We fully recognize that there are many issues considering the economic circumstances that our country faces including the issue of availability of tax-exempt bonds, but we feel that any change to diminish the availability or increase the cost related to tax-exempt bonds can only serve to hurt our ability to finance that water infrastructure given that dependency that we have based on current circumstances.

We also urge you to restore the full payment that was promised by the federal government to issuers of Build America bonds, which have been cut as a result of the sequester. Ultimately, the result of that is that the available funding for investment in our capital infrastructure is diminished by that loss of revenue that was promised by the federal government when those bonds were issued.

Mr. SIMPSON. If I could ask, how much was that loss of revenue?

Mr. ARNDT. I believe it is about 7 or 8 percent, and potentially we have been told that could grow going forward.

Beyond those current tools, the American Water Works Association has been advocating the creation of a new program called WIFIA, the Water Infrastructure Finance and Innovation Act, which is patterned after the highly regarded and successful Transportation Infrastructure Finance and Innovation Act, or TIFIA, as I am sure you know it. We believe that WIFIA can fill a significant gap or void that exists in our financing toolbox that we have available to us. As I mentioned earlier, large projects typically are unable to tap into the state revolving loan funds because a single project or perhaps a few large projects could essentially deplete the total funding that is available through many of the state SRFs, and they are already—most of them are already oversubscribed.

I would like to talk a little bit about some of the features of the WIFIA program as we foresee it. WIFIA would be able to provide loan guarantees and other forms of credit support to utility systems that are proposing to finance water infrastructure, and the two types of recipients that this concept envisions is that utilities sponsoring large projects, and for purposes of beginning a dialog, we have suggested that any utility sponsoring a project greater than \$20 million would be able to obtain direct funding from the WIFIA program. In addition, the SRFs would be able to leverage their pro-

grams by aggregating smaller loans from those smaller systems that you spoke about earlier and aggregating those loans to a pool of \$20 million and be able to tap into the WIFIA program as well.

The way the program would work, again, very much like TIFIA, is that the Treasury would provide the funding to the WIFIA program. In turn, WIFIA would make the loan guarantees or issue the credit support to either those large project sponsors or to the SRFs, and in turn, the system recipients of those loans or other credit support would pay fees and/or interest on the loans, which money would be returned to WIFIA over a period of time and then in turn WIFIA would return those funds to the Treasury. In many ways, it is a self-liquidating program. There is certainly an initial outlay but one that is repaid in the future.

One of the most important features of the WIFIA program as we see it is that it has minimal cost to the federal government. Under the Federal Credit Reform Act, Congress needs only to appropriate the subsidy cost or, if you will, the net long-term cost of the program. For two reasons, this cost to the federal government is actually very minimal. First of all, as I mentioned a moment ago, the program is self-liquidating so the funds out are repaid over a period of time, in many cases with interest or with additional fees that are attached to the financing. The second feature is that water debt in general has one of the highest credit ratings and best credit histories of all types of public indebtedness that is out there. Fitch Rating Services, one of the three largest rating agencies, determined a few years ago that the default rate on water infrastructure financing is four-hundredths of a percent, and this was done over several decades. So the likelihood of receiving that full repayment back to the federal Treasury is very, very strong.

In addition, the SRFs that exist around the country that leverage their programs currently through the issuance of additional bonds, there has been no history of default, so they of course have, if you will, 1.000 batting average, and so again, there is a great assurance of repayment of those funds.

Last session, last year, as a matter of fact, Representative Bob Gibbs from Ohio circulated a draft of this legislation for comment and review and actually conducted two hearings in that regard approximately a year ago in February and March of 2012. We urge Congress to enact Mr. Gibbs' draft and move that tool forward so that water utilities will be able to access this very important and useful tool to fill the gaps that result from the existing tools that are out there and to broaden the capabilities of the financing that we currently have available.

In short, we believe WIFIA will allow our Nation to build more infrastructure at less cost, and on top of that, we get a cleaner environment, better public health and safety, and a stronger economy.



I would like to thank the committee for this opportunity again to appear before you. I would like to congratulate you on your leadership on this issue, and I found the earlier round of questions very intriguing, and you are certainly finding the type of complex issues that we have been grappling with on a day-to-day basis as water suppliers, and we look forward to working with you to address those.

[The statement of Aurel Arndt follows:]



American Water Works  
Association

The Authoritative Resource on Safe Water <sup>SM</sup>

### **Water Infrastructure Financing and Alternatives to Meet National and Local Needs**

**Presented by  
Aurel Arndt  
General Manager  
Lehigh County Authority  
Allentown, Pennsylvania**

**Before the House Appropriations Subcommittee  
on Interior, Environment and Related Agencies  
March 13, 2013**

Good morning, Chairman Simpson and members of the Subcommittee. My name is Aurel Arndt, and I am General Manager of the Lehigh County Authority based in Allentown, Pennsylvania. I deeply appreciate this opportunity to offer input on the critical issue the subcommittee is addressing today: water infrastructure financing and alternative tools to meet national and local needs.

As for my background, the Lehigh County Authority provides high-quality, affordable and reliable water and sewer service to more than 22,000 customers in Lehigh County and Northampton County, Pennsylvania. I have worked for the Lehigh County Authority since 1974. Throughout my career, which includes service on the Executive Board of the Government Finance Officers Association, then the board of the Pennsylvania Infrastructure Investment Authority (PennVest), and now on the Water Utility Council of the American Water Works Association (AWWA), I have focused my efforts and interest on water infrastructure finance. I am here today representing AWWA and its more than 50,000 members across the United States.

Water infrastructure is vital to our nation's well-being for a variety of reasons. Most obviously, water infrastructure protects public health and the environment, supports local economies, protects us from fires, and brings us a better quality of life. Moreover, the US Department of Commerce Bureau of Economic Analysis (BEA) estimates that for every dollar spent on water infrastructure, about \$2.62 is generated in the private economy. And for every job added in the water workforce, the BEA estimates 3.68 jobs are added to the national economy.

In 2012, AWWA released a report titled, "Buried No Longer: Confronting America's Water Infrastructure Challenge," which revealed that restoring existing water systems as they reach the end of their useful lives and expanding them to serve a growing population will cost at least \$1 trillion over the next 25 years. Please note that this \$1 trillion is only for buried drinking water assets. Above-ground facilities, waste water, storm water, and other water-related investment needs are at least as large, and must be added to reflect the true magnitude of the water investment needs before our country. I am providing copies of that report to members of the subcommittee.

I might also note that in the coming weeks, EPA is expected to release its latest drinking water infrastructure needs survey. That report will yield a much lower dollar figure in drinking water needs, because the EPA survey focuses only on projects that would be eligible for the state revolving loan fund program. AWWA's study considers a broader universe of drinking water infrastructure, including projects not eligible for the SRF.

The fact that the United States needs to invest much more in its water infrastructure is widely accepted these days. The hard question centers on how to do that. AWWA has a long-standing position that communities are best served by water utilities that are self-sustaining through local rates and charges. However, there are times when a large investment in infrastructure is required that might be too large to be accommodated affordably in a short time frame only through those local rates and charges. These larger investments are critical during those times when a treatment plant or a pipe network reaches the end of its lifespan and large-scale replacement or upgrades are needed. New drinking water regulations can also drive the need to upgrade or replace water facilities the costs of which are super imposed on communities where water charges and other utility and tax rates are already beyond the means of the community and its residents.

In addition to those local rates and charges, we have a few additional tools in the infrastructure finance "toolbox," but they need to be protected or strengthened. These include, tax-exempt municipal bonds, private activity bonds and state revolving funds (SRFs)

#### **Municipal Bonds**

Tax-exempt municipal bonds have been an invaluable tool for water utilities, and at least 70% of U.S. utilities rely on them to some degree. They provide lower interest rates than commercial bonds and provide relatively quick access to capital. They are often the core funding source to finance many water infrastructure projects.

We know that in the current fiscal climate, all tax issues are on the table here in Washington. One of those may be the degree to which higher-income earners can utilize the tax-exempt features of municipal bonds. On the surface, this might have some appeal but I don't think it stands up to serious scrutiny. In my experience and in the experience of fellow utility managers at AWWA, a large share of the purchases of tax-exempt municipal bonds are made by those very higher-income earners. If they are denied tax-exempt interest, the result for utility finance would be devastating. Moreover, no other financing vehicle is as flexible for utilities as these bonds. We must keep our access to this particular tool in the finance toolbox, and so AWWA joins several groups of locally elected officials in urging you to protect the current tax exemption of municipal bonds.

#### **Build America Bonds**

As you know, many utilities issued Build America Bonds (BABs) on the promise of federal payments to the utility designed to make those bonds at least as attractive to the issuer and buyers as traditional tax-exempt debt instruments. Now utilities have been notified by the Treasury that BAB payments must be reduced in order to comply with the sequester. We urge you in the strongest possible terms to take whatever steps are necessary to ensure that no reduction in Build America Bond payments to utilities occurs. Utilities that issued Build America Bonds relied on the United States' promise to make up the difference in borrower interest costs over the life of the bonds, compared to traditional local government debt. Reducing such payments to utilities now after bonds have been issued represents a grossly unfair breach of that promise and can only serve to diminish limited utility funds that would otherwise be available for investment in water infrastructure.

### **Private Activity Bonds**

Another tool that could help meet our water infrastructure investment needs is greater use of private activity bonds (PABs). Currently, municipal bonds that meet certain private use tests are considered private activity bonds and become subject to state-by-state volume caps. This severely limits the amount of PABs that can be issued for water facilities. To encourage public-private partnerships and reduce financing costs, PABs for community water systems could be exempted from the state volume cap, just as PABs for publicly owned solid waste facilities are currently exempted. We urge Congress to take that step.

### **State Revolving Loan Funds (SRFs)**

Created in the 1996 Amendments to the Safe Drinking Water Act, the drinking water state revolving loan fund has been an excellent tool for providing funds for water infrastructure, primarily for small to medium-sized utilities facing compliance challenges. The Clean Water SRF has existed since 1988. AWWA supports robust funding of the state revolving loan fund programs for drinking water and wastewater.

That said, there are gaps in what the SRF is able to support. The drinking water SRF in particular was authorized to support infrastructure projects necessary for regulatory compliance and must give highest priority to projects where there is the most immediate threat to public health. This rules out replacing aging infrastructure unless there is a compliance challenge, and leaves out expanding infrastructure to address growing populations. The latter is a particular issue in the South and the West, where many communities are still growing. Finally, because annual appropriations for the SRF are divided up among the 50 states, the body of funds available for loans is over-subscribed in most states. We realize there are exceptions here and there, but in surveying SRF loans, we find that the typical cap on a drinking water SRF loan is about \$20 million. In one state in the Pacific Northwest, our members have been told not to bother applying if the loan is to be above \$6 million.

It is not hard for even modestly sized water project to exceed this \$20-million threshold. Lehigh County authority is involved in a multifaceted, multi-municipal project which is estimated to cost about \$40 million dollars. It will reduce wet weather flows and eliminate sanitary sewer overflows in a regional wastewater collection, transmission and treatment network. This project will increase overall service cost and rates by about 10% above current levels, in addition to the annual 5% increase in cost and rates in recent years. If this project were funded through WIFIA, the interest rate on the financing would be reduced by approximately by about 1% based on current interest rates, which equates to a 9% reduction in the financing cost of the project over the financing period.

The SRF is unable to make loans to larger projects simply because large loans would exhaust all of the state's capitalization funds. This means there is a gap for funding assistance for large, regionally and nationally significant water infrastructure projects. Given the enormous scope of this challenge, we strongly urge Congress to enact a new, modern, innovative finance tool to address this national need.

#### **A New Approach: The Water Infrastructure Finance and Innovation Act**

Last year, Congressman Bob Gibbs of Ohio, chair of the House Subcommittee on Water Resources and Environment, floated a draft bill titled the Water Infrastructure Finance and Innovation Act (WIFIA). As described in the draft, WIFIA would fill a significant gap between what current water infrastructure tools can do and what needs to be done.

As we mentioned earlier, about 70 percent of American communities use municipal bonds and other forms of debt to finance water infrastructure projects. Being able to lower the interest rate by just a few percentage points in a multi-million-dollar loan can amount to significant savings in the cost of an infrastructure project. These savings for local borrowers can significantly accelerate needed water infrastructure investment by making it more affordable for utilities and their customers. In fact, lowering the cost of borrowing by 2.5 percent on a 30-year loan reduces the lifetime project cost by almost 26 percent, the same result as a 26-percent grant.

Lowering the cost of infrastructure investment pays dividends in other ways as well. Most fundamentally, it makes it possible to do more with less, that is, to rebuild more infrastructure at the same or lower total cost. Consequently, WIFIA would assist communities in meeting the nation's water infrastructure needs in a manner that would have minimal cost to the federal government while complementing existing financing mechanisms, maintaining the current federal role, leveraging private capital, and creating vital manufacturing and construction jobs.

We urge Congress to enact Mr. Gibbs' WIFIA legislation. We note that it is modeled after the highly successful Transportation Infrastructure Finance and Innovation Act (commonly called TIFIA). Similar to TIFIA, WIFIA will lower the cost of capital for water utilities while having little or no long-term effect on the federal budget.

#### **Replicating the TIFIA Model**

We largely agree with the approach taken in Mr. Gibbs' draft, which would access funds from the U.S. Treasury at long-term Treasury rates and use those funds to provide loans, loan guarantees, or other credit support for water infrastructure projects. Funds would flow from the Treasury, through WIFIA, to funding recipients to enlarge their pool of capital. Loan repayments – with interest – and guarantee fees would flow back to WIFIA and thence into the Treasury – again, with interest.

Eligible water infrastructure projects would include drinking water, waste water, storm water, water reuse and desalination, and similar projects, and associated water infrastructure replacement and rehabilitation.

We believe that WIFIA should have the authority to:

- Provide direct loans, loan guarantees, and lines of credit for large water infrastructure projects. We believe it makes sense for WIFIA to make loans above a minimum size, proposed as \$20 million. That ensures that WIFIA complements but does not replace the SRF program by specifically focusing on larger projects that are generally unable to access capital through the SRFs.
- Provide state authorities with the ability to aggregate a collection of loans for smaller projects that would meet the \$20 million threshold. Collectively this will allow states to make more loans for small and medium-sized projects, and remove larger projects from the SRF loan pool.

AWWA believes that, like the TIFIA program, WIFIA should be able to take a subordinate position in any project. This would be extremely helpful in attracting and leveraging private capital in particular projects. We do recommend, however, that it must be the utility that applies for and receives a WIFIA loan, and not a private participant in a project.

I'd like to emphasize that we are not asking that WIFIA provide loan forgiveness or negative-interest loans or similar credit aspects that would increase the cost of the WIFIA program to the federal government. We support a straightforward approach that passes the very low cost of Treasury funds on to American communities for investment in water and wastewater projects, and those loans would be repaid with interest to the Treasury. In addition, a small interest surcharge or fee could be added to cover WIFIA's operating expenses, thus minimizing or offsetting the amount needing to be appropriated for administrative expenses. Alternatively, Congress could appropriate those expenses.

It is also essential to ensure a streamlined approach to financing. WIFIA needs a streamlined review and application process so that applicants face no more burden than required by traditional credit markets. We believe it is important to avoid federal cross-cutter requirements and complications of that kind to the maximum possible extent.

#### **Low Cost to the Federal Treasury**

A key feature of the draft proposal for WIFIA, as in TIFIA, is the minimal cost to the Federal Government. Under the Federal Credit Reform Act, a federal entity can provide credit assistance to the extent that Congress annually appropriates budget authority to cover the "subsidy cost" of the loan, i.e. the net long-term cost of the loan to the Federal government. In this way, Congress directly controls the amount of lending – but the budgetary impact is also minimal because it reflects the net long-term cost of the loan. As you may know, virtually all water-related loans are repaid in full. In fact, Fitch Ratings, a top credit rating agency, determined that the historical default rate on water bonds is 0.04 percent. Indeed, water service providers are among the most fiscally responsible borrowers in the United States. Moreover, those states that leverage their SRF programs have no history of defaults, placing them among the strongest credits in the country. Consequently, WIFIA – because it involves loans that are repaid with interest – involves minimal risks and minimal long-term costs to the federal government. TIFIA is able to leverage federal funds at a ratio of approximately 10:1. With the water sector's strong credit ratings and history, that ratio could be even greater for WIFIA. In other words, because of the sector's strong credit rating and history, the "subsidy cost" called for by the Federal Credit Reform Act would be minimal.

We do recommend modifying the TIFIA model in at least one important respect: we suggest explicitly providing that a utility which pays its own "subsidy cost" up front should be able to get a loan or guarantee that does not count against WIFIA's appropriated budget authority. In effect, such a utility would be paying for credit insurance and would be able to access funds at Treasury rates in the same degree as a utility that had its "subsidy cost" paid through the ongoing interest payment.

In short, WIFIA will allow our nation to build more water infrastructure at less cost. And on top of that, we will get a cleaner environment, better public health and safety and a stronger foundation for our economy.

**Summary**

To help provide for sound water infrastructure across the country for communities of all sizes, AWWA urges Congress to

- preserve the current tax-exempt status for municipal bonds;
- remove the annual volume caps for private activity bonds for water infrastructure projects;
- maintain funding for robust drinking water and wastewater state revolving loan fund programs; and
- enact a Water Infrastructure Finance and Innovation Act (WIFIA) modeled after the successful transportation program known as TIFIA, offering meaningful assistance to American communities in a modern, cost-effective way, at the lowest-possible cost to federal taxpayers.

We thank this subcommittee for the leadership it is taking today in holding this hearing. We are eager to help in any way we can to advance your work on all aspects of water infrastructure.

Thank you again for the opportunity to appear today. I will be happy to answer any questions or to provide you with any other assistance I can, now or in the coming months.

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**Aurel Arndt**  
(pronounced "au-rel aren't")  
**General Manager, Chief Financial Officer**  
**Lehigh County Authority**  
**Allentown, Pennsylvania**

Aurel Arndt is General Manager and Chief Financial Officer of the Lehigh County Authority and is the Authority's chief executive officer. He is responsible for all aspects of water and wastewater service to 20,000 customers in 15 municipalities in Lehigh and Northampton counties in Pennsylvania. The Lehigh County Authority is a non-profit, public agency founded in 1966 by the County of Lehigh and is governed by a seven-member board of directors appointed by the county.

Mr. Arndt holds a master's degree in Business Administration from Lehigh University and a bachelor of science degree from Ursinus College. He joined the Authority in 1974 and has held several positions during his tenure, including that of Business Manager and Assistant General Manager.

He is chair of the American Water Works Association's (AWWA's) Water Utility Council, which sets federal policy for the association. In addition, he is past Chair of the Pennsylvania AWWA Section (PA-AWWA) and a member and past Chair of the PA-AWWA Water Utility Council; and a past Chair of the AWWA Economics Technical Advisory Workgroup.

Mr. Arndt served as representative for AWWA on EPA's National Drinking Water Advisory Committee Workgroup on State Revolving Loan Funds. He has received AWWA's George Warren Fuller award for distinguished service to the water supply field and the PA-AWWA Samuel Baxter award for outstanding service and leadership in the water supply field. He has also chaired two steering committees for AWWA studies on Financing Water Infrastructure and use of Private Activity Bonds to finance water infrastructure.

Established in 1881, AWWA is the oldest and largest non-profit, scientific and educational organization dedicated to safe and sustainable water in the world. With more than 50,000 members worldwide and 43 Sections in North America, AWWA advances public health, safety and welfare by united the efforts of the entire water community.

Mr. Arndt is past President and Regional Director of the Pennsylvania Municipal Authorities Association (PMAA); Chair of its legislative committee (administration); and served on various standing and ad hoc committees. He is a recipient of PMAA's William H. Markus Award of Excellence for distinguished service to the municipal authorities of the Commonwealth of Pennsylvania, the Sahli Service Award and Extended Service Award.



He is a past member of the Executive Board of the Government Finance Officers Association of the United States and Canada and past chair of its Debt & Fiscal Policy Committee. From 1988 through 1990, he served as the representative of water and wastewater utilities on the Pennsylvania Infrastructure Investment Authority ("PennVest"). He is also a past member of the Governor's Local Government Advisory Committee. He has served on the Board of Directors and Executive Committee of the Water Resources Association of the Delaware River Basin. He is a member of the Leadership Council and Organizing Committee of Renew Lehigh Valley, a diverse regional group focusing on improving community services and the quality of life in the Lehigh Valley. He also chaired the Lehigh Valley Partnership's Water and Wastewater Regional Coordinating Council, which evaluated cooperative, regional service approaches for the two-county Lehigh Valley region. He is a former member and Chair of the Board of Directors of the Pennsylvania Municipal Investment Program, a municipal cash management and investment program for Pennsylvania municipalities and authorities. He also served as a board member and Chair of the Pennsylvania Municipal Retirement System, a statewide municipal pension program, for nine years.

Mr. SIMPSON. Mr. Grumbles.

OPENING REMARKS OF MR. BENJAMIN GRUMBLES

Mr. GRUMBLES. Thank you, Mr. Chairman and Congressman Serrano, I really appreciate the opportunity to appear before you. I am Ben Grumbles, President of the U.S. Water Alliance, and I too want to commend you and Congressman Moran and the staff for putting together a critically important hearing and the great discussion so far this morning.

I think Governor Rendell said it, but he said that you cannot sustain a world-class economy with a second-class infrastructure system. The bottom line is that as much success as we have had in building an enviable around-the-world, an enviable water and wastewater infrastructure system, it is showing signs of age. The needs are growing. The public funding is decreasing, and I cannot think of a more important topic today to talk about than shifting that paradigm from water being invisible to invaluable, and finding some innovative and collaborative ways to fund our Nation's future when it comes to water and stormwater and wastewater.

The U.S. Water Alliance is a truly unique, nonprofit, educational organization. We have drinking water, clean water, stormwater, agricultural, energy, public and private sector individuals coming together, through leaders to collaborate on shifting some of the paradigms. Howard Neukrug, who is on the panel, is the Vice Chair, and we have had some real thoughtful leaders—urban water, rural water—shift the paradigm. And you know full well, in fact, you have been displaying it this morning, that hope and policy themselves do not treat the water and make it clean, do not meet the needs for businesses and communities; you need funding as well as vision on policies and regulatory strategies.

So just three points I wanted to make very briefly while I still have your attention, and one of those is the most fundamental first step in addressing this growing crisis on water and wastewater infrastructure is the value proposition, valuing water to support people and ecosystems, the value of water. I am honored to be part of a coalition. Jeff Sterba, sitting to my left, is one of the leaders in a public-private coalition that will only grow to increase public awareness about the value of water, the worth of water, that will make your job easier in the long run because of the understanding at the local level and nationally of the critical need to invest more. There is a difference between price and cost and value, and as a Nation, we cannot afford to keep water so cheap. The price is an inherently local matter but it becomes a national issue when we are not finding sustainable and dedicated sources of funding for infrastructure, and all water is local but also, if that thought prevailed, we would not have a Clean Water Act or Safe Drinking Water Act. And you are showing some leadership by drawing attention to this issue, and the first step is really a national effort with Congressional support, with support from the private sector, local utility leaders, is really getting out the word about the worth of water and the need to invest more in it, not just the infrastructure but the ecosystems that are provided.

The other major point is the partnering, and what a great discussion this morning about public-private partnerships, and you have

got real experts on this panel about that. I would just simply say, particularly because our organization has a perfect blend of public and private sector enthusiasts, you need both, and you need to move into the future and more innovative approaches. The private activity bond legislation that was proposed in the last Administration and also this last year moved through the House. I think this is a very important step forward. The key part of it, though, is that it is not making decisions for communities as to who owns or operates their water and wastewater systems; it is removing an artificial state volumetric cap on private activity bonds, and that could lead to new money to the tune of \$5 billion a year dedicated to the effort. I do not know, but I know it is one positive step and it also signals that Congress cannot just rely on the SRFs or one single mechanism and that there needs to be federal involvement and help to supplement the 95 or 97 percent of the funding that comes at the local level for water and sewer infrastructure.

Then the last point, besides the valuing of water and the partnering between the public and private sector, is really this paradigm shift in greening the infrastructure. It is not in lieu of gray infrastructure. There is always going to be a need for a hybrid, a mix, but greening the infrastructure and also recovering the resources—I would just simply say, particularly the U.S. Water Alliance working with other organizations, particularly NACWA and WEF and others—the leaders in this effort fully believe that there are great benefits and energy and money savings through green infrastructure, and sometimes it is not about federal dollars, it is about federal willingness and support to sometimes provide a soft landing for innovative communities like Philadelphia, who want to do some innovative work. We may not get it right on the first try but if the environmental community and the regulators are there with them, we can get some amazing progress on that front. And the resource recovery, I am impressed by the product that just came out by the Water Environment Federation, NACWA, the National Association of Clean Water Administrators, and the Water Environment Research Foundation on the utility of the future. I know Howard's testimony talks about that at length. Mr. Chairman, that is really about looking at wastewater facilities, formerly viewed as treat-and-discharge facilities, as centers of regeneration, as green factories, and that will produce energy and money and a more sustainable approach.

Anyway, Mr. Chairman, Congressman Serrano, thank you so much for shining a spotlight on this critical issue of water infrastructure financing. I look forward to a good, robust discussion.

[The statement of Benjamin Grumbles follows:]

TESTIMONY  
 BENJAMIN H. GRUMBLES  
 U.S. WATER ALLIANCE  
 SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES  
 HOUSE APPROPRIATIONS COMMITTEE  
 HEARING ON WATER INFRASTRUCTURE FUNDING  
 B-308 RAYBURN HOUSE OFFICE BUILDING  
 MARCH 13, 2013

Mr. Chairman, Ranking Member Moran, and Members of the Subcommittee, thank you for the opportunity to testify on one of the most urgent issues facing America's water future: sustainable funding for infrastructure systems to support our country's most precious liquid asset.

I'm Ben Grumbles, President of the U.S. Water Alliance (Alliance), a nonprofit educational 501(c)(3) organization, committed to uniting people and policy for water sustainability. Since its creation in 2008, the Alliance has focused on bringing together the many distinct segments of the nation's water community to increase awareness of the challenge and build support for more integrated, holistic watershed-based strategies. On financing, the Alliance believes we urgently need water innovation and collaboration, not only to sharpen and polish existing tools, but also to forge new tools for communities and ecosystems.

#### U.S. WATER ALLIANCE

The Alliance is committed to uniting different sectors, and leaders within sectors, to change the way America views, values, and manages water—from quantity to quality, above and below ground. We emphasize the importance and value of each aspect of the water cycle and promote a more integrated, sustainable management of water and watersheds (a concept we call "one water" management). We focus on changing some of the old paradigms, such as only hard and gray infrastructure to a mixture of hard and gray with soft and green, and shifting perception of water from invisible to invaluable.

We have a 35 member Board of Directors that is rich in professional and geographic diversity, experience, and leadership representing public and private water and wastewater organizations and utilities, state water and energy regulators, conservation, environmental, agricultural organizations, and academia. Dick Champion, the Director of the Independence Water Pollution Control Department (MO) chairs the board and Howard Neukrug, Commissioner of Philadelphia Water Department is vice-chair.

One of our most important steps was to design and create the U.S. Water Prize, a high-profile annual awards program and ceremony to honor America's leaders in the public, private, and nongovernmental sectors. Recognition programs that promote innovation, integration, and education help all of us in the water community. The support is growing and so is the variety of winners, from large city utilities to interstate source water protection collaborators, to educational nonprofits and businesses. On February 26, the Alliance announced its 2013 winners and two have a direct bearing on today's hearing: Onondaga County NY and The Freshwater Trust. Onondaga County's "Save the Rain" program uses green infrastructure rather than a more costly (\$100 million estimated) gray infrastructure project to reduce sewer overflows and The Freshwater Trust, located in Oregon but working throughout the country,

uses market-based strategies to help wastewater facilities and power plants protect stream and rivers in more efficient and cost effective ways.

The Alliance also created an Urban Water Sustainability Council to promote innovation and train future leaders. The Council, which Kevin Shafer of Milwaukee Metropolitan Sewerage District chairs, shapes our policies on urban water, climate, and energy. Our annual leadership conference in the Fall brings together hundreds of sustainability champions and green city advocates. Spotlight communities bring cross-disciplinary, multi-sector teams to discuss their achievements, issues, and opportunities. We've had three extremely successful conferences, in Philadelphia, Milwaukee, and Cincinnati. Our fourth will be in Los Angeles, September 23-26, 2013. At each, leaders discuss aspects of urban water sustainability involving green infrastructure, resource recovery, and integrated planning.

The Alliance has also launched a Business Advisory Council, a unique collection of private sector water, environmental engineering and consulting organizations. Brent Fewell of United Water chairs the Council. We've gathered suggestions on ways to spur innovation in technology and regulation, advance public-private partnerships, and underscore, like never before, the value of water through communications strategies and pricing dialogues. We're coordinating with EPA on its Value of Water study to offer perspectives from public and private sector experts. Most recently, on March 4, 2013, the Business Advisory Council teamed up with the Water and Wastewater Equipment Manufacturers Association to host a robust roundtable discussion on how to accelerate the deployment of innovative water and wastewater technologies and approaches. EPA was a very active and supportive participant.

The Alliance held 3 *National Dialogues*, involving over 150 people, and issued follow-up reports: *Need for an Integrated National Water Policy* (2009), *What's Water Worth?* (2009), and *One Water Management* (2010). As a result of the Dialogues and reports, and a follow-up meeting in January 2011, we issued a National Water Policy Framework, including core principles for Water Sustainability: Valuing, Monitoring, Integrating and Collaborating, and Innovating (finance, technology, and regulation).

Consistent with our framework for water sustainability, over the last two years we have facilitated workshops and issued reports on pressing topics, such as: utility management in an era of climate change adaptation, changing the infrastructure paradigm from "gray to green", and the treatment paradigm from "pipe and discharge" to "recover and reuse". With support from the Turner Foundation, we issued the 2011 report, "Barriers and Gateways to Green Infrastructure". Based on interviews and questionnaire responses from over 225 governmental, NGO, and private sector experts from around the country, the Alliance report describes in some detail potential technical, legal, fiscal, and cultural/institutional barriers to greening and naturalizing approaches to stormwater and other wet weather flows. In 2011, the Alliance's Urban Water Sustainability Council also teamed up with American Rivers, a leader in the green infrastructure movement, to issue a statement of principles to drive federal green infrastructure policies and strategies.

The Alliance strives to advance a "one water" perspective and a "one water management" strategy. Since its 2010 national report, the Alliance has been promoting integrated watershed management in all of its publications, forums, and actions. This has led to partnerships with the Water Environment Research Foundation, the Water Research Foundation, the WaterReuse Association, WaterReuse Research Foundation, National Association of Clean Water Agencies, Ground Water Protection Council, Alliance for Water Efficiency, Western States Water Council, the American Public Works Association, the National

Association of Flood and Stormwater Management Agencies, the Irrigation Association, the National Water Resources Association, and many others. The "One Water Management" Network meeting on February 10, 2012, supported by Water Environment Research Foundation, convened over 60 leaders from federal, state, local and non-governmental organizations to improve understanding and coordination in prioritizing research and implementing integrated water management.

Two examples of our work in "one water management" involving quality and quantity issues are hydraulic fracturing and water softeners. The Alliance has hosted or moderated six national webinars on shale gas drilling and fracturing. Our approach is to lay out fresh facts and critical policy choices so that decision-makers can best understand the energy-water nexus and adopt watershed-based strategies. We've also facilitated discussions among utilities, environmental nonprofit organizations, and EPA on water softeners, salt loadings, and the potential to save water and energy with a new WaterSense certification and label for water efficient devices.

#### WATER FUNDING AND FINANCE PRINCIPLES

Mr. Chairman, as you and your colleagues debate specific funding programs and levels, and financing strategies, the Alliance urges you to embrace the following core principles related to valuing, partnering, and greening for sustainability:

##### 1. Valuing Water to Support People and Systems

"Sustainability" must include viable funding strategies to deal with the problem and the price of water lies at the heart of the problem. One of the Alliance's earliest actions was to hold a *National Dialogue* to discuss the urgent but frequently ignored question: "What's Water Worth?" A copy of our 2010 report is available online.

Water pricing is both a science and an art. There's a lot we can do, in our respective roles and capacities, to help communities and agencies develop sustainable ratemaking strategies that move in the direction of "full cost" or "true value" pricing (i.e., rates that more closely reflect the value of service provided), without abandoning the social safety net for those who can't afford to pay. Congress can help agencies and thought leaders to develop the science of ecosystem services and infrastructure life cycle analysis and the art of building public support for reasonable and necessary rate, fee, and tax increases.

The Committee should know about two recent efforts that may ultimately help make your job easier and our water infrastructure more sustainable. One is the coalition of six private and six public sector companies and associations/alliances to launch a concerted national campaign on the value of water. The Alliance is a member, along with organizations represented on this panel and we hope to inspire thought-leaders, rate payers, and citizens to pay more attention to water and invest more in its sustainability. The other is a recent report by the Alliance for Water Efficiency, *Declining Water Sales and Utility Revenues: A Framework for Understanding and Adapting* (August 2012 – [www.a4we.org](http://www.a4we.org)). The report, based on a summit of leaders in water utilities, conservation organizations, and universities tackles the problem dubbed the "conservation conundrum" and suggests tools and strategies to ensure water conservation can benefit, not penalize, utilities and communities.

## 2. Partnering Between Public and Private

Policymakers need to continue to probe the barriers and boundaries to public-private partnerships and look for ways to increase collaboration. Legislation, executive orders, and federal agency policies, if done properly, can help promote local choice to increase the range of partnerships for designing, building, operating and financing public water systems. We're also finding private sector technologies, ranging from nutrient recovery to biogas generation, to real-time monitoring and data management systems, continue to provide the solutions public entities depend on. There must be a willingness to consider appropriate private sector involvement, particularly with declining public funds and increasing rates. Otherwise, community systems run the risk of suffering what I like to call "the Public Rust Doctrine"--refusing to explore private-public partnerships to prevent public-purpose systems from rusting and decaying.

Many national and local leaders are looking for the opportunity to infuse public service with private enterprise and tap the financial resources and expertise of the private sector to move public water service forward for our nation's communities. Figures have come out that nearly \$180 billion of private capital and infrastructure funds are looking to invest their money in American (or Chinese) infrastructure. We need to consider these opportunities without losing sight of the public's need for trust and accountability when it comes to water.

This Administration and Congress are looking to expand opportunities for public-private partnerships. To this end, most segments of the water industry have rallied around a long-standing proposal to remove the state volume cap on private activity bonds to facilitate private investment and public-private partnerships.

Examples of innovative, private sector financing are growing, and often in response to some of the most pressing issues. NRDC's February 2012 report, "Financing Stormwater Retrofits in Philadelphia and Beyond," includes an excellent description of promising techniques to meeting the stormwater challenge through market-based approaches involving fees, offsite mitigation and credit programs. The NRDC estimates a potential market for third-party investments in stormwater retrofits in Philadelphia on the order of \$376 million. To quote from the report: "Given the substantial gaps nationwide between water infrastructure funding needs and available local, state, and federal funds, cities all around the country will increasingly seek to leverage private financing."

Other cities such as Washington, D.C. are also generating funds and using credit systems through parcel-based stormwater fees, and in doing so, are rewarding investments in retrofits. The report also describes a number of project finance mechanisms in the energy efficiency sector (such as Property Assessed Clean Energy--PACE--programs) that could be used to meet the financing needs of property owners seeking to install stormwater retrofits.

## 3. Greening Infrastructure and Recovering Resources

The Alliance puts a priority on helping communities embrace green infrastructure strategies. I encourage Members to read our 2011 "Barriers and Gateways to Green Infrastructure" report, available online at [www.uswateralliance.org](http://www.uswateralliance.org). It reveals that a prime motivator of communities in meshing more green infrastructure with gray infrastructure is to save money and energy. Your hearing focus is on financing, but it bears repeating what you already know: Efficient use of green infrastructure systems can avoid more costly end-of-pipe, concrete, basin-based and tunnel-driven solutions. We know hard and gray infrastructure has been at the heart of much of America's progress in meeting Clean Water Act and Safe Drinking

Water Act goals and requirements. We also know the data is coming in that communities can manage stormwater and prevent overflows, improve air quality, reduce the "urban heat island effect," and enhance livability through innovative approaches that integrate more green infrastructure with existing gray infrastructure. Our Urban Water Sustainability Council is documenting case studies and developing common practices to help reduce the demand on infrastructure and improve water quality.

One of the most recent examples of green infrastructure and resource recovery process is in New York City. NYC-DEP, a founding member of the Alliance and winner of our 2011 U.S. Water Prize, has launched a massive effort for greener solutions to controlling overflows. On March 13, 2012, the City announced plans to commit \$2.4 billion in public and private money over the next 18 Years. It's an effort that's been playing out in other cities, such as Philadelphia, Los Angeles, Milwaukee, and San Francisco--also winners of our U.S. Water Prize.

Residents of the National Capital area and Members of Congress are probably familiar with two other excellent examples of wastewater utilities becoming green factories: DC Water's Blue Plains facility and East Bay Municipal Utility District's facilities. Both operations are transforming their wastewater "treatment and discharge" plants in "centers of re-generation," capable of beneficial recovery and reuse of energy, water, nutrients, and biosolids.

All of these examples fueled the Alliance's Urban Water Sustainability Council to adopt "Resource Recovery Principles" see attached and go to website [www.uswateralliance.org](http://www.uswateralliance.org). By recovering and beneficially reusing energy, heat, nutrients, wastewater and biosolids, these community water, energy, and nutrient facilities have the capacity to save ratepayer dollars and boost the economy.

#### 4. Connecting Infrastructure, Watersheds, and Sustainability

Consistent with our "one water management" philosophy, the Alliance believes local and regional water and wastewater infrastructure projects should benefit from early and integrated planning efforts before funding and construction decisions are made. Integrated planning and collaborative review can help to reduce the risk that environmentally or fiscally unsustainable projects move forward. Such planning and prioritizing can also help ensure the most important projects for protecting public health and the environment move forward first. EPA's recent memos, framework, and meetings on wet-weather flows under the Clean Water Act are promising. It's important to update the Agency's financial capability analysis under the Act and to have the Water and Enforcement Office working together to provide consistency, predictability, and finances to communicate with multiple needs.

#### COMMENTS ON FEDERAL FUNDING TOOLS AND STRATEGIES

The Alliance has not adopted specific positions on pending bills or legislative proposals. We have adopted a set of Green Infrastructure Principles, available on our website, [www.uswateralliance.org](http://www.uswateralliance.org), and hope the following general comments and suggestions will be of use to the Subcommittee.

##### Existing SRFs

We urge Congress to continue supporting the Clean Water Act and Safe Drinking Water Act regulatory and funding programs. We also recognize federal capitalization grants for the



highly-successful CWA State Revolving Fund (SRF) and Safe Drinking Water Act State Revolving Fund (SRF) are under increasing pressure from fiscal constraints and competing priorities. While not taking a specific position on current and proposed funding levels, we do believe four important aspects of SRF programs should be embraced as Congress contemplates future revisions and additional funding tools:

1. **Flexibility.** As Administrations request less capital grant funding and as state programs mature and revolve more fully, it is important to keep looking for ways to broaden project eligibility and administrative flexibility. States can do more with less only if cross-cutting requirements and procedural constraints don't prevent them from doing so in the first place. Land acquisition, an explicitly eligible activity for funding under DW SRF source water protection provisions, holds great potential for DW SRF and nonpoint source pollution control projects. The Alliance is a strong advocate for green infrastructure and energy and water efficiency funding. We also recognize that set-asides, though not needed permanently, have an important role in catalyzing change toward more sustainable water management practices. The Council of Infrastructure Financing Authorities represents public infrastructure financing agencies and has valuable perspectives on what works and what doesn't work among its members from 48 states.
2. **Transferability.** The 1996 Amendments to the SDWA included a first-ever authority to transfer a percentage of funds between the newly-established SRF and the CW SRF. State managers need this type of transferability authority to continue. This is also an important provision as water reuse projects grow in number and SDWA and CWA policy makers look for models to use in seizing upon municipal wastewater reuse opportunities.
3. **Repayment Terms.** The CWA SRF loan repayment period should be extended from 20 to up to 30 years, on par with the SDWA SRF repayment period.
4. **Equitable Allocation.** Congress and EPA should ensure allotment formulas under the CWA and SDWA are fair and based on up-to-date information. As a former state official, I know first-hand the results of allotment formulas that are based on outdated needs and population numbers from the 1970s.

#### Private Activity Bond legislation

1. Congress should continue to work on sending the President bipartisan legislation to expand opportunities for private sector investment in public works.
2. From the 112<sup>th</sup> Congress, H.R. 1802 and S. 939 would have amended the Internal Revenue Code to remove the state volume cap on the use of private activity bonds for water and sewer projects. This legislation has the potential to increase access to private sector funding for public water and wastewater projects, while leaving the choice to communities on how to design, build, operate, own, and finance.

#### "WIFIA" legislation

Last Congress, the American Water Works Association, Water Environment Federation, the Association of Metropolitan Water Agencies, and others championed a legislative effort to establish additional mechanisms for capital financing of large projects. The legislation was introduced and hearings were held. This year, important efforts continue. On February 14, 2013, Senator Jeff Merkley introduced S. 335, the Water Infrastructure Finance and Innovation Act of 213. The legislation includes accurate and compelling Congressional findings. It also

states that the new loan/loan guarantee program is administered by EPA rather than Treasury, is limited to larger projects of \$20 million or more, and can be used for a wide variety of projects, including land acquisition, source water protection, storm water management and control, energy and water efficiency, and alternative source water development such as reuse. The Alliance believes these types of projects are important now and will only grow in importance over time.

We add one extremely important caveat, however, which the Committee understands well given the dynamics of government agencies, budgets, and politics: It's critical to ensure what's intended as a supplemental tool doesn't become the one and only tool or in some way undermine the success of the SRFs. That's a concern many of us have.

H.R. 3145 (from 112<sup>th</sup> Congress)

We appreciate the efforts of Reps. Bishop, Rahall, LaTourette, and Petri last Congress to introduce comprehensive legislation, H.R. 3145, the Water Quality Protection and Job Creation Act of 2011, to provide water quality financing through an array of existing and potentially new programs. We believe these efforts are an important part of the broader discussion on how best to proceed.

The Alliance members also know dedicated, sustainable funding is needed for water infrastructure. Our Urban Water Sustainability Council, in particular, understands the math of the gap and the urgency of having a steady stream of reliable and well-managed funding. Sustainability leaders also know it's a problem beyond their local borders, threatening to become a national crisis on the verge of a catastrophe. That's why it's important to continue discussions on whether and how a national trust fund should be established, financed, and operated. My own personal view, based on experiences in Congress, EPA, and State government is that we need a national strategy to increase funding from users and beneficiaries in the private sector, with revenues dedicated to water infrastructure solutions tailored to local and regional conditions. Also, a national effort cannot supplant local governmental and private-sector attempts to finance, maintain, and sustain local infrastructure.

#### Conclusion

Mr. Chairman and Ranking Member Moran, the water infrastructure challenge requires all of us to work together to embrace change and foster local strategies that protect public health and the environment and boost the economy. By using "all of the above" tools, and creating some new ones, we can improve the way America views, values, manages, and funds water systems. The U.S. Water Alliance supports your efforts and those of others to find common ground and to sustain our water life-support systems above and below ground.

Ben Grumbles  
 President  
 U.S. Water Alliance

Ben Grumbles is President of the U.S. Water Alliance, a not-for-profit educational organization based in Washington, DC and committed to uniting people and policies for water sustainability throughout the country. He has a long career in water and environmental policy, serving the public and teaching law students and environmental professionals, over the last 25 years.

Most recently, he led Arizona's Department of Environmental Quality working on air quality and climate change, energy policy and waste management, water efficiency, and wastewater recycling. Regional priorities included protecting the Grand Canyon, Colorado River, and Arizona-Mexico border environment.

Mr. Grumbles served as Assistant Administrator for Water at US EPA from 2004 through 2008. He launched EPA's water efficiency labeling program, WaterSense, and initiatives on green infrastructure, water and climate change, and pharmaceuticals. He carried out and defended the nation's clean water, drinking water, ocean and coastal, and wetlands laws and worked on great waterbody collaborations from coast to coast.

From 1985 to 2001, he served in the US House of Representatives in various environmental counsel and staff director roles for the Transportation and Infrastructure Committee and Science Committee. His particular focus was on water and its connections to people, wildlife, agriculture, and energy.

Mr. Grumbles serves on various boards and committees, including the Water Science and Technology Board of the National Academy of Sciences; Solutions from the Land, an educational nonprofit forging integrated and sustainable policies for agriculture, forestry, and conservation in the U.S. and globally; and the Water Resources Adaption to Climate Change Workgroup of the Federal Advisory Committee on Water Information. He is also a former board member and current supporter of River of Words, a national nonprofit committed to connecting kids to their watersheds and imaginations through poetry and art.

Mr. Grumbles has a Masters degree in environmental law from George Washington U. Law School, a J.D. degree from Emory University Law School, and a B.A. degree from Wake Forest University. He was born and raised in the Beargrass Creek watershed of the Ohio River, Louisville, Kentucky, four-miles east of Churchill Downs. Ben, his wife Karen, and their two children live and play in the Spout Run watershed of the Potomac River, Arlington, VA.

Mr. SIMPSON. Thank you.  
Mr. Neukrug.

#### OPENING REMARKS OF MR. HOWARD NEUKRUG

Mr. NEUKRUG. Thank you both for your leadership. My name is Howard Neukrug. I am the Water Commissioner for the City of Philadelphia. I also serve on the board of directors of the National Association of Clean Water Agencies, also more commonly known as NACWA, and we represent over 350 municipal wastewater utilities.

Congressman Serrano, you will not see it on my bio that was submitted here, but I did have a little canoe trip down the Bronx River a couple of years ago, and I highly recommend it for everyone. It really shows everything that is right and could be great about America's waterways. At the same time, you see the pollution and the problems and the amount of money that is needed to make improvements to a river like the Bronx River, so I commend you on your work here.

Modernizing the country's aging infrastructure may be the single-most important public works need facing our Nation. Nothing less than full attention, focus and support of federal, state, local, private sector and public water utility industry will be needed to tackle what EPA is estimating at \$635 billion need over the next 20 years.

Today, U.S. cities like Philadelphia bear almost the entire burden of the costs of clean water. As an industry, we have been raising rates by more than double the rate of inflation for the last 10 years and probably for the next 20 years up to and sometimes beyond the limits of our customers' ability to pay, and there is still a backlog today of over \$40 billion local water infrastructure projects. Given the enormity of these numbers and the criticality of water to society, it really remains vital that the federal government continue to leverage local investments in infrastructure by supporting programs like the Clean Water State Revolving Fund. NACWA believes that a clean water trust fund modeled after the highway trust fund is still the best option to help ensure a sustainable, dedicated and reliable revenue stream into the SRF system, and Chairman Simpson, thank you very much for your support of that concept.

Outside the jurisdiction of this committee but also needed is for Congress to maintain the tax-exempt status of municipal bonds. If limited or eliminated, it would increase the costs of local borrowing by billions of dollars, effectively reducing the capital investment that utilities can make in our cities and our towns. With the partnership between the federal government and local utilities, we are and we will continue to find ways to leverage every dollar. Utility leaders in Philadelphia and elsewhere are working to turn waste streams into resources that produce energy, recycle clean water and recover heat and nutrients. We are driving innovation in green infrastructure and adaptive management. Our vision is to meet these complex responsibilities and opportunities of our times using the most innovative and efficient means that are possible.

Philadelphia is extremely proud of our innovative \$50 million Biogas Cogeneration Facility now under construction using a pub-

lic-private partnership model, all with private investment. We will be using the methane gas byproduct of our treatment process to safely generate 6 megawatts of electricity, which is more than 80 percent of the power and heat needed to run this large wastewater plant. Last year, using another public-private partnership model, we developed a \$60 million sludge pelletization facility, and I know that may not sound pretty but we are successfully repurposing environmental waste into a vital nutrient resource and saving millions of dollars in the process. Both of these projects were developed using private equity dollars. They are good for the environment, they reduce our operating costs, and they leave precious public capital dollars available for Philadelphia to invest in its aging infrastructure.

Finally, one of our most celebrated efforts to date has been the newly launched Green Cities, Clean Waters partnership, which restores local waterways and manages stormwater runoff with cost-effective green infrastructure. This massive undertaking to green and update our infrastructure for the 21st century is absolutely essential and reliant on strong public and private sector partners. We are thrilled that we have been able to partner with the EPA to overcome financial barriers by adding regulatory flexibility without sacrificing water quality, and we are proud to be among the Nation's first partners with the EPA to use an integrated approach to water management.

We have come a long way in cleaning up our rivers and our streams but we still struggle, and as our infrastructure grows older, as it has been made very clear here, it does not grow any stronger. Significant investment is and will be needed to make an update on network of pipes and facilities while the costs of operating those aging systems continue to track higher. We are investing in innovation, adaptation, flexibility and resilience, and are glad to see the federal government at the table with us with the same vision and goals.

There are many ideas floating around Washington on how the federal government should support local investment in infrastructure, and all have some merits and some pitfalls, but there is nothing more dangerous than continuing down a path of underfunded and undervalued water infrastructure. We must work together to find a solution that works under these times of reduced discretionary spending, high unemployment and poverty, and the absolute need for a sound water infrastructure system in the United States. Utility leaders across the country are ready to transform our industry and leverage our ratepayers' investments to guarantee water quality and an environment that is sustainable and unrivaled, so thank you for this opportunity.

[The statement of Howard Neukrug follows:]



Testimony of:

**Howard Neukrug**

Commissioner  
Philadelphia Water Department  
Philadelphia, PA

Member, Board of Directors  
National Association of Clean Water Agencies  
1816 Jefferson Place, NW  
Washington, DC

**Oversight Hearing – Water Infrastructure Financing  
Appropriations Subcommittee on Interior, Environment and  
Related Agencies  
U.S. House of Representatives  
March 13, 2013**

Chairman Simpson, Ranking Member Moran, and members of the Committee, thank you for the opportunity to appear before you today. My name is Howard Neukrug and I'm the Commissioner of the Philadelphia Water Department. I'm proud to have the opportunity to share with you my unique experience and insights, based on my work with our team of more than 1,800 dedicated, innovative professionals serving the greater Philadelphia region 24 hours a day, 7 days a week. Our teams deliver integrated water, wastewater and stormwater services, treating about 300 million gallons of drinking water and 465 million gallons of wastewater and stormwater every day, while keeping our commitment to protect public health and the environment, and to support the sustainable growth of our city.

As part of my work as Commissioner, I serve on the Board of Directors of the National Association of Clean Water Agencies (NACWA), which represents the interests of more than 350 municipally owned wastewater treatment agencies and organizations who collectively treat approximately 80 percent of the nation's wastewater and who are public servants working each and every day to meet the objectives of the Clean Water Act. It is my pleasure to be testifying on NACWA's behalf today as well as the City of Philadelphia.

America's water and wastewater utilities provide valuable services to our environment, our economy, and our health. By collecting and treating wastewater from households and businesses, these clean water facilities deliver cleaner rivers, lakes, and coastal waters that sustain growing fish populations, enable water-based recreation, increase adjacent property values, and improve and protect public health. These outcomes, in turn, generate jobs that stay in America, increase economic output, and enable businesses to locate in the U.S. and grow.

Since passage of the Clean Water Act (CWA) in 1972, the estimated investment in the Nation's wastewater infrastructure totals \$1.4 trillion. While the successes to date under the Act have been impressive and a majority of waters that once were impaired now meet CWA standards, data over the past several years suggest that we may have hit a plateau in terms of water quality gains and that the gains made to date may be at risk absent additional investment and a smarter approach to prioritizing an increasingly complex web of water quality compliance requirements.

**Decreasing Federal Investment Harms Municipalities and Ratepayers**

Modernizing and replacing the country's aging water infrastructure may be the single largest public works need that our Nation faces, and it will require a serious investment. The U.S. Environmental Protection Agency's (EPA) most recent needs survey estimates \$293.7 billion is needed today by clean water agencies to comply with the CWA. A similar story can be told on the drinking water front: \$334.8 billion in drinking water infrastructure investments is needed over the next 20 years.

On top of these needs, a 2009 assessment on the costs needed by drinking water and wastewater agencies to confront the realities of a changing climate indicated that as much as \$1 trillion over the next 30 years will be necessary to improve resiliency in the face of more frequent and extreme weather events like Hurricane Sandy and the persistent drought that has gripped places like Texas and other states.

While the funding gap is well known, it is of greater importance to identify its impacts and potential solutions to address it. The lack of federal funding has been extremely hard on municipalities, who currently shoulder approximately 97% of the costs of clean water projects and face a backlog of over \$40 billion in local clean water infrastructure projects. In addition, according to a recent survey of NACWA members, our member agencies are spending approximately 26% of their annual operating budgets to service their debt. This is important because increasing sums are going toward debt service as opposed to new infrastructure investments.

To meet their current clean water challenges and existing debt obligations, clean water utilities have raised rates by more than double the rate of inflation for the last ten years. Today, 40% of households across America are already paying more out of their disposable incomes for wastewater management than the EPA says is affordable (i.e., 2% of their median household income). Given the current economic situation with high unemployment and poverty rates, utilities are reluctant to ask ratepayers to pay even higher rates and strain their pocketbooks further.

**We Need a Stronger Federal Partnership in Meeting the Nation's Clean Water Needs**

As Congress works to reduce the deficit, it is important that the federal government remain a reliable partner in helping communities meet their CWA obligations. The Clean Water State Revolving Fund (CWSRF) has been one of the more successful federal-local partnerships, providing \$47.9 billion to nearly 15,300 job-producing projects around the country. The short- and long-term improvements



made possible by the CWSRF have delivered significant environmental, economic and public health benefits as well.

Given the enormous and growing investment need, decreasing federal support for the CWSRF at this time is extremely ill-advised. In fact, we need a more reliable and sustainable way to put money into the CWSRF that keeps the federal government at the table without subjecting the CWSRF to the unpredictability or pressure of the annual discretionary budget process. NACWA supports the establishment of a Clean Water Trust Fund, to ensure that a dedicated and non-discretionary source of funding exists for the CWSRF. A Clean Water Trust Fund, similar to those that provide stable funding for highways and airports, would create a reliable revenue stream to supplement existing local and state investments. This would address the backlog of clean water projects and ensure that the sector is able to continue meeting the goals of the Clean Water Act. NACWA also believes that other federal financing tools that put new money on the table deserve serious consideration, including methods to increase private capital into the system, loan guarantee programs that complement the SRFs, and concepts like a national infrastructure bank so long as water infrastructure receives equal consideration as investments in transportation and ports.

As important as new funding opportunities are, it is more important to ensure that the existing funding mechanisms are not harmed. NACWA, in line with the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties, urges Congress to maintain the tax-exempt status of municipal bonds, a principal source of financing for wastewater projects. In the last decade, municipal bonds have financed more than \$258 billion in water and sewer infrastructure projects, more than total municipal bond-based investment for roads and highways, public power projects, or mass transit. If the tax-exempt status of municipal bonds were limited or eliminated, it would increase the costs of local borrowing by billions of dollars. In Philadelphia, for example, the elimination of tax-exempt bond status would likely mean over \$40 million in additional interest and coverage related expenditures every year for every \$1 billion in new capital borrowing (a 40% increase!), which would either be passed onto ratepayers who cannot afford it or simply diminish the level of greatly needed infrastructure investment. Neither of these options are advisable at a time when jobs are scarce and the physical state of our public water works and other municipal infrastructure are deteriorating.

**Investment in Clean Water Infrastructure Spurs Economic Growth and Creates Jobs**

Increasing federal investment in clean water infrastructure would not only help reverse declines in water quality and help overcome a well-documented investment gap, it would expand Gross Domestic Product (GDP) and create hundreds of thousands of jobs. In fact, for every \$1 billion spent on clean water infrastructure in the U.S., 28,500 new jobs are added, \$3.4 billion is added to the GDP, and personal income is boosted by \$1.1 billion.

Capital invested in clean water infrastructure is proven to generate more jobs per dollar than a comparable investment in schools, transportation infrastructure, energy infrastructure, or broad-based tax cuts. Clean water infrastructure is critical for private sector development as well. For every \$1 billion in new investment in core infrastructure, we can expect an extra \$840 million added to GDP each year from the private economy, of which about \$141 million is increased output from the manufacturing sector. These economic impacts are clear in cities where clean water investments have revived waterfronts, spurred new recreational opportunities such as kayaking and fishing in urban waters, and have lead to a rebirth of once abandoned green space along the water.

#### **Clean Water Utilities Are Transforming into Agents of Resource Recovery**

We believe that the federal government must remain a reliable partner in improving our water infrastructure, however clean water agencies also understand that we will continue to shoulder most of the burden. Knowing this, utilities have had to get smarter and look for ways to make each dollar stretch as far as possible. A broad shift is taking place in the clean water community as utilities transform from basic providers of wastewater services to full blown resource recovery agents, capturing waste heat and generating renewable energy on-site, reclaiming and reusing water, extracting and finding commercial uses for nutrients, and using green infrastructure to manage stormwater and improve urban quality of life more broadly. The result is savings and even revenue generation for the utility but also a more attractive and sustainable urban environment.

This concept is one of the ideas that we consistently keep top-of-mind at the Philadelphia Water Department. Our vision is for our utility to meet the complex responsibilities and opportunities of our times and our environment, and we work every day to uphold and advance that charge.

To this end, our major resource recovery efforts focus on green power and waste heat use, as well as the recycling of biosolids. We're extremely proud, for example, of the work in progress on the

construction of our innovative Biogas Cogeneration Facility in Northeast Philadelphia. The Cogeneration facility will use the methane gas produced by the existing digesters at our adjacent wastewater treatment plant to safely generate more than 80% of the power and heat for the facility; this will account for a reduction of 44 MWh/ year in our previous power consumption at this site.

In addition, the Philadelphia Water Department is currently piloting a heat recovery system that will eventually be used in all of our water pollution control plants. This system warms the facility with heat extracted from wastewater, eliminating the need for gas or oil heat. We anticipate significant costs savings in operational overhead as a result of its implementation.

Last year, we also began full-scale production at our new pelletization facility at our Biosolids Recycling Center, where we are successfully re-purposing the treated biosolids that would have become environmental waste, into a vital nutrient resource for fertilizing farmlands. Farmers in Pennsylvania, Maryland, Virginia, and Florida are now benefiting from the application of these pellets to help the growth of their crops.

Philadelphia has been nationally recognized as well, for the work our Water Department did in developing the state-of-the-art Contamination Warning System, drinking water contamination warning system to protect the public from acts of terrorism and other assaults on the water supply by providing timely detection of water contamination events.

This is not our only celebrated effort in protecting the water supply. The Philadelphia Water Department's newly launched *Green City, Clean Waters* partnership with the EPA has garnered notable media attention, and this program, which restores local waterways and manages stormwater runoff with cost-effective community beautification green stormwater infrastructure practices, has become a model for other U.S. cities. We've gotten support for it locally with the employment of mandates on developers in our city, now requiring them to meet certain on-site stormwater management standards for all new construction. These sites will account for about one-third of the green space *Green Cities, Clean Waters* will eventually create.

These are just a few examples which illustrate that in everything we do, the Philadelphia Water Department is committed to delivering maximum environmental benefits at the least cost to society.

We're keenly aware that our efforts to increase operational efficiencies in a manner that protects our environment also directly affects our ability to offer rates that remain among the lowest in our region – a value that becomes increasingly important as we recognize the limited ability of our customers, and customers around the country, to pay more.

Although we are working diligently, there is so much more to be done, and we need tremendous support in order to accomplish it. In Philadelphia alone, there are over 6,000 miles of water and sewer mains, the bulk of which will require upgrading or replacement in the coming years, in order for us to continuously distribute safe, drinkable water and provide reliable wastewater services to the more than two million people who rely on us.

Please be aware that we are using every tool in the book to manage our capital expenses, from improved asset management and long-term capital planning, to financial planning for improved bond ratings, and strategic planning to prioritize our capital activities, well into the future. In addition, we are diligently establishing public-private partnerships for help funding our large projects like the Cogeneration Plant and the Biosolids Pelletization Facility, and we are working with groups like NatLab, the Living Cities Foundation and the William Penn Foundation to identify innovative approaches to bringing private equity to our capital programs, with a focus on nurturing new business models for managing stormwater.

Indeed, our massive undertaking, to green and update our infrastructure for the 21<sup>st</sup> century and beyond, is absolutely essential, but is in reality, only fully possible with the continued, reliable and increasing support of our partners in federal government. In addition to vital fiscal investment, it's imperative that our federal partners remain abreast of the challenges facing our efforts and offer facilitation support. We're pleased to see this happening with EPA's recognition that current methods and requirements for CWA compliance present significant obstacles for our communities, and that more flexibility, without sacrificing water quality, is necessary. In June 2012, the EPA released its integrated planning framework, which allows communities with an approved integrated plan to sequence their clean water investments and work on projects that will yield the greatest water quality benefit first. Philadelphia is proud to be among the EPA's first partners in implementing an integrated approach to water management.

It's this kind of support -- which reflects an understanding of our core mission to deliver the greatest benefit to the public in everything that we do -- that will allow U.S water utilities to successfully continue our work as providers of one of life's ultimate essentials, and consequently, as leaders in service to our nation's cities.

**Conclusion**

We are at a crossroads. Forty years after the passage of the Clean Water Act, our industry is struggling to balance three core principles -- the amount of time needed to comply with federal regulations; the level of flexibility needed to prioritize competing compliance requirements; and the appropriate levels of federal/state/local investment needed to achieve these shared clean water goals. With committed federal support in all of these areas, utility leaders across the country will continue to transform our industry and stretch their ratepayers' investments to guarantee another four decades of water quality and environmental improvement that is sustainable and unrivaled.

Thank you for the opportunity to appear before you today, I look forward to any questions the Committee may have regarding my testimony.

**Howard Neukrug** is Chief Executive of Philadelphia's Water Utility and is responsible for providing safe and affordable drinking water and integrated wastewater and stormwater services to over 2.3 million people.

Mr. Neukrug is a national leader for urban sustainability and the creator of Philadelphia's Green City, Clean Waters program. He is a Professional Engineer, Board Certified Environmental Engineer and a graduate in Civil and Urban Engineering from the University of Pennsylvania, where he currently teaches a course on Water, Science and Politics and the 21<sup>st</sup> Century US Water Industry.

Mr. SIMPSON. Thank you.  
Mr. Sterba.

#### OPENING REMARKS OF MR. JEFFRY STERBA

Mr. STERBA. Thank you, Mr. Chairman, Mr. Serrano. It is great to join you today. We serve about 15 million customers in a little over 30 states in the United States plus some provinces of Canada. I am here representing our company as well as NAWC, the National Association of Water Companies, which represents the private water industry made up of a number of providers throughout the United States.

Earlier, Mr. Chairman, you talked about the 250 years. Let me give you another angle on the 250 years. At the rate—and this is why I believe that the number of what it will cost to maintain the kind of infrastructure the United States deserves is not \$633 billion but much higher than that. The rate at which we are replacing the infrastructure that exists today underground means that we are expecting that that infrastructure will last 250 years. That means that what was put into the ground by Thomas Jefferson at Monticello is about coming up for replacement. That is a little difficult to believe as a viable scenario. So the \$633 billion is really based on doing what we do today when that is not sufficient to provide the level of service that I think customers need in the future.

Let me in the brief time just touch on four aspects that can help on the financing front, and it is focused on—there is really two pieces. One is, how do we manage the cost of financing, which goes to what are interest rates, the use of tax-exempt debt, etc. The second is, how do we bring more capital into the market because the level of capital that has been committed, particularly from the public sector, is not sufficient. So let me address those two related things.

The first item I would raise is an issue that we have run into in a number of occasions through our public-private partnership work. There is a tax inefficiency if a municipality or another public entity wants to lease or sell its system to a private entity. So in a public-private partnership, there is a lease, and we effectively will lease that system. But if tax-exempt debt was used to finance those assets, then that tax-exempt debt must be defeased. Even though the city still retains ownership and the city is still accountable for that debt, that tax-exempt debt must be defeased. The cost of that defeasance is anywhere from a 15 to a 25 percent penalty on top of the amount of debt that is outstanding. That does not go to the U.S. Treasury, so it is no help to the federal government. It does not go to customers. In fact, it is a drain on customers because it will increase rates in the longer term and it takes capital out of circulation. It is basically sitting in an account for the benefit of bondholders. This is an easy change to be made administratively, and we have proposed to the Administration a change in rules that would relieve this and put it back into the way that the regulations were interpreted in the pre-1986 window where this issue did not come up. So that is a fairly easy one and can provide great benefits to communities.

The second one, which Ben mentioned, is private activity bond reform. Right now, water sits under the volume cap and that is a

significant constraint. So we have supported, NAWC has supported and this House has been very supportive of having legislation that would remove the volume cap, as is done today for solid waste for airports and a number of other elements. Now, I will note that there has been some well-founded criticism of how private activity bonds have been used. I think the classic example is \$1.6 billion of PABs being used to build a company's headquarters in Manhattan. I want to distinguish between that kind of usage of PABs and what happens in the water business. In the water business, PABs would be used specifically for infrastructure, infrastructure that is going to stay in that community, hopefully not 250 years, but let's say 100 years, and will be there to serve customers for the long term. Also, the benefit of that tax-exempt debt does not flow to shareholders, it flows through to customers and rates, because as a regulated utility, as all of our private water companies are, we operate on cost of service, and so the cost of that debt and the savings associated with tax-exempt debt flows directly through to customers. So I will make that distinction.

The third area I would touch on is the notion of state revolving funds and eligibility, and we are very strongly supportive of the state revolving fund mechanism. I would clarify something that I think Mike said in his comments in the last panel. Under the Drinking Water Act, private companies are eligible to receive state revolving fund loans but only if the state approves it. So over half the states in the United States do not allow private companies to qualify or to apply for state revolving fund loans, yet what we find is that the needs of those private companies are included in the use surveys that are submitted to the EPA. So that seems to be something that could be easily fixed. And then as Mike mentioned on the clean water side, there are not provisions relative to allowing private entities to utilize the state revolving funds.

The last thing I would mention is on this notion of public-private partnerships. We have found that they can—they are not a panacea but they can be very effective and very useful. Howard has the advantage of running a relatively large system that has some sophistication to it in terms of the capacity to enter into those kinds of agreements. Three-P agreements are complex, and for a small community to look at entering into one of those with the legal, financial and other ramifications, the transaction costs can be very high. Canada, just as an example, has done something different where they have created a corporation that is originally founded by the government that provides the facilitation for communities to develop public-private partnerships. You have to go through them if you are going to use any public monies. It requires that somewhere near 80 percent of the money must come from private coffers, so that is what we are trying to do is, pull more private capital into the marketplace, and they are able to help manage those transaction costs by creating some standardization to these agreements because, no offense meant, but you put five lawyers in the room, you are going to get six different agreements, and that is what happens in a lot of the PPPs unless you have the discipline that Howard or some of the other large communities can bring to the table.



So with that, I want to thank you all very much for your time and for taking on this issue. There are major challenges, but I got to tell you, from my vantage point, they are all resolvable.  
[The statement of Jeffry Sterba follows:]

**Testimony of Jeffry Sterba  
President and Chief Executive Officer  
American Water**

**Before the  
Subcommittee on Interior, Environment, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives**

**March 13, 2013**

Introduction

Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee – good morning and thank you for the opportunity to be with you today. I am Jeff Sterba, President and CEO of American Water, the largest publicly traded U.S. water and wastewater utility company. We employ approximately 6,700 dedicated professionals who provide drinking water, wastewater and other related services to approximately 14 million people in more than 30 states, parts of Canada and 10 US military bases serving military families.

I am pleased to be with you today representing the National Association of Water Companies. NAWC is the voice of the private water service industry. Our members are located throughout the nation and range in size from large companies like American Water that own, operate or partner with hundreds of systems in multiple states to individual utilities serving a few hundred customers. Through our various business models, private water and wastewater professionals serve more than 73 million Americans, nearly a quarter of our country's population.

NAWC applauds you, Mr. Chairman, and this Subcommittee, for highlighting America's water infrastructure challenges and helping identify some of the transformational solutions that will address them. I also want to relay a major "thank you" to the Congress on behalf of private water utility customers and individual investors for making permanent the capital gains and dividend tax rates. Keeping qualified dividends and capital gains taxes on par and at low rates is essential to the highly capital-intensive regulated utility industry, as it relies heavily on dividend paying stocks for critical infrastructure investment for both new and old water systems to help meet the growing demands on the nation's aging infrastructure. For the private sector, access to lower cost capital leads to needed infrastructure investment, which, in turn, translates to jobs and other important economic benefits to the community, including those directly passed on to customers in the form of lower rates. Low dividend tax rates that are on par with the tax rates for capital gains benefit millions of Americans who own dividend-paying stocks, as well as businesses that pay dividends and the national economy. Investment in the water industry is good for everyone. So again, thank you.

I am pleased to join you today to present actions we can take together as a nation to unleash "More Tools for the Financing Toolbox" through innovation and by embracing the powerful combination of public service and private enterprise to build the water infrastructure our communities need to thrive and to be healthy. The good

news about the increasing attention water and wastewater is getting – including in the popular press – is that the unseen infrastructure that truly promotes economic vitality, provides public health, and protects our environment is beginning to get the attention needed to highlight the increasingly difficult level of risk we will face if a different approach to investment is not taken.

#### Our Challenges Bring Opportunities

The challenges we face to protect and maintain our water and wastewater systems and make the investments needed for continuing growth and new public health and environmental standards seem vast, but they need not paralyze us. Last year I had the pleasure of appearing before the Subcommittee on Water Resources and Environment of the Transportation and Infrastructure Committee to testify on behalf of NAWC and I quoted a report that had just been released by the Johnson Foundation. The findings of this report, “Financing Sustainable Water Infrastructure”, continue to resonate:

“While these challenges are significant, they are not insurmountable. In fact, they can be viewed as drivers of much-needed change in how we finance and develop our water systems to meet future demands. New financing models and pricing flexibility, which are necessary to pay for new infrastructure and to support legacy systems, provide enormous opportunity for positive transformation necessary to keep pace with the rapid changes being experienced by counties, municipalities and investor owned utilities.”

The guiding questions the Johnson Foundation asked of the diverse group of experts it convened for the report were 1) “What new financing techniques can communities use to pay for integrated and sustainable infrastructure approaches?” and 2) “How can we direct private capital toward more sustainable water management projects?” We are all here today to help answer these questions.

#### The Value of Water

Americans value clean, reliable water. For most Americans, access to clean drinking water is as effortless as turning on the tap. At a cost that is typically less than a penny per gallon, clean and safe drinking water is often taken for granted rather than being viewed as a critical resource. The network of pipes that makes it so easy for 300 million Americans to take our drinking water for granted spans 700,000 miles and is more than four times the length of the National Highway System. Some of these pipes originally intended to survive 50 to 75 years have been in service for more than 100 years – well beyond their useful life. These extensive and integrated water and wastewater systems that deliver such great value are at risk today.

What this country spends annually on bottled water really puts the value of tap water into perspective. Today, all customers in the United States pay about \$29 billion annually to operate and maintain all of the tap water systems. In contrast, according to *The Big Thirst* by Charles Fishman, Americans spend about \$21 billion a year on bottled water. That is, they spend almost as much on bottled water, for an amount of water that would meet less than eight hours of total water demand, as we do on operating and maintaining the systems that meet the other 8,752 hours in a

year. Think of what could be accomplished if we put that \$21 billion into repairing and replacing the country's water infrastructure.

#### Water Infrastructure Today

Aging and deteriorating public water systems threaten economic vitality and public health, and communities nationwide are faced with massive fiscal challenges to replace critical water and wastewater infrastructure. Our aging infrastructure is a severe challenge for the water industry as evidenced by the 650 water main breaks every day and two trillion gallons of treated water lost every year at an estimated cost of \$2.6 billion. And, the U.S. Environmental Protection Agency (EPA) and the Government Accountability Office (GAO) estimate the current water infrastructure funding gap to be as high as \$1 trillion.

In addition to the EPA and GAO dire assessments, the American Society of Civil Engineers (ASCE) – in 2009 gave the U.S. water and wastewater infrastructure a “D minus,” as part of its infrastructure report card. According to the ASCE, if left unchecked, these conditions could cost businesses \$147 billion and cost households \$59 billion. ASCE also notes that under a worst-case scenario, the U.S. could lose nearly 700,000 jobs by 2020.<sup>1</sup>

No discussion of infrastructure would be complete without mentioning Hurricane Sandy because it really speaks to the importance of building resiliency in our systems. Think about 85 mile per hour winds, 10 inches of rain, and a couple of feet of snow in some mountain areas which impacted American Water service areas in New Jersey, New York, Pennsylvania, Maryland, Virginia, and West Virginia. We serve about a total of 6 million people in those states. Through the execution of emergency planning, the use of over 200 generators due to the massive power losses, around-the-clock staffing and in-depth coordination with federal, state, and local agencies on both preparation and recovery, we had less than 2,000 customers that lost water service for any period of time. Moreover, we had only minimal damage sustained by our facilities and, most importantly, there were no employee injuries. It also demonstrated the value of new technologies we are deploying where we could locate our underground facilities even with four feet of sand, homes moved up to five or six blocks and piles of debris covering any semblance of typical landmarks. We were also able to use this technology to even help communities find roads that were not visible because of sand and debris. Sometimes such details are taken for granted, but to me it speaks volumes about our industry's focus on long-term planning and making the appropriate investment for our nation's communities. I would also like to give a special thanks to the dedicated men and women who worked tirelessly to rapidly repair critical infrastructure in order to restore services to the communities devastated by Hurricane Sandy.

#### Use of Private Capital

Before I talk about some specific recommendations to improve our nation's “Financial Toolbox”, I want to touch on three other factors that already are helping and can continue to help the nation address our water challenges: 1) the substantial

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<sup>1</sup> The full report is available at [www.asce.org/failuretoact](http://www.asce.org/failuretoact).

private capital already at work in water, 2) successful partnerships between the public and private sectors, and 3) the use of innovative technology.

In 2012, American Water alone invested \$929 million in our community water and wastewater systems across the country and we expect to do about the same in 2013. NAWC estimates that its six largest members are collectively investing around \$2 billion each year in their systems – and these six companies provide service to about six percent of the U.S. population. This is significant when one notes that the total federal appropriation for the clean water and drinking water state revolving fund (SRF) programs for last fiscal year was approximately \$2.4 billion. While a number of other financing sources and programs are being used to invest in water and wastewater infrastructure, several groups estimate that there is a significant lag in total industry spending compared to what is actually needed.

#### Public Private Partnerships with Municipalities

We know that no sector, whether public or private, can solve the nation's water challenges on its own. I am here speaking for the private water industry which serves about 15% of the drinking and wastewater community directly and another 10% through existing partnerships with municipal and other public systems. We work closely with our partners on important legislation and regulations affecting the water and wastewater industry. We all share a strong interest in investing in our water infrastructure and serving our communities by providing reliable, clean and safe drinking water and efficient wastewater systems, and have unique dedicated professionals in our employ.

Incentivizing capital formation through public-private partnerships can be a critical tool in addressing the infrastructure challenge. Yet, due to the complicated nature of the analysis, structure, contractual negotiations, and oversight, public private partnerships (P3's) can be burdensome to municipalities. Moreover, it could be a significant diversion from their core services to the communities they serve. There are ways, however, to find efficiencies and reduce this burden. For example, I understand that Canada offers dedicated advisory assistance and professional services to municipalities at both the federal and provincial level. As a result, over the years Canada's P3 landscape has evolved considerably and is one of the more significant P3 geographies in both volume and capital size of transactions. The dedicated support of federal and provincial agencies has apparently developed a national source of expertise, producing for greater competition and lower costs for those entities in the public sector entering into forms of partnerships with private entities. It may be advantageous to consider a similar tool, whether public, private or non-profit, in the U.S.

NAWC's members interact with municipalities in three major ways: 1) we provide operating services; 2) we enter into long term lease or concession arrangements, and 3) sometimes we purchase municipal water systems. It is far more efficient to work together and we believe the financial tools that I will discuss in a moment will benefit us all.

### Services Through Innovation

Leveraging technological innovation to obtain greater value for customers, cleaner water, more efficient operations and less waste is also key to the solution. Innovations in water technology are vital to the industry to meet the challenges we face today, including aging infrastructure, urbanization, resource shortages, the economic and financial crisis, emerging contaminants, the need for sustainable development, and demographic changes. Yet, according to *Global Water Intelligence*, it takes seven years for a new technology to enter the water market and there are many examples of where it took decades. We can do much better.

NAWC's members are active in the innovation space. In the case of American Water, we are working on a number of infrastructure-related money saving technologies. For example, we have just implemented a data collection system that will save money for both water service providers and our customers in two important ways. Specifically, it saves money on infrastructure investment and can save money for customers by identifying water leaks more quickly. In addition by identifying and fixing water leaks quickly we can begin to reduce the waste of this precious resource.

This first of a kind project was fully deployed in our 129 water districts in five months. This hosted solution, provided by Smart Earth Technologies (SET), collects usage readings and other data from smart water meters, as well as other devices in the system – for example, pressure gauges, acoustic leak detection monitors and water quality sensors. The platform is interoperable with all device manufacturers, thus it allows for American Water to select the best products at the lowest cost which saves significant capital through true competition and commoditization of materials. Currently the various meter vendors systems do not communicate. This is akin to an iPhone not being able to call a Blackberry.

This system will help American Water manage its assets through the analysis of real time data. For example, a continuous flow alarm at a homeowners meter can be flagged and the customer notified that they have a leak. Leaks in the distribution system can be identified and located before they surface. Water system pressure can be managed during fire flow events. The platform also uses an automatic business-to-business communication protocol that eliminates manual processing of data and saves field service representatives time.

### The Financial Toolbox

Now let me turn to some of the opportunities for increasing the flow of private capital into water and wastewater infrastructure systems throughout the country, as well as some of the impediments we have the opportunity to remove.

#### *Remove Tax Inefficiencies for Lease and Sale of Municipal Water Systems (Defeasance)*

Current tax rules and regulations create significant impediments that have the practical effect of barring many municipalities from entering into cost saving and efficiency driven partnerships with private water companies for the operation of

municipal water supply and treatment facilities. Given the current state of the US economy, and that infrastructure planning is deferred to state and local governments, leaders are challenged to think in new ways to improve their financial flexibility to address other important city priorities and to ensure critical infrastructure investment in their water systems, and they look to the private sector for assistance. Municipalities sometimes make a determination that their water service can best be provided either by selling to or in a partnership with a private water company.<sup>2</sup> However, current IRS regulations impose a significant financial penalty on municipalities who sell or lease their water system to a private company if it was originally financed with tax-exempt debt.

Not surprisingly, most municipalities have issued bonds over the years that were used for the purchase, upgrade and/or maintenance of its water facilities. If a municipality that has these bonds outstanding chooses to engage in a public-private partnership for the provision of water services, it is subject to tax restrictions that can act as a complete barrier to entering into the partnership. The rules essentially require that the municipality either pay off the bonds or set aside funds (in a process known as defeasance) to pay off the bonds before entering into the public-private partnership. The expense associated with the current IRS defeasance requirement can be prohibitive to entering into a productive partnership. The funds required for defeasance could be 120 percent or more of the tax exempt debt being defeased, reducing the amount of funds that could otherwise be used to reduce rates for the customers or used to meet other municipal needs. This results in the IRS requiring an inefficient use of funds by the municipality, where these funds could be better used for productive purposes of improving the municipality's financial strength or the municipality's economic development initiatives.

Prior to the Tax Reform Act of 1986, the IRS tended to apply the tax exempt bond rules based on the bond issuer's expectations when it issued the bonds. After the 1986 Act, the IRS increasingly viewed compliance with all of the tax exempt bond rules as something that had to continue throughout the term of the bonds based on actual compliance/noncompliance rather than based on the issuer's expectations regarding compliance when it originally issued the bonds. It was as part of this effort that the IRS imposed the rules saying that "changes of use" of bond financed facilities, such as sales and leases, can cause the bonds to become taxable unless a remedial action is taken.

In order to allow for more efficient public-private partnerships to go forward NAWC seeks a narrowly tailored modification to IRS regulations on defeasance, which would stipulate that defeasance as it relates to the sale or lease of municipal water systems is not required where certain conditions or criteria are met that protect taxpayer interests while avoiding penalties to municipalities. We have asked the U.S. Department of Treasury to assist by revising the rules so that they would not function to deter municipalities from entering into partnerships in appropriate circumstances that provide economic and infrastructure efficiencies. We believe this can be done in a

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<sup>2</sup> In the case where the municipality leases its system, the municipality still controls the provision of water services to its citizens through its role as the utility regulator that monitors the actions of the private water company and controls the rates the company may charge for its services. The local municipality usually also retains the ownership of the facilities while allowing the private company to use them under a long term lease arrangement.

manner that reasonably protects the tax policy concerns of the United States and with no loss of revenue to the Department of Treasury. This Subcommittee's support for these changes would be an important message to the Treasury Department that the changes needed are appropriate and should be undertaken.

#### *Private Activity Bond Reform*

One of the most effective financing tools of the federal government in helping provide financing for long-term, capital-intensive infrastructure projects is the private activity bond (PAB). PABs are a critical tool water and wastewater systems need and use for all public-purpose drinking water and wastewater projects: it makes infrastructure repair and construction more affordable for municipalities and ultimately for users or customers. The use of PABs spurs capital investment in public projects during a time when governmental budgets are tight; and investors prefer PABs because interest accrues tax-free. Greater access to PABs by removing state volume caps for PABs used for community water projects is an approach that makes much sense;

The Sustainable Water Infrastructure Investment Act (introduced in the 112th Congress as HR 1802/S 939, which received extraordinary bi-partisan Congressional support) would do just that: remove water projects from state volume caps for private activity bonds and thus spur increased private investment in systems throughout the country. This same legislation is slated to be introduced in both chambers in the 113<sup>th</sup> Congress by very strong bi-partisan sponsors who serve on the tax-writing committees. Further, dozens of business and other groups support the legislation from the Clean Water Council to the U.S. Chamber of Commerce to Operating Engineers and Laborers' Unions and the U.S. Conference of Mayors.

A number of experts have stated that this legislation would generate at least \$2 billion – translating into 60,000 jobs – in new investment each of the first few years and grow to several times that as the market opens up. And this is federal support for water infrastructure and jobs that is highly leveraged. The Joint Tax Committee has scored this proposal to cost well under \$400 million over 10 years – a small investment to make to generate the funds for much needed water infrastructure improvements.

H.R.1802 garnered 101 bipartisan co-sponsors covering the full political ideological spectrum because of the measure's undeniable merit. This legislation is bipartisan and bicameral and passed the House twice in the 111th Congress as part of larger packages sent to the Senate. In 2012 the provisions of S 939 were incorporated into the Senate Finance Committee mark-up of the surface transportation bill passing the committee by voice vote 17-6. We are eager to see this legislation reintroduced and enacted given the vitality it would bring to the economy.

#### *State Revolving Funds and Eligibility*

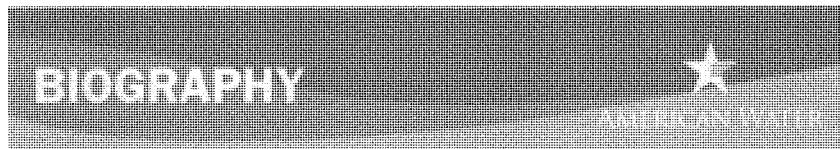
NAWC is a strong supporter of the State Revolving Fund (SRF) program and encourages the Subcommittee to continue its appropriations to this important tool. However, we strongly encourage this Subcommittee and Congress to fix an unfortunate oversight in the Clean Water Act. Currently, private water utilities are not eligible to participate in the Clean Water SRF. Moreover, while the Safe



Drinking Water Act gives states the option to make private water utilities eligible for the Drinking Water SRF, nearly half the states have not done so. We believe that the Congress and the Environmental Protection Agency should encourage and incentivize them to do so. I hope we can agree that the existing federal financing assistance programs such as the State Revolving Funds should benefit all taxpayers, including those who are customers of private water companies.

#### Conclusion

I sincerely appreciate your invitation to appear before the Subcommittee today and, along with my many colleagues in the National Association of Water Companies, look forward to continuing our work with you to ensure that all Americans benefit from innovations in financing which improve the water infrastructure so essential to their quality of life. Thank you and I would be happy to respond to any questions you may have.



## Jeffrey Sterba

**President and Chief Executive Officer**

Jeffrey Sterba is president and chief executive officer (CEO) of American Water, the largest investor-owned U.S. water and wastewater utility company. Mr. Sterba brings more than 30 years of exceptional operational experience and a wealth of industry knowledge to American Water.

Mr. Sterba leads a team of more than 7,000 dedicated professionals who provide drinking water, wastewater and other related services to approximately 16 million people in 35 states and Ontario and Manitoba, Canada. He is responsible for developing the overall strategy and vision of American Water and directing its key business development initiatives.

Prior to joining American Water on August 16, 2010, Mr. Sterba served as Chairman and CEO of PNM Resources, Inc., the parent company of PNM, Texas-New Mexico Power Company (TNMP) and First Choice Power, from 2000 until March 2010, and was Non-Executive Chairman of PNM Resources from March 2010 until December 2011. After joining PNM in 1977, he held a succession of positions including Executive Vice President & Chief Operating Officer, Senior Vice President Bulk Power Services, Senior Vice President Asset Restructuring, Senior Vice President Retail Electric & Water Services and Vice President Revenue Management. From 1998 to 2000, Mr. Sterba was Executive Vice President of United States Enrichment Corporation (USEC), a global energy company headquartered in Maryland.

Mr. Sterba is a nationally recognized thought leader in the areas of energy policy, climate change legislation, renewable energy, and sustainability. He has served as chair of Edison Electric Institute, the national association of shareholder owned utilities, and chair of the Electric Power Research Institute, a non-profit center for energy and environment research. He serves on the board of directors of the Meridian Institute and is a member of the Business Environmental Leadership Council for the Pew Center on Global Climate Change. Mr. Sterba also previously served on the board of directors of the U.S. Chamber of Commerce, and is a recipient of the Keystone Leadership in Industry Award and numerous other national and local honors.

Mr. Sterba has been actively involved in community and economic development efforts. He served as a community board member for Wells Fargo of New Mexico, on the board of directors of the Albuquerque Community Foundation, and as a member of the Kirtland Partnership Committee. He has also chaired the Albuquerque Economic Forum, United Way of Central New Mexico, Greater Albuquerque Chamber of Commerce and the Middle Rio Grande Business Education Compact.

Mr. Sterba attended Washington University in St. Louis, earning a bachelor's degree and completing post-graduate work in economics, and was accepted as a PhD candidate at the University of Chicago. He resides in Philadelphia, and is married with two grown children.

More information can be found by visiting [www.amwater.com](http://www.amwater.com).

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Mr. SIMPSON. Thank you.  
Mr. Wilson.

#### OPENING REMARKS OF MR. THAD WILSON

Mr. WILSON. Thank you, Chairman Simpson and Ms. McCollum. It is an honor to be here today to discuss water infrastructure financing options. My name is Thad Wilson. I am a Vice President with M3 Capital Partners. We are a management-owned investment firm based in Chicago. Through an advisory affiliate, M3 currently manages equity commitments of over \$3.4 billion on behalf of a U.S. public pension plan.

M3 is currently forming a North American water infrastructure fund that we anticipate will be initially capitalized by U.S. public pension plan investors. It is expected that the fund will focus primarily on offering an innovative design-build-operate-finance approach that we believe offers a robust form of public-private partnership, or P3, to municipalities to capitalize their water infrastructure improvements.

In the United States today, there is a significant and growing need for investment in critical water infrastructure, as we have heard this morning, and given current funding challenges, accessing private capital through P3 structures may be a compelling option for municipalities. At the same time, public pension plans need long-term investments that can provide stable returns for their beneficiaries—teachers, firefighters, police officers and other public employees.

There are various P3 structures municipalities can consider to meet their water infrastructure financing needs including structures that utilize an upfront equity investment to capitalize projects as part of a long-term concession agreement between a municipality and a private investor partner. The investor partner may be comprised of a public pension plan or an infrastructure fund, which provides most of the upfront equity for the project, and a service provider, which provides the experience and expertise to implement the project. That investor partner typically assumes key risks associated with the design, construction, operations, maintenance and/or financing of the project. To the extent the investor partner meets established performance levels, the upfront investment plus an appropriate return is effectively returned to the investor partner over the life of the P3 through service fees paid by the municipality.

As was cited early this morning, the city of Santa Paula, California, provides a recent P3 example. The city's wastewater treatment facility was built in 1939 and was out of compliance and needed to be replaced. Facing a tight deadline to avoid over \$8 million in fines, the city moved that project forward under a design-build-operate-finance procurement process. In July 2008, just two months after the contract was awarded, the investor partners broke ground on that project, and in May 2010, a new water recycling facility was in full operation seven months before the compliance deadline.

Two examples of P3s for existing water and wastewater systems were structured last year in the cities of Bayonne, New Jersey, and Rialto, California. In both cases, the investor partners made up-

front payments to fund initial capital improvements and other community needs and assumed responsibility for the operations and maintenance of the subject water facilities during that P3 term.

In my view, the primary benefits of water infrastructure P3s include the following. Because a P3 is not a sale or privatization, municipalities can retain long-term ownership and control of their water facilities. Municipalities can accelerate the launch of new projects, which may help to meet compliance deadlines and may generate near-term employment opportunities for the local economy. Municipalities can transfer key risks to the investor partner. As a result, the investor partner is well assigned with the municipality and is putting its capital at risk with a requirement to perform its obligations throughout the term of the P3. And finally, municipalities can potentially realize lifecycle cost savings as a fully integrated team takes on the responsibility to design, build, operate and finance their water infrastructure projects.

Potential measures to facilitate more water infrastructure P3s include the following: increasing awareness of the potential benefits of P3 structures combined with efforts to implement regulations that facilitate the use of P3s similar to the efforts in Canada that were just mentioned, helping to lower the costs of the debt financing for private investor partners in water facility P3s, potentially by removing the state volume cap on private activity bonds for such projects, and by promoting additional policies to facilitate low-cost funding for P3, potentially through the SRF program or the WIFIA program that was mentioned earlier. With access to low-cost debt financing, investor partners could deliver such projects to municipalities based on a lower overall cost of capital, generating cost savings that ultimately could be passed onto the community ratepayers.

Thank you for your time today and for your consideration of this important issue.

[The statement of Thad Wilson follows:]

**Testimony of**

**Thaddeus R. Wilson  
Vice President**

**M3 Capital Partners LLC  
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**To**

**Committee on Appropriations  
Subcommittee on Interior, Environment and Related Agencies  
US House of Representatives  
B308 Rayburn House Office Building  
Washington, D.C.**

**On**

**A Review of Financing Options for  
Community Water Infrastructure Projects**

**March 13, 2013**

Chairman Simpson, Ranking Member Moran and Members of the Subcommittee:

It is an honor to be here today to discuss financing options for community water infrastructure projects. My name is Thad Wilson and I am a Vice President with M3 Capital Partners LLC (M3), a management-owned investment and advisory firm based in Chicago, Illinois. M3 is registered with the SEC and a member of FINRA and SIPC in the United States.

M3, through an advisory affiliate, currently manages equity commitments of \$3.4 billion on behalf of a U.S. public pension plan. The focus of these equity commitments is on long-term, entity-level investments in real estate operating companies.

#### **M3's Water Infrastructure Initiative**

M3 is currently forming a North American water infrastructure fund that we anticipate will be initially capitalized by U.S. public pension plan investors. It is expected that the fund will focus primarily on offering an innovative Design-Build-Operate-Finance (DBOF) approach to municipal water infrastructure project delivery. We believe this approach offers a robust form of public-private partnership (PPP) to municipalities to capitalize their water infrastructure improvements, which may include the repair, upgrade or replacement of drinking water and wastewater treatment facilities and, in some cases, their related distribution and collection systems (collectively referred to herein as "Water Facilities"). M3 plans to form strategic ventures with highly experienced water service providers who will undertake the Design-Build-Operate (DBO) components of project implementation.

We believe M3's fund will be an attractive partner for municipalities given a common interest in long-term investments in critical Water Facilities. Municipalities need a DBOF partner with a long-term vision to ensure their Water Facilities will perform for decades, providing local rate payers with high-quality water services at a reasonable cost. Public pension plans need long-term investments that can provide stable, long-term returns for their beneficiaries – teachers, firefighters, police, and other public employees. By helping to provide a DBOF package, M3 believes we can offer municipalities the certainty they need to repair, upgrade or replace their Water Facilities on schedule and on budget.

My testimony today explores some of the compelling reasons to bring municipalities and public pension plans together through PPPs in such a way as to creatively address the nation's water infrastructure investment needs. Although M3 is a private group, we seek to establish a fund that will facilitate investments by public pension plans, which in turn will ultimately support public pension plan beneficiaries.

#### **Public Pension Plan Interest in Water Infrastructure**

During the past several years, U.S. public pension plans (particularly state retirement plans for teachers, firefighters, police and other public employees) have been exploring new categories of stable investments to improve their ability to meet long-term payment obligations to their beneficiaries, while mitigating the potential erosion of investments from possible future inflation. The significance of these exploratory efforts has been magnified in light of the effects of the global financial crisis, which generated volatile performance even in investment categories that were previously considered “core” or “stable”. Many investments that were reasonably expected to produce steady annual cash distributions have failed to do so. As a result, public pension

plans are increasingly looking to build or expand allocations focused on “tangible asset” investments. Such tangible asset investments include infrastructure investments that seek to generate stable cash flows over a long-term holding period, with limited economic correlation to other investment holdings (e.g., stocks, bonds and real estate). In addition, pension plans have feared their investments would not keep up with inflation, should inflation rear its ugly head. Ideally, pension plan investments would provide inflation-protected returns commensurate with the risk profile of the underlying assets.

Recent data clearly demonstrate the desire among institutional investors, including public pension plans, to invest in infrastructure:

- According to industry research by Preqin Ltd., from 2008 through 2012, 201 global unlisted infrastructure funds were formed with \$128 billion in aggregate capital commitments and an average fund size of \$637 million. In 2012 alone, 36 funds obtained \$23.7 billion in aggregate capital commitments globally. A significant amount of this capital is targeting investments in North America, where 23% of the transactions involving Preqin-tracked infrastructure funds closed in 2012.<sup>1</sup>
- According to data collected by Institutional Real Estate, Inc., 52 U.S. public pension plans have made 91 distinct commitments to infrastructure funds since 2005, totaling in excess of \$10.4 billion.<sup>2</sup>

M3’s view is that a number of public pension plans will be interested in building a portfolio of investments in municipal Water Facilities. Municipal Water Facilities provide an essential service to residential and commercial end users, for which there is no viable alternative, and generate cash flows secured by an established and diversified customer base of homes and



businesses. As such, municipal Water Facilities are likely to generate stable, recession-resistant cash flows, with a limited correlation to other investment allocations of pension plans.

The long-term investment requirements of municipal Water Facilities are also well-aligned with the long-term investment “hold period” of public pension plans. Public pension plans will generally target long-term, stable yields on investments that reflect the strength and stability of the underlying assets, ideally with adjustments for inflation that allow for an acceptable real return over a long-term investment period. For municipalities, partnering with a public pension plan investor is an effective way to provide long-lasting, quality water infrastructure that will have efficient operating costs for the long-term, to the ultimate benefit of rate payers.

#### **Potential PPP Structures**

There are various PPP structures municipalities can consider to meet their Water Facility development and operating needs. Among these various structures, two structures in particular are well suited to matching public pension plan capital with municipal water infrastructure investment needs:

- **Existing Facility PPP** – for the repair, upgrade or expansion of existing Water Facilities.
- **New / Replacement Facility PPP (DBOF)** – for the development of new or replacement Water Facilities.

Both PPP structures require significant equity to capitalize Water Facility capital project needs, as part of a long-term “concession agreement” between a municipality and a private investor partner (referred to herein as the “Investor Partner”). The Investor Partner may be comprised of a) a public pension plan (or an infrastructure fund capitalized by public pension plans), which provides most of the needed capital costs up-front, and b) a service provider or

combination of service providers, with the experience and expertise needed to design, build and / or operate the Water Facility over the term of the PPP. The Investor Partner receives payments over the term of the PPP that are structured to provide a reasonable return on the Investor Partner's capital invested. At the end of the PPP term, the Water Facility typically will be owned by the municipality under pre-negotiated terms with no further payment due to the Investor Partner by the municipality.

Under an Existing Facility PPP structure, the Investor Partner assumes responsibility for operations and maintenance of the Water Facility during the PPP term. The Investor Partner may also fund and implement any immediate required facility upgrades, as well as future periodic capital expenditures. The up-front capital payments plus an appropriate return on capital is effectively returned to the Investor Partner over the PPP term through service fees paid by the municipality. Proceeds necessary for the payment of service fees to the Investor Partner come from rate payers served by the municipality. In order to establish future rates at an acceptable level for rate payers, the Investor Partner will seek to generate long-term cost savings, realized by the integrated delivery of design, construction, operations and maintenance services.

A New / Replacement Facility PPP structure can be utilized by an established municipality a) to build a new Water Facility (e.g., a biosolid facility) that upgrades or expands a municipality's existing infrastructure or b) to build a replacement Water Facility that replaces an existing older, obsolete Facility that no longer meets regulatory compliance standards (e.g., a new water recycling facility that replaces an old wastewater treatment plant). Under this structure, the Investor Partner will provide a) the resources and talent to implement design and construction services during project development, b) operating and maintenance services through the life of the PPP term, and c) financing for the initial project construction and for future capital

expenditures required. With the Investor Partner coordinating all design, build, operate and finance functions (under the standards and oversight of the municipality), the municipality can enter into a single agreement for the development and operation of new or replacement Water Facilities. Once the Water Facility is commissioned and operations commence, the up-front capital invested in the project is repaid to the Investor Partner over the life of the PPP term through service fee payments.

As an alternative to PPP structures, municipalities may consider an outright sale or “privatization” of their Water Facilities to a private investor. A privatization transaction typically requires a shift in control over rate setting and other matters from the municipality to a state Public Utility Commission or similar regulatory authority.

***Recent Examples of Water Facility PPPs***

The City of Santa Paula, California (the City) provides a recent example of a Replacement Facility PPP structure utilizing private capital. The City’s wastewater treatment facility, built in 1939, was out of compliance and needed to be replaced. The City did not have sufficient funds to pay outright for a new facility and was facing a tight completion and compliance deadline to avoid more than \$8 million in fines. Santa Paula’s City Council moved the project forward under a DBOF procurement process, utilizing Section 5956 of the California Government Code. Section 5956 encourages PPPs to address public infrastructure needs through private investment.

The Santa Paula City Council awarded the project to an Investor Partner team comprised of an experienced DBO service provider (PERC Water) and an infrastructure fund (which counts a number of pension plans as its source of capital) as the primary equity capital provider. In July 2008, just two months after the contract was awarded, the Investor Partner broke ground on the

project. A new water recycling facility for Santa Paula was in full operation by May 2010, seven months before the compliance deadline. PERC Water is now operating the facility under a 30-year agreement between the Investor Partner and the City.<sup>3</sup>

Two examples of Existing Facility PPPs were completed in 2012 in New Jersey and California. An Investor Partner comprised of United Water and a private investor completed a 40-year concession in the city of Bayonne, New Jersey involving the city's water and wastewater systems. Similarly, another Investor Partner comprised of Veolia Water North America and private investors completed a 30-year concession in the city of Rialto, California involving the city's water and wastewater systems. In both cases, the Investor Partners made up-front payments to fund initial capital improvements and other community needs. The Investor Partners also assumed responsibility for operations and maintenance of the subject Water Facilities during the PPP terms.<sup>4</sup>

#### **Why Municipalities Should Consider PPPs for Water Facility Investment**

In the U.S. today, there is a significant and growing need for investment in our critical water infrastructure. Increasingly stringent regulations established and maintained by the Environmental Protection Agency (EPA) necessitate the ongoing upgrade or replacement of existing Water Facilities. According to a recent report from the American Society of Civil Engineers, the total U.S. water and wastewater infrastructure capital need in 2010 was an estimated \$91.2 billion, while total capital spending was only an estimated \$36.4 billion, resulting in a total estimated "capital gap" of \$54.8 billion. According to this report, if current trends persist the anticipated capital gap between need and expenditure will grow to \$84.4 billion by 2020.<sup>5</sup>

In the current environment, municipalities are taking on these required investments in their water infrastructure asset base, while federal, state and local governments are facing significant budget and debt-load constraints. To further complicate matters, some federal programs available for financing Water Facilities, such as the Drinking Water and Clean Water State Revolving Funds (SRF), have recently been curtailed. Going forward, accessing private capital through PPP structures may be even more compelling for municipalities.

The primary benefits of PPP structures for municipal Water Facilities are summarized in the following paragraphs.

#### ***Ownership and Control***

With a PPP arrangement, municipalities can retain long-term ownership of their Water Facilities. During the PPP term, the Investor Partner typically obtains the benefits of ownership of the asset (potentially through a lease or other property interest in the asset). However, at the end of the PPP term, the benefits of ownership revert back to the municipality under pre-defined exit standards, with no further payment due to the Investor Partner. The length of allowable PPP terms varies by state, but terms typically range from 20 to 35 years.

Under a PPP, the municipality can also retain control over rate setting, rather than conceding such control to a state Public Utility Commission (as typically occurs under an outright sale / privatization of Water Facilities).

The PPP agreement may stipulate that failure to comply with established performance levels or regulatory standards results in termination of the PPP, with the benefits of ownership of the Water Facility reverting back to the municipality for a pre-established amount. With a properly

structured PPP, the Investor Partner is highly motivated to comply with – or even exceed – local, state and federal regulations.

#### ***Accelerated Project Launch***

In order to accelerate the launch of Water Facility projects, municipalities can access private investment via PPP structures, potentially without the timing constraints associated with SRF applications or municipal bond financing arrangements. Because municipalities that access the bond market must carefully manage their bond maturities, credit ratings and financial ratios, they may only access the bond market at established intervals. PPP structures can be formed independent of the municipal bond cycle and provide an alternative financing source for near-term and long-term investment needs.

There are many reasons municipalities may want to accelerate the launch of Water Facility projects. For example, by accelerating the launch of major Water Facility repair, upgrade or replacement projects, municipalities facing EPA consent decrees are more likely to meet compliance-driven deadlines and avoid fines. In addition, by accelerating project launch municipalities can generate significant near-term employment opportunities for their local economy.

#### ***Risk Transfer***

A key benefit of PPP transactions is the opportunity for municipalities to transfer financial and performance risks inherent in the design, construction, and operation of Water Facilities to the private entities with which they contract for these services. Under a PPP structure, the Investor Partner will take on operating and maintenance risks, while guaranteeing operational

compliance with local, state and federal regulations throughout the PPP term. Under a Replacement Facility PPP, the Investor Partner may also assume key risks associated with the design, construction, and financing of the project. To the extent the Investor Partner guarantees project costs, schedule of completion, water / effluent quality, capital replacements and energy consumption levels, the Investor Partner is well aligned with the interests of the municipality and is putting its capital “at risk”, with a requirement to perform its obligations throughout the PPP term.

#### *Life-Cycle Cost Savings*

By utilizing a PPP approach for the development of replacement Water Facilities, municipalities potentially can realize savings in life-cycle costs (i.e., the risk-adjusted net present value of total project costs to the municipality over the life of the PPP term) as compared to the traditional Design-Bid-Build (DBB) approach to project delivery. Lower life-cycle costs may be achievable under the PPP despite the relatively higher cost of capital of the Investor Partner as compared to tax-exempt bonds and / or SRF loans that are typically utilized under the DBB approach.

Lower life-cycle costs under the PPP approach are driven by the life-cycle perspective of the Investor Partner. The Investor Partner’s integrated team takes full responsibility for the design, construction, operation and maintenance of the project over the life of the PPP term, allowing for coordination and efficiencies across these activities. The Investor Partner is motivated to invest in equipment during construction that will result in the lowest operational costs through the PPP term, producing cost savings that can be shared with the municipality. In contrast, the DBB approach separates the design, build and operations phases of the project. Under the DBB

model, independent design and construction firms generally have no operating responsibilities beyond project start-up, and are therefore less aligned with the municipality regarding the long-term operating performance of the Water Facility. By combining the design, build, operate and finance functions under a single Investor Partner in a PPP structure, municipalities can potentially avoid change orders, cost overruns and / or litigation costs associated with separate, non-integrated service providers.

#### *New Revenue-Generating Opportunities*

Investments in new Water Facilities may present municipalities with new revenue-generating opportunities, which potentially can be monetized by partnering with an Investor Partner. Municipalities and Investor Partners can form PPPs in order to facilitate the development of new Water Facilities and the application of innovative technologies that allow for:

- desalination of seawater or brackish water;
- treatment and reuse of wastewater (i.e., “recycled water”) and / or;
- waste-to-energy conversion of wastewater byproducts (i.e., “biosolids”).

To the extent meaningful new revenues can be generated from such initiatives, they can help lower future rates for rate payers, or at least mitigate the need for rate increases. Alternatively, an Investor Partners may incorporate an appropriate, risk-adjusted valuation for such future new revenues into PPP structures. In such cases, the Investor Partner may reduce the up-front capital costs for the delivery of a new Water Facility by an amount equal to the present value of the future new revenues generated by the project.



***Long-Term Partnership Approach***

Through PPPs with public pension plans, municipalities can form long-term partnerships with established investors that have deep financial resources and proven track records. Public pension plans are ultimately responsible for preserving and growing the long-term retirement benefits of teachers, firefighters, police and other public employees. As such, public pension plans and municipalities share a common public mission, which creates a solid foundation for mutually beneficial long-term partnerships.

**Facilitating Water Infrastructure PPPs**

Although the U.S. faces a nationwide need for investment in community Water Facilities, the implementation of such projects is generally carried out at the local level. As a result, any efforts toward increasing the number of water infrastructure PPPs should primarily seek to enhance the ability of local officials and their staff to effectively solicit, review, deliberate and approve such projects.

The primary challenges to implementing water infrastructure PPPs, along with potential measures to address those challenges, are as follows:

- **Value of water and water infrastructure** – Water is generally viewed as a public good in the U.S., with very limited appreciation among many for the true cost to develop and maintain the critical infrastructure required to deliver safe drinking water, and to collect and treat wastewater. Capital intensive pipe systems and technologically advanced treatment facilities are typically “out of sight and out of mind”, so long as water arrives at and departs from our homes and businesses as needed. With a focus on shorter-term priorities, a number

of municipalities have maintained user rates for water-related services at levels that do not reflect the true cost of such services. Rate increases that may be needed to support required water infrastructure investment, no matter the capital source, are often met with resistance.

Potential measures to address these challenges include:

- Increase awareness of the significant and growing need for investment in U.S. water infrastructure required to maintain high standards of quality and reliability;
  - Increase awareness of the myriad social benefits from optimal water infrastructure investment, such as: (i) the reliable delivery of safe drinking water; (ii) the protection of the environment through effective wastewater treatment; (iii) the conservation and reuse of water from water recycling initiatives; and (iv) the potential for job creation from near-term project launches;
  - Encourage broader community appreciation for the value of water and water infrastructure, and support for efforts to implement true-cost pricing for water services where appropriate.
- **Understanding PPPs** – Given the limited number of water infrastructure PPPs utilizing private capital in the U.S., a) most interested citizens are unaware of the potential long-term benefits of PPPs, and b) few municipal officials have meaningful experience in soliciting, evaluating and structuring such transactions. In addition, regulations governing the implementation of PPPs vary widely from state to state. As a result, many municipal officials may be reluctant to deviate from the “traditional” DBB procurement approach, as compared to a potentially more effective PPP structure under an uncertain regulatory environment. Potential measures to address these challenges include:

- Increase awareness of the potential benefits of PPP structures for water infrastructure investments;
  - Encourage more state governments to implement PPP regulations which facilitate the solicitation, evaluation and structuring of PPPs, along the lines of Section 5956 of the California Government Code, under which a Replacement Facility PPP was completed in Santa Paula, CA;
  - Establish a nationwide office to promote and support PPPs at the municipal level, similar to the “PPP Canada” initiative launched in 2009 by the Canadian federal government. PPP Canada provides a national office for the promotion, coordination and financial support of private investment in public infrastructure as part of the country’s long-term economic plan. PPP Canada also manages a C\$1.2 billion fund, which is a merit-based program, designed to promote consideration of PPPs in public infrastructure procurements, in order to achieve value for taxpayers and other public benefits.<sup>6</sup>
- **Debt Financing Options** – Most municipalities, and particularly larger cities, can access low-cost, tax-exempt financing through the municipal bond market and / or the SRF program for their major water infrastructure investment needs. The limited amount of similarly low-cost debt financing for PPP projects involving Water Facilities increases the overall cost of capital for such projects. Although tax-exempt private activity bonds (PABs) may periodically be available to private investors in Water Facilities, uncertainty caused by the PAB “state volume cap” for Water Facilities may limit the competitiveness of PPP structures in certain cases. Potential measures to address this challenge include:
    - Help to lower the cost of debt financing for private Investor Partners in Water Facility PPPs by removing the private activity bond state volume cap for Water Facility projects;

- Facilitate additional policies and programs – potentially through the SRF program and / or the contemplated Water Infrastructure Finance and Innovation Act (WIFIA) – that provide competitive, low-cost debt financing for Water Facility PPPs. With access to low-cost debt financing for Water Facility PPPs, Investor Partners could offer such projects to municipalities based on a lower overall cost of capital, generating cost savings that ultimately could be passed on to community rate payers.

### Summary

Municipal obligations to provide quality water and wastewater services to the public align well with the increasing desire of public pension plans to invest in stable, long-term cash-generating assets. PPPs utilizing public pension plan capital are an attractive option for municipalities to meet their Water Facility investment needs. PPP structures can accelerate project launch, generate near-term jobs, allow for long-term municipal ownership and control, and potentially generate meaningful cost savings and / or new revenues through the life of the project. Among the thousands of drinking water and wastewater systems across the U.S., more municipalities should find it advantageous to explore the solutions offered by PPPs involving public pension plan financing.

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#### Endnotes:

<sup>1</sup> Prequin Ltd. Infrastructure Spotlight, January 2013.

<sup>2</sup> Institutional Real Estate Inc. 2013

<sup>3</sup> PERC Water website. 2013.

<sup>4</sup> United Water website; Veolia Water North America website. 2013

<sup>5</sup> American Society of Civil Engineers. 2011. Failure to Act – The Economic Impact of Current Investment Trends in Water and Wastewater Treatment Infrastructure.

<sup>6</sup> PPP Canada website. 2013.

**THADDEUS R. WILSON**

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**Vice President, M3 Capital Partners LLC**

Mr. Wilson is a Vice President of M3 Capital Partners LLC (M3) and is leading the firm's North American water infrastructure investment initiative. In this role, Mr. Wilson has developed the firm's relationships with water-sector service providers and has reviewed multiple prospective water-related public-private partnership opportunities. With broad insights into U.S. public pension plans' interest in investing in municipal water infrastructure, Mr. Wilson testified in February 2012 before the U.S. House Subcommittee on Water Resources & Environment to address "*A Review of Innovative Financing Approaches for Community Water Infrastructure Projects*".

During his tenure with M3, Mr. Wilson has had responsibility for investment banking coverage of the senior housing and medical office sectors in North America. He has also managed the sourcing, underwriting and / or structuring of investment opportunities for Evergreen Real Estate Partners, a private equity partnership managed by Evergreen Investment Advisors (EIA), a wholly owned subsidiary of M3.

Previously, Mr. Wilson worked with GE Capital, McKinsey & Company and Morgan Stanley. Mr. Wilson received an M.B.A. from Northwestern University and a B.A. in Government from Harvard University.

M3 is a global management-owned investment and advisory firm focused exclusively on real assets. Through its EIA subsidiary, M3 currently manages \$3.4 billion in equity commitments on behalf of a U.S. public pension plan. M3 is registered with the SEC and a member of FINRA and SIPC in the United States.

Mr. SIMPSON. Thank you, and again, thank all of you for being here today.

#### STATE PRIVATE EQUITY BONDS

As I said in my opening statement, I actually think this is one of the biggest challenges we face, and there are a lot of challenges around this country but we are, as I say in speeches a lot, we are the beneficiaries of our forefathers' investment in infrastructure, and most people when you say infrastructure think of roads and bridges, but you are not only talking roads and bridges, you are talking dams, harbors, all of the infrastructure we have in this country. You go to foreign countries and look at the infrastructure challenges they have that have not had this type of investment from their forefathers, and we are not keeping up with it, frankly. It is an investment that we have to make if we are going to address these problems. It is not just addressing the infrastructure, it is also being able to address the rest of the parts of the budget that deal with it, which makes us not be able to do a good job there and not address the problems that we are having with water infrastructure.

Now, three of you mentioned removing the cap on state private activity bonds. Have any states tried to exceed that cap or add the cap level or anything currently?

Mr. ARNDT. Our association had done an analysis a few years ago, and most of the states exceed or max out, they do not have available funds, and given the competition for those private activity bonds, it is very difficult for water-related infrastructure projects to access those monies. So they are very limiting in regard to making monies available for water.

Mr. STERBA. What Aurel said at the end is really important. Remember that you have got many other competing needs, which frankly are visible. Water is invisible, and so it tends to get to the bottom of the rung because of that, and so it is not only that it does not get its fair share, it is that it is at the bottom of the table.

Mr. WILSON. It was also pointed out, these are long-term projects and take a long time to structure and review and get through approval, and a level of certainty around the availability of those funds over a period of time would be important.

Mr. SIMPSON. You are right. One of the real challenges you have here is that nobody really thinks about where water comes from until it does not come. Nobody thinks about what happens when you flush the toilet unless it does not flush, and that really is the challenge. When you drive on a road that ruins your front-end alignment, people notice that right away. So this is the invisible infrastructure that has to be addressed.

#### FINANCING POOLS

You mentioned creating a trust fund like the highway trust fund or the airport trust fund or the harbor maintenance trust fund or the inland waterways trust fund. We have a lot of trust funds. What do you tax to put in there?

Mr. NEUKRUG. Well, I look at these bottles, and there is about \$15 worth of bottled water here, and the city of Washington could

supply that to you for less than a penny. I think there is room for—

Mr. SIMPSON. Is it not amazing that people will complain about \$3.50 gas but will pay for a bottle of water.

Mr. NEUKRUG. It is really incredible, and we have it here because it is convenient but it is not a necessity, and I think this is a prime example. As a matter of fact, when you look at our waterways and you look at the floatables, the trash that is in our waterways, whether it comes through the wastewater process or just overland, it is predominantly these bottles. So I think there is a very good case to be made that is one location. Another area, of course, is flushables, what we call in Maryland the toilet paper tax, where you will be using things that actually have a relationship to the water I think are eligible areas for this.

Mr. SIMPSON. What about the idea of creating a national infrastructure bank, as some people have suggested? How would that work? Any ideas? None of you mentioned this, so I hate to ask you.

Mr. ARNDT. My presumption is that it would be some form of indebtedness that would be necessary to provide the capital, the seed capital, for that type of an entity. It was actually one of several alternatives that we looked at before we settled on this WIFIA approach. The difficulty from our perspective with a trust fund or with a water infrastructure bank is that essentially you have a dollar in equals a dollar out, whereas with WIFIA, because of the Federal Credit Reform Act, every dollar that is appropriated for a WIFIA-like program actually is leveraged. In TIFIA, for example, there is a ten-to-one leveraging ratio, so every dollar that is appropriated actually provides \$10 in spending authority, and it is because of only needing to fund that subsidy cost, and I think we could make the case that in the case of water infrastructure, that the leveraging ratio should be even higher. So for every dollar you appropriate for a WIFIA-type program, you get a much larger spending capability and a much larger infrastructure investment.

Mr. GRUMBLES. Mr. Chairman, so I was, like a few people in the room, like Tom Curtis, I was around on Capitol Hill working as a staffer when the state revolving fund model for the Safe Drinking Water Act was enacted, and also back in 1986 the Clean Water State Revolving Fund, a program which the President vetoed and then vetoed it again and it was overridden by the Congress and put into place with a very clear end date in terms of the authorizations but it was also very clear that Congress and the American people wanted it to continue because of the model. The basic point I would make on this with your question about a national infrastructure bank, it is not just a question of where the dedicated funding comes from, it is also where the fund resides, and that is—I think one of the reasons that the Clean Water and Drinking Water State Revolving Fund model has been so successful is it is really not a fund, it is 50 funds or different funds. They have a designated agency, in this case, EPA, being the go-between and overseeing the federal dollars through Congressional appropriations but it has devolved down into the states, who actually run the programs, as the Council of Infrastructure Finance Authorities would tell you.

One big concern that some have about a national infrastructure bank, even though it draws needed attention to infrastructure, is,

there is such a track record of water being put at the back of the bus or under the bus, and roads and bridges, which are very important, or airports getting most of the attention, and so that is part of the concern. And then when you create a national infrastructure bank, does that then create a vacuum and the support for the state revolving funds under clean water and drinking water proven successful programs, do they get shortchanged because of a new infrastructure bank? So that is some of the concerns or perspectives that I think you are already aware of.

Mr. STERBA. That goes to the issue, just like the PAB question, of, if you have everything under one umbrella, how do you allocate and get prioritization, and so you have to find a way around that, and that is where, I think, these targeted mechanisms can be appropriate. The thing that I keep struggling with, though, is, if you do not—if you decide to create a trust fund and you tax something, that is creating a revenue stream that is pulling money out of a private side—and you are hoping that that will be multiplied over. Under most of these mechanisms, though, the real question for me is, are we really creating more money? Are we creating new capital that will flow, or are we just changing the price at which that capital gets charged? It seems to me that in this situation, we really need to find new ways to bring capital to address water and wastewater needs, and I look at it fairly simplistically. You got the ability to do it through taxation of some form, whether it is indirect or direct, and then it is used by the federal government and the states to make things happen, or you use private capital, and the real answer is, you have got to use both.

One encouragement I would have for the subcommittee is, anything that you do, do it in a way that pulls private capital in to a greater degree. If you go to TIFIA, the transportation, which is a very good model, one of the things when you go on that Web site, it says our fundamental purpose is to attract other sources of capital from private markets in order to leverage federal expenditures. So if we do not pool private capital, we might reduce cost but we have not done anything more. We have not necessarily addressed the infrastructure issue.

Mr. SIMPSON. You mentioned the private partnerships are not—SRF funds are not available for them in about half the states. Re-state that.

Mr. STERBA. I think it is roughly half the states do not allow private utilities to make application for state revolving fund under the Clean Drinking Water Act. About half do. So, for example, two of the big states that we serve are Pennsylvania and New Jersey. They have a very robust, and they really think about it, particularly Pennsylvania, from an economic development side. But other states do not.

Mr. SIMPSON. What is the reason those other states do not?

Mr. STERBA. Well, it can be a lot. It could be that the private utilities in that state did not get in line early enough and so it has been taken up by other things. It could be that the state says, look, I only got so much, I am prioritizing things that are visible, I am prioritizing economic development, I am prioritizing roads, whatever the case may be that they are going to use that state revolving fund for.



Mr. SIMPSON. But I assume they have the state revolving fund for water systems that are publicly owned.

Mr. STERBA. For the water systems, and that is where it is going, you can understand it. The political side says I am a mayor, I have a need, that is a private company, they should not get any, we need it. There is more than enough demand in the public market, in the public water market, to use those funds, so we do not want private water companies to get it. But the problem is, private water companies pay the same taxes that helped create the state revolving funds. Should they not have the same access?

#### WATER INFRASTRUCTURE MANAGEMENT

Mr. SIMPSON. Well, and your goal is actually to deliver clean water.

Mr. STERBA. Absolutely.

Mr. SIMPSON. And that is what you are after.

Mr. STERBA. A hundred percent.

Mr. SIMPSON. And if you are a citizen out there, I really do not care whether it is done by the municipality or whether it is done by private, as long as I turn on my tap and the water comes out and it is clean and it is at a reasonable price, and we might have differences of opinion about what a reasonable price is, but one of the things I heard in the earlier testimony was that citizens, when you have private companies, did not like the price increases. I have never seen a community upgrade their water system where the prices did not go up. We get letters all the time about those things.

Mr. STERBA. And this goes to what Ben was talking about in terms of the value of water, and helping customers understand better what the value of water is today, because today people do not pay for the molecule of water. They pay to clean it, they pay to deliver it, and in many instances, they are not paying the full cost of that. So it makes it very difficult when you are only replacing your investment as if it was going to last 250 years to enhance that reinvestment if you have only got rates that are recovering cost for over 250 years.

Mr. GRUMBLES. Can I just chime in one basic point, and that is, there is plenty of room to advance public-private partnerships without ignoring the fundamental principle here, and that is that water is a basic human right. It is our most precious liquid asset but it is also a human right, and so the country, our national water policies really continue to be founded perhaps more than other countries in the world on this public ownership idea or on public accountability, and the magic place to go is always ensure that there is public trust and public accountability in water because it is not simply a commodity but find ways where the agents of delivering that water can bring new money to the table and new ideas, and I think that is something the committee should look at encouraging just like in Philadelphia, Commissioner Neukrug, the Natural Resources Defense Council, which is a member of ours, the U.S. Water Alliance, and others are really looking at and saying hey, they are tackling one of the most expensive infrastructure issues, and that is, stormwater around the country, sewer and water, and one way to avoid the costs of the public fisc is to bring in the private sector and to create—it could be fees, but if you do it in a way

that provides market-based flexibility so that developers, their private money goes towards managing stormwater in a more effective way and they get credit for it, that fee is decreased because of some of the green infrastructure work they are doing that the agencies approve of. I think that is a really good model and it is one that we are seeing all across the country, communities between a rock and a hard place because of the water infrastructure, and stormwater is one of the biggest unfunded mandates that some communities face. They are looking for innovative approaches, and the private sector and land developers have a really important role to play. They have to be treated fairly too, but it is a perfect example where we have to move beyond the older model of, it has got to be publicly funded money because water is involved.

Mr. ARNDT. If I could take the conversation one step further, I think your question in the prior session really went in the direction of what I want to say, and that is, if you look across the country, there are some 54,000 community water systems, many, many of them small, many of them do not have what we call the technical, managerial and financial capability to really be sustainable going forward. My organization has actually acquired 30 water and wastewater systems over the years. I am guessing Jeff's number would dwarf mine. But we have integrated those systems into our core service area. We have upgraded service. We brought some financial discipline to the system, and I think without addressing that element, we kind of keep putting a band-aid on the problem and let the underlying situation persist, and so I think anything that can be done to incentivize the—allowing entities that can provide the service, be it a private entity or public entity, that they should be incentivized to essentially consolidate those systems that cannot survive going forward, and as a result, I think we will be able to better manage that investment need in front of us and also potentially reduce the costs that would otherwise be before us.

Mr. SIMPSON. Well, it is interesting that if you look in the Teton Valley in Idaho, there are several small communities, I am talking real small communities that are spread out probably over a 20-mile valley, and it used to be that they would each have their wastewater treatment facility and stuff. Now they are looking at a common system and they are doing that more and more across southern Idaho and these areas, but you were going to say something, Thad?

Mr. WILSON. To your point, Mr. Chairman, about the public-private partnerships potentially accessing SRF funds, that is something we have been exploring with a couple state agencies. Under the structure we envision, the municipality would continue to own the facility, or if we are building a new or replacement facility, they would actually own it, they would own title to it, they could access SRF funds and combine that with our private equity that we are bringing into that partnership, and it would be a way to leverage those SRF funds to go farther.

Mr. SIMPSON. But in your situation, the municipality does not own the system is what you are talking about?

Mr. WILSON. In the areas where we provide retail service to customers, we own the system. We are under regulated rates by the state commissions. We also do public-private partnerships where

we operate systems for others. Most of those are operational agreements. Some of them are more of a lease arrangement, and that is where we run into the defeasance issue, etc. In that instance, we would not be the applicant to the state revolving fund because if it is going to be owned by the municipality, they are the applicant for the state revolving fund. It is the challenge of how you bring those two pieces together.

One of the things you mentioned earlier, Mr. Chairman, which I am so glad you did, because like the one that Aurel raised, it is one of those that does not always get talked about, but it is the efficiency of capital spend. One of the things that just shocked me was, we recently did an analysis with a municipality. We just looked at supply chain, the cost of meters, pipes and vales, those kinds of basic, the fundamental building blocks of infrastructure for the water and wastewater industry. The difference between what they were paying for that equipment versus what it cost through our supply chain was about 30 percent. You would leverage that out, that is 30 percent more capital that could be available without doing anything other than getting more efficient. It is scale but it is also expertise.

I come out of the energy world, and I have only been in the water space for two and a half years, but an enormously open roadmap for us is on applying technology in this industry. We have not done it. There is so much more than can be done from leak detection to ways to reduce the energy use. But that is very difficult to do at small scale and so this notion of how do we bring entities together is important.

Mr. SIMPSON. It is. There are a lot of very interesting examples that are used. The amount of water we use, when you go into airports and you run your hand under it and the water runs for a minute, it is amazing how much water that saves. I read a study one time of how much water you would save if you turned off the tap while you were brushing your teeth. Being a dentist, that was always interesting to me.

Ms. MCCOLLUM. Do you?

Mr. SIMPSON. Actually, no, and the reason nobody does is because the individual savings to me is miniscule, but the savings to society as a whole would be large. That is the way things work. Ms. McCollum, go ahead.

Ms. MCCOLLUM. Well, being the Girl Scout in the room then, I liked what you said about convenience. We do not look at the big-picture cost. There is petroleum that went in there and the energy on so many different scales that all went in here. I get funny looks when I go with people and I am in a restaurant here, because in Minnesota, I mean, nobody ever asks if you want bottled water unless you are at a really high-end restaurant, and then they do not mean flat water, they mean sparkling and I go, no, I drink D.C. tap water and everybody kind of goes huh. So a lot of it is this false sense of somehow this is very great water because, Mr. Chairman, it is carefully blended from selected natural springs.

Mr. SIMPSON. Exactly.

#### FUTURE WATER INFRASTRUCTURE ISSUES

Ms. MCCOLLUM. Like a fine wine is blended.

I want to take this maybe up a couple more feet into the sky. I just left a defense briefing where we were talking about North Africa and Yemen. Big national security there: water. International security for us: water. So water comes down to, as you so eloquently said, a basic human right. And you touched on small cities and townships and then we went into the whole thing about states' rights. And the League of Cities is here. I was on a city council, so you guys are near and dear. I was in the state legislature, city council, so I dealt with water on many different levels. So there is modernizing our systems, there is maintaining our systems, there is building new infrastructure, so there are different roles and different ways in which you kind of come in. And going to sewer separation, where you are really kind of going in and doing the heavy lifting, which is the new modernization of systems in some of our municipalities that can be 60, 100 years old. That is not cheap work no matter who does it. So if you could maybe kind of touch on that a little bit.

And then you make money building projects. You also make money selling water. So let me give you a little story. Minnesota, water rich, right? Lake Superior down 4 feet, climate change. I have a good-sized lake which we prided ourselves—we like to do winter carnivals and do all kinds of crazy things when it is cold like fish on the ice and everything. The lake where the dock and the chair used to kind of be at the end of the table, now the water is here and the dock is where that chair is. So we had USGS, and thank you very much for this committee funding them and the good work that they do, and they said okay, there might be a little puncture in White Bear Lake. Yes, climate change is playing a factor in it because they looked at other lakes around. It is our reservoir. We are going through water faster than we ever thought we were going to go through it. So we have a metropolitan council and they are looking at it. Now cities are fighting over who goes to conservation first, who is most important.

Where do you fit in? Where do you see your responsibility in maintaining these systems as to really talking about the ethic of how much water we use and using it efficiently, whether it is, you know, in airports or watering bans, because it would seem to me—and I was in the private sector most of my adult life in sales. It would seem to me for a lot of your business models, you made money by how much you pump out? What do we do to incentivize you as part of our solution here to reduce the amount of water we are wasting?

Mr. NEUKRUG. That is a great question. I think we are doing it. I think it is a really exciting time to be in the water industry because there is so much innovation going on, so many new things that are happening with leak detection, water conservation, this new thing that we are calling stormwater conservation, managing the rainwater, and there is so much potential here, and the problem is, as we have been talking about all along, there is not enough money. In particular, there is not enough capital dollars. So we are all in this game of prioritizing how do we figure out what is the best way to spend that last dollar that we have, and Jeff, you talked about level of service. Right now, the level of service that is acceptable in the United States is that there will be one water-

main break every two minutes. That is the level of service that the United States is accepting. I am not sure if they would accept it if went to one break every minute. I do not know. We are kind of making those decisions for the United States because of the limitations of how much money we have. The same thing with boil-water notices. How many is too much? Occasionally you have them. In Philadelphia we have not had one—I do not think we ever had a boil-water notice but other cities have them every now and then. Is that okay? What about, you are talking about storage, if one of our reservoirs dropped and we did not have any water for two or three days? Is that acceptable? And what do you want us to pay in order to avoid that risk?

So there are a lot of questions that we are all working on on a daily basis, thinking about how do we best manage this system with the amount of money we have, and for Philly, we were working on a \$100-million-a-year capital budget. That is 5 years ago. Now we are up to \$250 million a year. So we went from looking at \$100 million a year and then a 5-year plan that is a half a billion dollars to looking at \$250 million a year, and now we are looking at 25 years out, and that is a \$10 billion program. So our whole perspective has changed, and it is not just Philadelphia, I think it is the entire industry is looking further out, understanding the issues.

Asset management was brought up earlier, prioritizing our—you know, what are we going to do with our money, and, you know, I am here because I need some support from the federal government because right now I get very little. So most of every penny that I have, which is all the money that I have, is coming from my rate-payers, and that is fine. I think that is appropriate. But there is no way that I can raise the rates sufficiently to cover everything that I want to do and need to do. So I am making decisions and so is every utility manager in the country about what level of service is acceptable to America in 2013. We are not even considering what is acceptable in 2023.

Mr. ARNDT. And I think Howard's latter point goes to, given the fact that we do not have a bottomless bucket of funds to do everything we would like to do, a big part of what we are doing and growing annually is consumer education, customer education, so that they are better consumers of the water and they understand what goes into the service that they receive. I guess in many ways, I look at it somewhat differently than you characterize it. The water is the vehicle for the services that we provide in many ways, and it represents a relatively small cost if you just took the value of the raw material itself. But it has significant societal implications in terms of environmental issues and that sort of thing, and so our educational efforts are very heavily focused on youth education, really educating the consumers of the future or letting those kids go home and tell their parents they should not be letting the water run while they are brushing their teeth, and I think that is one of the things that we think is very, very important.

Another piece of it is what we call full cost pricing, that what we charge for the service should be reflective of the full cost of providing that, and in many ways, it does not, and I think simple economic theory says that if you charge something that is reflective

of its full cost, you will get better management and utilization of that resource or that asset, and I think that is one of the things where there has been this, we cannot raise our water rates because, and in the political arena, that rings true many times, and as a result, something gets chopped out of the water budget that is really important.

Ms. MCCOLLUM. Mr. Chair, could I ask a question? Could you set up a meter that would watch how much I am using to consume for my basic needs versus my lawn care? I mean, because if you are going to charge me, then based on my ability to pay, being a retired worker, you know. And then the other question, because we are going to wrap this up, is, where are you with working with—I just was out to Simon Properties Managers out in Maplewood, Minnesota. They have this big stormwater thing. They are watering their trees off of it. They are going to have less—because we have the frost, so they are going to have less potholes and all this other stuff because of what they are doing in their parking lot. And brown water technology. When you go in, are you a full-service provider? Can you lay everything out? Do you work with the other contractors on how to look at a big picture or do you just come in and look at this part of the picture?

Mr. STERBA. You have raised a very critical issue. It is the notion of thinking about one water. This industry has a tendency to think about drinking water, wastewater, stormwater, or traditionally. More and more, though, you are finding thinking about one water. So you think about—I know Howard is doing a lot of things on how do you get property owners to take the responsibility for the amount of runoff so that water is used and not flooding the sewer system. We do—in New York City, we have six high-rise buildings where we do 100 percent reuse. The city of Fillmore, California, we have a-million-gallon-a-day reuse system so we are taking brown water, if you will, and we use it for irrigation, for flush, for cooling purposes.

You also raised an issue, though, that is a troubling one for the industry, which is this notion that—as I said, we serve all across the country, so if you go to California, our average use per customer is about 110, 115 gallons a day. You go to New Jersey, it is 300-plus gallons a day. Why? Well, because Californians understand water is scarce. New Jersey does not have that mindset yet. They have not realized what is changing in the marketplace and what is going to happen to water. But what we are seeing across our systems is a decline in use per customer. So as people use less water, what happens, and this is true whether you are a public company like we are, a private company that is publicly traded or you are a municipality, you have rates that are not going to recover your costs because you are 80 percent fixed costs, 20 percent variable, but your revenues are 20 percent fixed, 80 percent variable. So you will always—you are in this catch-up mode. That is—you know, we have got to find a way, and this is probably not legislatively, but it is regulatorily-wise or it is imposing some mandates potentially for funding where you build the kind of appropriate price structures so that you incentivize efficiency as oppose to penalize efficiency. And then you can do things like provide an amount of water at a fixed price that is what people need to live

on, but if they choose to take 20-minute showers or they choose to have ultra-green lawns, whatever the case may be, where they do something more, well, then they pay for that.

Mr. GRUMBLES. Our organization, which is not a trade association, we are a national—it is like a think tank, convener of collaborations, policy thinkers and doers. We were formed because of the need for a one-water, integrated water holistic approach. The question you asked about sewer separation is a perfect example of how all of us need to work together, the regulators, the environmental community, the utilities, the private sector, to not back away from the goals for, in this case, the Clean Water Act, but to find ways that recognize a community may not have the money and the time or the patience to do sewer separation to deal with the sewer overflow problem, they can come at it in different ways, and green infrastructure, a combination of different technologies and strategies are very promising, and it can work but it requires some time and research and also a track record, and across the country in communities, we are seeing a willingness to do something different. It may not be sewer separation but it can be a combination of green infrastructure practices with regular check-ins by the regulators so that you are making progress and doing it in a more cost-effective way. And it all gets to the basic point that water, we take it for granted and everybody says that but we do not really do much about that, and great ways to work on that are to be able to advance the smart technologies that monitor. So there really are—there are companies, there are utilities that can provide their customers with smartphones where they get weekly or a monthly notice that oh, they are exceeding a certain amount in their bill, they may want to check on how they are consuming that water, or they can pay just to have the water—in Arlington County, for instance, you can pay to get a bill metered just on water that you are using for outdoor irrigation. And businesses that are springing forth, and it is not just through an EPA water sense program but through other efforts, are developing ways to respect the fact that every drop counts and you can save money with new technology, weather-based sensors, and it is not just a technology for arid, water-scarce regions. I mean, that is the value in water. But thanks for asking the question.

Mr. SIMPSON. I really did not expect this hearing to go on for two and a half hours, but it is obviously a very important subject. It is one that we take seriously and hopefully the Transportation Committee that oversees the Clean Water Act takes very seriously, and I am hopeful that we will get something done in this Congress to address this pressing problem that we have of dealing with the infrastructure, which will also help me with my budget and a few other things, but it is something that we have got to do if we are going to make the most of limited resources that we have.

I thank all of you for being here today and I appreciate your testimony very much. Thank you.

U.S. House of Representatives Committee  
on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Hearing on Water Infrastructure Financing  
March 13, 2013

**Questions for the Record for EPA**

**Questions from Mr. Simpson**

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1:** What are the pros and cons of each material – ductile, cast and PVC?

**ANSWER:** The following are the pros and cons of the three pipe materials identified:

- **Ductile-iron pipes** have long been noted for their long-term economy, performance, reliability, and proven record in serving the public's daily water needs. Ductile iron is a high strength, tough material that has been used in water and wastewater systems in all 50 states and in many other areas around the world. Ductile iron pipes can withstand conditions such as high pressure, water hammer and excessive external loads. Like most ferrous materials, ductile iron is susceptible to corrosion, which will impact the useful life of the pipe. The corrosion occurs either by leaching away of iron content leading to generally weakened pipe structure or by corrosion pitting, which is more localized effect also causing weakening of the pipe structure. The potential for corrosion is significantly impacted by the corrosivity of the soil and/or water which in turn impacts the lifespan of the pipe. Pipes installed in aggressive environments without appropriate protection may impact the lifespan from an estimated 100-110 years to 20 to 40 years. In the U.S., we have standardized the use of polyethylene encasement to protect ductile iron pipes from the effects of corrosion. However, EPA has not established this as a requirement.



- **Cast iron** rapidly became the standard material for water distribution mains due to its reliable strength and durability. Engineers continued to use cast iron until ductile iron became available. Currently, there is very limited to almost no new manufacture of cast iron pipe. Cast iron pipes are also prone to external and internal corrosion in aggressive conditions like ductile iron pipes. Older cast iron pipes have caulked joints with little flexibility. The majority of these pipes are unlined because they were installed in the late 1800s to early 1900s. Some utilities have retrofitted these pipes with lining to extend their useful life.
- **PVC** has gained momentum as a preferred pipe material when used for smaller diameter pipes in distribution systems. PVC pipes are resistant to almost all types of corrosion and cannot be damaged by aggressive waters or corrosive soils. PVC is extensively used due to its mechanical properties that exceed those of other general purpose plastics in durability and strength when installing smaller diameter pipes. However, PVC is subject to penetration in exposure to petroleum products, has a lower crushing strength, is subject to UV degradation unless UV coated, is impacted by operating temperatures, and has special bedding requirements. Since PVC is much lighter and easier to handle, it requires smaller crews and less heavy equipment to do repairs, so small utilities may be able to install/replace using in-house staff. In comparison, ductile iron pipes exhibit higher strength characteristics, which is why this pipe material is often used more in larger diameter pipes.

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

**ANSWER:** While cast and ductile iron pipe and then PVC are the primary types of pipe materials that make up the U.S. water distribution network, there are a number of other pipe materials that have been used in the United States and other parts of the world. However, no other pipe material has gained wide acceptance yet in the United States. It can take a considerable amount of time for a material to gain acceptance in the US even if it is widely used in other countries.

Wastewater collection systems may be constructed of various materials such as: ferrous pipe (including ductile iron, cast iron and steel), concrete pipe (including reinforced concrete pipe and pre-stressed concrete cylinder pipe), ceramic-based pipe (including brick and vitrified clay pipe), and plastic pipe (including polyvinyl chloride or PVC and high density polyethylene or HDPE). Use of PVC pipes in sewer applications would benefit from additional data to improve accuracy in predicting its useful life and potentially enhanced design and wider use in larger diameter applications. Likewise, given the use of modern hydraulic modeling software and improved water pressure operational knowledge, new materials or enhancements to existing materials can be expected to be introduced to the market.

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

**ANSWER:** Pipe rehabilitation technologies can help utilities extend the life of installed pipes. This can be accomplished either by spray lining the pipes with cement mortar or polymer-based

linings such as epoxy, polyurea or polyurethane; slip lining with smaller diameter pipes of HDPE or PVC, or a technique called cured-in-place pipes (CIPP) which is when glass or polyester fiber reinforced tubes impregnated with resins are cured in place with hot air or UV. EPA is aware of different organizations that are doing research to develop other technologies such as molded-in-place pipes and smart pipes, which includes a pipe liner wrapped in fiber that is integrated with sensors. However, these are not yet implemented widely across the country.

Rehabilitation approaches for collection systems include casting a new internal lining, sprayed cast concrete linings, sprayed polymer linings, cured-in place lining, as well as grouting and sealing approaches.

**Simpson Q4:** What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?

**ANSWER:** EPA has been working with states, water utility associations and other federal agencies such as USDA and HUD to promote policies that emphasize up-front planning of water sector infrastructure projects that consider the full life cycle costs of any investment, and weighs all alternatives to traditional solutions. Issued in 2010, EPA's Sustainability Policy calls on drinking water and wastewater systems to undertake robust and comprehensive planning to ensure that federal water infrastructure investments are cost-effective over their lifecycle, resource efficient, and consistent with other relevant community goals. This policy also supports the concept of asset management, a framework widely adopted in other fields such as transportation, and in some cases regulated in other countries such as Canada and Australia, as a means to pursue and achieve sustainable infrastructure. Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating them while delivering the desired service levels. A high-performing asset management program incorporates up front planning and integrates efforts such as water efficiency, energy efficiency and effective watershed decision making.

EPA has also been promoting water system partnerships, especially in the drinking water sector where close to 80% of the public water systems serve fewer than 500 customers and fewer than 500 systems serve more than 100,000 customers. Through partnerships, small water systems can gain access to economies of scale that help to reduce costs.

All of these practices serve to reduce costs or appropriately increase revenues to help close the infrastructure gap. Implementing practices such as up-front planning and asset management is essential to protecting the multi-billion dollar investment the federal, state and local governments are making in the nation's water infrastructure each year. In addition, a systematic operation, maintenance, and rehabilitation program is an essential element in the management of a system. Effective inspection, cleaning, and rehabilitation are key processes for optimizing the proper functioning of a system and for reducing overall operational and maintenance (O&M) costs.

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

**ANSWER:** EPA is committed to promoting innovation and technology to solve environmental problems. Innovation in the water sector industry can lead to cost savings and a positive impact on the ability to contribute to addressing both sustainability and affordability concerns. Some manufacturers have expressed concerns that obtaining approval for new drinking water treatment technologies is time and resource intensive and a potential barrier to innovation in the water sector. However, EPA believes that the Safe Drinking Water Act provides sufficient flexibility for systems to adopt treatment methods that protect public health and reflect system-specific circumstances. EPA works closely with states, who make the primary day-to-day decisions to review and approve technologies.

The Safe Drinking Water Act requires that EPA provides a list of the treatment technologies that have been demonstrated in the field to be effective in reducing contaminant concentrations to the Maximum Contaminant Level (MCL). This list is published with the regulation and is referred to as the best available technologies (BAT). EPA does not require systems to use these specified technologies, but when a utility is considering installing a new water treatment technology they must obtain approval from their "Primacy Agency" or state agency responsible for implementing the Safe Drinking Water Act. (All states have received primacy except Wyoming, whose SDWA program is administered directly by EPA. Washington, D.C.'s program is also administered by EPA.) Primacy agencies will typically review and accept BAT according to their state regulations. However, because a BAT is not proven to work on all water sources for the identified contaminant, primacy agencies will require utilities to conduct pilot testing to assure the BAT is effective for their source water conditions. When a utility is considering installing a new water treatment technology that is not an approved BAT, the primacy agency is responsible for ensuring that the treatment technology is designed and performs as expected in treating the specific contaminant for the specific water source and that the utility understands how to operate and maintain the technology properly. The manufacturer often works with the primacy agency and the public water system to conduct the pilot study and develop the necessary operational plans. Primacy Agency approvals for new water treatment technologies are, for the most part, site specific and not state-wide because the performance of a technology is site-specific and the final treated water that is being produced impacts public health.

Other potential barriers include utility acceptance of non-traditional project delivery alternatives such as "design-build" and open piping material selection standards. These alternatives can lead to both cost savings and wider use of innovative approaches. Additionally, research on "next generation" collection system materials, designs, and rehabilitation methods is important in promoting innovation.

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

**ANSWER:** At this time, there are no specific federal regulations that address the lifecycle of newly installed distribution systems or wastewater collection systems, nor are we aware of any

state or local regulations that do so. However, EPA has been actively working with states, water utility associations and other federal agencies such as USDA and HUD, to promote policies and target federal and state funds towards projects that support up-front planning of water sector infrastructure projects that consider the full life cycle costs of any investment and weights all alternatives to traditional solutions. State agencies responsible for implementing the Safe Drinking Water Act ("primacy agencies"), via the Drinking Water State Revolving Fund (SRF) program, have begun encouraging asset management approaches to promote the importance of long-term planning and capacity. Some primacy agencies have enacted state laws that require public water systems to have a water conservation plan in place before they are eligible for SRF funding. Other primacy agencies lend water detection equipment to public water systems to conduct their own water loss audits or provide funds for a third party to conduct the audit. Based on the result of the water loss audits, the primacy agencies direct federal funds to help pay for rehabilitation of the distribution system. With respect to the wastewater sector, federal consent decrees related to sewer overflows often include requirements for proper collection system management, operations and maintenance.

#### **GAP Analysis**

The 2002 GAP analysis included two scenarios. The first assumed no revenue growth over a 20 year period, and showed an annual capital gap of \$6 billion for clean water infrastructure and an annual capital gap of \$5 billion for drinking water infrastructure. The analysis also showed a combined annual operating and maintenance gap of \$14 billion. Consequently, under a "no revenue" scenario there is a total gap of \$25 billion annually between spending and need. The second scenario assumed a "three percent revenue growth" whereby spending levels in the water industry at large would increase by three percent annually. Under this scenario the gap shrunk to roughly one to two-billion per year.

**Simpson Q7:** Since the GAP analysis was issued in 2002, have actual spending trends aligned more closely with the "no revenue growth" scenario or to the "three percent revenue growth" scenario?

**ANSWER:** The data available suggest that spending trends were somewhere between "no revenue growth" and "three percent revenue growth." The most recent report from the Congressional Budget Office on Public Spending on Transportation and Water Infrastructure was released in 2010, and is based on data through FY 2007, so it does not represent the impact of the recession. The CBO report shows that total public spending for water supply and wastewater treatment generally increased from \$92.7 billion in 2002 to \$101.3 billion in 2007, representing an average annual increase of 1.8% during that period.<sup>1</sup>

**Simpson Q8:** What general trends have been observed?

**ANSWER:** EPA has observed general trends towards improved utility management, including substantial adoption of asset management practices. The EPA-State State Revolving Fund (SRF) Workgroup published a report titled "Sustainable Infrastructure: Compendium of State

<sup>1</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/119xx/doc11940/11-17-infrastructure.pdf>

Initiatives" in July 2011, which found that 21 states were using SRF funds to promote asset management. This represented an increase from the Workgroup's first report. EPA expects that the trend toward increasing use of asset management will continue. Asset management practices should improve the efficacy of operating and maintenance expenditures and should result in improved decisions regarding for capital renewal and replacements.

**Simpson Q9:** What resources or level of effort was required to produce the original 2002 GAP analysis? (What was the cost to produce the report?)

**ANSWER:** EPA's best estimate of the cost circa 2002 to produce the original GAP report and analysis is \$500,000. This includes both extramural resources for contractor technical and engineering support and peer review, along with the costs associated with Agency FTE used to produce the report.

**Simpson Q10:** Alternatively, please provide a cost estimate or estimated cost range to conduct a second GAP analysis.

**ANSWER:** The Agency estimates that conducting a new GAP analysis would cost between \$1,500,000 and \$2,000,000, including both extramural resources and Agency FTE costs. The new analysis would require substantial revisions to the prior methodology, revision of data sources and sets (some data sources used in the original study are no longer available), and updated modeling approaches. The agency has no plans to conduct such an analysis at this time.

**Simpson Q11:** What value added could an updated analysis offer? Would that level of effort be a justifiable expense given that the analysis will tell us what many of the other water organizations are reporting – that a large GAP exists?

**ANSWER:** A revised analysis would allow the Agency to incorporate some of the potential improvements identified in Section 5.1 of original analysis (pages 43 and 44). While such improvements would be expected to generate improved quantitative estimates of the GAP, it seems unlikely the conclusions of the analysis would fundamentally change, given as noted, that other water organizations have continued to report a large gap in the period since the original GAP analysis was conducted.

#### **Cost of regulations**

One drinking water standard that is particularly challenging is the current arsenic standard. Some Western towns have background levels that exceed EPA's standard of 10 parts per billion, and they have to spend millions trying to achieve that level. In some cases they are close but they have a difficult time realizing further reductions. Mayors then must prioritize between paying for these upgrades and paying for other critical services.

For small community water systems (those serving fewer than 10,000 people), EPA estimates that the increased cost per household to comply with the arsenic standard ranges between \$38 and \$327 annually. Overall, the 2008 drinking water needs assessment identified \$52 billion of the \$334 billion in needs attributable to federal drinking water regulations.

**Simpson Q12:** With that in mind, how are the costs of new water regulations factored into the needs assessment?

**ANSWER:** For the drinking water infrastructure needs assessment, EPA strives to capture all Drinking Water State Revolving Fund-eligible needs for the next 20 years. Given that infrastructure needs associated with proposed or recently promulgated regulations may not yet be reflected in surveyed water systems' investment planning documents, EPA makes a special effort to assure the capture of these needs in a manner that is consistent and fair across water systems and the states.

Prior to undertaking each assessment, EPA works with the industry and the states to gain a consensus on which new or proposed regulations may not yet be reflected in the infrastructure investment plans of all water systems. Needs associated with these rules are then not included in the survey of water systems but are instead added to the national total and not distributed between the states. The national total for these infrastructure needs are derived from the Economic Analysis documents used to support these proposed or recently promulgated regulations.

For example, in 2007, the consensus agreement was that an insufficient number of water systems' planning documents would yet reflect the costs for the Proposed Radon Rule; Final Stage 2 Disinfectants/Disinfection Byproducts Rule; Final Long Term 2 Enhanced Surface Water Treatment Rule (treatment needs only) and the Final Ground Water Rule. For the 2011 effort, the consensus was that only the Proposed Radon Rule and Final Stage 2 Disinfectants/Disinfection Byproducts Rule were still not yet sufficiently accounted for in enough water systems' investment plans. The national infrastructure needs for these two rules were derived from their Economic Analysis documents and added to the total national need determined by the assessment but not allocated to individual state needs. The consensus for the 2011 effort also identified a newly proposed revision to the 1989 Total Coliform Rule as being too new, but it was also agreed that there would be little if any infrastructure needs given the proposed revision's focus on enhanced maintenance and operations. For the 2011 effort, the infrastructure needs of all other regulations (including those associated with Final Long Term 2 Enhanced Surface Water Treatment Rule and the Final Ground Water Rule) relied on water systems owners/operators, with assistance from the states, to identify and document project by project.

**Simpson Q13:** How does EPA, in conjunction with the States, determine what is a regulatory cost vs. a non-regulatory cost when developing the needs assessment? How do EPA and the States differentiate between the \$52 billion in regulatory costs versus \$282 billion in non-regulatory costs as communities try to bundle these investments to realize economies of scale?

**ANSWER:** With the exception of those proposed or recently promulgated regulations deemed by consensus agreement as not yet being significantly reflected in infrastructure planning documents (see Q12 above), EPA relies on the water systems, with assistance from their states, to identify, on a project-by-project basis, which needs are associated with a regulatory requirement. These regulatory needs are classified by type (e.g., microbial or chemical) and are then aggregated at the state and national levels based on the survey's statistical methodology used to determine all infrastructure needs.

**Simpson Q14:** If communities have smartly bundled those costs with other capital improvements, then could regulatory costs be underestimated or overestimated in the needs assessment?

**ANSWER:** Generally, EPA is relying on the expertise of the water system owners and operators surveyed, with assistance from state program experts, to differentiate between the infrastructure needs that allow a system to continue its basic function of providing potable water to its customers, and those needs specific to meeting a particular regulation. To ensure as much consistency between water systems and states in identifying these needs, EPA holds a series of pre-surveying meetings and workshops with the states as well as industry representatives to reach consensus agreement on consistent benchmarks and methods for identifying needs including those associated with regulation. For example, there is consensus that pipe replacement and rehabilitation, the biggest single cost for most water systems, is generally standard business practice for water systems in their continuing effort to provide potable water to their customers regardless of any regulatory requirements.

#### **Development of the Needs Assessment**

Every 4 years EPA works with States to identify existing water infrastructure needs. The last needs assessment for drinking water was released in 2007 and the latest for clean water was released in 2008. For the last assessment EPA mailed questionnaires to the large and mid-size water systems and they reply with their data. For smaller systems, EPA contracts with water system professionals to conduct in-person surveys.

**Simpson Q15:** Who are the water professionals that EPA contracted with to perform the in-person surveys?

**ANSWER:** In the case of the Drinking Water Infrastructure Needs Survey and Assessment (2007), EPA contracted with The Cadmus Group, who then utilized a number of experts in water system operations including former system operators or consultants and local/state regulators. Small system operators may not yet have the capacity to assess their longer term needs, particularly to a 20-year horizon, so assistance by highly-experienced technical experts in such long-range planning helped assure a full accounting of these systems' infrastructure needs.

In comparison, information for the Clean Watersheds Needs Survey (CWSNS) is provided by the states and territories into an EPA database; no contractor resources are used to perform in-person surveys.

**Simpson Q16:** Has the data collection process been modernized – is it an electronic data collection process, or is it still manual? Please explain the process by which EPA develops its needs assessment with the States.

**ANSWER:** For the Drinking Water Infrastructure Needs Survey (DWNS), the survey is a highly interactive effort between EPA and the states as well as between the states and the couple thousand water systems surveyed with issues arising on the projects submitted including their supporting documentation. EPA provides states flexibility on the means for project submissions and documentation handling, including electronic and non-electronic submissions, depending on

each state's determination of what works best for it and its water systems being surveyed. For efficiency, EPA does provide an electronic file of the submission from any system surveyed in a previous survey for the state and system to determine if all or part of that submission remains currently valid. Whether initially submitted in electronic form or not, once the data are submitted, the projects from each individual system's questionnaire are tracked electronically, including information on each individual project's status and records of communications with the state or water system about the project. EPA will continue to work with states to modernize the survey data collection in a manner that works best for each individual state to assure the complete and accurate capture of the Nation's water systems infrastructure investment needs.

Beginning in the 1980s, states and territories began to submit data electronically for the Clean Watersheds Needs Survey (CWNS). The 2008 and 2012 data were collected electronically via an improved web-based system known as the CWNS Data Entry Portal (DEP). The CWNS DEP integrates with other EPA systems to allow states to upload and annotate electronic documents, import location and point of contact data from National Pollutant Discharge Elimination System (NPDES) permits, and identify impaired waters associated with the facility. The CWNS DEP is a dynamic system which adjusts required data elements according to the type of facility being entered and performs error checking to reduce data entry errors.

At the beginning of each new survey, states and territories are provided their own final data from the previous survey as a starting point for data collection and entry. They are responsible for collecting and entering the required data for each facility (e.g. wastewater treatment plant, sewer system, stormwater management project) via the DEP. Required data elements include facility name, description of type of facility, location, technical information (e.g. population served, flow, effluent level), and capital costs for needed water quality projects. EPA requires that states and territories provide documentation to demonstrate the water quality needs and capital costs for each facility. Once data and documentation is submitted to EPA, it is reviewed according to the approved Quality Assurance Project Plan.

#### **Questions from Mr. Valadao**

The GAO in its testimony noted that one of the items that drives costs in water infrastructure projects, especially in small, rural towns like the ones in my district, is duplicative and redundant environmental regulations. The GAO has suggested the EPA improve coordination with other agencies and states to develop uniform permitting requirements that meet federal and state requirements.

**Valadao Q1:** What steps have the EPA completed to improve coordination and reduce regulatory duplication across agencies and levels of government?

**ANSWER:** In response to the GAO Final Report *"Rural Water Infrastructure, Additional Coordination Can Help Avoid Potentially Duplicative Application Requirements,"* EPA began participating in an interagency workgroup of federal and state partners, including representatives from the U.S. Department of Agriculture (USDA), the U.S. Department of Housing and Urban Development (HUD), the Indian Health Service (IHS) and 13 states. The purpose of this workgroup was to establish uniform best practices for preliminary engineering reports across



funding agencies. In January 2013, the workgroup finalized and distributed an interagency memorandum that explains the purpose of the workgroup and provides a general outline of a Preliminary Engineering Report ("PER"), as well as a detailed template of each desired component. EPA believes that the publication of the template will be a significant step forward in attempting to establish greater consistency among the preliminary engineering reports submitted by applicants. EPA fully endorses this collaborative effort. However, adopting the template for Clean Water and Drinking Water State Revolving Fund (SRF) purposes will be left to the states' discretion because preliminary engineering reports are not a federal requirement for SRF programs.

**Valadao Q2:** What steps does the EPA plan to take in the future to reduce duplicative requirements?

**ANSWER:** EPA will continue to encourage the adoption of the PER template, monitor the extent to which it has been implemented by our state programs and communicate progress to the interagency workgroup. As a companion effort, EPA will work with USDA to determine the extent of duplication in the area of environmental reviews. A conference call with state SRF personnel across the ten EPA regions was held in April. Following the conference call, EPA is continuing to work with state and federal partners to examine the possibility of whether environmental review processes can be modified or whether some other option can be pursued.

Ongoing examples of our commitment include EPA's collaboration with (1) the Small Communities Water Infrastructure Exchange (SCWIE), a network of federal and state water infrastructure funding officials, that holds quarterly calls to discuss best practices and (2) CIFA, a national organization of state, regional and local financing authorities that meets twice a year to discuss pressing issues related to the nation's growing infrastructure needs. EPA and USDA participated in a panel focusing on PERs at the fall 2012 CIFA conference. EPA will continue to collaborate with these organizations and look for additional opportunities to foster communication with federal and state partners and identify opportunities to reduce duplication of effort.

**Valadao Q3:** Does the EPA have a long-term strategy to reduce duplication in its permitting processes?

**ANSWER:** As noted in the answer to Q2 above, EPA plans to continue to work with USDA and other federal agencies and with state SRF programs to minimize duplication between federal and state requirements for project applications and for environmental reviews. The GAO report identifies those to be the key areas of overlap for water sector infrastructure projects, and EPA is currently unaware of other concerns regarding potential duplication in its permitting processes. If EPA becomes aware of any other significant duplication in requirements between federal and state permitting programs affecting water sector infrastructure projects, the Agency certainly would be willing to examine these requirements to determine whether procedural or regulatory changes might be warranted.

Questions from Ms. Pingree

In my District, the City of Portland has been working on a Combined Sewer Overflow and overall strategy to reduce wastewater costs while protecting Casco Bay. The costs for this project are high (nearly \$170 million over 15 years) but the need is dire (496 million gallons of runoff and sewage discharged last year.)

**Pingree Q1:** Looking at the 3 potential approaches given in the GAO study regarding funding and financing clean water, what would the process be for ongoing projects to access a new National Infrastructure Bank, or a Clean Water Trust Fund?

**ANSWER:** In its testimony at the subject hearing, GAO presented its findings regarding three potential approaches to financing water infrastructure, including a new National Infrastructure Bank and a Clean Water Trust Fund. From a review of the testimony, it doesn't appear that the question of how to treat ongoing projects was addressed in the GAO study. One way for "ongoing projects" to access any new fund might be through refinancing projects already underway and financed from other sources. Whether refinancing ongoing projects from a National Infrastructure Bank or a Clean Water Trust Fund would be a permissible type of assistance for either funding mechanism would depend on the particular statutory authority establishing such a funding mechanism.

**Pingree Q2:** For the Clean Water Trust Fund, in particular, is there precedent for the inclusion of existing projects from the Highway Trust Fund?

**ANSWER:** In its testimony at the subject hearing, GAO presented its findings regarding three potential approaches to financing water infrastructure. One of these, the Clean Water Trust Fund, would fund water infrastructure through a federally run program funded by a dedicated revenue source(s). The GAO interviewed a wide range of stakeholders with respect to: (1) the administration and use of the trust fund; (2) the type of financial assistance that should be provided for projects; and (3) the eligible activities for funding. EPA has not done an evaluation of the trust fund approach and the administration has not developed a position on any proposals. From the GAO testimony, it is not clear whether the inclusion of existing projects from the Highway Trust Fund was raised or considered in the interviews that GAO conducted.

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Questions for the Record for Mr. Gomez

Questions from Mr. Simpson

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1: What are the pros and cons of each material – ductile, cast and PVC?**

GAO has not conducted the work necessary to answer this question. GAO has been asked to conduct a technology assessment of technologies to improve the efficiency of drinking water and wastewater processes. The work for this request will focus on ways to reduce freshwater use, but there may be an intersection with cost and water use.

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**Simpson Q2: Looking forward, might there be another shift in the materials that are used in water systems?**

GAO has not conducted the work necessary to answer this question. GAO has been asked to conduct a technology assessment of technologies to improve the efficiency of drinking water and wastewater processes. The work for this request will focus on ways to reduce freshwater use, but there may be an intersection with cost and water use.

**Simpson Q3: What other options exist for reducing costs to meet capital needs?**

Asset management is an approach to managing capital infrastructure and needs for replacing or building it. GAO's 2004 work on asset management found improved decision making about capital assets. For example, GAO found that asset management promoted better understanding of maintenance, rehabilitation, and replacement needs. One regional utility we reviewed, the Massachusetts Water Resources Authority, used better information to improve its maintenance decisions and eliminate some unneeded activities. The utility decreased the activities it conducted to maintain pumps by 25 percent. It also decreased the amount of oil it used to lubricate some equipment, saving \$20,000. See GAO, *Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments*, GAO-04-461 (Washington, D.C.: Mar. 19, 2004).

**Simpson Q4: What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?**

GAO's work on asset management also found that the approach can reduce treatment costs and operations and maintenance needs. In addition, GAO's work on the energy-water nexus showed that key technologies and approaches can improve the energy efficiency of drinking water and wastewater processes, but barriers exist to their adoption. The approaches include process optimization, equipment and infrastructure upgrades, water conservation, and

improved energy management. For example, modifying operations by using variable frequency drives allow facility operators to accommodate variations in water flows by running pumps at lower speeds and drawing less energy when water flows are low. In addition, increased use of renewable energy could offset energy purchased by water utilities from energy producers.

The barriers that exist, however, include five categories: (1) costs associated with these technologies, (2) inaccurate water pricing, (3) barriers associated with how water utilities operate, (4) competing priorities at drinking water and wastewater facilities, and (5) the lack of public awareness about the energy demands of drinking water and wastewater facilities. See GAO, *Energy-Water Nexus: Amount of Energy Needed to Supply, Use, and Treat Water Is Location-Specific and Can Be Reduced by Certain Technologies and Approaches*, GAO-11-225 (Washington, D.C.: Mar. 23, 2011).

**Simpson Q5: Are there any identifiable barriers to innovation in the water sector?**

GAO has not conducted the work necessary to answer this question. GAO has received a request that asks it to examine the efficiency of municipal drinking water and wastewater technology and processes. The work for this job may examine the performance of these systems and processes and any barriers to innovation.

**Simpson Q6: Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?**

GAO has not conducted the work necessary to answer this question.

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**GAP Analysis**

The 2002 GAP analysis included two scenarios. The first assumed no revenue growth over a 20 year period, and showed an annual capital gap of \$6 billion for clean water infrastructure and an annual capital gap of \$5 billion for drinking water infrastructure. The analysis also showed a combined annual operating and maintenance gap of \$14 billion. Consequently, under a “no revenue” scenario there is a total gap of \$25 billion annually between spending and need. The second scenario assumed a “three percent revenue growth” whereby spending levels in the water industry at large would increase by three percent annually. Under this scenario the gap shrunk to roughly one to two-billion per year.

**Simpson Q7: Since the GAP analysis was issued in 2002, have actual spending trends aligned more closely with the "no revenue growth" scenario or to the "three percent revenue growth" scenario? What general trends have been observed?**

GAO has not conducted the work necessary to respond to answer this question.

**Rural Water Coordination**

Rural communities face tough challenges for financing projects, and GAO’s recent review the Federal responsibilities and funding sources available to rural communities is appreciated.

**Simpson Q8: How would GAO’s recommendations for (1) uniform preliminary engineering reports, (2) uniform environmental analyses and (3) “more state-level” coordination prevent these issues in the future?**

GAO’s recommendations could reduce costs and time spent on multiple applications for funding by either coordinating the application requirements or providing earlier feedback to communities so they could focus their applications on a single program. Specifically, rural communities face potentially duplicative application requirements such as completing more

than one preliminary engineering report or environmental analysis if they apply to more than one program for funding. GAO recommended that the federal and state agencies that fund projects make it possible to fill out one engineering report and environmental analysis. This would save communities consulting costs for engineering firms, who typically prepare the documents, and time.

In addition, GAO's recommendation for more state-level coordination can reduce inefficiencies and delays in getting funds to communities. GAO's work showed that state and state-level federal programs vary in how much they coordinate on project funding. In one case mentioned in the report, USDA and two states' SRF programs each independently agreed to fund the same community projects. If the two agencies had coordinated better in each state, they could have found out earlier that they were each funding the same projects and determined which program was better suited to fund the various projects. Then, each agency could have targeted funding to other communities in the state that needed funding. Other states we reviewed—Montana and South Dakota—each had coordination meetings among state and federal funding programs to discuss communities' needs and funding. See GAO, *Rural Water Infrastructure: Additional Coordination Can Help Avoid Potentially Duplicative Application Requirements*, GAO-13-111 (Washington, D.C.: Oct. 16, 2012).

**Simpson Q9: To what extent are GAO's recommendations applicable or binding on the States?**

GAO's recommendations are not binding on states. Some GAO recommendations to federal agencies, however, may have the result of changing the federal agency's regulations or requirements for a state program. Specifically, GAO's recommendation that federal agencies work together and with state and community officials to coordinate aspects of rural water funding programs is not binding on state and community officials, but if the federal agencies were to do so and develop additional guidance and conduct outreach, we believe states and communities would generally benefit.

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**Additional subsidization**

GAO's testimony notes that EPA does not have overall data to ensure that Recovery Act SRF funds were targeted to disadvantaged communities.

**Simpson Q10: Is this also true for the annual SRF program where 20-30 percent of funds are available for additional subsidization?**

EPA does not track, on an aggregate national level, data that may be reported by states on disadvantaged communities that receive the additional subsidization funds. GAO's work on this focused on EPA's American Recovery and Reinvestment Act funds. See GAO, *Recovery Act: Funds Supported Many Water Projects, and Federal and State Monitoring Shows Few Compliance Problems*, GAO-11-608 (Washington, D.C.: June 29, 2011). EPA's Office of Inspector General also found that EPA was not able to track distribution of Recovery Act funds to economically disadvantaged communities (See OIG, *EPA Faced Multiple Constraints to Targeting Recovery Act Funds*, (Report No. 11-R-0208).

**Simpson Q11: What changes to the SRFs could make them more effective and efficient?**

GAO has not conducted the work necessary to answer this question. GAO's recent work on the SRF funds focused on the use of American Recovery and Reinvestment Act funds. See GAO, *Recovery Act: Funds Supported Many Water Projects, and Federal and State Monitoring Shows Few Compliance Problems*, GAO-11-608 (Washington, D.C.: June 29, 2011). In that report, GAO examined the use of different Recovery Act requirements on funding, such as requirements to fund green projects, use Davis-Bacon wages, and to buy American materials.

**Simpson Q12: What changes to the non-Federal/State structure could allow for a more efficient allocation of funds?**

GAO has not conducted the work necessary to answer this question.



**Public-Private Partnerships**

GAO's testimony notes that some communities have expressed concerns with losing control over their facilities, materials and rates under public-private partnerships, which has led to a lack of interest in future partnerships.

**Simpson Q13: What are some lessons learned – both positive and negative – to keep in mind for future public-private partnerships?**

The municipal and industry officials involved in the projects we reviewed identified the following advantages of public-private partnerships: (1) Faster delivery of new facilities or upgrades, (2) access to alternative sources of financing, (3) cost and operational efficiencies, (4) access to expertise and solutions, (5) up-front payments to municipalities, (6) increased focus on other municipal functions. At the same time, the officials said that such partnerships face challenges such as public and political opposition because of potential rate increases, lack of responsiveness, job losses. They also face financing challenges, such as the difficulty of combining private and public funds under IRS rules on tax-exemption. In addition, private financing generally costs more than public financing and there is a concern about loss of municipal control and a lack of experience with PPPs. Finally, costly and difficult contracting can occur, leading to the need to hire specialized legal and engineering assistance. See GAO, *Wastewater Infrastructure Financing: Stakeholder Views on a National Infrastructure Bank and Public-Private Partnerships*, GAO-10-728 (Washington, D.C.: June 30, 2010).

**Simpson Q14: What are some similarities between the seven public-private partnerships GAO reviewed, and in what ways do they differ?**

All seven of the public-private partnerships were privately financed agreements that lasted for terms of 20 to 35 years. Five of the seven partnerships involved leasing the facilities to

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the private partner to run, and two of these five involved asset sales as well as leases. One of the five, and the two remaining partnerships, involved a design-build-finance-operate agreement in which the partner agreed to finance and build new, or upgrade old, facilities for the utility and then operate them for the rest of the agreement term. Six of the seven partnership agreements involved an up-front payment to the utility, while one did not.

**Asset Management**

GAO's testimony highlights the need to be efficient in spending the infrastructure funding currently in the system.

**Simpson Q15: How would improvements in asset management allow funds to be spent more efficiently?**

By developing a comprehensive inventory of its infrastructure and condition, a utility can make better decisions about replacing or rebuilding the infrastructure. It can prioritize and fund projects of highest need. For example, our 2004 work found that the Louisville Water Company used asset management to make better capital investments. The utility used information on its pipes to target certain pipes (those built between 1862 and 1865 and 1926 and 1931) for replacement because they had the highest risk of rupture. They targeted other pipes (those built between 1866 and 1925) for rehabilitation because they had less ruptures. Such decisions target funding to the highest, potentially most costly problem in a risk-based decision system. See GAO, *Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments*, GAO-04-461 (Washington, D.C.: Mar. 19, 2004).

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Questions for the Record for Mr. Aurel Arndt

Questions from Mr. Simpson

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1:** What are the pros and cons of each material – ductile, cast and PVC?

*A: Many locally specific factors go into deciding which material is best in a particular location and for a particular purpose. For example, soil types, geology, water chemistry, exact location, and other factors are important in determining the “best” type of pipe for a particular application. The durability of a pipe often depends as much or more upon installation practices as upon the material. All this is to say that there is no “best” material for all applications, and what is a “pro” for a given material in one application*

*might be a “con” in another application, or vice versa. Detailed information is available from the manufacturers of pipes of various types.*

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

*A: It is certainly possible that new materials and techniques could emerge in the future that effect pipe life. For example, we are currently seeing advances in the durability of coatings on the interior of pipes, and it is likely that technology will continue to develop in this and other ways.*

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

*A: Comprehensive asset management offers one of the best options for reducing the long-run capital costs associated with maintaining water pipe networks. That means assessing the condition of existing pipes; understanding the wear-out dynamics and failure probabilities for different pipe materials and vintages in particular applications; assessing the risks associated with the failure of particular pipe assets; and replacing or rehabilitating utility assets neither too early nor too late, but “just in time” to be economically optimal.*

**Simpson Q4:** What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?

*A: Greater source water protection would reduce treatment costs, since so much money is currently required to remove contaminants added to the water by human activity, not by nature. For example, for many utilities the preponderance of organic matter in their source water – which must be removed or reduced at considerable expense - is anthropogenic. Steps to reduce the introduction of these contaminants into source water should result in lower treatment costs downstream. It is also important for EPA to continue being mindful about inadvertent complications or confounding factors between different drinking water regulations. For example, the requirement to disinfect drinking water can confound the requirement to minimize disinfection byproducts. Regulations that drive utilities toward certain treatment technologies can drive up energy costs.*

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

*A: Regulatory agencies (both state and federal) are by their nature conservative in that they stick with the tried and true and are generally reluctant to be the first to try something new. Moreover, drinking water regulations are often based on prescribed technology rather than on prescribed results. This can make it difficult for utilities to deploy new techniques or technologies, even if those have been demonstrated to be effective in the laboratory.*

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

*A: Not that we are aware of. The American Water Works Association undertakes significant efforts through its conferences, publications, training, etc., to disseminate knowledge and best practices that will have the effect of increasing the life expectancy of water infrastructure systems, both above and below ground, such as asset management.*

### **What should be Congress' top priority?**

Beyond simply increasing appropriations to the SRFs, the Congressional Research Service has identified 5 legislative options that have been considered recently by stakeholders. The policy options are:

- a) Create a water infrastructure trust fund with a dedicated revenue stream
- b) Create a water infrastructure financing program, similar to the transportation infrastructure financing program, that would provide loans or loan guarantees for larger water projects
- c) Create a National Infrastructure Bank
- d) Lift restrictions on private activity bonds which may allow access to more private investment; and

- e) Reinstate the authority for Build America Bonds where the Treasury helps lower borrowing costs via bonds.

**Simpson Q7:** Each concept has its pros and cons. If you had to choose one policy for Congress to focus on in the near-term, which would it be?

*A: We strongly recommend that Congress focus on b), the creation of the Water Infrastructure Finance and Innovation Act (WIFIA), as outlined in the testimony of Aurel Arndt delivered on March 13. This program would provide an important new tool and be highly leveraged, so that a small appropriation would support a large pool of low-interest loans. WIFIA would encourage private investment and carry a very small footprint on the federal budget in the long run. It would offer assistance to small to medium-sized systems by allowing state SRF authorities to bundle such smaller, worthy projects into one large loan application. The Senate Committee on Environment and Public Works reported a bill on March 20 that creates a WIFIA pilot program, and we encourage the House to adopt a similar provision.*

*A number of other tools are also important to supporting increased investment in water infrastructure. Those include municipal bonds and Build America Bonds. As noted in our testimony, it is critical that the tax exemption of municipal bond interest be protected for taxpayers at all income levels, and that the United States keep its promise for payments related to the issuance of Build America Bonds.*

#### **Top Water Issue for your organization**

**Simpson Q8:** With limited resources, what is biggest priority or issue for you and your members in the short term? Is it:

- Pipe repair/capital construction?
- Treatment to meet regulations or TMDLs?
- Combined sewer overflows?
- Growth?

- Increasing private investment?

*A: Any of these issues could be a top concern for a particular community. But each year AWWA surveys its membership to identify priority issues for water utility managers across the nation. In recent years, mobilizing the capital necessary for extensive repair and rehabilitation of water infrastructure – needs that AWWA documented in our Buried No Longer report and in our testimony to the Subcommittee on March 13 – has ranked as the number-one concern to utility managers. And although the question pertains to short-term issues, the concern identified in AWWA's member survey is a long-term one: the huge long-term replacement needs for U.S. water and wastewater infrastructure.*

#### **Public-Private Partnerships**

GAO notes that some communities have expressed concerns with losing control over their facilities, materials and rates under public-private partnerships, which has led to a lack of interest in further future partnerships.

**Simpson Q9:** What are some lessons learned – both positive and negative – to keep in mind for future public-private partnerships?

*A: Public-Private partnerships can offer the solution or part of the solution to the capital problems facing many utilities, but it won't satisfy all needs or work in all places. Among other factors, the return sought by potential private parties may be too great in many cases to allow affordable customer bills, and/or the potential partners may not be able to agree to a mutually acceptable sharing of the risks attendant to any large capital project.*

*We would also like to point out that public-public partnerships also have great potential in many circumstances. A public-public partnership can take the form of the consolidation of two or more utilities, an operations contract or concession, or other forms of agreement between public entities.*

**Simpson Q10:** Why have some communities been reluctant to privatize water infrastructure or engage in public-private partnerships?

*A: There are many locally important factors involved in the decision to privatize water service – including in some cases a strongly held view that water service is an essential public good. Then too, some early attempts at privatization were not seen as successful by either party in the transaction. On the other hand, in many cases water service has been successfully provided by investor-owned or private utility companies for many years.*

*Another source of reluctance could be that public-public, public-private, and privatization arrangements are generally highly complex and expensive undertakings. The transaction costs alone for the parties to the deal can run to many millions of dollars. Moreover, the proposal to adopt one of these contracts is often highly controversial in the community, and local leaders who take on one of these projects often pay a high price politically.*

*For these reasons, AWWA holds the view that the question of whether water utilities should be public or private entities or should engage in any form of partnership is an entirely local one.*

**Simpson Q11:** What are the incentives and disincentives?

*A: Aside from the factors mentioned above, two others deserve mention. One is the cost of private capital. In many cases private capital may simply be more expensive than capital available through the municipal bond market or other traditional sources. A higher cost of capital means higher water charges to everyone who pays a water bill. Utility managers (and utility boards) have a duty to their customers to keep water service as affordable as possible. In addition, sometimes a utility cannot be sustainable without significant investment or re-investment. In such a case, another entity seeking to acquire or contract with that utility has to consider the investment that would be required and the effect of that investment on its current customers.*



### Private Activity Bonds

It has been reported that States have not been issuing the maximum amounts for Private Activity Bonds under their caps for any given year. States then routinely carry forward the unused cap amount. In addition, since the national volume cap is a population driven formula, the national cap has actually increased over the past four years. For 2013, the national volume cap is set to expand by 1.1 percent or by \$349 million. However in 2011, States had to return, or “abandon” \$6.6 billion in expired private activity bond authority.

**Simpson Q12:** If States currently do not “max out” borrowing for private activity bonds under existing caps, and if a significant unused Private Activity Bond amount is carried forward from one year to the next, then why should Congress consider raising or eliminating PAB caps?

*A: We wish to clarify that we have not asked for Congress to raise or eliminate PAB caps, but only to take water projects out from under the cap. Water projects have a hard time competing against universities, hospitals, and housing, which tend to get the lion's share of PAB cap volume in most states. And water projects are often staged over several years, so that the predictability of financing in future years is important. Such predictability is very difficult when water projects are held under a state's overall volume cap.*

**Simpson Q13:** What signal would Congressional action send to States and the private markets that would encourage greater use of private activity bonds and spur more private investment?

*A: Passing WIFIA in a form that allows low-interest WIFIA loans to work with other sources of funding in a particular project – including private investment – would send such a signal. We believe that the federal government should be denied “springing liens” in WIFIA – that is, they should not be allowed to jump to the front of the line if there is difficulty in repaying debt on a particular project. If the United States were willing to get paid last in the event project revenues fell below expectations, it would be a significant inducement to public-private partnerships.*

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**Questions for the Record for Mr. Howard Neukrug**

Questions from Mr. Simpson

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1:** What are the pros and cons of each material – ductile, cast and PVC?

**Answer:** NACWA recommends looking to several other associations for this information – there are a number of associations representing the various pipe manufacturers who would be more able to answer this question more ably than NACWA.

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

**Answer:** There is a currently a shift towards new materials and techniques aimed at creating structural linings in parallel with existing pipe materials. Structural linings on the sewer side are cheaper and set to outpace our sewer replacement rate. Structural linings for drinking water right now are in a state of research and development with limited and specific applications and not available or cost-effective for mass pipe renewal programs. If drinking water pipe structural linings become available at a cheaper cost, this would be a significant capability that would help drinking water utilities. Lining is appealing because it reduces disruption, trenching, utility relocation, right of way acquisition, and helps extend the life of an existing asset.

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

**Answer:** Wastewater utilities are always looking for ways to reduce costs related to capital needs, including prioritizing investments, using innovative approaches to reduce the volume of wastewater needing to be treated, and deploying innovative technologies that can recover and recycle materials from our waste streams.

Prioritizing and directing investments to those that will produce the greatest water quality benefit helps our utilities use limited resources effectively, maintain affordable rates for our ratepayers, and ensure continual progress toward environmental improvement. EPA's new Integrated planning approach offers communities additional flexibility to meet their Clean Water Act requirements and provides us with this opportunity. Philadelphia is proud to be among the EPA's first partners in implementing this approach to water management and we believe it could help many other communities as well. NACWA is urging Congress to support this approach in the FY 14 Appropriations bill through a small \$5 million demonstration project to help other communities take advantage of this new EPA flexibility.

Under the Integrated Planning umbrella, Philadelphia will be able to invest in innovative approaches, such as green infrastructure to manage and reduce the volume of stormwater that our traditional system of pipes and concrete must manage. Green infrastructure approaches give us an opportunity to rely more on natural systems to absorb storm water and filter out pollutants. Because of the flexibility provided by the Integrated Planning program, Philadelphia is being given more time to realize anticipated water quality benefits from using green technologies and deploying adaptive management techniques if they fall short of expectations.

Moving toward resource recovery is another way utilities can reduce overall costs and deploy limited dollars more effectively. Many utilities are transforming themselves as basic providers of wastewater services to resource recovery utilities by generating renewable energy, reclaiming and reusing water, and extracting and finding commercial uses for nutrients and metals contained in the effluent stream. Policies that promote this transition, like establishing a renewable energy standard that credits energy created in the wastewater treatment process will help utilities reduce costs and save money while enhancing community livability.

**Simpson Q4:** What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?

**Answer:** One area of wastewater management that leads to high treatment and utility costs is managing large volumes of wet weather. Historically, affordable treatment and management techniques, such as parallel treatment technology for wet weather flows or use of peak effluent flow treatment facilities, have been available to help municipalities affordably and cost-effectively manage wet weather-related flows while ensuring the protection of the environment and public health. However, recent EPA policy interpretations are limiting communities' ability to continue using these proven cost-effective and environmentally responsible management options, thus imposing unnecessary expenses on local ratepayers with no commensurate benefit. NACWA

estimates that if communities are no longer able to use these effective treatment methods, they could face between \$90 billion to \$190 billion in additional, avoidable costs.

NACWA is recommending that Congress authorize EPA to allow POTWs to use alternative peak wet weather treatment technologies and management approaches during peak wet weather events based on an approved wet weather management plan. NACWA's draft legislation, *The Wet Weather Community Sustainability Act*, would authorize EPA to issue information and guidelines for alternative technologies and management approaches, including alternative treatment methods, collection system operation and maintenance programs, and monitoring and reporting systems. Deploying alternative treatment methods for wet weather flows would reduce the overall wear and tear on the wastewater treatment system as a whole, thereby reducing costs for the ratepayer.

Ideally, keeping wet weather in place and not having to move it through the system in the first place is an ideal solution. That is why Philadelphia and other communities across the country are taking advantage of low-impact development or green technology solutions to keep flows in their place, thereby lowering energy costs and minimizing strain to the system.

In the long-run, however, what will be needed is a viable watershed-based approach to dealing with water quality. This means that all contributors to a pollution problem — whether municipal, agricultural, industrial — contribute proportionately and equitably to solving the problem.

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

**Answer:** The lack of adequate funding for basic infrastructure upgrades and repairs coupled with competing and costly EPA Clean Water Act requirements leave very few resources available to devote to innovation. Additionally, there is insufficient support for new technologies to enter the market and be piloted broadly because of concern with

continuing to have to meet permit limits, which can effectively stultify innovation and limit the possibilities for the future in terms of maximizing water quality gains at the most efficient cost.

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

**Answer:** There are currently no federal requirements specifically geared towards reducing the lifecycle costs of water and sewer pipe distribution systems. However, many NACWA members rely on the Clean Water State Revolving Fund program to help fund a wide variety of water quality projects including traditional wastewater infrastructure projects that strengthen and improve the durability of distribution systems.

Are there any State/local requirements in PA? While many cities and communities have moved towards less thick piping to reduce upfront capital costs, Philadelphia continues to specify in its standards a requirement for thicker ductile iron pipe. We believe that this leads to longer service life with lower operation and maintenance issues. For example to date, we have not seen any water main breaks due to failing ductile iron pipe other than those caused by contractor strikes through digging.

#### **What should be Congress' top priority?**

Beyond simply increasing appropriations to the SRFs, the Congressional Research Service has identified 5 legislative options that have been considered recently by stakeholders. The policy options are:

- a) Create a water infrastructure trust fund with a dedicated revenue stream
- b) Create a water infrastructure financing program, similar to the transportation infrastructure financing program, that would provide loans or loan guarantees for larger water projects

- c) Create a National Infrastructure Bank
- d) Lift restrictions on private activity bonds which may allow access to more private investment; and
- e) Reinststate the authority for Build America Bonds where the Treasury helps lower borrowing costs via bonds.

**Simpson Q7:** Each concept has its pros and cons. If you had to choose one policy for Congress to focus on in the near-term, which would it be?

**Answer:** NACWA urges Congress to establish a Clean Water Trust Fund, to ensure that a dedicated and non-discretionary source of funding exists for the CWSRF. A Clean Water Trust Fund, similar to those that provide stable funding for highways and airports, would create a reliable revenue stream to supplement existing local and state investments. A trust fund approach to financing the SRF is the only approach among those cited above that can guarantee the SRF programs continue to provide low-cost financing for investments in community water, wastewater and stormwater systems. The SRFs have proven effective mechanisms to provide financing to communities – both large and small - across the country, however unless the federal government maintains a yearly commitment to providing them with capitalization grants, these funds will rely on a smaller amount of money for project financing which will ultimately lead to higher borrowing costs for communities. Establishing a trust fund with a non-discretionary revenue base removes the pressure from the annual federal discretionary budget and ensures a federal commitment to the SRF program remains robust.

Maintaining the tax-exempt status of municipal bonds is equally critical. In the last decade, municipal bonds have financed more than \$258 billion in water and sewer infrastructure projects around the country, more than total municipal bond-based investment for roads and highways, public power projects, or mass transit. If the tax-exempt status of municipal bonds were limited or eliminated, it would increase the costs of local borrowing by billions of dollars. In Philadelphia, for example, the elimination of tax-exempt bond status would likely mean over \$40 million in additional interest and

coverage related expenditures every year for every \$1 billion in new capital borrowing (a 40% increase).

#### **Top Water Issue for your organization**

**Simpson Q8:** With limited resources, what is biggest priority or issue for you and your members in the short term? Is it:

- Pipe repair/capital construction?
- Treatment to meet regulations or TMDLs?
- Combined sewer overflows?
- Growth?
- Increasing private investment?

**Answer:** Managing wet weather challenges both within combined and sanitary sewer systems as well as new regulatory requirements related to nutrient reduction are priority issues for NACWA members. Additionally, the ability of the ratepayer (domestic and industrial) to continue to afford rising rates to meet a variety of regulatory demands coupled with often delayed infrastructure repair and replacement costs is a very concerning trend. This is also made all the more concerning by the fact that it is costing significantly more to make even modest water quality improvements, leading to a need to reexamine the Clean Water Act's ability to continue to deliver the types of improvements needed.

#### **Public-Private Partnerships**

GAO notes that some communities have expressed concerns with losing control over their facilities, materials and rates under public-private partnerships, which has led to a lack of interest in further future partnerships.

**Simpson Q9:** What are some lessons learned – both positive and negative – to keep in mind for future public-private partnerships?



**Answer:** Like most communities, Philadelphia struggles with finding the right balance in the use of public private partnerships. However, our experiences to date have been extremely positive. We have three public-private partnerships we've embarked on in Philadelphia and each one has helped PWD take a significant step forward that we could not have achieved alone.

Our first example was the work we started in 1997 to be one of the first large cities to go to automatic meter reading. A 20 year public private partnership with Itron has led to significant improvements in our water accounting and billing and helped to manage long term operating costs. Our second effort was the 22 year leasing of our biosolids facility to Synagro to move from composting into an upgraded Class A facility. This project has saved us millions of dollars to date. Our last example is our 16 year lease with Ameresco to build a \$47 million dollar biogas cogeneration facility using investment tax credits that utilizes resource recovery to achieve 85% of the facilities energy needs from our own resource – wastewater. We anticipate this project to save us over \$5 million during that period and much more during the life of the facility.

Though all continue to be successful, we've identified the key to successful public private partnerships is in the initial stages of scoping and contracting. If a utility does not put in the years of work leading up to a partnership, it can lead to negative consequences.

**Simpson Q10:** Why have some communities been reluctant to privatize water infrastructure or engage in public-private partnerships?

**Answer:** A number of communities have entered into partnership agreements with private companies to manage the wastewater treatment system. Municipal wastewater utilities by law are publicly owned entities, however several POTWs are managed by private firms such as Veolia or United Water. A community's decision to privatize management of the POTW is based on local conditions and considerations such as costs, personnel and overall management authority. There have also been several large-scale efforts at privatization of wastewater utilities which have generally not worked out as

planned and has led to a broader skepticism of privatization (as opposed to privatization) in the wastewater arena.

**Simpson Q11:** What are the incentives and disincentives?

### **Private Activity Bonds**

It has been reported that States have not been issuing the maximum amounts for Private Activity Bonds under their caps for any given year. States then routinely carry forward the unused cap amount. In addition, since the national volume cap is a population driven formula, the national cap has actually increased over the past four years. For 2013, the national volume cap is set to expand by 1.1 percent or by \$349 million. However in 2011, States had to return, or “abandon” \$6.6 billion in expired private activity bond authority.

**Simpson Q12:** If States currently do not “max out” borrowing for private activity bonds under existing caps, and if a significant unused Private Activity Bond amount is carried forward from one year to the next, then why should Congress consider raising or eliminating PAB caps?

**Answer:** Congress should not raise the existing caps if there is significant unused PABs carried forward from one year to the next.

**Simpson Q13:** What signal would Congressional action send to States and the private markets that would encourage greater use of private activity bonds and spur more private investment?

**Answer:** Supporting the idea of wastewater treatment plants as resource recovery agencies – where revenue can be generated – would help potentially lure private capital into the system more generally. NACWA doesn’t see lifting the cap on PABs as the answer where we know that very few public wastewater utilities would see additional investment from such a move.

**U.S. House of Representatives**  
**Committee on Appropriations**  
**Subcommittee on Interior, Environment, and Related Agencies**  
**Oversight Hearing: Water Infrastructure Financing**  
**March 13, 2013**  
**B-308 Rayburn HOB**

**Questions for the Record for Mr. Jeffrey Sterba (testifying on behalf of the National Association of Water Companies)**

Questions from Mr. Simpson

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1:** What are the pros and cons of each material – ductile, cast and PVC?  
Taking these in the order that they came on to the market:

**Sterba Response:** Cast iron –debuted centuries ago in France. In fact, pipe dating back to the 1880's remains in use in the United States today. During the first 50 years of manufacture, the pipe was cast with very thick walls to overcome its brittleness. From the 1930's to the 1950's the pipe manufacturing process improved and the pipe wall was cast thinner. The major advantage is its thickness which overcomes corrosive action on its exterior. The cons are that much of the pipe prior to the 1950's was not cement lined which results in internal corrosion; this can restrict flow and cause water quality issues. The early cast pipe used lead to join the pipe segments; later the joint material was changed but was more brittle and prone to leaking.

Ductile Iron- by adding magnesium to the molten iron the resulting structure of the iron was stronger and more ductile than cast iron. Manufacturers made it thinner because of the added strength. Joints were also changed to a rubber gasket material that is more reliable. In addition, the pipe is cement lined to prevent interior corrosion. Strength and ductility are the pipe's major advantages. The weakness to this point is that the thinner material is more susceptible to exterior

corrosion failure in a shorter time period if aggressive soils or other corroding conditions, like stray electrical currents, are present.

**Polyvinyl Chloride** – this material is inherently more resistant to corrosion than iron and steel materials. Initially, operators had to adjust to the pipe brittleness (especially when installing service connections) but the product is considered very reliable. From a cost perspective, the material is significantly cheaper but it does require more preparation in the trench which offsets a part of these savings. Of course, the plastic is more likely to break than iron when struck. Because PVC pipe does not conduct electric current, locating buried pipe is more difficult. Also, because of its structure, noise from leaks does not travel as far along the pipe when detection of leaks is needed. PVC has been effective for 50 years but its future length of service is still somewhat unknown. Like iron pipe, PVC is usually installed in 18-20 foot lengths but it is also available as a continuous pipe.

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

**Sterba Response:** For large diameter mains, steel pipe is an alternative; this material is typically coated inside and outside to prevent corrosion. Ductile iron may add an upgraded exterior coating to retard corrosion in the future as well. Polyethylene (PE) pipe is also a material now in use in the water industry and is a continuous pipe that is connected by heat fusion. Its present use is largely related to pipe rehabilitation and trenchless applications. Service pipe (the pipe from the main to a house) has its own set of pipe materials (lead, galvanized steel, copper). Due to the increasing price of copper, PE pipe is now finding its way into this service line market.

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

**Sterba Response:** One option is to make more use of pipe rehabilitation and other trenchless methods. There is a technique that bursts the pipe in the ground as it pulls a new pipe through the widened hole. There are lining materials that can be slipped inside an existing pipe or inserted and cured close to the old pipe. There are spray applied materials to both strengthen and protect the original pipe. Some of these techniques are very new and still being evaluated. Cathodic protection can be used to reduce exterior corrosion rates. Lower stress on existing pipe can also help – if working pressures and pressure surges can be reduced.

But perhaps the more significant development is the development of software support systems to facilitate making better decisions on which pipes should be chosen for renewal. Recent advances in leak detection and condition assessment methods will help water utilities make better decisions and replace only those portions of the pipe which are structurally unacceptable (large water mains in particular, a pipe break in one part of line does not always mean the entire pipe is in that condition).

**Simpson Q4:** What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?

**Sterba Response:** American Water was a pioneer in a process that sends daily information about acoustics along the water system that can be indicative of a leak. Fixing leaks before they surface not only reduces water loss, it lessens the damage and repair cost for the leak. American Water continues to collaborate with vendors in making further improvements in this technique. American Water is also researching a technique to expedite the reduction of water pressure when customer water demand is low. Lowering water pressure when demand is low (typically at night) will reduce the amount of water loss and the frequency of pipe failures in structurally challenged systems. Another innovation is the use of computer tools like GIS and computer software programs that aid in tracking the history and condition of the mains and ultimately better renewal decisions.

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

**Sterba Response:** There are no severe obstacles to innovation but several challenges are worth noting. The water industry is understandably a cautious one. Water utilities are not just making a product and delivering it, we are providing a life giving fluid that must be free of contamination 24/ hours a day, 7 days a week, 365 days each year. When new technologies are introduced, they must be thoroughly evaluated to avoid any unforeseen consequences. Recall that the pipe placed into service today will be expected to last 75 years or more. These decisions must be carefully made. American Water has formed an Innovation Development Program to specifically look for new technologies and accelerate their validation and acceptance within the water industry. Not every innovation works the first time.

There is a perceptible lack of external incentives to accelerate water innovation. For example, the low cost of water relative to gas and oil likely send investors and innovators into those pipeline markets. At the community level, the investment in materials buried and taken for granted may not be as attractive to the public and its public officials as competing elements like a new park. The use of innovation such as trenchless technology may be frustrating to municipalities who may use open cut utility main replacement as a means to finance full road reconstruction. However, if water infrastructure continues to decline with increasing disruptions and costs, innovation will be viewed as a major factor in restoring our pipe networks.

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

**Sterba Response:** There does not appear to be any such requirements directed at life cycle cost calculations. Life cycle cost evaluations require reliable predictions of pipe life expectancy. Predicting the estimated life of newer materials like PVC and PE pipe is somewhat speculative. While some cast iron pipe remains in service after over 130 years, we do not have PVC or PE pipe with much more than 50 years of service at this time. To some extent, the projected life of materials is site dependent. Some ductile iron pipe has failed in just a few years where a corrosive soil is found and PE pipe can be compromised by petroleum in the ground.

The American Water Works Association has recently released a tool labeled Nessie View that follows the principles of the full-scale Nessie Model employed in the recent Buried No Longer report. The models allow utilities to project future investment in water main replacements that

depends on reasonable estimates of pipe life expectancy. It is anticipated that the widespread use of the tool may help drive greater accuracy and approximation of pipe life.

It should be noted that we are also attempting to estimate future operating and maintenance costs. Technologies could drastically change over the next 50-100 years. There are already discussions about robotic devices that travel through pipe searching and repair leaks, smart pipe using nanotechnology to identify leaks and pipe stresses. We already have systems that can listen for and pinpoint leaks on a daily basis or apply a spray that adds structure to the pipe. These are additional reasons that American Water invests in research to identify and progress promising innovations.

#### **What should be Congress' top priority?**

Beyond simply increasing appropriations to the SRFs, the Congressional Research Service has identified 5 legislative options that have been considered recently by stakeholders. The policy options are:

- a) Create a water infrastructure trust fund with a dedicated revenue stream
- b) Create a water infrastructure financing program, similar to the transportation infrastructure financing program, that would provide loans or loan guarantees for larger water projects
- c) Create a National Infrastructure Bank
- d) Lift restrictions on private activity bonds which may allow access to more private investment, and
- e) Reinstatement of the authority for Build America Bonds where the Treasury helps lower borrowing costs via bonds.

**Simpson Q7:** Each concept has its pros and cons. If you had to choose one policy for Congress to focus on in the near-term, which would it be?

**Sterba Response:** American Water, along with its trade association the National Association of Water Companies (NAWC), has long championed innovative solutions to attracting additional private capital for public water infrastructure projects from investor-owned companies, as well as private capital that is already in infrastructure funds, pension funds, and other sources eager for the long-term, reliable investments that well-run water utilities provide. One of the chief ways the private water sector has publicly claimed this can be achieved is by option (d) lifting restrictions on private activity bonds (PABs). Taking the cap limit off PABs in other sectors, such as for solid waste, has proved in the past to draw critical private investment to these projects and help communities meet their infrastructure investment needs.

The public policy benefit is clear: for very little Federal investment (\$354 million over 10 years) it would infuse \$50 billion in private capital and create and support 142,500 jobs.

#### **Top Water Issue for your organization**

**Simpson Q8:** With limited resources, what is biggest priority or issue for you and your members in the short term? Is it:

- Pipe repair/capital construction?
- Treatment to meet regulations or TMDLs?
- Combined sewer overflows?
- Growth?
- Increasing private investment?

**Sterba Response:** Given the fiscal constraints facing this country, it is important that the private sector remain a strong and viable partner in meeting our growing water infrastructure needs. As I stated in my testimony, the U.S. Environmental Protection Agency (EPA) and the Government Accountability Office (GAO) estimate the current water infrastructure funding gap for drinking water and wastewater in the United States to be as high as \$1 trillion. In addition to these EPA and GAO dire assessments, the infrastructure report card recently released by the American Society of Civil Engineers (ASCE) gave the condition of the drinking water and wastewater infrastructure in this country a grade of “D”.

Those of us in the private water industry understand that the Federal government is unable to close that funding gap on its own. The private sector has been and remains a partner in this effort. Therefore, removing barriers and providing opportunities to increase private investment is a priority. It is important to realize, however, that increasing this investment leads to additional capital construction, pipe repair and other water infrastructure improvements, as well as economic growth.

#### Public-Private Partnerships

GAO notes that some communities have expressed concerns with losing control over their facilities, materials and rates under public-private partnerships, which has led to a lack of interest in further future partnerships.

**Simpson Q9:** What are some lessons learned – both positive and negative – to keep in mind for future public-private partnerships?

**Sterba Response:** Some of the ways in which partnerships can positively impact communities are outlined below.

Water utilities can address complicated issues through the implementation of solutions such as Total Water Management (TWM). In harnessing the synergies between potable water and waste water management, for example, water poured down drains can be treated and reused for golf courses, heating-cooling and flush systems, thereby conserving a city’s precious ground water resource for drinking. Public-Private-Partnerships have created powerful models of such programs in Battery Park City in New York, Gillette Stadium in Massachusetts, the Homestead active adult community in New Jersey, to name a few. In other instances, a water utility can help communities gain access to an affordable and efficient water system. In West Virginia, for example, over 20,000 homes were supplied with drinking water and fire protection services through a public-private partnership, which would have otherwise taken years to provide.

Partnerships can help communities better manage the risks associated with water management, such as the increasingly stringent regulatory requirements and penalties associated with water and waste-water facilities. A case in point: Fillmore, CA engaged in a partnership for a Design, Build, and Operate (DBO) contract for a new wastewater recycling facility. In doing so,

Fillmore transferred the specific risks associated with a DBO facility to a private company, which is better positioned and equipped to manage such ventures.

In bridging the infrastructure gap, another way partnerships can assist communities is by bridging the capital gap. A town that has limited financial and staffing resources, for example, can contract its system out to a water utility. In return, the water utility can offer a greater economy of scale in its services by providing better management, modern metering techniques, leak detection technologies, access to capital, emergency response and ultimately a more cost-effective water system. In Seattle, the Tolt Water Treatment plant under American Water's management has saved 40 percent of previous costs. This model is one partnership program with particular advantages, since it allows communities access to funds that a private utility anticipates it can save. To illustrate, a water company can estimate relatively accurately how much money it will save a community. Numerous surveys indicate that governments traditionally realize cost savings of 20 to 50 percent when the private-sector is involved with providing services. So a water system that costs a town \$1 million to operate may only cost a water utility \$800,000. Based on these averages, the water utility can then offer a town a lump sum of money upfront, which the town can use for other purposes such as financing roads, schools or pension liabilities.

In terms of lessons learned, terms of contracts in the past have not always been optimal, so for example, too much risk may have been put on one party or the length was too short to realize the benefits. American Water looks to enter well-structured long-term arrangements.

**Simpson Q10:** Why have some communities been reluctant to privatize water infrastructure or engage in public-private partnerships?

**Sterba Response:** As noted, in some cases, municipalities are interested in exploring leasing or selling their water system to companies like American Water; however, the tax inefficiencies—which equates to a financial penalty—associated with the current IRS defeasance requirement can be prohibitive to engaging in an a PPP. The funds required for defeasance could be 120 percent or more of the tax exempt debt being defeased, reducing the amount of funds that could otherwise be used to reduce rates for the customers or toward other municipal needs.

There are also misperceptions around losing local control. Anti-private groups have used scare tactics on many occasions including unfounded accusations on service and compliance levels.

**Simpson Q11:** What are the incentives and disincentives?

**Sterba Response:** As noted above, Public-Private-Partnerships offer one of the most viable ways in which cities, towns, and communities can access the industry expertise and capital of the private-sector. By modifying IRS regulations related to private water transactions, this disincentive can be removed, allowing greater economic and infrastructure efficiencies, while protecting US taxpayer interests.



### Private Activity Bonds

It has been reported that States have not been issuing the maximum amounts for Private Activity Bonds under their caps for any given year. States then routinely carry forward the unused cap amount. In addition, since the national volume cap is a population driven formula, the national cap has actually increased over the past four years. For 2013, the national volume cap is set to expand by 1.1 percent or by \$349 million. However in 2011, States had to return, or “abandon” \$6.6 billion in expired private activity bond authority.

**Simpson Q12:** If States currently do not “max out” borrowing for private activity bonds under existing caps, and if a significant unused Private Activity Bond amount is carried forward from one year to the next, then why should Congress consider raising or eliminating PAB caps?

**Sterba Response:** It is important to note that the National Association of Water Companies and others are not proposing a general increase or elimination of PAB volume caps. Rather, the reform proposed of removing PABs issued for water infrastructure projects from the existing cap would address a particular barrier impeding greater use of public-private partnerships and private investment.

Innovative capital water projects that would require issuing PABs typically take several years to plan and select the appropriate private partner. A municipality must have certainty regarding its ability to issue PABs once construction funds are needed. The cost of capital, including debt, is an integral part of the project and the proposal and selection process needs to be based on sound knowledge that tax-exempt PABs are available. Without that certainty municipalities will choose not to develop projects that would require PABs, even if those projects are highly desirable from an efficiency, performance or life-cycle cost perspective.

The nature of the volume cap allocation process is such that there always is some carry forward of unused cap. Some of this is unavoidable as it is impossible to time exact amounts by the end of each year; some projects allocating volume cap are delayed and the cap unused in the expected year. In addition, states intentionally carry forward cap for projects that will need the funds in multiple years. The significant “unused” cap referred to in the question is a relatively new phenomenon likely new to the recession and economic slowdown which adversely affected housing and economic development, two large recipients of volume cap. We expect this to change with the economic recovery. However, as stated above it is not the absolute cap that necessarily is the problem regarding issuing PABs for water infrastructure but the lack of certainty of receiving cap allocation at the time it is needed for construction.

**Simpson Q13:** What signal would Congressional action send to States and the private markets that would encourage greater use of private activity bonds and spur more private investment?

**Sterba Response:** Removing the state volume cap restriction on PABs usage for water infrastructure projects would provide the needed certainty that would allow companies to structure adequate proposals and offerings. The certainty of knowing that PABs would be available to companies to pursue public projects would encourage a robust engagement in water infrastructure projects.

Questions from Mr. Rogers**Public Private Partnership (P3) Infrastructure Financing**

Mr. Sterba, based on your testimony and that of your fellow panelists, it is clear that private companies, municipalities, and federal agencies identify a dire need for water infrastructure investments. However, with annual deficits of \$1 trillion over the last few years and a national debt of \$16 trillion, federal infrastructure funding is tightly constrained and is likely to remain so in the near future.

**Rogers Q1:** Speaking on behalf of an organization with significant experience in creating public private partnerships (P3) for water infrastructure, what can Congress do with its limited public dollars to maximize capital investments from the private sector for water infrastructure investment?

**Sterba Response:** As I stated in my testimony, private water companies have infused significant amounts of capital into water infrastructure and have engaged localities in tremendously successful PPPs (or P3s). This includes \$929 million invested by my company in 2012 alone. NAWC's six largest members collectively invested around \$2 billion each year in their water systems. So I am proud to say that there are vibrant and productive P3's already infusing much needed capital, efficiencies, and innovation into water systems across the country. There are some modest reforms that we believe could unlock even more private capital for the benefit of water infrastructure.

First, current tax rules and regulations in some cases act as barriers to P3s for water systems from taking place at all. I outlined in my testimony how modifying the IRS regulations on defeasance with respect to previously issued tax exempt bonds for water projects is critical in many cases to remove fiscal impediments to municipalities from entering into these partnerships.

We believe that the "remediation" rules of the regulations under Section 141 of the Internal Revenue Code should be modified to provide an exception to the requirement that bonds be defeased in the event of a P3 transaction for a water and wastewater treatment facility. Private capital is becoming increasingly essential to finance necessary investments for critical infrastructure yet the remediation rules discourage these transactions either by making them uneconomic for public entities or increasing the cost of the infrastructure investment for water customers. I have attached a detailed letter NAWC sent to the U.S. Treasury, which offers policy solutions the current defeasance requirement, which inadvertently prohibits municipalities from engaging in effective and beneficial P3 agreements.

Next, in an era of growing need and increasing demands on public finance, private investment has a critical role to play in meeting water infrastructure needs. In order to focus federal policies on leveraging the power of private enterprise, Congress should eliminate the state volume cap on exempt facility water and wastewater private activity bonds (PABs) to allow tax-exempt debt to finance this important public purpose. This is a legislative proposal which would revise the tax code by lifting PAB restrictions on water infrastructure projects—which has already been

granted for airport, high-speed rail, and solid waste disposal projects. As I stated during my testimony, PABs has proved to be an important and effective funding mechanism.

The Sustainable Water Infrastructure Investment Act of 2011 (HR 1802 and S 939 in the 112<sup>th</sup> Congress) received broad bicameral and bipartisan support—particularly within the Senate Finance Committee and among House tax writing committee members—is a prime example of how a modest public commitment can leverage a large infusion of private capital into water infrastructure. Some experts estimate that such a proposal would result in at least \$2 billion of new investment in just the first few years. Moreover, PABs present an extremely low risk to the federal, state and local governments; they have no impact on their tax revenues and defaults are extremely rare and only investors (not citizens) are impacted. Further, the tax-exempt bond market has historically performed better than any fixed-income investment market. With that these modest reforms would be a major step forward to encourage even further P3s.

Finally, I would recommend that Congress help ensure stable and affordable financing for water infrastructure projects. I've outlined in my testimony that private companies should also have access to programs such as the State Revolving Funds, as these funds are funded by tax dollars, compensated by the citizens in our service areas. In addition, Congress should explicitly authorize mixing SRF funding and private capital investment in projects if communities wish to do so.

**Rogers Q2:** Would congressional efforts to facilitate the formation of P3's need to focus on regulation and tax code reforms? What role do you identify for this Subcommittee in aiding these efforts through the appropriations process?

**Sterba Response:** The answer to this question would entail a mix of legislative and regulatory tax code reforms (see response to Q1): some are focused on regulatory and legislative changes with respect to the tax code, while others involve changes to the State Revolving Funds under the Clean Water Act.

While these proposals do not fall within the Subcommittee's jurisdiction, your Subcommittee has developed significant awareness of the profound needs for water infrastructure investments in a fiscally restrained environment. Consequently, we believe communications from this Subcommittee to the relevant parties as to your support for such reforms would be of tremendous value.

This Subcommittee's support for removing barriers to effective and productive public-private partnerships would be very beneficial and would send a strong signal that increased private sector involvement could be one way to help meet needs without more federal money:

- 1) eliminate the defeasance and redemption requirement for remediation of tax-exempt bonds for water and wastewater facilities provided that the P3 transaction does not involve the private entity obtaining the benefit of the outstanding tax-exempt bonds through a direct assumption of the debt service,

2) eliminate the state volume cap for PABs issued to water and wastewater projects, and

3) private company access to SRF funds.

In sum, private water companies stand ready to work with you on proposals to unleash the vast potential of private capital in much needed water infrastructure investment building on the significant investments that we have already made.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Water Infrastructure Financing  
March 13, 2013  
B-308 Rayburn HOB

**Questions for the Record for Mr. Thad Wilson**

Questions from Mr. Simpson

**Reducing costs/new technologies**

The Congressional Budget Office has noted that one Federal option is to invest more in Federal research and development to identify new materials, new treatment technologies or methodologies that could serve to reduce costs.

In the 1800s, the first pipes and water mains were made of either wood or brick. Cast iron pipes were introduced the late 1800s. In the mid-1900s there was a move to ductile iron; so the construction materials have evolved over the years. In a 2012 study on water main break rates, Utah State University concluded that the average age of failing water mains is 47 years old. The report found that 43 percent of water mains are between 20 and 50 years old and 22 percent of all mains are over 50 years old. While pipe life can be estimated at over 100 years, the actual life of pipe being put in the ground today is roughly 79 years due to soil corrosivity and installation practices. The report also noted that non-corrosive materials like PVC have an estimated life over 110 years and that PVC has one of the lowest failure rates. This data suggests that PVC could help reduce costs by increasing system longevity and reducing repairs.

**Simpson Q1:** What are the pros and cons of each material – ductile, cast and PVC?

**Answer:** Not applicable to M3 Capital Partners' area of focus

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

**Answer:** Not applicable to M3 Capital Partners' area of focus

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

**Answer:** By utilizing a PPP (capitalized terms referenced herein are defined in my written testimony submitted to the Subcommittee for the March 13, 2013 Water Infrastructure Oversight Hearing) approach, municipalities may be able to realize lower life-cycle costs for the development of replacement Water Facilities. Lower life-cycle costs under the PPP approach are driven by the life-cycle perspective of the Investor Partner. The Investor Partner's integrated team takes full responsibility for the design, construction, operation and maintenance of the project over the life of the PPP term, allowing for coordination and efficiencies across these activities. The Investor Partner is motivated to invest in equipment during construction that will result in the lowest operational costs through the PPP term, producing cost savings that can be shared with the municipality. By combining the design, build, operate and finance functions under a single Investor Partner in a PPP structure, municipalities can potentially avoid change orders, cost overruns and / or litigation costs associated with separate, non-integrated service providers.

**Simpson Q4:** What are some methodologies that could also reduce treatment costs, and operations and maintenance needs?

**Answer:** Life-cycle cost savings as addressed in Q3 can be realized throughout the design, construction, operation and maintenance activities of the project over the life of the PPP term, allowing for coordination and efficiencies across these activities.

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

**Answer:** Lack of knowledge about PPPs can be a barrier to innovation in the water sector. Given the limited number of water infrastructure PPPs utilizing private capital in the U.S., a) most interested citizens are unaware of the potential long-term benefits of PPPs, and b) few municipal officials have meaningful experience in soliciting, evaluating and structuring such transactions.

In addition, regulations governing the implementation of PPPs vary widely from state to state. As a result, many municipal officials may be reluctant to deviate from the “traditional” DBB procurement approach, as compared to a potentially more effective and innovative PPP structure under an uncertain regulatory environment.

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

**Answer:** Not applicable to M3 Capital Partners’ area of focus

#### **What should be Congress’ top priority?**

Beyond simply increasing appropriations to the SRFs, the Congressional Research Service has identified 5 legislative options that have been considered recently by stakeholders. The policy options are:

- a) Create a water infrastructure trust fund with a dedicated revenue stream

- b) Create a water infrastructure financing program, similar to the transportation infrastructure financing program, that would provide loans or loan guarantees for larger water projects
- c) Create a National Infrastructure Bank
- d) Lift restrictions on private activity bonds which may allow access to more private investment; and
- e) Reinststate the authority for Build America Bonds where the Treasury helps lower borrowing costs via bonds.

**Simpson Q7:** Each concept has its pros and cons. If you had to choose one policy for Congress to focus on in the near-term, which would it be?

**Answer:** d) Lift restrictions on private activity bonds which may allow access to more private investment. In addition, I would recommend that Congress establish a nationwide office to promote and support PPPs at the municipal level, similar to the “PPP Canada” initiative launched in 2009 by the Canadian federal government.

#### **Top Water Issue for your organization**

**Simpson Q8:** With limited resources, what is biggest priority or issue for you and your members in the short term? Is it:

- × Pipe repair/capital construction?
- × Treatment to meet regulations or TMDLs?
- × Combined sewer overflows?
- × Growth?
- √ **Increasing private investment.**



**Public-Private Partnerships**

GAO notes that some communities have expressed concerns with losing control over their facilities, materials and rates under public-private partnerships, which has led to a lack of interest in further future partnerships.

**Simpson Q9:** What are some lessons learned – both positive and negative – to keep in mind for future public-private partnerships?

**Answer:** With a PPP arrangement, municipalities can retain long-term ownership of their Water Facilities. During the PPP term, the Investor Partner typically obtains the benefits of ownership of the asset (potentially through a lease or other property interest in the asset). However, at the end of the PPP term, the benefits of ownership revert back to the municipality under pre-defined exit standards, with no further payment due to the Investor Partner.

Under a PPP, the municipality can also retain control over rate setting, rather than conceding such control to a state Public Utility Commission (as typically occurs under an outright sale / privatization of Water Facilities).

The PPP agreement may stipulate that failure to comply with established performance levels or regulatory standards results in termination of the PPP, with the benefits of ownership of the Water Facility reverting back to the municipality for a pre-established amount. With a properly structured PPP, the Investor Partner is highly motivated to comply with – or even exceed – local, state and federal regulations.

**Simpson Q10:** Why have some communities been reluctant to privatize water infrastructure or engage in public-private partnerships?

**Answer:** As per Q5, most interested citizens are unaware of the potential long-term benefits of PPPs, and few municipal officials have meaningful experience in soliciting, evaluating and structuring such transactions. In addition, regulations governing the implementation of PPPs vary widely from state to state. As a result, many municipal officials may be reluctant to deviate from the “traditional” DBB procurement approach, as compared to a potentially more effective and innovative PPP.

**Simpson Q11:** What are the incentives and disincentives?

**Answer:** The primary incentives / benefits for municipalities to implement PPP structures for Water Facilities are summarized as follows (and are further described in my written testimony):

- Retained ownership and control by the municipality;
- Accelerated project launch;
- Risk transfer;
- Life-cycle cost savings;
- New revenue-generating opportunities; and,
- A long-term partnership approach, particularly through PPPs with public pension plans providing most of the capital of the Investor Partner.

In terms of potential disincentives, most municipalities, and particularly larger cities, can access low-cost, tax-exempt financing through the municipal bond market and / or the

SRF program for their major water infrastructure investment needs. The limited amount of similarly low-cost debt financing for PPP projects involving Water Facilities increases the overall cost of capital for such projects. Although tax-exempt private activity bonds (PABs) may periodically be available to private investors in Water Facilities, uncertainty caused by the PAB “state volume cap” for Water Facilities may limit the competitiveness of PPP structures in certain cases.

Despite the relatively higher cost of capital of the Investor Partner in a PPP, as compared to tax-exempt bonds and / or SRF loans that are typically utilized under the DBB approach, lower life-cycle costs may be achievable under PPP structures (as addressed in Q3 and Q4 above).

#### **Private Activity Bonds**

It has been reported that States have not been issuing the maximum amounts for Private Activity Bonds under their caps for any given year. States then routinely carry forward the unused cap amount. In addition, since the national volume cap is a population driven formula, the national cap has actually increased over the past four years. For 2013, the national volume cap is set to expand by 1.1 percent or by \$349 million. However in 2011, States had to return, or “abandon” \$6.6 billion in expired private activity bond authority.

**Simpson Q12:** If States currently do not “max out” borrowing for private activity bonds under existing caps, and if a significant unused Private Activity Bond amount is carried forward from one year to the next, then why should Congress consider raising or eliminating PAB caps?

**Answer:** Congress should consider raising or eliminating PAB caps for Water Facility PPPs in order to provide greater certainty of PAB capacity a) across states, and b) over a potentially multi-year PPP project development process.

**Simpson Q13:** What signal would Congressional action send to States and the private markets that would encourage greater use of private activity bonds and spur more private investment?

**Answer:** Potential Congressional actions that would encourage greater use of private activity bonds and spur more private investment include:

- Increase awareness of the potential benefits of PPP structures for water infrastructure investments among citizens and elected officials;
- Encourage more state governments to implement PPP regulations which facilitate the solicitation, evaluation and structuring of PPPs; and,
- Establish a nationwide office to promote and support PPPs at the municipal level, similar to the “PPP Canada” initiative launched in 2009 by the Canadian federal government.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Hearing on Water Infrastructure Financing  
March 13, 2013

**Questions for the Record for the U.S. Water Alliance**

**IN GENERAL**

The U.S. Water Alliance (USWA) and I commend the Subcommittee for its thoughtful March 13, 2013 hearing on water infrastructure financing and also the probing questions submitted to me for the record after the hearing. The answers below are based on my own observations and opinions and on insights and experiences of various members of USWA but do not constitute official positions of USWA.

Questions from Mr. Simpson

**Reducing cost/new technologies questions**

**Simpson Q1:** What are the pros and cons of each material—ductile, cast, and PVC?

**Answer:** USWA members include various utilities, companies and trade associations that use and/or manufacture ductile iron and PVC pipe; USWA has no intention of choosing or endorsing one material over another.

Cost, durability, performance, safety, and ease of maintenance, repair, and rehabilitation all factor into making the right choice for water piping infrastructure in a particular community in a particular watershed. Cast iron pipes are no longer produced and so my answer focuses more on ductile iron and PVC. For each, key factors include life cycle analysis, susceptibility to corrosion, overall durability, pressure capacity, and replaceability.

PVC pipe pros: corrosion-resistant and cost-effective in smaller sizes

PVC pipe cons: not as cost-effective in larger sized pipe; fittings used in pressurized PVC systems may use ductile iron and therefore be vulnerable to corrosion; may be less forgiving when struck during digging.

Ductile iron pros: doesn't break as easily during inadvertent digging; may be easier to repair; available in larger sizes

Ductile iron cons: can corrode

Ductile iron pipe is a ferrous metallic pipe that corrodes at the same rate as other ferrous pipes (steel as an example) and should be protected by some form of bonded coating to achieve optimal performance. According to experts (of which I am not), ductile iron pipe is produced to a maximum diameter of 64" currently and many major pipelines are larger than that, steel pipe is the material of choice for diameters exceeding 64" and can be designed with engineered coatings

and linings to achieve 75-100 year performance expectations, and PVC pipe is suitable for installation up to a maximum of 30-36" diameter but is limited in its pressure capacity to approximately 100 PSI in those diameters.

Recent reports and studies (e.g. the American Water Works Association and the Utah State study cited in your questions) highlight the importance of the risk of corrosion and corrosive soils and the costs of repairing corroded pipes. The PVC Pipe Association also maintains that corrosion-proof PVC pipe can be significantly less expensive than ductile iron pipe. The Association also states that the American Water Works Association Research Foundation finds PVC pipe has a longevity in excess of 110 years.

USWA recognizes the importance of pipes and other "gray infrastructure" and the role of materials in sustaining such infrastructure. Our organization is also firmly committed to supporting the increased use of green infrastructure, such as enhanced or conserved wetlands, floodplains, and engineered approaches like check dams, swales, and rain gardens. These techniques help to keep rainwater out of sewer systems to avoid polluting overflows into surface waters. They can also reduce flooding that harms not only water quality but also the "gray" or engineered infrastructure that supplies drinking water and handles wastewater. Both the U.S. EPA and States around the country have begun encouraging local solutions to include green infrastructure as part of a more cost-effective approach to sustainable water management. USWA supports continued investment in green infrastructure as part of a "one water" approach.

**Simpson Q2:** Looking forward, might there be another shift in the materials that are used in water systems?

**Answer:** Perhaps. Some indicators point to high-density polyethylene (HDPE) as another non-corrosive piping system (which also includes fittings that are non-corrosive). There may be some concern, however, about the durability and costs of repairs of HDPE and its limitation to low pressure applications. Fiberglass is another example of a material limited to relatively low pressure applications.

The key is to accelerate technology innovation principles and practices into the area of materials. See answer to question number 5 for a more detailed discussion of future materials, techniques, and strategies for water innovation.

**Simpson Q3:** What other options exist for reducing costs to meet capital needs?

**Answer:** Open competition bidding and asset management are two strategies that receive a lot of attention and support, particularly in recent years. A recent report by the U.S. Conference of Mayors argues that open competition for piping materials would spur innovation and substantially reduce the reported \$2.28 trillion in investment required for new piping in the U.S. over the next 20 years. Another strategy to consider: design/build approaches. Proponents of design/build legislation point to savings in time and money as areas of overlap between design and construction phases are reduced.

**Simpson Q4:** What are some methodologies that could also reduce treatment costs and operation and maintenance needs?

**Answer:** Life cycle cost analysis is key. Sometimes it gets overlooked in the interest of staying within a limited budget.

In a broader sense, but no less important, pollution prevention and energy and water efficiency and conservation are proven methodologies to reduce the demand on infrastructure systems and the cost of maintaining or upgrading them. The U.S. EPA WaterSense program and the Alliance for Water Efficiency have documented savings to communities through water efficiency, from the reduced need of chemicals for treatment at the water plant to deferring costly or difficult to achieve investments in water supply and water treatment facilities given the decrease in demand.

**Simpson Q5:** Are there any identifiable barriers to innovation in the water sector?

**Answer:** On March 4, 2013, USWA and WWEMA (the Water and Wastewater Equipment Manufacturers Association) held a Round Table workshop in Washington, D.C. on "Innovating for Water's Future". The discussion among 60 representatives and leaders from the private sector, utilities, State and Federal regulatory agencies, and conservation/environmental organizations focused on risk, uncertainty, technology verification, local bidding practices, the cost of water, and the need for collaborative approaches that encourage, rather than discourage, innovation. EPA's Acting Assistant Administrator Nancy Stoner also outlined priority areas for the National Water Program.

On March 27, 2013 EPA's Office of Water released its "Blueprint for Integrating Technology Innovation into the National Water Program" <http://water.epa.gov/blueprint.cfm>. The document identifies EPA Water's top ten priority areas for technology innovation, such as energy efficiency and resource recovery, nutrient pollution, greening infrastructure, infrastructure finance, reducing environmental impacts of domestic energy production (such as shale gas), climate adaptation for infrastructure resiliency, and rural drinking water systems. The document mentions a number of organizations and recent events that have contributed to EPA's thinking on barriers, solutions, and priorities, including WEF, WERF, and NACWA and makes particular mention of the March 4, Washington D.C. Round Table "Innovating for Water's Future," sponsored by the U.S. Water Alliance's Business Advisory Council and the Water and Wastewater Equipment Manufacturers Association.

USWA strongly believes that innovation is needed, from finding the right mix of green and gray infrastructure to recovering rather than disposing, valuable resources at wastewater facilities. Technology, regulation, stewardship, and finance all have roles in changing for the better the way America views, values, and manages water.

**Simpson Q6:** Are there any Federal, State or local requirements that seek to reduce lifecycle costs of water and sewer pipe distribution systems being installed today by increasing their performance and life expectancy, and reducing operating and maintenance costs?

**Answer:** Excellent question. USWA will survey its members. We also know of other excellent sources to help answer this question, such as ACWA, ASDWA, AWWA, NACWA, AMWA, and NAWC. I understand the National Conference of State Legislatures has done recent work on this front too.

#### **What Should Be Congress's Top Priority?**

**Simpson Q7:** Each concept (identified by CRS as 5 legislative options beyond simply increasing SRF appropriations and then described by the Subcommittee) has its pros and cons. If you had to choose one policy for Congress to focus on in the near-term, which would it be?

**Answer:** All five legislative options are worth discussing and considering details and practicalities. The question's emphasis on "near-term" focus is important as some of the options will continue to trigger much longer discussion and debate. Our membership has varying views and no single option listed above is likely to gain support as the "best" policy for near-term focus. As an organization "uniting people and policy for one water sustainability," USWA believes Congress can take many steps to emphasize the value of water and the need for integrated planning and stakeholder collaboration. For example, outside of the constraints of a Congressional hearing, House and Senate leaders and Committee members could hold a joint one day session on the need for innovative finance and public private partnerships. The more Congress focuses on the growing gap in infrastructure funding and the urgency for innovative solutions, the better.

More specifically, here are some of my thoughts on the specific options for near term action. Bipartisan action on PAB has broad support and also seems to be one of the most likely to happen in the near-term. Clearly Congress could act here in a bipartisan manner and send a signal that helps respond to growing infrastructure problems. Reinstating the Build America Bonds could also be a good step to helping our Nation's drinking water and clean water utilities rebuild their aging infrastructure. One possible change to the Build America Bonds would be to also allow up to 5% of the bond proceeds to be used for preliminary engineering and design costs that are a necessity for the construction projects. Following the Build America Bonds issue, this Nation needs a sustainable funding source for water and wastewater infrastructure. The Trust Fund could be such a source of revenue. The key is to find a new dedicated revenue stream that boosts infrastructure funding without creating an unworkable national fund administered solely out of Washington, D.C. It could be the funding source for the water infrastructure financing program discussed above as the WIFIA option and could also be a revenue source for the Infrastructure Bank. Sustainable funding is essential for our nation's water infrastructure.

The Subcommittee should also look closely at the March 25, 2013 comments submitted by ECOS, ACWA, ASDWA, and CIFA on WIFIA legislative proposals. The primary goal of the state-based organizations is to assure a smooth interaction with the clean water and drinking water State Revolving Loan Funds (SRFs). Secondary considerations are to save money for the federal government, preserve federalism interactions on water financing, and create a system that will work well for all three levels of government that will be involved.



### Top Water Issue for Your Organization

**Simpson Q8:** With limited resources, what is the biggest priority for you and your members in the short term? Is it: pipe repair/capital replacement; treatment to meet regulations or TMDLs; combined sewer overflows; growth; or increasing private investment?

**Answer:** Because we're not a trade association of utilities and businesses but a broad alliance of thought leaders, regulators, stakeholders, and advocates, it's not easy to identify a single priority among the 5 options listed. USWA, however, is united in "uniting people and policy for one water sustainability" to increase the value of water in the public's eye and the use of more integrated, holistic approaches to water quality and quantity challenges. We believe collaboration and innovation will pave the way to more sustainable management and use of water, watersheds, and infrastructure systems. We support the adoption of integrated customized watershed management strategies to respond to the range of varying challenges in particular communities and climates, from sewer overflows, stormwater and nonpoint source runoff pollution, to population/growth stressors.

### Public-Private Partnerships

**Simpson Q9:** What are some lessons learned—both positive and negative—to keep in mind for future public-private partnerships?

**Answer:** Because water is both a human right and a marketable commodity, it should be protected, managed, and provided in ways that combine the best of both the public sector and the private sector. Any successful enterprise for safeguarding and delivering our most precious liquid asset to current and future generations must succeed in gaining and maintaining the public's trust and the community of stakeholders' support.

The Subcommittee may find useful the summary of proceedings from a 2012 meeting hosted by the Horinko Group, "Public Private Partnerships for Financing Water Infrastructure: Finding the Right Model" <http://www.thehorinkogroup.org/pubs/April2012P3SalonProceedings.pdf>.

In the proceedings, Brent Fewell of United Water, and a member of the U.S. Water Alliance Board, restated the definition of Public-Private-Partnerships according to the National Council of Public Private Partnerships, and emphasized two of the most important aspects of successful partnerships: 1) keep the focus of the partnership on the public's best interest, ensuring services provided are cost effective and reliable; and 2) shared risk and reward is the foundation of making such arrangements work—there must be the potential for the private company making a large infrastructure investment to share in rewards tied to the partnership. Without the potential for sharing in the rewards, no investment would occur."

**Simpson Q10:** Why have some communities been reluctant to privatize water infrastructure or engage in public-private partnerships?

**Answer:** The Horinko Group summary is a useful document in answering this question. Again, the reasons vary but often the hesitation is due to novelty (i.e. lack of experience with) and complexity of the public-private partnership. Public perception and distrust of the private sector can also cause delay or reluctance.

**Simpson Q11:** What are the incentives and disincentives?

**Answer:** Incentives for communities, ratepayers, and taxpayers include potential savings, greater efficiencies, and improved delivery of service. Disincentives include risk on the part of the investors and citizens.

#### **Private Activity Bonds**

**Simpson Q12:** If States currently do not “max out” borrowing for private activity bonds under existing caps, and if a significant unused PAB amount is carried forward from one year to the next, then why should Congress consider raising or eliminating PAB caps?

**Answer:** USWA defers to other organizations for a more specific response to this question. Experiences with other types of infrastructure systems that enjoy the lack of a cap would be useful. Public and private organizations believe that removal of the cap would create new opportunities that haven’t been tapped into to date.

**Simpson Q13:** What signal would Congressional action send to States and the private markets that would encourage greater use of PABs and spur more private investment?

**Answer:** Passage of the pending PAB legislation would send a positive signal that Congress can act in a bipartisan manner to stimulate investment in water infrastructure.

TUESDAY, MARCH 19, 2013.

## OVERSIGHT OF INDIAN HEALTH

### WITNESSES

**YVETTE ROUBIDEAUX, DIRECTOR, INDIAN HEALTH SERVICE**

**REX LEE JIM, VICE PRESIDENT, NAVAJO NATION, TREASURER AND  
NAVAJO AREA REPRESENTATIVE, NATIONAL INDIAN HEALTH  
BOARD OF DIRECTORS, ON BEHALF OF NATIONAL INDIAN HEALTH  
BOARD**

**D'SHANE BARNETT, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF  
URBAN INDIAN HEALTH**

**KELLY MOORE, ASSOCIATE PROFESSOR, CENTERS FOR AMERICAN IN-  
DIAN AND ALASKA NATIVE HEALTH, COLORADO SCHOOL OF PUBLIC  
HEALTH, UNIVERSITY OF COLORADO DENVER, ON BEHALF OF  
FRIENDS OF INDIAN HEALTH**

**HENRY FIELDS, PROFESSOR AND CHAIR, DIVISION OF  
ORTHODONTICS, COLLEGE OF DENTISTRY, OHIO STATE UNIVER-  
SITY, ON BEHALF OF AMERICAN DENTAL ASSOCIATION**

### OPENING REMARKS OF CHAIRMAN SIMPSON

Mr. SIMPSON. The hearing will come to order.

Good afternoon and welcome to this oversight hearing on Indian health. In 2010, the United States enacted into law the following policy: "A major national goal of the United States is to provide the resources, processes, and structure that will enable Indian tribes and tribal members to obtain the quality and quantity of healthcare services and opportunities that will eradicate the health disparities between Indians and the general population of the United States." Let me say that again. "A major national goal of the United States is to provide the resources, processes, and structure that will enable Indian tribes and tribal members to obtain the quantity and quality of healthcare services and opportunities that will eradicate the health disparities between Indians and the general population of the United States."

A few of those disparities are reflected in these sobering statistics provided by the National Congress of American Indians. Native people die at higher rates than other Americans from tuberculosis, 500 percent; alcoholism, 514 percent; diabetes, 177 percent; injuries, 140 percent; homicide, 92 percent; and suicides, 82 percent.

This subcommittee has, over the past several years, made funding for Indian Health a higher priority. In fact, from 2000 to 2012 under both Republican and Democratic leadership, funding for the Indian Health Service went from 2.4 billion to nearly 4.4 billion before sequestration. No doubt some of that increase was an attempt to keep pace with the nationwide problem of rising medical care costs, but my hope is that the rest of the increases has made a positive difference in people's lives.

So the fiscal year 2014 budget delay provides us with this opportunity today to step back and ask the following questions in support of the national goal I stated at the outset: has the increased funding made a measurable difference in the health of American Indians and Alaska natives, and why? And where do we go from here in this constrained fiscal environment?

We are pleased today to be joined by two panels of experts. Our first panelist will be Dr. Yvette Roubideaux, Director of the Indian Health Service. After Dr. Roubideaux testifies, we will have a round of questions from the subcommittee. Then, we will invite up our second panel, which includes Mr. Rex Lee Jim, Vice President of the Navajo Nation, testifying on behalf of the National Indian Health Board; Mr. D'Shane Barnett, Executive Director of the National Council of Urban Indian Health; Dr. Kelly Moore, Associate Professor at the Centers for American Indian and Alaska Native Health at the University of Colorado, testifying on behalf of the Friends of Indian Health; and Dr. Henry Fields, Professor at the College of Dentistry at the Ohio State University, testifying on behalf of the American Dental Association.

Mr. SIMPSON. Let me also take this moment to welcome our distinguished guests in the audience and the many tribes and tribal organizations around the country who are submitting written testimony for the record. Thank you all for your commitment and your assistance in helping us today. I will say that we are expected to have votes at about 2:15, so our anticipation is that we hope we will get through with Dr. Roubideaux so you do not have to hang around if you do not want to. If you want to listen to the other panel, that is fine, but then we will probably go vote and then have the second panel up as soon as we get back from this first series of votes, which should not take too long.

I would like to turn to my ranking member, who is at a luncheon that is not quite over yet, but he will be here as soon as he can make it. And then you have an opening statement?

Ms. MCCOLLUM. I am excited to get going, sir.

Mr. SIMPSON. Okay. Mr. Moran will provide his opening statement when he gets here. Dr. Roubideaux, the floor to you.

Dr. ROUBIDEAUX. Thank you. I am just making sure that the microphone is on. You are good? Push the button. You can hear me now?

Mr. SIMPSON. Yes.

Dr. ROUBIDEAUX. Perfect. Well, good morning.

Mr. SIMPSON. Would you like to have your opening statement now or—

Mr. MORAN. Apparently you are not so Irish there or something.

Mr. SIMPSON. Seriously, so let's not go there.

Mr. MORAN. I will not go there. Do you want a cookie?

Mr. SIMPSON. I have two here. You will be off the hook on your side of the table.

#### OPENING REMARKS OF MR. MORAN

Mr. MORAN. Actually, I have such a fine opening statement, Doctor. I know you would want me to share it. We do want to thank you for coming to the subcommittee oversight hearing today.

And I thank you, Mr. Chairman, for giving us the opportunity to say a couple words.

We, I think, recognize that a person's greatest asset oftentimes is their state of health because if you do not have your health, there is not much that you can enjoy in life. And the fact is that too many Native Americans' health status is seriously impaired in category after category. The Native Americans suffer sickness and disease at far greater rates than other Americans, and that is what Chairman Simpson noted in his address. And Native Americans die at higher rates than other Americans.

The statistics you quoted, Mr. Chairman, are just stunning. Whether it be alcoholism, diabetes, injuries, homicides, suicide, it is something that we have to address, and this is the best way to address it. Native Americans' life expectancy is still 4 years less than Americans of any other race, and as bad as those statistics are, though, I want to recognize the terrific work that is done by the Indian Health Service. Over the last 50 years, Indian Health Service has made a real difference in the lives of Native Americans, particularly in terms of high infant mortality and deaths from disease. But we still have many challenges, especially the epidemic of diabetes. We recognize that there are larger societal issues, but poverty, education, rural isolation all comes together to present special challenges for Indians' health.

I do appreciate the bipartisan support that Indian Health has had on this subcommittee. I think it should be recognized because it is real and substantial and meaningful. But it is becoming more and more difficult. This bill proportionately was cut more than any other bill by the Senate, and that is very troubling. A 5 percent cut in Indian health programs is not what the American taxpayer would want done; it is certainly not what this subcommittee wants to see. The situation is going to continue to be very difficult, but this subcommittee is committed to doing everything we can to advance the state of Indians' health and to support you in your efforts, Dr. Roubideaux. So I thank you very much.

I thank you, Mr. Chairman.

Mr. SIMPSON. Dr. Roubideaux.

#### OPENING REMARKS OF DR. YVETTE ROUBIDEAUX

Dr. ROUBIDEAUX. Well, thank you, Mr. Chairman and members of the subcommittee. My name is Dr. Yvette Roubideaux. I am the director of the Indian Health Service. I am really pleased to have the opportunity to testify on the accomplishments of the Indian Health Service.

Well, over the past few years, we have been working to change and improve the Indian Health Service. And I want to thank you so much for our progress on appropriations. It has been really critical to our progress in terms of accomplishing our agency priorities and improvements. Since 2008, the IHS appropriations have increased by 29 percent, which is making a substantial difference in the quality and quantity of healthcare we are able to provide, which in the end helps us reduce health disparities in the communities we serve.

For example, Contract Health Service funding, which is how we pay for referrals to the private sector, has increased 46 percent

since 2008, and 4 years ago, only four federal programs were funding beyond Medical Priority 1, which is “life or limb” for referrals. Now, almost half of all federal Contract Health Service programs are funding referrals beyond Medical Priority 1. This is significant because it means more patients are accessing healthcare services that they need, including preventive services like mammograms and colonoscopies. The increases in Contract Health Service funding also means that the IHS Catastrophic Health Emergency Part, or CHEF fund, which used to run out of funding for high-cost cases reimbursement in June, is now able to reimburse cases all the way until August. So although IHS faces uncertainty about its funding level for fiscal year 2013, we are committed to continuing our efforts to change and improve the Indian Health Service.

While IHS has made considerable progress in addressing our agency priorities and reforms, our first priority is to renew and strengthen our partnership with tribes, and that is based on our belief that really the only way that we can improve the health of our communities is to work in partnership with them. Over the past few years, we have made several improvements that have resulted in better decision-making and more effective progress on our agency reforms.

For example, Tribal Consultation is helping us improve our Contract Health Service program, the business of it and our referral process. Tribal Consultation is also helping us improve coordination of care for veterans through implementation of our 2010 updated MOU and the recently signed IHS-VA National Reimbursement Agreement.

Our second agency priority is to bring reform to the Indian Health Service, and this year, the IHS is focused on planning for implementation of the Affordable Care Act health insurance exchanges and Medicaid expansion in 2014, and we continue to make progress on implementation of the reauthorization of the Indian Health Care Improvement Act.

IHS is also making progress on our internal IHS reform efforts, including organizational and administrative reforms, improved budget planning, financial management, human resources, performance management, and more consistent business practices throughout the Agency. While IHS has responded with corrective actions for the findings from the Senate Committee on Indian Affairs investigation of the Aberdeen area, we have since conducted reviews of all 12 areas and are implementing corrective actions as well.

Our third agency priority is to improve the quality of and access to care. We have focused our efforts on a number of customer service and quality improvement strategies over the last few years, including our Improving Patient Care program, which establishes a patient-centered medical home model within the Indian Health System.

In 2011, the Indian Health Service successfully met all of its national Government Performance and Results Act, or GPRA, performance clinical indicators, and this is an accomplishment that was never before achieved in IHS. And it is really due to a system-wide focus on improvement and also increased access to care from the recent funding increases.

For example, receipt of mammograms by women for many years was in the low- to mid-40 percent range, and by fiscal year 2012, it has increased to over 50 percent.

So our final agency priority is to ensure that our work is transparent, accountable, fair, and inclusive. And this includes a focus on system-wide accountability for progress on agency reform efforts.

So in summary, we are making progress and changing and improving the Indian Health Service. And thank you so much for your support and your partnership. It has really been essential to our progress thus far. And although we are in a time of uncertainty regarding resources and we clearly have much more to do, the work of the past few years has clearly established that by working together, our efforts can change and improve the Indian Health Service. And that helps us ensure that our American Indian and Alaska Native patients and communities receive the quality healthcare that they need and they deserve.

Thank you. And I am happy to answer questions.

[The statement of Yvette Roubideaux follows:]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**STATEMENT**

**OF**

**YVETTE ROUBIDEAUX, M.D., M.P.H.**

**DIRECTOR**

**INDIAN HEALTH SERVICE**

**BEFORE THE**

**HOUSE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED  
AGENCIES**

**OVERSIGHT HEARING**

**ON**

**INDIAN HEALTH**

**March 19, 2013**



**STATEMENT OF THE INDIAN HEALTH SERVICE**

Mr. Chairman and Members of the Subcommittee:

Good morning. I am Dr. Yvette Roubideaux, Director of the Indian Health Service (IHS). I am pleased to provide testimony on the accomplishments of the IHS in addressing our agency mission to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives (AI/ANs) to the highest level.

The Indian Health Service is an agency within the Department of Health and Human Services (HHS) that provides a comprehensive health service delivery system for approximately 2 million AI/ANs from 566 federally recognized Tribes in 35 states. The IHS system consists of 12 Area offices, which are further divided into 168 Service Units that provide care at the local level. Health services are provided directly by the IHS, through tribally contracted and operated health programs, through services purchased from private providers, and through urban Indian health programs. The IHS fiscal year (FY) 2012 appropriation was \$4.3 billion, with an additional \$1 billion provided through health insurance reimbursement and mandatory diabetes funds.

Over the past few years, we have been working to change and improve the IHS. I want to thank you for our progress on appropriations for IHS. The IHS budget is critical to our progress in accomplishing our agency priorities and improvements. Since 2008, IHS appropriations have increased by 29 percent, which is making a substantial difference in the quantity and quality of healthcare we are able to provide to AI/ANs.

For example, Contract Health Service (CHS) funding, which is a top priority of IHS and Tribes, has increased by 46 percent since 2008. Four years ago, most programs were funding only Medical Priority 1, or "life or limb" referrals. Now, the increased CHS funding means that almost half (29 out of 66) of Federal CHS programs are now funding referrals beyond Medical Priority 1. This means these programs are paying for more than just life or limb care and more patients are accessing the health services they need, including preventive services such as mammograms and colonoscopies. The increased CHS funding also means that the IHS Catastrophic Health Emergency Fund (CHEF), which used to run out of funding for high cost cases in June, now is able to fund cases through August.

At this time, IHS faces uncertainty about its funding level for FY 2013, given the recent implementation of sequestration and the status of appropriations for the remainder of this fiscal year. The impact of sequestration will be significant for IHS; overall, the \$220 million reduction in IHS' budget authority for

FY 2013 is estimated to result in a reduction of 3,000 inpatient admissions and 804,000 outpatient visits for American Indians and Alaska Natives (AI/ANs). The implementation of efficient spending initiatives, e.g., reducing travel and conference spending, has also changed the way IHS conducts its business, and IHS is committed to continuing these efforts regardless of the current fiscal uncertainty.

IHS has made considerable progress in addressing our agency priorities and reforms. Our first priority is to renew and strengthen our partnership with Tribes. This priority is based on our belief that the only way we can improve the health of Tribal communities is to work in partnership with them. Over the past few years, we have made several improvements in national, Area, and local Tribal Consultation and communication. These improvements have resulted in better decision-making and more effective progress on our agency reforms.

For example, our Tribal Consultation for improving the CHS program has resulted in the implementation of several of our Tribal workgroup's recommendations to improve the business of the CHS program and the referral process. We have developed training modules for CHS staff in federal and Tribal programs, conducted annual best practices sessions, gathered more comprehensive and accurate data on denied and deferred services, conducted more meetings with outside providers, and are currently consulting with Tribes on whether to change the CHS funding distribution formula.

Tribal consultation has also helped IHS work more effectively with the Department of Veterans Affairs (VA) to improve coordination of care for AI/AN veterans eligible for both IHS and VA. In 2010, IHS and VA signed an updated Memorandum of Understanding (MOU) and implementation is ongoing at the national, Area and local levels. Tribal consultation was essential to the development of the IHS-VA National Reimbursement Agreement that was signed on December 5, 2012. This agreement, authorized by the Indian Health Care Improvement Act (IHCIA), allows VA to reimburse IHS for direct care services provided to eligible veterans who receive services from IHS. The VA and IHS are beginning to implement the reimbursement agreement in federal and Tribal sites.

Our second agency priority is to bring reform to the IHS. The Affordable Care Act (ACA) is an important part of reform for IHS since the law has many new benefits for AI/ANs. The insurance reforms in the law protect those with insurance, and the State and Federally Facilitated Exchanges, or Marketplaces, will make purchasing affordable insurance easier in 2014. The Medicaid Expansion will cover more AI/ANs based on a higher income threshold, so more adults will have the option to enroll in Medicaid. And AI/ANs can still use IHS since the ACA extends authorizations of appropriations indefinitely. This year, IHS is focused on planning for implementation of the Exchanges and Medicaid Expansion in 2014.

IHS continues to make progress on implementation of the permanent reauthorization of IHCIA included in ACA. Several provisions are already in place, such as Tribal providers being able to be licensed in one State; outside providers not being able to go after patients who have referrals authorized to be paid by CHS; and third-party reimbursement resources staying at the Service Unit where they were generated. There are also provisions that require more work and more resources, such as long-term care and some of the demonstration projects.

IHS is also making progress on our internal IHS organizational and administrative reform efforts. We have set a strong tone at the top that we will change and improve, and we have made a number of administrative improvements, including improved budget planning, financial management, performance management and more consistent business practices throughout the agency. We are implementing improvements in human resources, including improving hiring times, supervisor training, and recruitment and retention strategies.

IHS has responded to the findings of the Senate Committee on Indian Affairs investigation of the Aberdeen Area and corrective actions and improvements have been implemented. Improvements in pre-employment background checks, credentialing of providers, reductions in use of administrative leave, improved administrative controls, improved pharmacy security and development of a more consistent, coordinated approach to training and maintenance of accreditation are among the areas of improvement in the Aberdeen Area. The Senate Committee on Indian Affairs also requested that IHS conduct reviews in all other IHS Areas on the same areas investigated in the Aberdeen Area, and those reviews have been completed and corrective actions are in progress. The Agency is establishing an oversight focus to continue accountability and progress to date.

One area where IHS has made significant improvements is in the management and oversight of personal property. Much of the work in the past four years has concentrated on senior level accountability and policy level attention to improving agency-wide property management. National and local systems have been structured to prevent problems and/or to detect fraud, waste or abuse in a timely manner, and to hold individuals personally accountable. We have invested resources in personal property management over the past two years to implement new policies and internal control strategies. Corrective actions are ongoing to ensure that improvements over the past 4 years continue.

Our third agency priority is to improve the quality of and access to care. We have focused our efforts on a number of customer service and quality improvement strategies over the last few years. The Improving Patient Care (IPC) program aims to establish a patient centered medical home model within the Indian health system. In the past four years, IPC has completed two more phases and added 89 sites for a total of

127 participating sites. The IPC program implements a variety of strategies to provide patient centered care including the use of multidisciplinary provider teams, continuous quality improvement strategies, empanelment of patients (i.e., linking patients to specific providers) so that they see the same provider team each time they access the facility, improvements in the process and flow of the outpatient clinic, use of registries, case management and quality measures. In the most recent phase, IPC sites have increased access to care by empanelling 261,180 active patients to a primary care team, compared to 85,079 empaneled patients in the preceding phase. In addition, patient experience of care surveys from IPC sites have shown patients' satisfaction has increased overall from 55 percent in April 2011 to 72 percent currently.

In 2011, the Resource and Patient Management System (RPMS), the IHS' comprehensive health information system, became the first Federally-sponsored Electronic Health Record (EHR) to be certified under the criteria established by the Office of the National Coordinator for Health Information Technology. The RPMS is certified as a Complete EHR for use in both ambulatory and inpatient settings. IHS has also implemented the Electronic Dental Record through a commercial system that interfaces with the RPMS at 134 IHS, Tribal, and urban Indian health programs.

In 2011, the Indian Health Service successfully met all national Government Performance and Results Act (GPRA) performance indicators, an accomplishment never before achieved by the IHS. Improvements in GPRA indicators have resulted from a system-wide focus on strategies to meet targets and increased access to care from recent funding increases. For example, receipt of mammograms by women for many years was in the low to mid 40 percent range, and by FY 2012 it had increased to over 50 percent. In 2012, 66.7 percent of our diabetic patients received follow up nephropathy assessments demonstrating a 26.7 percent increase over 2007.

The IHS Domestic Violence Prevention Initiative has resulted in over 151,000 screenings and more than 11,000 referrals for victims of domestic violence to date. Over 19,000 individuals received crisis counseling and related services and over 6,000 professionals were trained on domestic violence prevention at 478 training events. Medical forensic equipment necessary for evidence collection has been provided to 45 IHS and Tribal hospitals. A total of 344 Sexual Assault Forensic Examination (SAFE) kits have been submitted to Federal, State, and Tribal law enforcement.

The Methamphetamine and Suicide Prevention Initiative (MSPI) funding has resulted to date in nearly 5,000 individuals entering treatment for methamphetamine and the delivery of 7,000 substance abuse and mental health encounters via tele-health. More than 7,400 professionals and community members have been trained in suicide crisis response and more than 200,000 encounters with at-risk youth have been

provided as part of evidence and practice-based prevention activities.

Our collaborations with other agencies have resulted in improvements such as our partnership with the Health Resources and Services Administration; more IHS sites are eligible for National Health Service Corps (NHSC) scholarship and loan repayment placement which helps fill critical provider vacancies. The collaboration with the NHSC resulted in an additional 96 Indian health facilities being approved by NHSC as placement sites and a corresponding increase of 85 clinicians serving during FY 2012.

Our final agency priority is to ensure that our work is transparent, accountable, fair, and inclusive, and this includes more communication about agency progress and activities at the national, Area and local levels. We continue our focus on accountability of our staff and our programs, and IHS has implemented a performance management process that ensures all senior executives at Headquarters, the 12 Area Offices and all federal Chief Executive Officers have performance plans with specific and measurable objectives based on agency priorities. This improved performance management process serves as an important tool to ensure system-wide accountability for progress on agency reform efforts.

In summary, we are making progress in changing and improving the IHS. Thank you for your support and partnership – it has been essential to our progress thus far. Although we are in a time of uncertainty regarding resources, the work of the past few years has clearly established that by working together, our efforts can change and improve the IHS to ensure that our AI/AN patients and communities receive the quality health care that they need and deserve. Thank you and I am happy to answer questions.



**Dr. Yvette Roubideaux**  
**Director**  
**Indian Health Service**

Yvette Roubideaux, M.D., M.P.H., a member of the Rosebud Sioux Tribe, South Dakota, is the Director of the Indian Health Service (IHS). Dr. Roubideaux was confirmed by the U.S. Senate as IHS Director on May 6, 2009, and she was sworn in on May 12, 2009. The IHS, an agency within the Department of Health and Human Services, is the principal federal health care advocate and provider for American Indians and Alaska Natives.

As the IHS Director, Dr. Roubideaux administers a \$4 billion nationwide health care delivery program composed of 12 administrative Area (regional) Offices. The IHS is responsible for providing preventive, curative, and community health care to approximately 2 million of the nation's 3.4 million American Indians and Alaska Natives in hospitals, clinics, and other settings throughout the United States.

Dr. Roubideaux previously worked for IHS for three years as a clinical director and medical officer at the San Carlos Service Unit on the San Carlos Apache Indian reservation in Arizona, and she worked for one year as a medical officer at the Hu Hu Kam Memorial Indian Hospital on the Gila River Indian reservation in Arizona.

Dr. Roubideaux recently served as assistant professor of family and community medicine at the University of Arizona College of Medicine. Dr. Roubideaux has conducted extensive research on American Indian health issues, with a focus on diabetes in American Indians/Alaska Natives and American Indian health policy. Dr. Roubideaux served as the co-director of the Special Diabetes Program for Indians Demonstration Projects, in which 66 American Indian and Alaska Native communities are implementing diabetes prevention and cardiovascular disease prevention initiatives. She also served as director of two University of Arizona programs designed to recruit American Indian and Alaska Native students into health and research professions.

Dr. Roubideaux received her medical degree from Harvard Medical School in 1989 and completed a residency program in primary care internal medicine at Brigham and Women's Hospital in Boston in 1992. She completed her Master of Public Health degree at the Harvard School of Public Health in 1997. She also completed the Commonwealth Fund/Harvard University Fellowship in Minority Health Policy before transitioning to a career in academic medicine and public health.

She is a past president of the Association of American Indian Physicians and co-editor of the American Public Health Association's book "Promises to Keep: Public Health Policy for American Indians and Alaska Natives in the 21st Century." She has authored several monographs and peer-reviewed publications on American Indian/Alaska Native health issues, research, and policy.

## CHEF AND CHS

Mr. SIMPSON. Thank you, Dr. Roubideaux. I appreciate you being here today and I appreciate the work that you are doing and have done with us trying to address this disparity.

You mentioned during your testimony that the old saying in Indian Country used to be do not get sick after June. You now say that you can get sick clear up until August. What happens in September?

Dr. ROUBIDEAUX. Well, there are two things. So there is the overall budget for Contract Health Service where we make referrals, and then there is this pot of money called the Catastrophic Health Emergency Fund. That is where we reimburse facilities for the costs of high-cost cases after they meet a certain threshold. That money is sort of a first-come, first-served, so it actually runs out when it runs out. And so what we are saying is it is now running out in August instead of June. Those cases have still been paid for; it is just that we are not reimbursing them. But if we reimburse them through this fund, that means those resources can be used for other referrals.

Mr. SIMPSON. So tribes are having to use their own resources to pay for those medical costs rather than being reimbursed?

Dr. ROUBIDEAUX. Their Contract Health Service fund.

Mr. SIMPSON. Yes.

Dr. ROUBIDEAUX. Yes, the overall pot of funds. The phrase do not get sick after June has been a very effective advocacy tool and way to describe the fact that for Contract Health Service, the way that we pay for referrals, we have an incredible shortfall in the amount of funding that is available for the referrals. So in the past, they used to just use it up and then it would run out.

Mr. SIMPSON. Yes.

Dr. ROUBIDEAUX. What we have done is we have implemented improvements in the way we manage the Contract Health Service program so that it is better apportioned throughout the year and that there are weekly meetings of the Contract Health Service program to look at medical priorities for approvals of referrals.

So the budget is clear. Even though we are doing that and the money is being apportioned out throughout the entire year, there is still significant need. Our current Contract Health Service budget is around \$800 million. The actual need related to denied and deferred services is almost \$1 billion above that.

Mr. SIMPSON. We figured out a way to separate the terms contract support costs and Contract Healthcare Services so that we can understand which we are talking about? We have mentioned that before that we oftentimes get them confused here.

Dr. ROUBIDEAUX. Yes. Contract Health Services, how we pay for referrals, contract support costs is the administrative costs related to contracts to tribes. I cannot reveal anything about the 2014 President's budget, but I can say that we took your advice and are changing the name to Purchased and Referred Care. We are proposing that in our budget. So Purchased and Referred Care does better reflect that this funding goes to referrals.

## GPRA

Mr. SIMPSON. Probably the thing that we rely on most is a measure of how well we are doing at addressing this—I do not want to say backlog—but this need that exists in meeting our obligations, and as the statute says that I read earlier, making sure we address this disparity. I mean I read the statistics of the differences between the Indian population and all other Americans based on pure numbers. How are we doing? I mean we have been at this effort for some time and trying to address this disparity. It seems to still exist. What measures are we using to try to reduce them?

Dr. ROUBIDEAUX. Well, the Indian Health Service does do regular surveillance on a number of things. The ultimate outcome is of course reducing the disparities in mortality or death rates. And we can see over time over the course of the Indian Health Service being in place, as Representative Moran said, we can see that mortality is decreasing in a number of areas. The areas where we see mortality decreasing include alcohol deaths, diabetes deaths, unintentional injuries, homicide, and tuberculosis. But you are right. American Indians, Alaska Natives still do suffer significant health disparities and the quality of care. Alcohol mortality is still 6.1 times greater, diabetes is still 2.8 times greater, and unintentional injuries are still 2.4 times greater. Those are in sort of the long-term health outcomes.

The way for us to prove that as a healthcare system is to improve access to quality healthcare. And that is where we really see some of the more short-term progress that will lead to long-term progress. I mentioned how we, for the first time, met all of our GPRA indicators, which measure the quality of care and the access to care that we provide.

When you look at all of the GPRA indicators, we can show significant improvements in, for example, access to dental services has increased 15.2 percent since 2008, sealants placed has increased 22.6 percent, topical fluoride patients have increased 40 percent, mammograms have increased 15.3 percent, colorectal cancer screening has increased 59 percent, tobacco cessation has increased 67.6 percent, and so on. We can provide you a full chart of what the increases have been over the last 4 years. But it is really clear that in order to address those long-term health disparities, we have to provide better access to care in our system, and the resources and funding increases in the past few years are definitely giving us a great start in doing that.

Mr. SIMPSON. One of the challenges we had—and it is true across all America I suspect—is—and maybe it is more emphasized within Indian Country, you go to some places, as we did when we went to Oklahoma and some other places, they are doing very well in terms of the healthcare services they are providing, facilities that they are building, and so forth. In other parts of Indian Country, it is almost the dark ages. How do we decrease this disparity, not just between Native Americans and the rest of the American population, but the disparity within Indian tribes?

Dr. ROUBIDEAUX. Well, what we need to do is make sure that when we get more resources for the system, we make sure that those resources benefit all of our patients, whether they are served



by IHS-direct programs, whether they are served by tribally managed programs, or served by Urban Indian Health programs. And looking at tracking trends, monitoring performance, looking at access to care, and making sure that we are consulting with all of the tribes in the 12 IHS areas to make sure what their priorities is helping us do better at improving the quality of care, access to care, and ultimately to reduce those disparities.

#### UNFILED POSITIONS

Mr. SIMPSON. How are we doing filling the unfilled positions that you have, whether they are doctors or dentists or other professionals?

Dr. ROUBIDEAUX. Well, we have always had a challenge with vacancy rates, especially with clinical providers and physicians, and we are facing greater challenge with a looming shortage of primary care doctors. But what we have been doing are a number of reforms. One is the overall agency reform. When I was first director, we surveyed all of our providers, all of our staff, and asked them what they wanted to see, and I thought they wanted to see more improvements in clinical care. And really what they wanted is the organization to function better. And so that is why we have had such a focus on improving business and administrative processes, accountability, performance, and communication, and so want to create a better environment within which people can work. We also continue to use recruitment and retention bonuses. We have our loan repayment programs, scholarship program. We have worked with HRSA on getting National Health Service Corps scholars for loan repayment and scholarship placed in our system.

And overall, one of the most exciting things that we have is our Improving Patient Care program, which is changing our care to a more team-based care that spreads the work to the highest level of each of the providers so that the doctor does not become completely overwhelmed because there are other members of the team that can do other parts of the care. And then trying to make the improvements and get more modern equipment and really try to find ways to improve the working conditions that people live in—

Mr. SIMPSON. Are those vacancy rates going down?

Dr. ROUBIDEAUX. Yes. We actually are seeing some improvements. You may remember the vacancy rates for dental were over 30 percent several years ago. They are now around 10 percent. There are improvements in a number of the other provider vacancies, but some of them we still struggle with, and physicians are always going to be an area where we really need to work harder. But the use of advanced practice nurses, physician assistants, and again, reorganizing the way we provide care will make sure that we use those providers more efficiently and that we do not overload them so that they get burned out.

Mr. SIMPSON. Mr. Moran.

Mr. MORAN. Thanks, Mr. Chairman. Appreciate it. That printer must have put that nametag together in a mirror.

Dr. ROUBIDEAUX. I know. I just noticed that.

Mr. MORAN. Did you notice that?

Dr. ROUBIDEAUX. Roudibeaux.

## WATER SANITATION

Mr. MORAN. We had an oversight hearing on water sanitation systems last year. That does contribute to some of the disease issues we have had to deal with. Have we made any progress in that regard, Dr. Roubideaux?

Dr. ROUBIDEAUX. Well, we are doing what we can to make progress on sanitation facility construction, and the Recovery Act definitely did help with giving us \$63 million more, and EPA also gave us \$90 million more. So we were able to work on the backlog of sanitation projects that is there. The estimate of the Sanitation Deficiency System that updated the need to serve existing homes in 2011 was 3.1 billion, and then in 2012, it had gone down to 2.8 billion. But in terms of what is economically feasible, that has gone up a little to 1.6 billion. There is just an enormous, enormous burden of need for water and the sewage disposal and solid waste disposal facilities in our new and existing homes. So with that incredible need of 2.8 billion in 2012, there is clearly still more to do. But it is clear that more resources do help us make progress.

## HEALTH EDUCATION AT RESERVATION SCHOOLS

Mr. MORAN. Thank you. A number of the illnesses, diseases that we experience the highest rates of are what are called behaviorally related problems, are you working with the school systems on reservations in terms of healthcare diets and nutrition counseling?

Dr. ROUBIDEAUX. We are. And that is mostly through the resources we have received through the Special Diabetes Program for Indians. I know many of those programs that provide diabetes prevention and treatment services do outreach and work with the local schools and try to help with education on nutrition. We also have our public health nurses who can go out to the schools and do education, as well as our Nutrition and Health Education staff. So we do do some outreach. It is clear we could do more, and that is why I was pleased to have already met twice with Assistant Secretary Kevin Washburn over at the Department of Interior, and I hope to have more meetings to talk with him about how we can do further collaboration on the portfolio that he has that includes schools.

## VETERANS AFFAIRS

Mr. MORAN. I hope so. The Department of Veterans Affairs and the Department of Defense are supposed to be sharing some of their medical facilities with IHS, and there are some issues with regard to reimbursement for the care of Native American veterans. How are we progressing on that?

Dr. ROUBIDEAUX. Well, we actually are making progress in terms of trying to improve the coordination of care for American Indian/Alaska Native veterans who are eligible for both IHS and the VA. And in 2010 I signed an updated Memorandum of Understanding with the VA that is working to improve coordination of services. We have a number of work groups at the national level that are working on trying to improve coordination in a number of areas, including sharing information, quality of care, IT systems, telehealth, and so on.

And in terms of reimbursement, we have been very fortunate that the Indian Health Care Improvement Act did include Section 405 that allows that the VA reimburse IHS. And on December 5, we were able to sign our National Reimbursement Agreement with the VA that allows the VA to reimburse IHS for direct care services for eligible American Indian/Alaska Native veterans at a rate that helps our facilities and was requested by tribes.

And so we are implementing that now in 10 federal sites. We are also implementing it in tribal sites. Alaska, of course, has been implementing it since August as well. And I believe the first federal site has already set up the billing and sent the first bill. So I think we are making progress there.

The issue of sharing facilities is something that we have a couple of examples of in our communities, and we hope to do more of that.

Mr. MORAN. Very good. And lastly and very quickly, the chairman mentioned that the rate of death for alcoholism is over 500 percent greater among Native Americans. Are those statistics any better this year?

Dr. ROUBIDEAUX. Those statistics over time are better, but there is still a significant disparity. And so we are focusing our alcohol and substance abuse funding to try to continue to address that with mostly tribal- and community-based programs.

Mr. MORAN. Thank you, Dr. Roubideaux.

Mr. SIMPSON. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

#### GENETICS AND DISEASE

Just on a point that Mr. Moran brought up on some of the life-style diseases, has there ever been a study also whether there is any genetic predisposition to certain diseases more in the native population than in other populations?

Dr. ROUBIDEAUX. Well, it is clear that we need more research in that area. We know from prevalence studies, studies of the rates of diseases, that certain diseases occur more frequently in American Indians and Alaska Natives, but that—

Mr. CALVERT. But it seems like diabetes is—

Dr. ROUBIDEAUX. Diabetes is actually one of the most notable where we see some of the highest rates in the world. And the epidemic of diabetes that is hitting America now hit American Indians and Alaska Natives in the 1970s. And that is why we have had programs since then to try and address that epidemic.

#### YRTC IN CALIFORNIA

Mr. CALVERT. All right. My primary question is about the tribes in California that waited 4 years for the construction of their Youth Regional Treatment Centers mandated by the Indian Health Care Improvement Act, and with the development of these centers that have been finally initiated, it is important that the work continues. And I just wanted to see if you could assure the Committee that the centers will remain a priority and these facilities, their construction budgets and so forth, will not be delayed, and whether or not sequestration may affect your plan to move forward on these Youth Regional Treatment Centers.

Dr. ROUBIDEAUX. Well, certainly the California tribes have made it very clear that the Regional Youth Treatment Centers, both in the southern and northern California, are a top priority, and that is what we have been working on over the past couple of years. We already have the land for the southern YRTC, and the design. We got the funding for the design in the 2012 budget. And the design of the southern YRTC will be completed by the end of this year. And so that would make it perfectly ready for construction funding in the following year. And \$15.5 million is needed to complete the southern YRTC. The northern YRTC we have just purchased the land and just got control of that. And so we are looking forward to requesting the funding for design and construction in future budgets.

Mr. CALVERT. Okay. Good. Thank you.

Mr. SIMPSON. Ms. McCollum.

#### FORWARD FUNDING AND SEQUESTRATION

Ms. MCCOLLUM. Thank you, Mr. Chair.

The VA, it took them a long time, but they finally got forward-funded with their medical costs. That would help with all of the problems that we have because we have underfunded for contract, but in light of what is going on with sequestration and some other things, it might have provided some relief. So if you could maybe talk about forward-funding, if there has been any discussion with the Obama Administration about moving forward with that. I think it is pretty difficult with the scenario that we are facing right now, but I think it is something that the VA talked about for years and years and years before they got it.

The sequestration is going to take \$220 million from IHS, and I think for many of us, we were quite surprised. We thought in the sequestration, because Medicare/Medicaid were kind of roped off, fenced off, and protected, I think there was a lot of assumptions that we took care of the most vulnerable populations when clearly we did not. Not only did we not take care of a very vulnerable population in sequestration, but now, they are going to be facing some cuts after this committee and other Members of Congress worked extraordinarily hard to raise things up.

Has there been any discussion about what we need to do at the Executive Branch? Because some of us have spoken here of trying to find the money to put Native American healthcare system at least held at, you know, not in harm's way the way Medicaid and Medicare have been.

Dr. ROUBIDEAUX. Well, it is clear, as you say, sequestration is a devastating impact for the Indian Health Service. The cut, after the fiscal cliff deal, it looks like it is going to be about 5 percent, which is still 220 million, as you have said, which is very significant. And we have estimated that there will be 3,000 fewer inpatient admissions and 804,000 fewer outpatient visits.

And the thing about the law is that it mandates every program, project, and activity be reduced, so there is a limited ability to protect priorities. So even if the Administration wanted to protect the Indian Health Service, the law, as it is written right now, would not do that. We are grateful for working with Congress and hoping to find a solution to larger budget deficit issue so that we can mini-

mize the impact or avoid sequestration. But it is really clear and we are really interested in hearing options and solutions to try to help us make sure that we can minimize the impact and also continue the progress that we have made.

What I am concerned about is we have made so much progress and I certainly hope it does not take us further backwards with the sequestration that we are facing.

Ms. MCCOLLUM. Mr. Chair, in the Recovery Act, which passed—and I realize that that was controversial amongst us, you know, passing it and what it achieved and what it did not achieve, but there was an unintended consequence of Indian schools being left out because they were and the Department of Education. Now, we had what we thought was a rope-off, a fence-off for the most vulnerable Americans in the sequester with what was accounted for in Medicaid and Medicare. And once again, Native Americans were left out. So I think we have a real problem. As these grand bargains and deals are put through, I think one of the boxes that we are all going to have to ask are checked off by our colleagues and by the Administration is: and how are the Indian children and elders doing?

Thank you, Mr. Chair.

Mr. SIMPSON. Mr. Cole.

#### IHS FUNDING COMPARISON CHART AND CSC

Mr. COLE. Thank you, Mr. Chairman.

Good to see you again, Doctor. First, a request. You mentioned you could get us that improvement chart we went down. I would really like to get a copy of that. And a couple of years ago—and I have used this to great effect since then—you produced a chart that just, in terms of dollar amounts, went through Native Americans, average American, veterans, Medicare recipients, and it was very striking about where Native Americans ranked. And so if you have an updated version of that, I would love to get a copy of that. I was able to wave it around a Budget Committee meeting to some effect recently, so it is a great piece of ammunition to have.

Let me ask you this: obviously, this committee—and you referenced it in your testimony—has put a lot of emphasis on contract support costs. And we had made some progress. So far in fiscal year 2013, have you been able to fully fund contract support and can you tell us whether or not you will be requesting full funding in fiscal year 2014?

Dr. ROUBIDEAUX. Well, I am unfortunately not able to talk about the fiscal year 2014.

Mr. COLE. Do you want to give us a hint?

Dr. ROUBIDEAUX. I am unable to tell you what we are doing, but we are certainly interested in working with Congress on this very important issue that I know is a priority for tribes.

Mr. COLE. Okay. Well, how are we doing in '13 to this point in terms of fully funding?

Dr. ROUBIDEAUX. Well, the '13 appropriation is not complete, so I am not sure what the outcome will be. I know that the actual need in 2013, if the President's budget for 2013 was implemented, which it does not look like now, but would be \$70 to \$80 million. And so the need is still great for contract support costs and we are

still interested in working with all of you to try to address that, especially since the Supreme Court decision.

Mr. COLE. Okay. Yes, absolutely. Let me ask you this: you might enlighten us a little bit because I think you would probably be better informed. We chatted a little bit about this. I know you are going to get at least some money it looks like in the Senate CR, not nearly enough, but can you give us a quick overview of what you think is developing through the CR that might assist you in the sequester process?

Dr. ROUBIDEAUX. Well, I have heard that the Senate version of the CR, while it does include a rescission and sequestration, may include an increase of \$53 million for new staff for facilities, and these would be facilities we are constructing or are being constructed by tribes through the Joint Venture Project. And once their construction is done, IHS has agreed to request the staffing from Congress, so it is considered a commitment. And so we have made that request and we do not know the final outcome of the 2013 budget, but I know that all of those tribes and all of those facilities that are waiting for that staffing funding really need it and it would help us get those facilities fully open in providing the healthcare services that the communities need.

#### JOINT VENTURE

Mr. COLE. Last question I know because we are very limited in time and a point first. Chairman, you raised the difference between really joint venture tribes in effect and, you know, tribes that are getting their services directly from IHS, and that is a huge difference, as you know. I mean some tribes have revenue streams they can put additional money on top of and actually can deal with the sequester a little bit better than tribes that are not as fortunately situated. I have got actually both kinds of facilities and tribes in both situations in my district, and you know, it is pretty unfair in terms of those that simply do not have the ability. They would do so if they could.

Toward that end, can you tell me where we are at in the joint venture process right now and whether or not the funds that were obligated—again, I know you have had to shuffle around funds to deal with shortfall, so if you could just give us some overview of how that has affected joint venture both for the tribes that in good faith put up money expecting support and sometimes not getting, but also some of the tough choices you have had to make because of that?

Dr. ROUBIDEAUX. Right. Well, when we signed the Joint Venture Agreement with the tribes, they agree to fund the construction of the healthcare program and we agree to request the funding for the staffing through Congress. But it always is subject to appropriations. And so in a way, there are sort of three partners in this journey. It is the tribe, the Indian Health Service, and Congress. And as you know—

Mr. COLE. I know who I would not trust in that trio.

Dr. ROUBIDEAUX. Well, you know, it has been challenging times with the budget and the ability to predict what the budgets will be in any year. And I appreciate all your partnership and trying to help us get the funds that we need, but we have many facilities

who we are now required to, because of the appropriations not meeting the need, what we have to do is sort of fund the staffing over multiple years. And I know that the tribes do not like that but it is the only way we have been able to try to be fair when we base it on the beneficial occupancy, which is when they are ready to open.

And so we have several of these facilities in the queue and we have some that are just getting started, and it makes us concerned about should we open another round for applications for the Joint Venture Program when we have so many facilities that need new staffing? And that is a big struggle and a decision we will need to make.

Mr. COLE. This is a case, Chairman, where we are being penny wise and pound foolish because we get tribes to invest and then do not follow through and they are not going to invest again. So hopefully, we can do better. I yield back.

Mr. SIMPSON. Just to follow up on what Mr. Cole was talking about and what you were, the \$53 million that they apparently plussed-up in the Senate CR, the problem is where they took some of it from. They terminated the BIE School Construction Renovation Program, and so we kind of robbed from Peter to pay Paul and it does not advance us anywhere. What we need when we are talking about fully funding the contract support that this committee has tried to do over the years, what we need is some cooperation with the body across the rotunda and we all need to be working off the same numbers. And we have talked about this before and the challenges that presents.

So Ms. Pingree.

#### RECRUITMENT AND RETENTION

Ms. PINGREE. Thank you very much, Mr. Chair. And I am looking forward to the tutorial on working with the Senate. I knew I was going to learn something coming here.

I am very grateful to be one of the new members on this committee, and a lot of my colleagues have already asked several of the things that I am also interested in, but just to the interest of time, let me reinforce a couple of them, and if you have some more comments, I would be happy to hear.

Coming from the State of Maine, I am fortunate to represent four tribes. And some of these things, like I said, you have already heard the concerns. The Passamaquoddy was deeply concerned about the fact that, as Ms. McCollum said, that several programs were held harmless. And it seems very unreasonable that these were not, that Indian health is not treated in the same way as the other programs that we held harmless. And to the extent that there is any way to look at that, it certainly seems like it is causing tremendous difficulties for them.

I think you talked a little bit about the model diabetes program, and we have been fortunate to have three of our four tribes involved in that and are just interested to know some of the things you talked about, what you can do. What can be done with more outreach is certainly significant. It is a significant problem in my State anyway and exacerbated within the tribes. And so to the ex-

tent that more could be done on outreach or, you know, just assistance to people who are really battling a very serious problem.

And the one other thing I wanted to bring up was around the area of something that the Micmac tribe has been dealing with. And again, I think you talked a little bit about some of the challenges of medical personnel. But they have had really great success under the Government Performance and Results Act for the past 3 years. They met all 21 of the GPRA indicators and have been recognized nationally for their work on dental services and outreach, which is of course a serious challenge again in a rural state within and outside the tribe.

But one of their huge issues is recruiting workers. Can you talk a little bit more in that area? Even in areas that have success stories, it does not seem like they are getting assistance for being able to recruit the quality staff that they need or retain them once they get them. So to the extent that you want to comment, I know some of those things you have already discussed today, but they are looming issues for us as well. Thank you for your testimony.

Dr. ROUBIDEAUX. And we would be happy to work with you on recruitment and retention strategies.

What we are trying to do now is share best practices around the system because it seems like there are some facilities that do better than others at recruiting and retaining. A part of it is salaries, but we have got some special pay systems that we have implemented that have made our physician salaries much more competitive than they were in the past. Our other providers we have recently gotten some increases in pay for them as well.

One of the things that we are trying to work with tribes on is that—and I saw this as a physician myself when I worked in the Indian Health Service—it really makes a difference if the community helps with the recruitment efforts, the community welcomes the providers, invites them to local events, you know, works with them in partnership on how to make things improve. And that is why I have a high priority on tribal consultation because I really feel if the providers connect with the local community, they may be more likely to see it as home and want to stay there. And our primary problem, in addition to recruitment, we also have those challenges with retention. And if we find a good doctor or a good nurse or a good provider, we have to do everything we can to keep them.

Mr. SIMPSON. Mr. Joyce.

#### SEQUESTRATION PERCENTAGE

Mr. JOYCE. Thank you, Mr. Chairman.

Dr. Roubideaux, thank you for appearing here today, and this may be a little bit of a follow-up to what my colleague, Ms. McColm, had asked you, but I understood that there were between the sequestration cuts you normally expected a 2 percent cut, but then when doing the math, it was applied to closer to 9 percent. Can you explain why almost all other discretionary health programs are protected and the American Indians are not?

Dr. ROUBIDEAUX. Well, what I can do is explain the sequence of events which was, you know, certainly sequestration was not supposed to happen, but when the Super Committee did not make their decision, then OMB was required to do an analysis of what



sequestration would mean for the Federal Government. And it was in that analysis that OMB did that they discovered that the exclusion for both IHS and HRSA that had been in previous versions of the Budget Control Act was not in this Budget Control Act. That was back in September. That report was sent to Congress. We were informed and we notified our stakeholders about the fact that instead of a 2 percent exclusion, actually, the cut would be the full sequester, which at that time was 8.2 percent.

However, with the fiscal cliff deal in December, the levels have been brought down to about a 5 percent cut. But that is still \$220 million, and that is really devastating for our system. So it appears that it is not in this version of the Budget Control Act, and I think there is certainly a lot of concern about the Indian Health Service not having that exclusion.

Mr. JOYCE. Thank you. I yield back.

Mr. SIMPSON. Mr. Valadao.

#### DOMESTIC VIOLENCE PREVENTION INITIATIVE

Mr. VALADAO. Thank you, Mr. Chair.

Your statement indicates that because of IHS' Domestic Violence Prevention Initiative, 344 sexual assault forensic examination kits have been submitted by IHS to law enforcement. While I applaud the work the Service has done on this front, I cannot help to feel that 344 SAFE kits seems kind of low compared to the statistic of one in three native women will be sexually assaulted in their lifetime. How does your statistic of 344 SAFE kits submitted compare to the rate of sexual assault in Indian Country? If 344 is low by comparison, how does the Service intend to increase the number of SAFE kits it submits to law enforcement? And what challenges does the Service face in increasing the number of SAFE kits it offers?

Dr. ROUBIDEAUX. Well, the data that we gave up about 344 SAFE kits being submitted to law enforcement is related to the data collection around our Domestic Violence Prevention Initiative. In that initiative, we are funding 65 projects in the Indian Health System, 44 tribes, 13 IHS and 8 Urban Indian Health Programs to be able to provide culturally appropriate prevention and treatment models and evidence-based practices to address domestic violence and its strategies. In addition, we are training medical personnel to conduct the medical exams in all 45 of our hospitals that offer those kind of services and we are also providing funding to provide the equipment that they need for those services.

And so I am not sure that this is the total number for our entire system. I know this is the number for the 65 projects that we have funded. And we will try to look and see if we can get some additional data to see what the number is for the entire system.

#### UNDERFUNDED IHCA PROVISIONS

Mr. VALADAO. And one more question if you do not mind. There are currently 23 unfunded provisions in the recently permanently reauthorized Indian Health Care Improvement Act. What are the funding priority areas for IHS?

Dr. ROUBIDEAUX. Well, you are absolutely right. The Indian Health Care Improvement Act has over 80 provisions that help up-

date and modernize the Indian Health Service. However, many of them represent new authorities and demonstration projects for which we do not have new or additional funding.

What we have been doing is trying to implement the ones that we can without funding, and we have made great progress on that, but there still are a number of priorities. And I have consulted with tribes, and some of those priorities are long-term care services, dialysis services, and behavioral health issues. And so those are issues that we are trying to work on related to the budget formulation and working with tribes on tribal priorities. In this challenging budget climate, it has been difficult to get those budget priorities into the budget when there are higher priorities that we hear from tribes like Contract Health Service and how we pay for referrals. But we continue to work with the tribes on those priorities.

Mr. VALADAO. Thank you.

#### AFFORDABLE CARE ACT

Ms. MCCOLLUM. I was going to ask you take yield for a second. I had a follow-up.

Was any of that funding in the Affordable Care Act? I know some of it was a line item separate from where you were, but my understanding was there was also some things that were funded in the Affordable Care Act that would be of benefit to Indian Country.

Dr. ROUBIDEAUX. Well, there is actually many things in the Affordable Care Act that are benefiting American Indians and Alaska Natives. Certainly, the health insurance exchanges that are being established increase access to health insurance coverage in a more affordable way and that funding is critical to make sure that our patients have that option to be able to purchase affordable health insurance in case they do not have it. And that helps them in addition because if they still go to IHS, we can build their health insurance, and then those revenues can be used to improve health care for the rest of the community. So that is one of the benefits.

There are a number of other demonstration projects that are being implemented in the Affordable Care Act around community prevention and community transformation, long-term care, supports and services, and so on that we have many tribal grantees who are part of that as well.

And so we are grateful for the fact that the Affordable Care Act is another way that the federal responsibility for health care is given. The Indian Health Service is a healthcare system that provides healthcare services, but if more of our patients can have these other benefits of also being covered by health insurance or by Medicaid, that is more resources for all of our facilities and for the rest of the community.

So that is why we are really focused on implementation of the Affordable Care Act in preparation for 2014 when the exchanges go live and the Medicaid expansion and those states that have chosen to do it is available for our patients.

#### REINSTATE HEALTH RESEARCH AND MONITORING TRENDS

Mr. SIMPSON. In the House Report accompanying the fiscal year 2013 Appropriation Bill, we encourage the IHS to reinstate health

research and monitoring of trends, including updating the trends in Indian health and regional differences. In the Indian Health Report, are there efforts underway to get this going?

Dr. ROUBIDEAUX. Yes, there are. So the Trends in Indian Health is a report of mortality statistics over time, and it is extremely important to us and it is a priority. The challenge of that is that it actually takes at least 4 years for us to get that data from the states through a number of channels to get it to us where we do the analysis and adjust for the underreporting on death certificates. So we are always a few years behind on publishing that data, and that has been true for many, many years. We plan to publish another version of Trends in Indian Health during the next year and also regional differences in Indian Health, which looks at the differences by areas.

We also on occasion do ad hoc publication of special reports. Those are usually based on available funds as well. But tracking these trends is extremely important to us and we are in the process of getting another report. And the issue is it always is several years behind because from the time we get the vital statistics data from the states and then it goes through a number of other venues. Then, it gets to us.

Mr. SIMPSON. Thank you. And thank you. We have got a vote going on now. Thank you for your testimony. We appreciate you being here.

The Committee will recess for these votes. We have got three votes, a 15-minute vote that started 10 minutes ago, so it is nearing an end, and then two 5-minute votes. And then we will be back for the panel that begins probably 20 minutes from now. So I appreciate it. Thank you for being here. And thank you for the work that you do in working with us in trying to address these concerns. As you noted and as I have noted and as Jim has noted, it is a bipartisan effort on the part of this committee. It is a responsibility we have. It is one we take very seriously.

And I guess you could probably blame me as much as anybody for not recognizing early enough that sequestration was going to hit Indian Health Services unlike Medicare and Medicaid and the others that were kind of exempted out of that. I should have had my antennas up and caught that, and unfortunately, I did not. It is something we have got to deal with. But we want to work with you to make sure that it does not have any more negative impact than absolutely necessary. So I appreciate it. Thank you.

Dr. ROUBIDEAUX. Thank you.

[Recess.]

Mr. SIMPSON. Thank you for your patience in waiting for us during that series of votes.

Our next panel is Mr. Rex Lee Jim, Vice President of the Navajo Nation testifying on behalf of the National Indian Health Board; Mr. D'Shane Barnett, Executive Director of the National Council of Urban Indian Health; Dr. Kelly Moore, Associate Professor of the Centers for American Indian and Alaska Native Health at the University of Colorado testifying on behalf of the Friends of Indian Health; and Dr. Henry Fields, Professor at the College of Dentistry at Ohio State University testifying on behalf of the American Dental Association. I understand Dr. Moore has to catch a plane, so we

are going to let you testify first, and then if there are questions there, we might do those before we go to the others.

So Dr. Moore, the floor is yours.

#### OPENING REMARKS OF DR. KELLY MOORE

Dr. MOORE. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Mr. Moran, and committee members. I am Dr. Kelly Moore, a member of the Muscogee Creek Nation of Oklahoma and a pediatrician. I am an associate professor at the University of Colorado with the Centers for American Indian and Alaska Native Health and a retired captain in the U.S. Public Health Service with 20 years of service to IHS.

I am here on behalf of the Friends of Indian Health, a coalition of over 50 health organizations, including the American Academy of Pediatrics. The Friends appreciates the opportunity to address whether increased congressional funding for the IHS has been effective in improving the health of the American Indians and Alaska Natives.

I can say from my experience that funding increases have made a positive difference in the care and treatment of children, as well as people with diabetes. These are most evident in the sustained improvements of blood sugar, blood pressure, and blood cholesterol levels that we have seen among people with diabetes. We have also seen impressive results in preventing complications. By teaching people with diabetes the importance of foot care, providing protective footwear, and routine podiatry care, IHS has reduced amputations by 20 to 25 percent in some areas.

The Together on Diabetes program is a program for young people in the Navajo area and in White River, Arizona. The program's success lies with the family health coaches who provide crucial one-on-one support to help youth achieve changes in health behaviors and attendance at their healthcare appointments. This is an essential step towards better health for our young people with diabetes.

Programs have also been established to address other pediatric health priorities. The AAP has seen a number of model programs on their Committee on Native American Child Health site visits. Open-access scheduling which allows parents to call and schedule sick visits or well-child care visits the same day or same week is now more widely available. At one site, this has improved show rates for appointments from 65 percent to 91 percent. Immunization rates are now at an all-time high. Many programs designed to address healthy weight promotion among youngsters have been put in place like the "Be Hopi, Be Healthy" Camps.

Telehealth is also emerging as a way to improve healthcare and remote areas because ENT specialists are rare and ear infections and ruptured eardrums are common for children. Alaska has developed a telehealth solution to provide services to 248 sites. For every dollar spent by Alaska Medicaid to reimburse telehealth, \$11.50 was saved in travel costs.

Not only has there been an improvement in pediatrics and diabetes care, but mortality rates for IHS patients have fallen from the 1990s. Since 2005, overall mortality rates have fallen by 11 percent. But there is still much to do. Suicide is the second-leading cause of death among American Indians and Alaska Natives be-

tween the ages of 15 and 24. Almost 23 percent of native youth over age 12 report alcohol use. While native teenagers, young people, and middle-aged adults have the highest rates of methamphetamine use in the United States, drug use varies among tribes. For this reason, the Friends believe that IHS drug programs should not be focused exclusively on meth. Funding should support a treatment/prevention/recovery/law enforcement infrastructure with a focus on family. Substance abuse prevention is most effective when the whole family is involved.

Many American Indian and Alaska Native children live in economically depressed areas. Nearly one in four Native American children live in poverty, experience four times higher rates of abuse and neglect, and have lower rates of educational achievement than other racial and ethnic groups in America. Early literacy promotion initiatives like Reach Out and Read and family nurse home visitations can improve maternal and child health outcomes. Investments like these have been proven to produce savings in health care costs and reduce the use of Child and Family Services.

In my written testimony, I also discuss the plight of the American Indian and Alaska Native male and the high death rate among this group. For several years, the Friends has testified about the need to fully fund Contract Health Services. In 2010, over 217,000 referrals for Contract Health Services were denied. We thank the Committee for increasing the funding by 64 million since 2010. But in spite of these increases, the need for Contract Health Services and reliance on private specialty and tertiary care will be ongoing because the IHS and tribal healthcare delivery system is predominantly a primary care medical system. But a redesign of the Contract Health System could result in care that is timelier, more effective, and patient-centered at a lower cost.

Prevention and early treatment programs can also reduce the need for Contract Health Services, but having a sufficient workforce is the key to their success. Filling vacancies through loan repayment has proven to be an effective recruitment and retention tool. In 2012, the IHS awarded 507 new loan repayment contracts and 316 contract extensions. However, 338 requests were denied. The Friends urges the Committee to increase funding for this account by at least \$17 million to fund all applications.

It is difficult to adequately address health problems without the best and most up-to-date research. Surveillance research in particular is vital to understanding disease and injury patterns and the impact of newer treatments and interventions. The Friends recommends additional funding for the IHS and tribal Epidemiology Centers to conduct surveillance research to better target resources to improve the health status of Indian people.

The Friends thanks the Committee for its continued support of the IHS. Your actions have indeed made a difference, but because the IHS has been underfunded for years, the health disparity gap has not yet closed. We look forward to working with you to close that gap.

[The statement of Kelly Moore follows:]

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STATEMENT OF THE  
  
FRIENDS OF INDIAN HEALTH  
  
TO THE  
  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND  
RELATED AGENCIES  
  
COMMITTEE ON APPROPRIATIONS

OVERSIGHT HEARING – INDIAN HEALTH  
  
SUBMITTED BY

DR. KELLY MOORE, FAAP

MARCH 19, 2013

Friends of Indian Health  
FY 2014 Appropriations Recommendations  
for  
The Indian Health Service  
March 19, 2013

Good afternoon Chairman Simpson, Ranking Member Moran and Committee Members, I am Dr. Kelly Moore, a member of the Muscogee (Creek) Nation of Oklahoma and a board-certified pediatrician. I am currently an Associate Professor at the Colorado School of Public Health at the University of Colorado Denver with the Centers for American Indian and Alaska Native Health.

I am also a retired Captain in the United States Public Health Service Commissioned Corps with 20 years of service to the Indian Health Service (IHS). During my last 10 years with the IHS I focused on diabetes surveillance and quality of care for American Indians and Alaska Natives (AI/ANs) with diabetes.

As a pediatrician, I am a Fellow of the American Academy of Pediatrics (AAP) and the immediate past Chair of the AAP Committee on Native American Child Health.

I am here today to testify on behalf of the Friends of Indian Health - a coalition of over 50 individuals and health organizations, including AAP, dedicated to improving the health care of American Indians/Alaska Natives.

In 1997, the Friends of Indian Health noted that the Senate Interior Committee in its FY97 bill report recognized that the increase provided to the IHS that year was still far below the need. At that time the budget for the IHS was \$2 billion. Today it is over \$4.5 billion.

The Friends appreciates the opportunity to testify today and address the question of whether increased Congressional funding for the IHS has been effective in improving the health of AI/ANs. I can tell you from my own experience that increases in Congressional funding have made a substantial difference in the care and treatment of children and people with diabetes.

From 1991 – 1995, I worked as a clinician among the Pima in the Gila River Indian Reservation in southern Arizona, I came to know approximately 50 teenagers with type 2 diabetes. Foreshadowing the incipient epidemic of type 2 diabetes among young people, another 75 with impaired glucose tolerance or pre-diabetes were being followed by the public health nurse case manager. Many aspects of the diabetes epidemic seemed elusive. Why were children and teenagers so severely affected by this epidemic? What roles did obesity and psychosocial factors such as depression and extreme poverty play in this epidemic? Why was optimal control of diabetes so difficult to achieve in this community? What could I do to make a difference?

Questions such as these were not my primary interest when I first considered medicine as a career. However, my motivation for becoming a physician was always linked to addressing the health needs of American Indian and Alaska Native communities—needs about which I am acutely aware, having received less than ideal care in Indian health settings. Long waiting times, even for scheduled visits, were common and referrals to outside specialists required complex bureaucratic approvals and extensive justifications.

I chose to become a pediatrician to prevent such long-term health problems as diabetes and its devastating complications among American Indians. During my career in IHS, I interacted with state and tribal health departments. Through collaboration with other health partners, including academic institutions, advocacy organizations, professional organizations, and other government agencies, I worked to reduce health care disparities for American Indians by serving on task forces and other operational appointments, turning these administrative opportunities into real, tangible efforts to make a difference for tribal communities.

Envisioning, articulating, and working towards common goals, recognizing and grappling with limited resources desperately needed by all communities, and creating programs that value individual Native cultures, yet are generalizable and exportable to other communities, were only some of the many sensitive and difficult issues I tried to resolve through the years. Nonetheless, as an American Indian physician, I remain committed to the promotion of culturally sensitive and high quality care for American Indian and Alaska Native communities.

***Diabetes-Related Improvements.*** Diabetes care improvements have been achieved and sustained, particularly with regard to blood glucose, blood pressure and blood cholesterol levels. Improvements have also been realized in preventing the devastating complications of diabetes. For example, AI/ANs have lower-extremity amputation rates 2–3 times higher than other groups. Studies in Alaska and northern Minnesota show that prevention efforts, such as focusing on high-risk individuals for self-care foot education, providing protective footwear and routine podiatry care, have resulted in 20–25% reduction in amputation rates. When these efforts were augmented with system changes, such as team coordination, patient-tracking systems, comprehensive foot care practice guidelines, flow sheets, and outreach programs, amputation rates reduced 50–75%<sup>1</sup>.

A promising diabetes program for youth is the Together on Diabetes (TOD) initiative, a collaboration between Navajo Area IHS, local service units including the Shiprock Service Unit, and many community partners. TOD uses a Family Health Coach model and is developing a youth and family focused intervention curriculum for the prevention and treatment of diabetes among youth. TOD has involved youth focus groups, youth employees, and key community informants in their community based curriculum development. While TOD patient enrollment only started in late 2012, improvements have already been realized in the ability to provide important medical care to youth with type 2 diabetes. The overwhelming barrier to care often is dis-engagement from care. Families and patients simply sometimes do not continue to stay



engaged with the care team. The Family Health Coach has accompanied pediatric patients to visits, has helped the families navigate our often difficult health care system, and has helped the families take steps towards effective patient empowerment. This is an essential first step in achieving better health status for our youth with diabetes.

**Public Health Programs.** Throughout the IHS health system, programs have been identified to address specific health priorities. The AAP Committee on Native American Child Health has observed these programs on the ground including several facilities in Navajo that are on the verge of filling all requirements to become baby friendly hospitals. In addition, immunization rates are at an all-time high. Many sites have expanded the use of fluoride varnish and their use of school based clinics.

In addition, we have observed many programs to address healthy weight promotion in culturally-appropriate and youth-friendly ways. Those programs include the Zuni Youth Enrichment Program that works to empower youth to promote physical and emotional wellness; the Hopi running program, that incorporates youth soccer and supports its “Be Hopi, Be Healthy” Camps; and the Navajo Nation’s IINa’ Bahozho (The Good Life) Clinic, a biweekly wellness clinic taking a comprehensive team approach to addressing weight and obesity issues through the utilization of a pediatrician, exercise specialist, dietician, and a behavioral specialist to provide families with resources to promote nutrition and healthy living.

**Investments in Technology.** Telehealth is rapidly emerging as a method to improve health care in geographic areas with low population density and limited access to primary care and specialists<sup>ii</sup>. Because ENT specialists are rare and ear infections and ruptured ear drums are still common, especially for children, Alaska has developed a telehealth solution—the Alaska Federal Health Care Access Network (AFHCAN)—to provide telehealth services to 248 sites across Alaska. This innovative use of a telehealth tool has improved access to care, reduced the cost of care delivery, and improved the efficiency and productivity of providers.

A 16-year review of patients referred to an ENT specialty clinic in Nome, Alaska, has shown that telehealth via AFHCAN has reduced waiting times for patients to see an ENT specialist at a field clinic. Prior to telehealth, almost half of all patients in Nome and surrounding communities waited at least five months to see a specialist. Now, waiting times have been dramatically reduced, and only 3 percent of all patients wait more than four months to see a specialist. Moreover, a recent cost analysis demonstrated for every dollar spent by Alaska Medicaid to reimburse store-and-forward telehealth, \$11.50 has been saved in avoided travel costs for beneficiaries requiring specialty care. These savings present opportunities for additional care for an already underserved population.

Another successful telehealth initiative for the Indian Health Service is the Joslin Vision Network. Diabetes is the leading cause of blindness among adults. AI/ANs with diabetes are particularly susceptible to diabetes-related blindness, largely because only half of them get an

annual diabetic eye exam. The Indian Health Service-Joslin Vision Network (IHS-JVN) Teleophthalmology Program uses telemedicine technology to provide accurate, cost-effective annual eye exams to AI/ANs. Blindness caused by diabetes can be prevented. Early diagnosis and treatment of diabetic retinopathy can reduce severe vision loss by more than 95%. Since the inception of the IHS-JVN program, the number of annual retinopathy exams has increased. The IHS-JVN Teleophthalmology Program has provided nearly 60,000 eye exams in over 80 primary care clinics to AI/AN in 23 states. Furthermore, eye exams and laser treatment of high-risk individuals are very cost effective, saving hundreds of millions of dollars each year by preventing diabetes-related vision loss.

The Friends has not only seen improvement in pediatrics and diabetes but comparing mortality rates for AI/ANs served by the IHS for the years 1996-1998 with the most current available findings from 2005-2007 show reductions in overall mortality of 11 percent, 15 percent for diabetes, 29 percent for diseases of the heart, and 30 percent for cerebrovascular disease.

But just as the Senate Interior Committee noted in 1997 there is still much to do. For example, according to the Center for Native American Youth, suicide is the second leading cause of death among AI/AN youth between the ages of 15 to 24 years old. Native teenagers experience the highest rates of suicide of any population. Alcoholism and substance abuse among AI/AN youth are also high. 22.9% of AI/AN youth aged 12 and older report alcohol use, 18.4% report binge drinking and 16% report substance abuse dependence or abuse. According to SAMHSA, AI/AN teenagers, young people and middle-aged adults have the highest rates of methamphetamine use and associated trauma in the United States.

The choice of drug use can vary from tribe to tribe. For example, in Keweenaw Bay its marijuana, in White Earth it is heroin, and in Quapaw it is meth. Rather than putting the emphasis on meth to the exclusion of other drugs flexibility and coordination of multiple approaches is needed to help individual tribes. Funding from Congress should be about establishing a Treatment/Prevention/Recovery/Law Enforcement infrastructure. A successful plan should also focus on the family. Prevention is most effective when the whole family is involved.

One rarely recognized and emerging area of concern is the disproportionate burden of health disparities experienced by AI/AN males. The most current findings reveal death rates for some age groups two to five times greater than AI/AN females for suicide, HIV/AIDS, homicide, unintentional injuries, diabetes, firearm injury, and alcohol-related deaths and 10 to 50 percent higher for cancer, heart disease, and liver disease. Of great concern but more difficult to measure, before the lives of AI/AN men are taken by alcohol, suicide, injuries and chronic diseases, they suffer from multiple debilitating physical and mental conditions and have experienced high levels of violence and sexual abuse that appear to predispose them to much higher rates as perpetrators of domestic violence and sexual abuse. The resulting suffering and

costs to their families and communities are enormous, as are the costs to the Nation's medical and judicial systems, and losses of productivity and quality of life for the many people affected.

**Contract health services.** For several years the Friends has testified before this committee about the urgent need to fully fund contract health services. Patients requiring cancer treatments, surgeries, treatment for injuries and additional mental health services need medical care that cannot be provided in IHS or Tribal facilities. In FY 2010, over 217,360 contract health services were denied.

The Committee is to be commended for addressing this concern through an increase in funding for this account by over \$64 million since 2010. But in spite of these increased funds, we believe that the Contract Health Services account is going to be a continuing need because the IHS and Tribal health care delivery system is predominately a primary care medical system. The IHS and Tribes operate over 600 facilities, including 45 hospitals. But only 19 of these hospitals have operating rooms. The majority of IHS and tribal sites must depend on the private sector for secondary and tertiary care.

The need to rely on private care is not going to change. But a redesign of the Contract Health system could result in care that is more timely, safer, effective, equitable and patient centered at a lower per capita cost. We strongly encourage conversations among key stakeholders to address and explore the IHS Contract Health Service system.

The Friends has for many years advocated for additional funding for prevention and early treatment programs to reduce the need for contract health services. But to implement them, the IHS has to have a sufficient health care provider workforce. Filling vacancies through loan repayment has proven to be an effective recruitment and retention tool.

**Loan Repayment.** In FY 2012, the IHS had 1,158 requests for loan repayment and awarded 507 new contracts and 316 contract extensions. Due to a lack of funds, 338 requests were denied. We are pleased to see that over 300 providers were able to continue their IHS service beyond their original obligation because this helps to build a steady workforce and provide continuity of care. In 2008, the IHS reported that the average retention period for loan repayment recipients was over seven years.

Last year the Administration did not recommend an increase for the loan repayment account. Because of the nation's fiscal crisis more graduating health professionals are looking to the public health service as an alternative to private practice. We believe, therefore, that this is an ideal time for the IHS to recruit more providers. **The Friends urges the Committee to increase funding for this account by at least \$17 million in order to fund all applications.**

Before loan repayment can be offered, dedicated, qualified health care professionals have to be recruited. Three years ago, the IHS Director commissioned a report on recruitment and retention. We were very pleased to see this action because the Friends strongly believe that if the recruitment process were improved it would have a positive effect on filling vacancies. **We urge the Committee to encourage the Service to put into action recommendations made in the report.**

Recently we were made aware that the severe cuts experienced by the agency with regard to travel and relocation expenses are creating an additional barrier to recruitment. The challenge of recruiting physicians and nurses to remote and often isolated locations is adversely affected if facilities are unable to offer candidates opportunities to visit the sites while they are making decisions about career options. Along those same lines, the lack of reimbursement for relocation expenses to move families makes it less advantageous to accept assignments farther from home. Travel restrictions not only affect recruitment programs of healthcare providers at conferences but they also have the unintended consequence of forcing facilities to use more expensive ways of filling vacancies that are not conducive to continuity of care for patients.

You have asked us to comment on actions the Subcommittee should consider within the current constrained funding environment to reduce the disparity of disease among AI/ANs.

**Early care and education.** The key to reducing disparities begins with investments in early care and education programs. For example, as outlined in the policy statement titled *Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health*, developmental, behavioral, educational, and family problems in childhood can have both lifelong and intergenerational effects<sup>iii</sup>. Many American Indian and Alaska Native (AI/AN) children live in economically depressed neighborhoods of the country. Nearly one in four Native American children live in poverty, experience four times higher rates of abuse and neglect and have lower rates of educational achievement than other racial and ethnic groups in America<sup>iv</sup>. During this time of budgetary restrictions, we encourage the committee to consider the importance of investing in early childhood initiatives. **Early education and care programs such as Head Start and home visitation have proven successful in improving maternal and child health**, identifying developmental issues, promoting social-emotional development and improving safety outcomes. Evidence-based programs have been proven to produce savings in health care costs and reduce the use of child and family services. Initiatives such as **Reach Out and Read** have also been effective in promoting early literacy and school readiness. Early education, combined with the increasing use of culture-based strategies should be maintained as priorities to address the effectiveness of historical trauma in individuals, families and communities.

**Research.** To effectively reduce the disparity of disease among AI/ANs the IHS health care system needs to be brought more fully into the 21<sup>st</sup> century. A key element of this goal is to employ the best and most up-to-date research possible because it is vital to understanding disease

patterns and how to target newer treatments. It is difficult to effectively address health problems without scientifically defining the problem and its determinants, testing potentially promising interventions, and systematically monitoring the impact in communities which includes not only changes in health status but also community acceptability, and sustainability/costs.

You cannot determine progress unless you can measure it.

It is well-recognized that AI/AN children have a much higher burden of many infectious diseases. A well-documented example illustrates how research helped to eliminate one disease that struck AI/AN children differently than other populations.

In the 1970s the rate of *Haemophilus influenzae* type b (Hib) meningitis in AI/AN children in Alaska and the Southwest was 10 times higher than the U.S. population. The first vaccine developed for Hib disease was released in 1982. It was a single dose and given at age 2. It had no effect on rates of Hib disease in AI/AN children though it was effective in the general U.S. population. A second generation Hib vaccine was developed in the mid-1980s. This vaccine was very successful and eliminated Hib meningitis in the general U.S. population. It decreased, but did not fully eliminate Hib meningitis in AI/AN children. Why not?

Research revealed that AI/AN infants acquired Hib disease at a much earlier age (before 6 months) than the general U.S. population. The infectious organism was the same, and the pathophysiology of disease was the same, but the epidemiology of the infection was very different in AI/AN infants. The breakthrough was the development of a third type of conjugated Hib vaccine that was effective as early as 2 months. With the use of this vaccine in AI/AN infants, the rates of Hib meningitis have been reduced 99 percent and are now close to those of the general population.

For many years the IHS tracked the health status of Indian people in a publication called *Trends in Indian Health* and *Regional Difference in Indian Health*. The last issue was based on data gathered for the 2002-2003 report. We understand that the IHS has plans to resume surveillance research in several areas and we hope the new reports will examine the prevalence of disease patterns that have emerged since the last reporting like the incidence of HIV/AIDS, the determinants of the disparities plaguing AI/AN males, and drug overdoses and alcohol abuse throughout Indian Country. **The Friends recommends that the Committee not only provide additional resources for this important surveillance research but strongly urge the IHS and tribal epidemiology centers to reinstate ongoing and timely surveillance research reports as a means for the IHS and Tribes to better target resources to improve the health status of Indian people.**

In conclusion, the Friends of Indian Health thanks the Committee for its continued strong support of the IHS during difficult financial times. Your actions have made a difference. According to the most recent performance measurement reports, the IHS has achieved its targets

in the following areas: proportion of diabetes patients who have achieved blood pressure control; percent of diabetes patients who received good glycemic control; percentage of patients ages 1 – 15 who received topical fluoride applications; rates of children and adults who were immunized; number of patients screened for alcohol use and the number patients screened for domestic violence<sup>v</sup>. These improvements have come about due to investments in programs that improve access to care and promote health. But because the IHS program has been underfunded for so many years, there is much more that needs to be done to close the disparity gap.

We encourage the Committee to do what it can to support and go beyond the Administration's FY 2014 budget proposal to assure that the IHS is fully staffed and will allow it to fulfill its mission to "raise the physical, mental, social and spiritual health of American Indians and Alaska Natives to the highest level."

We look forward to working with you to strengthen the IHS health infrastructure and improve the health care of American Indians and Alaska Natives.

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<sup>i</sup> Rith-Najarian S, Dannels E, Acton K, West Indian Med J. 2001 Mar 1-4;50 Suppl 1:41-3. Preventing amputations from diabetes mellitus: the Indian Health Service experience.

<sup>ii</sup> Carroll M, Cullen T, Ferguson S, Hogge, N, Horton M, Kokesh J, Perspect Health Inf Manag. 2011 Jan 1;8:1d. Innovation in Indian healthcare: using health information technology to achieve health equity for American Indian and Alaska Native populations.

<sup>iii</sup> Garner, Andrew, MD, PhD, et al. *Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health*. American Academy of Pediatrics. *Pediatrics*. Vol. 129. 1. January 1, 2012.

<sup>iv</sup> Satkowi, Christina, New America Foundation, Early Ed blog, October 28, 2008, accessed online at:

<http://www.newamerica.net/blog/early-ed-watch/2008/boosting-early-ed-services-native-americans-8001>

<sup>v</sup> Indian Health Service, FY2011, 2012 and 2013 Performance Measure, Tribal and HIS Direct Programs, accessed online at [http://www.ihs.gov/crs/index.cfm?module=crs\\_gpra\\_reporting](http://www.ihs.gov/crs/index.cfm?module=crs_gpra_reporting)

**Kelly Moore, MD**

Dr. Kelly Moore, a member of the Muscogee (Creek) Nation of Oklahoma, is an Associate Professor at the Colorado School of Public Health of the University of Colorado Denver with the Centers of American Indian and Alaska Native Health.

Dr. Moore is a retired Captain in the United States Public Health Service Commissioned Corps with 20 years of service to the Indian Health Service (IHS). Her last 10 years with the IHS were devoted to diabetes surveillance and quality of care for American Indians and Alaska Natives, as a Clinical Specialty Consultant for the national IHS diabetes program in Albuquerque from 2002 - 2007 and as an Area Diabetes Consultant for Billings Area IHS in Montana from 1997 - 2002. She is a former member of the American Diabetes Association Awaken the Spirit Team and a former Chair of the American Indian/Alaska Native Work Group of the National Diabetes Education Program.

Dr. Moore served as the Chair of the American Academy of Pediatrics Committee on Native American Child Health (2006 – 2012) and is a Fellow of the American Academy of Pediatrics. She is a graduate of the University of Oklahoma College of Medicine and completed a pediatrics residency at the University of Oklahoma Tulsa Medical College. She also completed post-graduate training in the Native Investigator Program of the Centers of American Indian and Alaska Native Health at the University of Colorado Denver in 2006. Her research interests include urban Indian health, childhood obesity, and youth-onset type 2 diabetes.

Dr. Moore has been married to Jon Wilson for more than 30 years. They have two grown children, Matthew and Tava, and a 3-year-old grandson Dante.

Mr. SIMPSON. Thank you for your testimony. What time do you have to catch a plane? When do we need to get you—

Dr. MOORE. My flight is at 5:10. I probably need to leave here by 4:00 at the latest I would say.

Mr. SIMPSON. We could ask questions now and then go to the rest of the panel if that is okay. Do you want to do the panel first?

Ms. MCCOLLUM. No.

Mr. SIMPSON. Okay.

Ms. MCCOLLUM. I am okay with it.

Mr. MORAN. Absolutely.

#### EDUCATIONAL PROGRAMS

Mr. SIMPSON. Okay. Let me ask you. You mentioned a program called Reach Out and Read. Tell me how the educational programs relate to improving health care?

Dr. MOORE. You know, that is really a good question. Reach Out and Read is an art and literacy program that is actually implemented in the context of well-child care visits. So nurses and doctors actually distribute books at 6 months to 5 years of age to encourage parents to read aloud to their children. It has really changed the way pediatrics is practiced in our Nation, and it gives doctors an evidence-based strategy to promote child development and school readiness.

Children served by Reach out and Read will develop the language and literacy skills necessary to read, complete school, and succeed in life. And the success of each one of those children and the collective success of all at-risk children all over the country will mean increased productivity and economic security for our Nation. If they are able to get jobs, it will improve their health literacy in terms of understanding instructions given to them related to medications, related to treatment for conditions for which they are being seen. So it does have a lot to do with health as well as health equity.

#### APPOINTMENTS

Mr. SIMPSON. You mentioned also in your testimony that the improvement in showing up for an appointment in this one program went from 65 to, what did you say, 95 percent or something like that?

Dr. MOORE. 91 percent, yes.

Mr. SIMPSON. A lot of people do not understand this when I tell people in the rest of the world that are not dentists and stuff—I was a dentist in the real world—that the biggest expense in the dental office is actually missed and broken appointments. And the same thing is true for most other medical programs.

Dr. MOORE. Absolutely.

Mr. SIMPSON. When somebody does not show up for an appointment, the costs and everything else still go on. But there is nobody there you are servicing so that is an important factor. And if there are things that we can do to make sure that people show up for the appointments that they have, we will be able to spread limited dollars a lot further.

Dr. MOORE. Absolutely.

Mr. SIMPSON. Mr. Moran.



Mr. MORAN. I am fine. Thank you, Mr. Chairman.  
Mr. SIMPSON. Mr. Cole.

#### SUCCESSFUL PROGRAMS

Mr. COLE. Just a quick one. You have got obviously a good and extensive background. If you are looking at things that tribes could do to reinforce what IHS has done, what are successful tribal programs, either where they have resources or they have taken some initiative that has really made a difference on top of what the service itself has?

Dr. MOORE. Well, I think Dr. Roubideaux's comment about helping with recruitment and retention in terms of helping to make health professionals feel at home in Indian communities where they serve would be extremely beneficial. I think that is one of our biggest problems is sometimes we are able to recruit but if tribes could help support, you know, keeping those healthcare professionals in our community, that would be, you know, a tremendous service.

I think if tribes could also look at sort of other economic initiatives that can, you know, help many of our Indian Nations rise up and out of poverty, that would incredibly help, I think, the health status of American Indians and Alaska Natives as well.

Mr. COLE. Thank you.

Mr. SIMPSON. Ms. McCollum.

#### HHS INITIATIVES

Ms. MCCOLLUM. Thank you. I am glad you mentioned Reach out and Read. I have actually seen doctors in action doing it. We do it with some of our low-income immigrant groups, as well as our Native American families on the east side of the St. Paul. And talking to the doctors afterwards, the doctors love it, but the doctors not only are encouraging a child to read, but with toddlers in the room, they will have a toddler book, and some toddlers do not even know to reach for the book because they have never been handed a book. And then that is a clue to the doc sometimes that there might be a literacy problem even with the adult and then spending a little more time talking about how the antibiotic is taken, would you like a reminder, how would you like me to—and so they saw even improvement in the way medication was being applied to the young adult. It is a public, private, and doctor initiative through the Department of Ed, so a lot of people give and donate to a lot of our corporations.

Are there some other examples? I know you mentioned not one-size-fits-all in the drug program or its suicide prevention. It needs to be culturally appropriate. But we have got the CDC; we have got SAMHSA. My question is is there an intra-HHS group that works on Native American health issues with some of the centers for disease control with some of the, you know, the Department of Health? What kind of conversations are people having whether it be urban Native American health or on the reservation? And then my other question would be the challenges—we have people who winter back and forth or adults who come down for awhile while they are ill and they are in the Twin Cities for the winter, and then they go back up in the summer and electronic medical records

and making sure that compliance and that doctors are prescribing the same thing.

So I threw a lot of things out there and whatever you want to talk about, I am happy to listen to.

Dr. MOORE. Right. There are some interagency groups that have been, for instance, around obesity, fetal alcohol syndrome. Those kinds of approaches have been used in terms of voting interagency collaboration on important health disparities. I think that some of the conversations that are taking place are indeed that we need to move beyond addressing health disparities through just focusing on just healthcare and healthcare facilities to try and address things like the social determinants of health. And that is why I love the Reach out and Read program.

But there are other programs. One of the ones that I am familiar with actually happened many years ago on the Pima Indian reservation where they were looking at diabetes prevention activities for overweight Pima individuals. And as many of you know, the Pima of the Gila River Indian community have some of the highest rates of diabetes reported in the world. And what they found was that they had two groups, and one group received just the traditional change or lifestyle, start eating better, start being more active, whereas another group got together and just talked about the cultures and traditions of the Pima people and what they could do to try and instill that in their youth. And when they looked at both groups later in terms of some metabolic indicators related to diabetes, it was actually the group where they focused on traditional history, traditional cultural ways that could be implemented again now, they actually did better. Their BMI was lower and some of their indicators like insulin levels for diabetes were also lower as well.

So those kinds of things can really help as well. So I really support a lot of programs that try and instill cultural pride, respect, just traditional ways of living. Even though we cannot go back and turn back the hands of time, there are still many things about that that help promote self-esteem of our youth, and that can be very helpful.

Mr. SIMPSON. Ms. Pingree.

Ms. PINGREE. Thank you.

#### LOAN REPAYMENT

Thanks for your testimony and your work today. My colleagues have already asked a lot of things that I was interested in any way. And I will only ask you to follow up on one thing. I represent the State of Maine. We have four tribes there, and we have a practitioner shortage anyway, and that the tribes are experiencing it in an even more severe way.

And it was interesting to hear you say a little bit about the program that helps with loan repayment. I know from talking to medical students—and we have a small medical school in our State—many of them want to stay but loan repayment is, you know, \$250,000, \$300,000 for many of them, and that they are dealing with a low-funded job, it is very difficult to just even keep their head above water even if they want to do that. So if you could just

reiterate what the current funding is and what you think the shortage is to the extent that you know?

Dr. MOORE. Let's see. I think we saw there were in 2012, 507 new loan repayment contracts and 316 contract extensions, but there were 338 requests that were denied. So we were urging the Committee to consider increased funding for this account by at least \$17 million to fund all the applications that the Indian Health Service receives. But you are absolutely right. The incredible debt burden that is assumed by young healthcare professional students is extremely overwhelming and can prevent them from pursuing that type of career.

Ms. PINGREE. Great. Well, thank you for your testimony.

Mr. SIMPSON. Thank you, Dr. Moore, for being here today. You can stay as far as you would like. You are welcome to stay, but we appreciate you being here today to give your testimony as we try to address this issue.

Vice President Jim, we welcome you here, Vice President of the Navajo Nation, and we look forward to your testimony.

Mr. JIM. Thank you.

#### OPENING REMARKS OF MR. REX LEE JIM

Chairman Simpson, Ranking Member Moran, and members of the subcommittee, thank you for holding this important oversight hearing on Indian health. My name is Rex Lee Jim. I am the vice president of the Navajo Nation. I am also the co-chair for the IHS Budget Formulation Group. I also sit on the Secretary's Tribal Advisory Committee for the DHHS.

As the treasurer for Navajo area representatives of the National Indian Health Board, thank you for inviting NIHB to provide these comments.

We all know that the federal trust responsibility is the foundation for federally funded health care to all members of the 566 federally recognized Indian tribes, bands, and Alaska Native villages. This trust responsibility is a direct result of treaties that were made between the United States and tribes and reaffirmed by Executive Orders, congressional actions, and two centuries of Supreme Court case law. We also all know that it is possible to improve health equities as the health status of Indian people has improved slowly over the last 40 years with an increase in resources, healthcare providers, funding, and other support. Yet, the IHS has long been plagued by woefully inadequate funding in all areas, a circumstance which has made it impossible to supply Indian people with the level of care they need.

Thanks to the dedication of this committee, steps have been taken towards the fulfillment of the federal trust responsibility by ensuring that IHS receives annual increases. Strong and sustained funding is necessary to address preventable disease and allow IHS to move from a sick-care system to a true public health model with a focus on prevention.

An excellent example of this model is the Special Diabetes Program for Indians. SDPI provides grant funding to 404 diabetes treatment and prevention programs and 35 states. SDPI grantees follow specific reporting requirements that allow for assessment of grantee progress. We have seen remarkable progress over the last

several years on the data gathered from the SDPI programs, for example, a decrease in the average blood sugar level from 9 percent in 1996 to 8.1 percent in 2010, a 73 percent increase in primary prevention.

SDPI is making a real difference in the lives of people who must manage diabetes on a daily basis. This federal investment and community-driven, culturally appropriate programs has led to significant advances in diabetes education, prevention, and treatment. This program is a significant accomplishment for travel healthcare and shows how adequate funding to address a chronic disease can achieve health improvements.

Today, we offer the following recommendations to help to advance the Indian Health Care System. First, we asked Congress to work towards full funding of the Indian Health Care System, which is currently funded on average at 56 percent of true need. Tribes have long asked for full funding of the IHS and we do not know the full potential of the IHS unless it is fully funded. For example, in 2010 IHS spending for medical care was \$2,700 per user in comparison to the average federal healthcare expenditure of the \$7,200 per person, a difference of \$4,500. The tribal projected needs-based budget for fiscal year 2015 is now \$27.6 billion. This would be less than 3 percent of the HHS budget of \$941 billion.

NIHB also urges Congress to consider the rates of both medical and nonmedical inflation during the appropriations process and recommend an increase in funding to address these needs.

As I noted in my written testimony, the national data on American Indians and Alaska Natives is outdated. We need timely and accessible data to appropriately assess the health care needs for our people in order to plan healthcare delivery and public health programs. With this foundational knowledge, tribes can make the best possible decisions for allocation of scarce financial resources. Other federal agencies collecting health data often do not offer American Indian and Alaska Native statistics, thus resulting in failure to correctly identify Indian individuals. Data ownership and access issues must be addressed, however, before this potential can be realized. We request additional funding to support the tribes and collecting data.

Another recommendation is to advance appropriations to IHS. Since fiscal year 1998, funding for IHS has not been provided before the commencement of the new fiscal year. The delayed funding, which ranges from 5 days to 197 days, significantly hampers tribal and IHS health care providers' budgeting, recruitment, retention, provisional services, facility maintenance, and construction efforts.

If IHS funding was an advanced appropriation cycle like the Veterans Administration, tribal healthcare providers, as well as the IHS, would know the funding a year earlier and it would not be subject to continuing resolutions. Providing sufficient, timely, and predictable funding is needed to ensure the Federal Government meet its obligation to provide healthcare for our people.

Another priority of Indian healthcare is the Contract Health Service. The CHS exists because the IHS system lacks the capacity to provide all the healthcare needed by the IHS service population. In theory, CHS should be an effective and efficient way to purchase

specialty care. In reality, CHS is so grossly underfunded that Indian Country cannot purchase the quantity and types of care needed. The IHS Tribal Alert Group and CHS is reviewing this issue and we encourage this committee to review the work group's final recommendations once they are released.

The tribes are extremely concerned about the consequences of sequestration. Unlike other federal programs such as Medicaid and the VA, the IHS is not exempt from the looming automatic across-the-board cuts. The IHS budget will suffer a devastating cut of \$220 million. Its true costs will be measurable in lives as well as dollars. If this Congress cannot design alternate methods of deficit reduction, the NIHB requests that Congress makes the IHS permanently exempt from all cuts.

Lastly, we also mentioned in our written testimony and issue with the implementation of the Affordable Care Act. The Act includes Indian-specific benefits and protections, but unfortunately, the provisions include different statutory references of Indian law. We are asking for Congress' help with a legislative fix for adopting the definition of Indian used by CMS for Medicaid.

And closing, although our Nation faces a new budget reality, the National Indian Health Board asks that this subcommittee give full consideration to the true needs of the IHS as well as Indian Country and the federal trust responsibility to its first Americans.

I thank the subcommittee for its time and for the opportunity to present this testimony. Thank you.

[The statement of Rex Lee Jim follows:]

National Indian Health Board  
March 19, 2013

**TESTIMONY OF THE NATIONAL INDIAN HEALTH BOARD**

**PRESENTED BY REX LEE JIM, NIHB BOARD AND EXECUTIVE COMMITTEE MEMBER AND  
VICE-PRESIDENT OF NAVAJO NATION**

**OVERSIGHT HEARING - INDIAN HEALTH  
HOUSE APPROPRIATION SUBCOMMITTEE ON INTERIOR, ENVIRONMENT,  
AND RELATED AGENCIES**

**MARCH 19, 2013**

Chairman Simpson, Ranking Member Moran and Members of the Subcommittee, thank you for holding today's important hearing on Indian health. My name is Rex Lee Jim, and I serve as the Navajo Area Representative to the National Indian Health Board (NIHB) and as Vice President of the Navajo Nation.<sup>1</sup> The NIHB, in service to the 566 federally recognized Tribes, offers the following written comments regarding the Indian Health.

*Honoring Trust Obligation*

As you know, the federal trust responsibility is the foundation for the provision of federally funded health care to all members of the 566 federally recognized Indian Tribes, bands, and Alaska Native villages in the United States. The provision of federal health care services to American Indians and Alaska Natives (AI/ANs) is the direct result of treaties that were made between the United States and Tribes and reaffirmed by Executive Orders, Congressional actions, and two centuries of Supreme Court case law. Through the cession of lands and the execution of treaties, the federal government took on a trust responsibility to provide for the health and welfare of Indian peoples.

*Health Disparities: Defining the Challenge*

Significant health disparities exist within AI/AN communities. The current status of AI/ANs is grave, with the AI/AN age-adjusted death rates for all causes of death for years 2002-2003 at 1.2 times the rate of the U.S. population. Some areas see even greater disparities for AI/ANs compared to rates in the U.S. population; for example, tuberculosis rates are 8.5 times, chronic liver disease and cirrhosis, 4.2 times, diabetes, 2.9 times, unintentional injuries, 2.5 times and homicide, 2.0 times. AI/AN rates were below those of the U.S. population for Alzheimer's disease (0.5 times), and the recently-published CDC Report on HIV/AIDS in American indicates that AI/ANs had the 3rd and 4th highest (15.3 and 9.3) overall rate of new HIV infections per

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<sup>1</sup> Established in 1972, the NIHB serves all federally recognized tribal governments by advocating for the improvement of health care delivery to AI/ANs, as well as upholding the federal government's trust responsibility to AI/ANs. We strive to advance the level and quality of health care and the adequacy of funding for health services that are operated by the IHS, programs operated directly by Tribal Governments, and other programs. Our Board Members represent each of the twelve Areas of IHS and are elected at-large by the respective Tribal Governmental Officials within their Area. The NIHB is the only national organization solely devoted to the improvement of Indian health care on behalf of the Tribes.

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100,000 respectively, among other races/ethnicities. However, while these rates have significantly changed since 2003, low rates are mostly likely due to the insufficient sampling data, reporting streams, racial misclassification, data ownership/management and under reporting. It is also critical to note that with diseases like HIV and AIDS, AI/ANs, among all American populations, have the shortest time between diagnosis and death.

Of all AI/AN people who died during 2002-2004, 26 % were under 45 years of age. These death rates have been adjusted to compensate for misreporting of AI/AN race on state death certificates. This compared to 8% for the U.S. all-races population (2003).<sup>2</sup> Additional reduced age-adjusted mortality rates include: homicide (55%), cerebrovascular (49%), alcohol-induced (44 %), and heart disease (32 %).<sup>3</sup> Of all AI/AN people who died during 2002-2004, 26% were under 45 years of age. These death rates have been adjusted to compensate for misreporting of AI/AN race on the state death certificates. This is compared to 8% for the U.S. all-races population in 2003. Additional reduced age-adjusted mortality rates include: homicide (55%), cerebrovascular (49%), alcohol-induced (44%), and heart disease (32%).<sup>4</sup> Finally, the CDC reports that suicide remains the second leading cause of death of AI/AN youth.

The fact that the health status of AI/ANs has improved since 1972-1974 proves that with an increase in resources, health care providers, funding and other support it is possible to improve health inequities. Lowered mortality rates are among some of the positive changes in evidence. For example, tuberculosis mortality has declined 84% and deaths due to unintentional injuries have declined 58%. Although the AI/AN population suffers from among the worst chronic disease disparities in the nation, the leading cause of Years of Potential Life Lost is unintentional injuries. According to the Centers for Disease Control and Prevention (CDC) disparities data, the AI/AN population has the highest rate of death due to unintentional injuries of any race or ethnicity in the U.S, which is primarily prevented with the use of public health services, outreach, education, and public health law.

Preventable diseases affect AI/AN populations at a far greater rate than they do the rest of America. Death rates from preventable diseases among AI/ANs are significantly greater than among non-Indians. Significant regional differences exist in these disease patterns. Enhanced data gathering on a geographically-specific basis can yield information necessary to instruct policy development to appropriately address prevalence and incidence through more-informed approaches.

#### *The Indian Health Care Delivery System*

The Indian health care delivery system consists of services and programs provided directly by the Indian Health Service; Indian Tribes; and Tribal organizations who are exercising their rights of self-determination and self-governance; and services provided through urban organizations that receive IHS grants and contracts (collectively, the "Indian Health Care System" or I/T/U). The Indian Health Care System has a user population of 2.6 million individuals. This system is community-based and reflects a culturally appropriate approach to delivering health care to a

<sup>2</sup> Indian Health Service. Division of Program Statistics, "Trends in Indian Health," 2002-2003 edition.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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population suffering severe health disparities and massive rates of poverty within the most remote and rural areas of America. The IHS has long been plagued by woefully inadequate funding in all areas, a circumstance which has made it impossible to supply Indian people with the level of care they need and deserve, and to which they are entitled by treaty obligation.

*Gains for the Indian Health Care Delivery System*

Thanks in no small part to the hard work and dedication of this Committee, in recent times, Congress and the Administration have demonstrated their desire to address commitments to Indian health and take steps toward the fulfillment of the federal trust responsibility by ensuring that the IHS receives annual increases. On behalf of NIHB, I thank this Committee for these increases in funding to IHS.

Over the past three fiscal years, the IHS budget has increased 29% and has a current budget of \$4.3 billion. As a result, IHS has been able to keep up with inflationary costs and increase the access to primary care services, and IHS and Tribal programs have stretched these funds to make small, but real gains in health status such as with Diabetes. In light of the current economic climate, where many other budget accounts saw deep cuts, this increase acknowledges the critical health needs of our tribal communities and represents the continued commitment to honor the federal government's legal obligation and sacred responsibility to provide health care to AI/ANs. Despite the 44% funding deficit, the Indian Health Services was one of only several federal agencies, working in partnership with Tribes, to meet 100% of their Government Performance and Results Act (GPRA) performance measures in 2011 and continues to work to meet performance targets through innovative programs such as the Improving Patient Care Initiative (IPCI) which helps improve the quality of care and use resources more efficiently. In addition, Tribes have expanded our Improving Patient Care initiative to 100 sites in the Indian health system. The IPCI is a patient-centered medical home initiative that is designed to improve the coordination of care for patients. This program is essential to facilitating adaptation to the new delivery system changes that come with the Affordable Care Act, and to helping improve customer service by making care more patient-centered.

Tribes are concerned that the severe lack of funding to address preventable diseases will keep the IHS from moving from a trauma system to a true public health model with a focus on prevention. Although the IHS budget has increased by an historic 29% since 2008, this equates to an average of 7.25% per year, barely enough to cover medical and non-medical inflation and the cost of contract health care for our growing population. Both serious budgetary increases and changes to resources supporting this health care system are necessary if we are going to effectively address the growing gap in health disparities, which has resulted in early death, and preventable, expensive chronic care costs for AI/ANs of all ages.

*The value of a strong public health approach to American Indian and Alaska Native health*

In addition to concerns over health care delivery, Tribes stress the absolute necessity of continued investments in public health initiatives. Catastrophic cuts to funding, coupled with preexisting underfunding of the IHS all but guarantee a dismantling of the public health programs tribes need and depend upon to address public health disparities. Public health is part of the health care delivery the federal government promised to the Tribes in treaties and



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repeatedly affirmed through legislation, executive orders and Supreme Court case law. In some cases, public health initiatives were the primary focus of treaty health provisions.

In addition to a legal duty, the government must also recognize the moral responsibility it bears to continue funding for current public health initiatives. By creating initiatives that address substance abuse, depression, suicide, domestic violence, and a host of other multiple-trauma induced conditions, the federal government asked communities and individuals to begin conversations, open old wounds and start on the road to healing. Once begun, these processes require tenacity and commitment on the part of all parties. The work is generational. Abandoning those initiatives in the early stages actually results in poorer outcomes than neglecting the issues entirely.

Public health holds tremendous potential for the nation and special promise for Indian Country. Because Indian Country suffers from some of the highest rates of public health related disparities, including the high incidence and prevalence of completely preventable diseases, it also stands to make the greatest gains from the promised public health investments. Strong and sustained funding is necessary to address preventable diseases and allow IHS to move from a sick care system to a true public health model with a focus on prevention.

*Successful Investment in Indian Health - Special Diabetes Program for Indians*

The growing epidemic of Type 2 diabetes represents one of Indian Country's greatest public health challenges, as American Indians and Alaska Natives have the highest prevalence of diabetes amongst all U.S. racial and ethnic groups. In response to this epidemic, Congress established the Special Diabetes Program for Indians (SDPI) Congress in 1997. The recent Congressional reauthorization of SDPI through September 2014 through the *American Taxpayer Relief Act of 2012* at the current funding level of \$150 million annually is a significant accomplishment for Tribal health care. SDPI programs established throughout Indian Country will continue to receive the needed funding and resources to continue the fight against diabetes.

While not every Tribe receives the SDPI grant, the program has become our nation's most strategic and effective federal effort in combating diabetes in Tribal communities. Today, SDPI provides grant funding to 404 diabetes treatment and prevention programs in thirty-five states. This federal investment in community-driven, culturally appropriate programs has led to significant advances in diabetes education, prevention, and treatment. SDPI is making a real difference in the lives of people who must manage diabetes on a daily basis and demonstrating remarkable outcomes.

The SDPI program is a mandatory funding program administered by the Indian Health Service (IHS). SDPI grantees follow specific reporting requirements that allow for assessment of grantee progress. These reporting requirements include: Attending and keeping track of required SDPI trainings; Improving the *IHS Diabetes Care and Outcomes Audit* items/elements; Collecting baseline data for required key measures of selected best practices; and Accomplishing objectives and planned activities from the grantee program plan. The SDPI grantee reports also includes information on diabetes prevalence for each target site and other diabetes-related measures such as amputations, End Stage Renal Disease rates, laser treatments, and obesity prevalence.

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We have seen remarkable progress over the last several years from the data gathered from SDPI programs. The sharing of this information and expertise among health care professionals and Tribal communities has played a central role in improving accountability and excellence in the SDPI program. SDPI programs throughout Indian Country are clearly improving the way diabetes is addressed in Tribal communities as well as saving lives. As a result of intensive SDPI program data collection, sharing and analysis, we are able to demonstrate remarkable outcomes from SDPI programs, including a decrease in the average blood sugar level from 9.0% in 1996 to 8.1% in 2010; a 73% increase in primary prevention and a 56% increase in weight management activities targeting children and youth; and reduced risk of cardiovascular disease through reduced cholesterol levels.

The SDPI program can be used as a model of success because the SDPI program works in saving lives and the measurable health outcomes achieved so far are resulting in significant federal cost savings. From 1999-2006, the incidence rate of End Stage Renal Disease (ESRD) due to diabetes in American Indian and Alaska Native people decreased by 28%, which represents a greater decline than for any other racial or ethnic group in the country.

ESRD is the largest driver of Medicare costs in the United States. Medicare costs per year for one patient on hemodialysis exceeded \$80,000 in 2009. The dramatic reduction in new cases of ESRD means a decrease in the number of new patients requiring dialysis and translates into millions of dollars in cost savings for Medicare, the Indian Health Service, and other third party payers. This data is significant and we can discuss the benefits of SDPI's impact beyond Indian Country as Congress focuses on ways to control Medicare spending. While it cannot be clearly claimed that this decline in the ESRD rates for American Indians and Alaska Natives is solely due to SDPI, the program has contributed to this downward trend.

SDPI has provided the funding, tools, training, support, and clinical data to help the Indian Health System make tremendous changes in the diabetes landscape in American Indian and Alaska Native communities. Guided by Congress' vision, scientific research, and community-driven priorities, SDPI funding has enabled the Indian Health system to build one of the most comprehensive and effective diabetes programs in the country. The challenges remain daunting, but as our understanding of diabetes continues to evolve, we will discover new directions and yet more hope for creating a healthier future for Indian Country. Together, we are beating diabetes for our ancestors, our communities, and future generations.

### **Recommendations**

#### **1. Create a long-term investment plan to fully fund IHS Total Need**

Tribes have long asked for full funding of the IHS. Developing and implementing a plan to achieve funding parity is critical to the future of Indian health and to fulfilling the United States's trust responsibility to AI/AN people. The funding disparities between the IHS and other federal health care expenditures programs still exist. In 2010, IHS spending for medical care was \$2,741 per user in comparison to the average of federal health care expenditure of \$7,239 per person.<sup>5</sup>

<sup>5</sup> IHS Fact Sheets: IHS Year 2012 Profile (January 2012) at: [www.ihs.gov/PublicAffairs/IHSBrochure/Profile.asp](http://www.ihs.gov/PublicAffairs/IHSBrochure/Profile.asp)

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In 2003, IHS, Tribes, and urban programs worked together to develop for the first time a true Needs Based Budget (NBB) to address the shortfall of funding required to meet the health needs of AI/ANs. That Workgroup at that time proposed a 10-year phase-in plan, with substantial funding increases in the first two years and more moderate increases in the following years. In the intervening years and with failure to produce necessary funding to fulfill this 10-year plan, the health disparities between AI/ANs and other populations continue to widen, and the cost and amount of time required to close the funding disparity gap has grown.

Along with continued under-funding, IHS faces additional financial obstacles in its ability to provide care: inflation, both medical and non-medical, and population growth. Funding for IHS programs has not kept pace with inflation, while Medicaid and Medicare have accrued annual increases of 5% - 10%. The \$59.9 million requested is needed to address the rising cost of providing health care and is based on the 1.5% non-medical inflation rate and 3.3% medical inflation rate identified by OMB. However, the actual inflation rate for different components of the IHS health delivery system is much greater. We recommended that the rates of inflation applied to Hospitals & Clinics, Dental Health, Mental Health and Contract Health Services in developing the IHS budget should correspond to the appropriate components in the CPI, and that there should be parity in the calculation of inflation among HHS operating divisions. The NIHB urges this Congress to consider the rates of inflation during the appropriations process and recommends an increase in funding to address these costs.

Additional funding is also needed to address the effects of population growth on IHS' ability to provide a continued level of care. IHS currently service population increases at an average rate of 1.9% annually.<sup>6</sup> The exclusion of population growth as a factor in the President's budget request puts the level of health care services into peril by reducing the availability of life-saving services for AI/ANs.

The NBB has been updated every year using the most current available population and per capita health care cost information. The IHS need-based funding aggregate cost estimate for FY 2015 is now \$27.6 billion, based on the FY 2012 estimate of 2.6 million eligible AI/ANs served by IHS, Tribal and Urban health programs. Full funding of the NBB is a reasonable and achievable phased-in approach to begin to address the true health care needs in Indian Country. The Tribal NBB, if fully funded, would be less than three percent of the HHS \$941 billion budget. Tribes and the NIHB will continue to ask the federal government to design and implement a true full funding plan for the IHS budget.

## 2. Need for more data to understand true need

Tribes need accurate, timely and accessible data to appropriately assess the health care needs for AI/AN. Tribes need this data to identify priority health needs, to plan health care delivery and public health programs, to implement those plans, and evaluate health activities. With this foundational knowledge, Tribes can make the best possible decisions for allocation of scarce financial resources.

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<sup>6</sup> IHS Fact Sheets: Indian Population (January 2012) at [www.ihs.gov/PublicAffairs/IHSBrochure/Population.asp](http://www.ihs.gov/PublicAffairs/IHSBrochure/Population.asp)

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At present, the data available for AI/AN populations fails to provide an accurate picture of AI/AN needs. Although there have been substantial and meaningful efforts on the part of Indian Health Service, the most comprehensive information available is from 2002-2003. Other federal agencies collecting health data often do not offer AI/AN statistics, or offer AI/AN statistics that are inaccurate. In these cases, inaccuracies may result from failing to correctly identify individuals as AI/AN or using survey methods that tend to minimize AI/AN participation.

Because effective health care and public health programs require this baseline data, the federal government's trust responsibility extends to health data collection, analysis and dissemination in addition to the provision of health care. Furthermore, the unique challenges in collecting AI/AN data, including geographic dispersion, racial misclassification, potentially excluding survey methods, and an inadequate collection of subgroup information, call for federal leadership and resources. Through the Indian Health Care Improvement Act, the Tribal Epi-Centers and Tribes have the right to access data kept by the States regarding the health of AI/ANs. Despite this legal assurance, acquiring data from the States remains costly and challenging. In addition, data available through the Indian Health Service, such as is collected through the RPMS system can also greatly enhance knowledge about AI/AN health status and progress. The establishment of electronic medical records throughout Indian Country, as is being achieved through the NIHB H Health Information Technology for Economic and Clinical Health (HITECH) Regional Extension Center, offers great promise in data creation about AI/ANs nationally. Data ownership and access issues must be addressed, however, before this potential can be realized.

### 3. Advanced funding to Indian Health Service Budget

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and Tribal providers great challenges in planning and managing care for AI/ANs.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011). Even after the enactment of an appropriations bill, there is an apportionment process involving OMB and then a process within IHS allocation of funds to IHS Area offices. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for Tribes and Tribal Organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of VA to properly plan and manage its resources, Tribes and Tribal Organizations have those concerns about the IHS health system. If IHS funding was on an advance appropriations cycle, Tribal health care providers, as well as the IHS, would know the funding a year earlier and would not be subject to continuing resolutions. Delayed funding significantly hampers Tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance, and construction efforts. Providing sufficient, timely and predictable funding is needed to ensure the federal government meets its obligation to provide health care for AI/ANs.

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#### 4. Protect IHS Budgetary Gains

The Tribes are extremely concerned about the consequences of sequestration. Unlike federal programs that serve the health of our nation's populations with the highest need, such as Social Security, Medicare, Medicaid, the Children's Health Insurance Program, and the Veterans Administration, the IHS is not exempt from the looming automatic across the board cuts. Although the recently passed American Taxpayer Relief Act reduced the level of the sequester reduction for the IHS from 8.2% to 5.1%, these cuts must be achieved over seven months instead of twelve, making the effective percentage of reductions approximately 9%. Even at that revised level, the IHS budget will suffer a devastating cut of \$220 million.

As projected by the Administration, the IHS and Tribal hospitals and clinics would be forced to provide 3,000 fewer inpatient admissions and 804,000 fewer outpatient visits. In addition, the billions in cut to funding for other key health agencies, such as Centers for Disease Control & Prevention, Substance Abuse and Mental Health Services Administration, Health Resources and Services Administration will further increase the blow to health of AI/ANs, as these programs have become critical to the Indian Health Care System. In total, this cut translates into lost funding for primary health care and disease prevention services for AI/ANs, which is certain to produce tremendous negative health impacts. Any budget cuts, in any form, will have harmful effects on the health care delivery to AI/ANs and its true cost will be measurable in lives as well as dollars. This must change. If this Congress cannot avoid sequestration through alternate methods of deficit reduction, the NIHB implores this Congress to make the IHS exempt from this process.

#### 5. Reform Contract Health Services

The Contract Health Service (CHS) program serves a critical role in addressing the health care needs of Indian people. The CHS program exists because the IHS system lacks the capacity to provide onside and directly all the health care needed by the IHS service population. In theory, CHS should be an effective and efficient way to purchase needed care – especially specialty care – which Indian health facilities are not equipped or do not have the specialists required to provide needed services.

In reality, CHS is so grossly underfunded that Indian Country cannot purchase the quantity and types of care needed. Therefore, many of Indian patients are left with untreated and often painful and preventable conditions that, if addressed in a timely way, would improve quality of life, lower the cascading effect of requiring crisis medicine when prevention would have worked, and at lower cost. If this program expansion increase is not funded, or alternative methods of assuring access to care, equipment and services is not otherwise provided, AI/ANs will continue to live sicker and die younger than any other American citizens. In addition, the system will continue to drain existing available resources for costly urgent, emergent and chronic care at higher rates than other populations where prevention or immediate access to appropriate care is easily accessed. The prospect of a better future, the dream of healthy communities, and a fair shake at improving the health status of all AI/ANs will remain out of reach for most Tribal Nations.

One method that may alleviate some of the financial burden of accessing specialty care is extending the Federal Tort Claims Act to private physicians and other health care providers who

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are willing to provide health care at Tribal and IHS sites on a voluntary, or pro-bono, basis. In partnership with NIHB, the American Academy of Orthopedic Surgeons explored the possibility of providing free health care services to American Indians in Montana and the lack of medical malpractice coverage to IHS and Tribal facilities was a main obstacle to advancing the effort. Charitable opportunities for physicians to provide free medical care are in evidence across the world and a well-planned and executed volunteerism program would provide for some relief. Likewise, establishing the presence of graduate medical education programs in Tribal and IHS facilities to ensure a constant presence of at least some medical specialists is also worthy of exploration.

Lastly, the IHS has a Tribal Workgroup reviewing this issue and is in the process of developing a set of tribal recommendations. We encourage the Committee to review these recommendations once released and we request that you assist with any legislative fixes if call for by the workgroup.

6. *Ensure Access to health care and services in 2014*

As this country's health care system will be evolving in the coming year, AI/ANs must be able to access the new benefits offered under the Affordable Care Act (ACA). The ACA contains numerous favorable procedural rules, cost-sharing protections, and mandatory enrollment exemptions that apply specifically to AI/ANs, referred to generally as "Indians" in the ACA. However, the ACA uses substantially similar but not exactly the same language to define "Indian" in every instance and in many cases does not include any definition at all. This creates enormous potential for confusion and inefficiency in the implementation of the ACA and makes it likely that AI/ANs will not receive the benefits and special protections intended for them in the law. Despite efforts by Tribal advocates, the only remaining remedy to this issue remains a legislative fix.

We are recommending that the definition of "Indian" adopted by CMS (at 42 C.F.R. § 447.50 and effective on July 1, 2010) in its implementation of the Medicaid cost-sharing protections should be adopted uniformly in implementation of the ACA for both Exchange plans and the Medicaid expansion as this definition is consistent with the substantially similar language used in the various definitions of Indian contained in the ACA. The use of the CMS regulatory definition has been endorsed by the National Indian Health Board, National Congress of American Indians, and the CMS' Tribal Technical Advisory Group.

The CMS definition conforms to the IHS eligibility regulations; thus, it is administratively efficient for I/T/U programs and state Medicaid plans to administer that are currently in place. Doing so will avoid bureaucratic confusion, fulfill the federal government's special trust responsibilities toward AI/ANs, promote the ACA's objectives of achieving nearly universal health coverage, and address the alarmingly inadequate access to health services by AI/ANs due to underfunding of the IHS.

9. *Invest in the American Indian and Alaska Native Public Health System*

It is proven that effective public health strategies save money and lives. Indian Country suffers from the highest rates of preventable illnesses and diseases and for every dollar spent in public health and prevention, \$5 can be saved in the direct treatment of illness. Let's build on disease prevention and health promotion programs that work, like the Special Diabetes Program for

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Indians, vaccinations, outreach and education and many other public health initiatives that will save money and lives.

Conclusion

Although our nation has been faced with a new budget reality, its recommendations remain relevant. NIHB asks that this Subcommittee give deep consideration to the true needs of the IHS, as well as Indian Country, and the federal trust responsibility to AI/ANs. The nation's debt is a pressing issue, but a solution must not be achieved through broken promises and the duty of this nation to honor trust responsibilities to its First Americans. Full funding for the Indian Health Services of \$27.6 Billion would represent less than 3% of the HHS budget. We ask that this Congress take the honorable path of restoring the funding needed to end needless suffering and death of our Alaskan Native/American Indian Peoples.

I thank the Subcommittee for its time and for the opportunity to present this testimony. I am happy to answer any questions.

**About Vice-President Rex Lee Jim:** After serving as a ranking member on the Judiciary Committee and chairman of the Public Safety Committee within the 21st Navajo Nation Council, Delegate Rex Lee Jim was sworn in as Vice President of the Navajo Nation on January 11, 2011. Born and raised in Rock Point, a small farming and ranching community in northern Arizona, Vice President Jim attended the local school where he learned to read and write in Navajo. He is of the Kin Lichii'nii clan born for Tachii'nii. His maternal grandfather is Kin Yaa'aanii and his paternal grandfather is Naakaii Dine'e.

He has five children. Vice President Jim attended the Newfound School in Asheville, North Carolina, and graduated from Colorado Rocky Mountain School in Carbondale, Colorado. In high school, he was introduced to students from other countries and gained much appreciation for their unique languages and cultures. After graduating from Princeton University, Vice President Jim started work with the Rock Point Community School teaching Navajo to students K-12. During this time, he developed a curriculum for K-Graduate programs that was culturally and pedagogically appropriate for Navajo students. He has published books and produced plays using the Navajo language.

An author, playwright, and medicine man, Vice President Jim continues to make diplomatic trips abroad on behalf of the United Nations to improve relations between nation states and indigenous peoples. As a representative of the Carter Foundation, the Vice President has helped improve relations between the United States of America and the Andean Countries of Colombia, Venezuela, Bolivia, Peru and Ecuador. Vice President Jim played a key role in the drafting and final passage of the International Declaration on the Rights of Indigenous Peoples. On 16 December 2010, President Barack Obama declared that the United States is going to sign the declaration.



Mr. SIMPSON. Thank you, Mr. Lee.

Mr. Barnett.

Mr. MORAN. Mr. Chairman, I am getting a little worried about Dr. Moore making it to the airport on time. Even if you are leaving from National, you probably need to leave now if you are going to make a five o'clock flight.

Mr. SIMPSON. There is nobody that knows that better than Mr. Moran.

Mr. MORAN. You could encounter a little traffic across the bridge.

Dr. MOORE. Absolutely. Well, thank you so much.

Mr. BARNETT. Thank you very much, Dr. Moore.

Dr. MOORE. Thank you.

#### OPENING REMARKS OF MR. D'SHANE BARNETT

Mr. BARNETT. Chairman Simpson, Ranking Member Moran, and members of the subcommittee, good afternoon. My name is D'Shane Barnett. I am Mandan and Arikara from the Mandan, Hidatsa and Arikara Nation of Fort Berthold, North Dakota.

On behalf of the National Council of Urban Indian Health, our 38 member healthcare programs, and the more than 100,000 American Indians and Alaska natives that we serve each year, it is an honor to appear before you today to speak about the health status of American Indians and Alaska Natives living in cities across the United States.

Before I begin, I would like to thank Congress for the recent passage of the Violence Against Women Act and for including the tribal protections. Given that much of our population migrates back-and-forth between reservations, rural towns, and urban areas, these protections will support many of the women that we serve.

Urban Indian communities are direct result and consequence of failed federal policies. Instead of investing in employment and education in Indian Country, between 1952 and 1960, the Bureau of Indian Affairs relocated an estimated 160,000 American Indians off of their reservations to live in urban areas as part of its Indian Relocation Program. With job opportunities scarce and little or no financial assistance from the BIA, American Indians developed significant health disparities that persist to this day.

In 1974, the Supreme Court ruled that assistance afforded to Indian people is not limited to those currently living on a reservation. In recognition of the deplorable health status of urban Indians, Congress enacted Title V of the Indian Health Care Improvement Act to ensure that healthcare services made available in the fulfillment of trust responsibility to reach all American Indians and Alaska Natives.

IHS-funded Urban Indian Health programs are both an attempt to mitigate the harm caused by the federal relocation policy and an expression of the United States trust responsibility to all American Indians and Alaska Native people. IHS currently funds 38 Urban Indian Health programs operating in 21 states. With line item funding of only \$43 million, these programs provide more than 275,000 patient encounters each year to Indian people providing high-quality, culturally appropriate services that cannot be received at other safety net healthcare providers.

In addition to primary care services, our programs provide traditional healthcare services, behavioral and mental health services, residential substance abuse treatment services, sexual assault and domestic violence prevention, and social services such as job placement and health insurance eligibility and enrollment.

IHS funding for Urban Indian Health is currently estimated to represent only 18.6 percent of total need. Because of this, our programs leverage \$1.50 for every dollar appropriated through the Indian Health Service. However, the federal trust responsibility cannot be shifted onto states, counties, foundations, and public or private reimbursement. The primary source of funding for the majority of our programs remains of the Indian Health Service.

It is essential to note that Urban Indian Health programs do not benefit from funding resources in other areas of the IHS budget such as Contract Health Services, facilities, contract support costs, or others. Because of this, resources intended to improve the health status of American Indians in urban centers need to be appropriated to the IHS Urban Indian Health line item.

According to the 2010 census, 71 percent of Indians live in urban centers. This means that even in cities where Urban Indian Health programs, or UIHPs, exist, limited IHS funding and recent budget cuts have led to many patients either being referred out for treatment or going without care entirely.

Current funding limitations make it impossible to provide comprehensive services to every patient. Further, the fact that UIHPs have had their sexual assault prevention grants and their domestic violence prevention grants eliminated means that there are fewer resources to address the disparities that our women and their families face each and every day.

All too often, federal policies and laws that were intended to improve the health of all American Indians have inadvertently excluded urban Indian patients and providers. One example is the IHS-VA agreement language that was discussed earlier, which does not include urban programs. Another example, Congress provided IHS and tribal health programs with 100 percent federal payment for Medicaid services known as FMAP. The tiny omission of our programs from 100 percent FMAP is creating significant barriers to health care for urban Indian people even though data provided by HHS shows that conclusion of urban Indian programs in 100 percent FMAP is estimated to cost somewhere in the range of only \$5 million a year.

Increased Medicaid revenues via 100 percent FMAP could mitigate some of the challenges of limited IHS resources. For this reason, NCUIH urges Congress to take the lead and provide urban Indian Medicaid beneficiaries with the same opportunities for care that IHS and tribal patients enjoy.

Likewise, the Administration's determination that the definition of Indian and the Affordable Care Act is intended to include only members of federally recognized tribes will have a detrimental and disproportionate impact on urban Indian communities and healthcare providers. While our programs serve tribal citizens from hundreds of federally recognized tribes, many of our patients face obstacles to tribal enrollment or are members of tribes that lost federal recognition as a result of the devastating federal termi-

nation policy of the 1940s. Although these Indians are eligible to receive services from IHS, tribal, and urban healthcare facilities, they will nevertheless be excluded from the American Indian provisions and protections of the healthcare law.

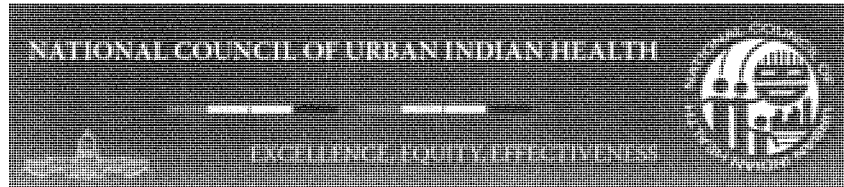
HHS leadership has publicly acknowledged their intent to work with Congress and we urge you to address this problem and align the ACA definition of Indian with the current Medicaid definition of Indian, which explicitly includes urban Indians and other native people who may not currently be enrolled members of federally recognized tribes.

In closing, I would like to emphasize that NCUIH supports the tribal recommendation for full funding of the Indian Health Service at \$27.6 billion. And we ask that full funding be afforded to the Urban Indian Health line item at \$231 million and that the shortfall be addressed by annual increases of only \$18.8 million over 10 years. We would like to urge you to extend 100 percent FMAP for Urban Indian Health programs.

And finally, we want to call your attention to the harmful effects of the sequestration. We stand with the National Indian Health Board in calling for exemption of the Indian Health Service from sequestration and we ask the Subcommittee to consider the impact of these cuts when determining IHS funding levels for fiscal year 2014 and beyond.

Thank you very much for your time here today and I would be happy to take any questions you may have.

[The statement of D'Shane Barnett follows:]



Testimony of D'Shane Barnett  
 Executive Director, National Council of Urban Indian Health  
 To the U.S. House of Representatives  
 Appropriations Subcommittee on the Interior, Environment, and Related Agencies  
 Oversight Hearing: Indian Health

March 19, 2013

Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee: Good afternoon. On behalf of the National Council of Urban Indian Health, our thirty-eight member health programs, and the more than 100,000 American Indians and Alaska Natives we serve annually, it is an honor to appear before you today to speak on the state of health of American Indian and Alaska Native people living in cities across the United States. We also want to especially thank Congress for its recent passage of the Violence Against Women Act and for including the tribal protections. Given that much of our population migrates back and forth between reservations, rural towns, and urban areas these protections will also support many of the women we serve. Further, for those of us residing in urban areas, these protections support our mothers, aunts, sisters, daughters and granddaughters that live on tribal lands, as we are all related and represent the same people.

The plight of American Indians and Alaska Natives living in urban areas is a direct consequence of the failed federal policies that created these communities in the first place. Between 1952 and 1960, an estimated 160,000 American Indians were relocated off of their reservations to live in urban areas as part of the Bureau of Indian Affairs "Indian Relocation Program." This relocation policy was part of a larger effort to assimilate American Indians into the majority American society. Often induced and coerced into leaving their land, their community, their culture, and their support network, American Indians quickly joined the ranks of the urban poor. With job opportunities scarce, and little or no financial assistance from the BIA, American Indians developed significant health disparities that persist to this day. Despite the solemn obligation of the United States to provide health care services to American Indians in fulfillment of the federal Trust Responsibility, the health needs of urban Indian people went unaddressed for more than two decades.

In 1974, the Supreme Court decided in *Morton v. Ruiz* that assistance afforded to American Indians and Alaska Natives is not limited to those currently living on a reservation. In 1976, in recognition of the deplorable health status of American Indians and Alaska Natives located in American cities, Congress enacted Title V of the Indian Health Care Improvement Act to ensure that the health care services made available in fulfillment of Trust Responsibility reach all American Indians and Alaska Natives. Congress subsequently affirmed that the United States'

obligation under Trust Responsibility “for the provision of health care services...does not end at the borders of an Indian reservation.” Most recently, in permanently reauthorizing the Indian Health Care Improvement Act, Congress declared, “it is the policy of the United States, in fulfillment of its special trust responsibilities and legal obligations to Indians, to ensure the highest possible health status for Indians *and urban Indians* and *to provide all resources necessary* to effect that policy.” IHS-funded urban Indian health programs are both an attempt to mitigate the harm caused by the federal relocation policy and are an expression of the United States’ trust responsibility to all American Indians and Alaska Native people – wherever they may reside.

The Indian Health Service currently provides funding to 38 Urban Indian Health Programs operating in 21 states. These IHS-funded health programs are not-for-profit organizations governed by a board of directors, 51% of whom must be urban Indians. With an IHS line item of only 43 million dollars, these health programs annually provide more than 275,000 high quality, culturally competent patient visits to American Indians and Alaska Natives that cannot be received at other safety-net health care providers. In addition to primary care services, our programs provide traditional health care services, behavioral health, residential substance abuse treatment, sexual assault and domestic violence prevention, and social services such as job placement and health insurance eligibility and enrollment. Given their modest IHS funding, which is estimated to represent roughly 18% of total need, Urban Indian Health Programs have become adept at leveraging this meager base funding to secure additional support from states, counties, and other federal agencies. Typically, Urban Indian Health Programs leverage 1.5 dollars for every dollar appropriated through the Indian Health Service’s urban health line item. While 27 of our programs have implemented third-party billing systems to supplement their base IHS funding with payment from private insurance as well as public programs such as Medicare, Medicaid, and CHIP, the federal Trust Responsibility cannot be shifted onto states, counties, foundations, and private insurance reimbursement. The primary source of funding for the majority of our programs remains the Indian Health Service.

Urban Indian people, as well as Urban Indian Health Programs, face many difficult challenges. Although Urban Indian Health Programs operate in 38 urban centers, an additional 18 cities have been declared by IHS to have sufficient need for new Urban Indian Health Programs. According to the 2010 Census, 3.7 million AI/AN people live in American’s cities, representing 71% of the total AI/AN population. However, the urban Indian health line item currently represents less than one percent of the total IHS budget. The more than 100,000 people served each year by the 38 Urban Indian Health Programs represent just a small fraction of the total urban Indian population and there has never been enough funding to expand the program to serve all urban American Indian people. It is critical to note that Title V funded Urban Indian Health Programs do not benefit from funding resources in other areas of the IHS budget, such as contract health services, facilities, contract support costs and others. Therefore it is critical that resources intended to improve the health status of American Indians in urban centers be appropriated to the IHS Urban Indian Health line item.

Even in cities where Urban Indian Health Programs operate, limited IHS funding means that many of our patients are either referred out for treatment, or go without care entirely. According to the most recent national diabetes audit of the Urban Indian Health Programs, while two-thirds

of patients received a foot exam in the past year, less than half received dental and eye exams during the audit period. These are critical standards of care for diabetes, a disease affecting urban AI/AN people at disproportionate rates, and many of the urban programs don't have the necessary resources to provide these standards of care for all patients. Only 17 Urban Indian Health Programs have dental services and only 4 have optometry services. While funding from the Special Diabetes Prevention for Indians project has been steady for years, the AI/AN diabetes population has still managed to increase. For example, five years ago there were 630 diabetics at the Indian Health Care Resource Center in Tulsa, OK; this year there are approximately 1,100. The number of pre-diabetic patients is estimated nationally to be three times higher than those with diabetes. While the Tulsa program is doing a great job in supporting standards of care, like foot and depression screenings, they can only provide dental exams to about 27% of the diabetes population, as there are not enough resources to support everyone.

As previously expressed, NCUIH is thankful to Congress for their robust support and reauthorization of the Violence Against Women Act. However, we regret that the Indian Health Service has eliminated Sexual Assault Prevention and Domestic Violence Prevention grants that helped our programs combat this problem in urban Indian households. Sample studies in New York City indicate that over 65% of AI/AN women experienced some form of interpersonal violence and, of those, 48% reported being raped and 40% reported multiple victimization experiences. This data mirrors what is happening in urban areas across the country. For example, the Friendship House Association of American Indians is one of our programs providing residential substance abuse treatment. They support holistic care to AI/AN people in urban areas as well as to tribes. Their program provides access to an on-site sweat lodge and use of traditional practitioners to support healing combined with evidence-based western practices and support services that serve to increase social determinants of health. In 2011, the Friendship House was able to increase employment of its participants by **115 percent** and increase abstinence from alcohol and/or drugs by **119 percent**. Within the same year, 65% of all patients entering Friendship House had co-occurring Post Traumatic Stress Disorder, indicating a demonstrable need in the community for treatment as well as highlighting the need for additional research. In light of this data, it is critical that programs such as Sexual Assault and Domestic Violence Prevention be restored to Urban Indian Health Programs.

Despite the existing health disparities and the incredible efforts of our programs to address these disparities, there are many instances in which federal policies or laws that were intended to improve the health of the entire American Indian and Alaska Native population inadvertently excluded urban Indian patients and providers. For example, Congress provided IHS and tribal health programs with 100% federal payment for Medicaid services provided through these health care facilities. The small omission of Urban Indian Health Programs from 100% FMAP has created significant barriers to health care for urban Indian people. Data provided by the Centers for Medicare and Medicaid Services show that inclusion of Urban Indian Health Programs in 100% federal Medicaid funding is estimated to cost somewhere in the range of only \$5 million a year, but it would enable Urban Indian Health Programs to receive the significantly higher Medicaid reimbursement rate that IHS and tribal facilities receive. It would also enable urban Indian patients to receive optional Medicaid benefits – such as adult dental care – that IHS and tribal facilities can provide in certain states due to their inclusion in 100% FMAP. The challenges faced by limited IHS resources could be mitigated if Urban Indian Health Programs

were able to bill Medicaid for services not covered under the state plan, but this will only be possible if Congress passes legislation granting urban Indian health providers 100% FMAP. We urge Congress to take the lead on this issue and provide urban Indian Medicaid beneficiaries with the same opportunities for care that IHS and tribal patients enjoy.

Likewise, the Administration's determination that the definition of "Indian" in the Affordable Care Act is intended to include only members of federally-recognized tribes will have a detrimental and disproportionate impact on urban Indian communities and health providers. While Urban Indian Health Programs serve enrolled citizens from hundreds of federally recognized tribes, a significant number of our patients face obstacles to tribal enrollment, or are members of tribes that lost federal recognition as a result of the devastating federal termination policy of the 1940's. Although these American Indians and Alaska Natives are eligible to receive health care services from the IHS/Tribal/Urban health care delivery system, they will nevertheless be excluded from the American Indian exemption from the individual mandate, which requires individuals to maintain "minimum essential [health] coverage". The possibility of incurring this fine, as well as the confusion and hurt created by the different "classes" of Indian people who will be excluded from this penalty, will create extremely difficult barriers to care and frustrate our goal of increased health insurance coverage. On March 8<sup>th</sup>, HHS Secretary Kathleen Sebelius acknowledged for the first time that the Affordable Care Act must provide the benefits of health care reform to all American Indians and Alaska Natives. The Secretary has endorsed the tribal recommendation that the ACA definition be identical to the Medicaid definition of Indian – which explicitly includes urban Indians and other Native people who may not be enrolled members of federally recognized tribes. NCUIH stands with the tribes and urges, in the strongest possible terms, that Congress act quickly to ensure that the Affordable Care Act is implemented in a manner that lowers barriers to care for all American Indians and Alaska Natives.

I would like to conclude by sincerely thanking the Subcommittee for providing me with the opportunity to share our concerns with you today. In closing, I would like to emphasize that NCUIH supports the tribal recommendation for full funding of the Indian Health Service at 27.6 billion dollars, and that full funding be afforded to the Urban Indian Health line item at 231 million dollars. This shortfall in urban Indian health funding could be addressed by annual increases of only 18.8 million dollars over ten years. Further, we would like to urge you to consider extending 100% FMAP for Urban Indian Health Programs. Finally, we want to call your attention to the harmful effects of sequestration. We stand with the National Indian Health Board in calling for exemption of the Indian Health Service from sequestration and we ask the subcommittee to consider the impact of these cuts when determining IHS funding levels for FY2014 and beyond. Thank you very much for your time here today, and I would be happy to take any questions you may have.

**Bio Sketch**

**D'Shane Barnett (Mandan/Arikara)** has served as the executive director for the National Council of Urban Indian Health since January 2011. D'Shane has led NCUIH through a period of transition in which the operational budget for the organization has doubled and the organization has successfully began diversifying its funding, even during a historic national recession.

Previously, D'Shane worked at the Native American Health Center in Oakland, California, as Director of Planning & Policy, where his duties included strategic planning, fund development, public policy analysis, and community organizing. Throughout his career, he has also worked at the Inter-Tribal Council of California (Sacramento, CA) as well as the Native American Youth Association (Portland, OR).

D'Shane currently serves as Chairman of the Board of Directors for the National Native American AIDS Prevention Council and has previously served on the respective boards of directors for: California Consortium for Urban Indian Health (President); Sacramento Native American Health Center (Treasurer); and the Marin Museum of the American Indian (Treasurer).



Mr. SIMPSON. Thank you, Mr. Barnett.  
Dr. Fields.

#### OPENING REMARKS OF DR. HENRY FIELDS

Mr. FIELDS. Good afternoon, Mr. Chair, Mr. Moran, and committee members. I am Henry Fields, Chairman of the American Dental Association's Council on Government Affairs. I am a professor and division chair of orthodontics at The Ohio State University. I am a private-practicing orthodontist and chief of orthodontics at Nationwide Children's Hospital in Columbus. I am also trained as a pediatric dentist.

The ADA appreciates the opportunity to respond to the Committee's question as to whether and to what extent your actions in prior years have reduced the tremendous disparities between Native Americans and the general population and to recommend future actions. In the 1990s, the budget for the IHS Division of Oral Health was \$65 million. Today, it is more than \$159 million. We are grateful for all the Committee has done to address the oral health needs of the American Indian and the Alaska Natives. It has resulted in improvements and oral health, but there is much that needs to be done.

There is an epidemic in early childhood caries, or ECC, which is simply tooth decay among native children. The ECC prevalence is about three times or 300 percent higher in this population than in other equivalent populations. We will never drill, fill, or extract our way out of this epidemic.

Traditionally, preventing oral disease has been possible and cost-effective. Children having their first dental visit before 1 are more likely to have follow-up preventive visits and lower dental costs. The earlier a child sees a dentist, the more cost savings there are.

Regarding ECC, the epidemiology of ECC is unclear. We need appropriate measures and data. Poor enamel may be a factor. Oral bacteria are different in this population and need studied, as well as does the immunology of the situation. We need new treatment approaches. This appears to be a different disease, especially among this group.

Traditionally, placing dental sealants on older children has resulted in Medicaid savings, especially for high-risk populations. IHS dentists are making advances in these areas in prevention. In 2011, the IHS placed over 276,000 sealants, 19,000 over their goal.

Regarding treatment, IHS dentists increased the number of patients seen from 23 to 28 percent, which is a 5 percent increase since the 1990s. And regarding the utilization of fluoride application, over 161,000 Indian students received at least one fluoride treatment. This is almost 26,000 applications over its goal. Things are improving.

These accomplishments are due to a focus on prevention combined with an increased workforce. In 2009, the IHS reported needing 140 dentists. Today, the vacancies are down to 40. The IHS Summer Externship Program and improved loan program funding have contributed to attracting dentists. Last summer 104 externs participated in the summer program, which resulted in 12,000 patient visits. The average dental student alone debt is \$200,000. In 2012, the IHS Loan Repayment Program funded all 107 applicants

from dentists and hygienists. Of those, 65 extended their contracts, underscoring the effectiveness of this recruitment and retention tool. This appears to be working.

Of course, more dentists are needed for more dental care. But while pleased with the increased utilization, we would like to see this rate continued to increase to 37 percent for adults and 46 percent for children, which is the national rate.

Additional investments in oral health literacy, which others have acknowledged, prevention and workforce are needed to accomplish this goal. More IHS dentists means the division can move more quickly to implement the Early Childhood Caries Initiative. The first step was to conduct an oral health assessment of children up to age 5. These data were gathered over 2 years ago but have not resulted in being fully or officially released. This delay has consequences. The ADA has met with the Arizona Dental Association and they have been meetings that we have implemented over 2 years ago with local tribes preparing to try to join forces and implement these recommendations for the ECC. Without these data and direction from the IHS, we cannot act. We urge the Committee to encourage the IHS to release the report.

Assuming that the report will eventually be released, the division will need a full-time person to monitor and coordinate the initiatives with the tribes and their partners, another comment that others have made. Having someone to oversee the project is vital to ensuring a uniform approach by all participating entities. We urge the Committee to provide an additional 300,000 for needed personnel and materials.

We know that due to years of underfunding oral health disease among American Indians and Alaska Native children and adults exceeds treatment capacity. In 2009, the ADA estimated that to achieve parity with IHS patients, the budget for the division would need to be \$600 million. That level of funding is not going to happen overnight, especially in these constrained economic times. So it is necessary to augment IHS services in other ways.

During the past 6 years, the ADA has recruited more than 200 volunteer dentists and dental students to serve in Indian Country. More volunteers could be recruited if IHS could streamline the credentialing process.

The ADA and several other state societies in Indian Country have joined forces to advance oral health outreach through the Native American Oral Healthcare Project. Our meetings with tribal leaders have centered on such goals as we can work together to enhance preventive efforts, increase access to dentures for elderly, and to increase oral health literacy.

Clearly, there is need for more American Indian dentists. We are taking the first steps to establish an educational pipeline that will extend from exposing young children to oral health careers to mentoring native dental students. As our plans developed, we anticipate a need for additional resources for the tribal nations to meet these goals. We hope that the Committee will continue to support our efforts in building these private-public partnerships. Thank you for allowing the ADA to testify. We are committed to working with you, the IHS, and the tribes to reduce dramatically the disparities

in oral disease and access to care that currently exist in Indian Country. Thank you.  
[The statement of Henry Fields follows:]

# **ADA American Dental Association®**

**STATEMENT OF THE**

**AMERICAN DENTAL ASSOCIATION**

**TO THE**

**SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED**  
**AGENCIES**

**COMMITTEE ON APPROPRIATIONS**

**U.S. HOUSE OF REPRESENTATIVES**

**ON**

**SUPPORT OF DENTAL AND ORAL HEALTH-RELATED INDIAN**  
**HEALTH SERVICE PROGRAMS**

**SUBMITTED BY**

**HENRY W. FIELDS, D.D.S.**

**CHAIR, COUNCIL ON GOVERNMENT AFFAIRS**

**MARCH, 19, 2013**

Good afternoon Chairman Simpson, Ranking Member Moran and Committee Members. I am Dr. Henry Fields, Chairman of the Council on Government Affairs of the American Dental Association (ADA). I am a Professor and the Division Chair of Orthodontics at The Ohio State University. I also have a private orthodontics practice and I am an attending dentist and Chief of Orthodontics at Nationwide Children's Hospital in Columbus.

The ADA, which represents 157,000 dentists, appreciates the opportunity to comment on the oral health issues that affect American Indians and Alaska Natives (AI/ANs), as well as the dentists and oral health care providers who serve in the Indian Health Service (IHS) and tribal dental programs.

The Subcommittee asked the ADA to comment on whether actions taken it has taken have helped to make a measurable reduction in the disease disparity rates between AI/ANs and all other populations and solicited recommendations on future actions the Subcommittee should consider taking within this constrained funding environment.

The ADA has been testifying before this committee since the 1990s. At that time, the dental program's budget was \$65 million. Today, it is over \$159 million. We are very grateful to the Committee for responding to the oral health care needs of AI/ANs and we have seen advances that we believe will lead to improvement in the oral health of AI/ANs. But we also know there is still much more that needs to be done.

Oral disease, especially among children, is preventable. But the level of Early Childhood Caries (ECC), tooth decay among the AI/AN children has reached epidemic proportions. The ECC prevalence is about 300 percent higher in this population than for all U.S. races. This is an important concept, because we cannot do enough fillings or afford to do enough fillings to fix the problem.

From research, we know that preventing oral disease is key and can result in savings. A study published in *Pediatrics*, the official journal of the American Academy of Pediatrics, found that children who had their first preventive dental visit by age 1 were more likely to have subsequent preventive visits and lower dentally related costs. The study also found that the earlier a child was seen by a dentist the greater the cost savings. If seen by a dentist by age 1, the average dental expenditure for a child was \$262, age 1 to 2, \$339, age 2 to 3, \$449, age 3 to 4, \$449 and age 4 to 5, \$546. A 2001 study published in the *American Journal of Public Health* found that older children who got dental sealants on their molars also resulted in Medicaid savings especially for high-risk populations.

According to the most recent data from the IHS Division of Oral Health, dentists are making advances in these areas. In 2011, the IHS placed 276,893 dental sealants, 19,632 sealants over its goal. IHS dentists reported treating 28 percent of the patients who needed care which is 5% more than they serviced in the 1990s. Additionally, the IHS reported that 161,461 AI/AN students had received at least one topical fluoride treatment. This was 25,857 applications over its goal.

The ADA believes that a key factor for these accomplishments and taking further steps to reduce disparity for disease is having a sufficient workforce. In 2009, the IHS reported needing 140 dentists. Today, the vacancies are down to 40. These numbers reflect the vacancies reported by the Division of

Oral Health and tribes that choose to notify headquarters of their openings for dentists. Because tribes are not required to report their workforce needs, the vacancy figures might be understated. Nonetheless, this data does show a substantial improvement.

We believe that the IHS summer externship program and improved loan repayment funding have contributed to reducing these workforce shortages. The IHS dental recruiters have conducted an excellent campaign to attract dental students to participate in their summer extern program as a way to introduce them to the Service. The recruiters try to make visits to at least 45 dental schools each year. These visits have resulted in over 200 third year dental students applying each year to the program. Last summer the program accepted 104 externs which resulted in 12,480 patient visits. We cannot say how many individual patients were seen as a result because in a 2-5 week externship a student may see the same patient more than once.

Experience has shown that the externs become great ambassadors when they return to school and we believe that this results in more dentists applying to the IHS upon graduation. However, one of the first things that the IHS eliminated due to the sequester was IHS staff travel. While the dental program will continue to keep recruiting through the internet and students telling others, the loss of face-to-face encounters with IHS recruiters could be a step backwards.

If recruitment visits are reduced, the Division of Oral Health would benefit from having "Direct Hire Authority" which would allow recruiters to make an offer to a viable candidate at a recruitment event. While candidates still have to go through the formal application and background check, having the ability to make an offer speeds up the hiring process and assures the candidate that they have begun the hiring process. We are aware that various divisions within the IHS use such authority, but it is unclear why the Division of Oral Health does not have the same opportunity. **We would urge the Committee to ask for a report on how the Division of Oral Health can have the same direct hire authority as other health disciplines in order to enhance future recruitments.**

The average student debt load for dentists is \$200,000 and most begin repaying their debts soon after graduation. The IHS dental loan repayment program offers an attractive incentive for dentists to join the Service. It is also an excellent retention tool for those dentists who want to continue in the IHS beyond their initial agreement. In 2012, the IHS funded all 107 applications from dentists and hygienists. Of those, 65 continued their previous contracts beyond their initial commitment which will help to maintain a continuity of care for patients.

We believe that the above data show that where an adequate workforce can be placed, there is an increase in prevention and needed treatment. While we are pleased with this utilization rate, we would like to see the IHS rates move upward to 37% for adults and 46% for children – which is the national rate. Additional investment in workforce, prevention, and oral health literacy is needed to reduce the need for treatment.

The IHS Division of Oral Health has begun to attack this epidemic with its Early Childhood Caries Initiative, a new program designed to promote prevention and early intervention of tooth decay in young children, through an interdisciplinary approach. The first step was to conduct oral health assessments of

children up to five years of age to determine the level of disease as well as the best prevention methods. The data was gathered over two years ago but the results have still not been fully and officially released. It has been ensnared in red tape between the IHS headquarters, the Department of Health and Human Services, and the Office of Management and Budget.

This delay has real consequences. The ADA and the Arizona Dental Association have been meeting for two years with local tribes in anticipation of this report. Together, they have focused on how they can join forces to drastically reduce ECC. But without these data and direction from the IHS Division of Oral Health, they cannot begin to take action. Meanwhile, the high rates of ECC continue to exist and children with the most serious disease continue to suffer in pain. We urge the Committee to encourage the IHS to follow through and release the report as soon as possible.

Anticipating that the report will be released eventually, we renew a request that we brought to the Committee's attention last year along with the Arizona Dental Association and five tribal organizations. In order for the ECC project to be successful, the Division of Oral Health needs to have full time personnel who can oversee and coordinate the national program with individual tribes, the oral health care team, medical providers, Community Health Representatives, Head Start staff, and Women, Infant, and Children (WIC) program staff. The person overseeing this program will also be responsible for ensuring that best practice approaches are followed and will coordinate the flow of prevention materials (fluoride varnishes and sealants) throughout Indian Country. Having one person to oversee this is also vital to ensuring that a uniform approach is followed by all participating entities. **We urge the Committee to provide an additional \$300,000 for needed personnel and materials.** We understand the fiscal constraints on the Committee and the IHS but not providing this funding is only going to drive up the costs of treatment. If a patient has severe tooth decay that can best be treated in a hospital under general anesthesia, the cost usually averages just over \$3,000 per visit. The anesthesia alone is over \$700. A good prevention program will avoid many of these costs and more than pay for itself.

The ADA thanks the Committee for supporting the Division of Oral Health's efforts to implement the Electronic Dental Record (EDR). For years the ADA conducted site visits to Indian country to see first-hand how IHS dental programs were functioning. We learned from those visits that patients often did not seek continuing dental care in the same facility. This makes it difficult for treating dentists to follow treatment plans. Having all IHS and tribal dental clinics connected through an EDR addresses that need. The IHS has been able so far to connect more than half of the sites but there are still almost 100 facilities that are not part of the system.

The ADA and the IHS dentists know that oral disease is preventable, especially when intervention begins at an early age. We know that because of years of underfunding, oral disease among AI/AN children and adults has far exceeded current capacity. In 2007, dental care expenditures in the United States were estimated at \$92.5 billion or \$316 per person. In contrast the 2009 budget for the IHS dental programs was \$141.9 million, approximately \$75 for each of the 1.9 million AI/ANs served by the IHS. In 2009, the ADA estimated that to bring oral health care to parity for AI/ANs the annual targeted minimum budget for the Division of Oral Health would have to rise to \$600 million.

We recognize that to reach that level of funding isn't going to happen overnight and in these constrained economic times it is necessary to augment IHS services. The ADA has conducted a program to bring volunteer dentists to Indian country to provide needed care to underserved areas. From 2006 to 2012, the ADA recruited and assigned nearly 200 volunteer dentists and dental students to IHS and tribal programs. Our volunteers found this to be very rewarding experience and we strengthened relationships with tribes.

Additionally, the ADA and several of its state societies in Indian Country have joined forces to advance oral health outreach and raise awareness. The Arizona and New Mexico Dental Associations established the ADA's Native American Oral Health Care Project to address the imbalance in access to quality oral health care among Native Americans. These organizations have made numerous visits to Indian Nations to meet and collaborate with tribal leaders. ADA presidents have met with Tribal leaders, health directors, and policy makers to discuss a comprehensive approach for improving oral health care in Indian Country. We have discussed such goals as how the ADA and tribal organizations can join forces to pool and leverage resources to enhance prevention efforts, increase access to dentures for community elders and support oral health care prevention strategies for youth.

Tribal leaders also emphasized the need to recruit American Indians into the dental profession. We are in the process of taking the first steps to establish a dental pipeline that will begin with exposing AI/AN youth to oral health care and dentistry and end with mentoring students through dental school. Having explored possible projects with universities from Massachusetts, Nebraska and Arizona, we anticipate the development of long term partnerships with tribal leaders to achieve this goal.

The ADA has also supported similar efforts between tribes in the Aberdeen area and the North and South Dakota Dental Associations. We are very encouraged by these efforts and wanted to make the committee aware of these talks. As more concrete plans develop we anticipate that there could be a need for additional resources for the Tribal nations for oral health literacy programs, prevention programs, and workforce. We hope that the Committee will support our efforts in building these public-private partnerships.

Earlier in our testimony we mentioned the need to have the report on the level of ECC for children released as soon as possible. That is the starting point for the ECC program. In 2011, the Division of Oral Health posted on its website a plan to conduct an oral health survey from 2011-2020. The proposal will measure not only the oral health of children but also adults. We were pleased to see this proposal because the last oral health survey was released in 1999 and during that time more information about oral disease has been reported.

Research funded by the National Institute of Dental and Craniofacial Research in the last 15 years has shown potential links between oral health and systemic health. They have established a connection between oral bacteria and pneumonia in nursing home patients. Cardiac surgeons are now not likely to proceed with a heart transplant if the patient has any kind of oral disease. The bacteria in the mouth can undermine such an operation. We know oral infection complicates a diabetic's ability to control the disease. Being able to eat a balanced and nutritious diet is also important for patients suffering from kidney disease, surgery or cancer. Dental problems can compromise overall health and well-being.

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We are pleased that the Division of Oral Health will survey adults because the 16-20 year gap in reporting any data has made it difficult to know if oral disease patterns have changed or remained constant. The Division of Oral Health needs to know today if they are still making progress. They need to know if new treatment modalities are more effective in eradicating dental disease than in the 1990s. They also need to know how large a workforce the IHS and tribal organizations need to fully meet patients' educational, preventive and restorative needs. We strongly encourage the Committee to do what it can to urge the IHS to expedite such research. With this knowledge the IHS and its dental partners can better focus on providing more cost effective care for the greatest number of patients.

Thank you for allowing the ADA to testify and highlight the needs and successes of the IHS dental program. The ADA is committed to working with you, the IHS and the Tribes to aggressively reduce the disparity of oral disease and care that currently exists in Indian Country. We know oral disease is preventable – provided that appropriate oral health literacy programs, prevention programs and an adequate workforce are in place.

**Biosketch - Dr. Henry W. Fields**

Henry is from Tipton, Iowa and graduated from Dartmouth College. He earned his dental degree and a master's in pediatric dentistry at the University of Iowa. He then completed a master's in orthodontics at the University of Washington before joining the departments of pediatric dentistry and orthodontics at the University of North Carolina School of Dentistry. He was named Professor in 1987, served as Assistant Dean for Academic Affairs and as Pediatric Dentistry graduate program director.

In 1991, Fields was appointed Dean at Ohio State University and served until 2001. Currently, he is Professor and Division Chair of Orthodontics. Fields continues to provide private patient care in orthodontics and is an attending and Chief of Orthodontics at Nationwide Children's Hospital.

His current research interests center on diagnostic systems and decisions, treatment outcomes, health literacy and cancer chemoprevention. Past and current scholarly interests have resulted in approximately 90 papers, two books in multiple editions, and numerous book chapters. Funding has focused on clinical based studies. Additionally, he has served as a reviewer for several journals and on the editorial board of *Pediatric Dentistry*, *ADA on line CE and AJODO* Diagnosis and Treatment Planning.

Fields has served organized dentistry and dental education in various manners. He was on the ADA's Council on Dental Education and Licensure, Commission on Dental Accreditation, National Board Written and Part II Case Based Test Construction and currently is the Chair of the Council on Governmental Affairs. He was Ohio Dental Association President, Chair of the ODA's for profit subsidiary and its Distinguished Dentist in 2010.

## DENTISTRY CHALLENGES

Mr. SIMPSON. Thank you, Dr. Fields. And thank all of you for your testimony. Since we have had vacancies go from 140 down to 40, apparently, I better leave Congress pretty quick if I am going to start filling one of those. What are the challenges that make it difficult for dentists to practice dentistry on reservations?

Mr. FIELDS. I think some of the cultural interactions are difficult for some people to understand. I think that loan repayment and salaries were an issue in the past. I think those have been improving and they are being met. I think that part of some of the morale issues among the dentists would be with early childhood caries, the inability to make inroads. It is so difficult. It is devastating, and it hurts the morale of the providers, I think.

## HEALTHCARE PROFESSIONS

Mr. SIMPSON. You mentioned something that I was going to ask Dr. Roubideaux about and that it seems to me like one of the best ways to get dentists and doctors back to reservations is to help educate them in the field of dentistry and being a physician. What is the pipeline of getting more Native Americans involved in healthcare professions and so forth? Are there very many Indians that are going to college to become doctors or dentists or anything else like that?

Mr. FIELDS. Well, I think that the data would indicate that there are a number of young Indians who want healthcare careers. And many times, those decisions are made quite early in life. Sometimes, people make those in grade school and junior high. Unfortunately, if those aspirations are not cultivated, you go nowhere. And there has not been very good cultivation of those people so that then they can achieve the academic excellence that they need in high school, and then they need to be tutored or directed when they are in college to understand what they need to take for prerequisites. If you go to a smaller school that does not have adequate directional services, most people get lost. And I think it is not because they do not have the aspirations; it is because they are not cultivated. And that just requires more time and energy.

And that is what the Pipeline Project is about, trying to bring these people along, give them adequate attention, help them succeed. Right now, they are trying to succeed on their own and the Pipeline Project is aimed at trying to bring those people along and provide them with the resources they need.

Mr. SIMPSON. We can learn a lot from the TRIO program that actually takes young people that are first-time students where their parents have never really gone to college or anything—I happen to be the co-chair of that caucus—that it actually gets them in high school in the Upward Bound Programs and other things. A lot of times these students have never thought about going to college because their parents never went. They never had a history of that, or anything else.

It really helps mentor them and tutor them into thinking of going to postsecondary education and then helps support them through the program. It has been a tremendous asset in helping these first-time students. Not only does it help that first-time stu-

dent, it helps all of their friends and sisters and brothers who never thought about going to college that went, man, Jane went to college. Maybe I can go to college.

We could probably learn something from the TRIO program about how to get people, Indians, into medical educations, because ultimately, that is going to be part of the answer.

But anyway, I appreciate your testimony.

#### INDIAN HEALTH FUNDING

Mr. SIMPSON. Mr. Jim, after reading your written testimony, I came away with the message or at least the impression of the message that recent Indian health funding increases have been helpful but insufficient, that the data needed to truly measure progress is inadequate and outdated, and that the health disparity between American Indians and Alaska Natives and other populations continues to widen. Is that an accurate interpretation of your testimony?

Mr. JIM. Mr. Chairman, that is an accurate interpretation. My testimony indicates that the budget based need is at \$27.6 billion, and so even though there have been increases, it is only a little bit over \$4 billion. And also there is a huge difference. And so we recommend that over 12 years that there be a phase-in so we get to the \$27.6 billion level and so we are asking about \$5.3 billion for this fiscal year 2015. And if we continue to do that, we should be able to catch up.

And to answer some of your earlier questions regarding Indian Country and Navajo, we are doing what is called Grow Your Own, and so we are beginning to do an analysis of what is needed on that. And there are 206 employed medical doctor positions on Navajo and less than 10 are occupied by Navajo.

Mr. SIMPSON. So you do have 10 doctors that are Navajo?

Mr. JIM. Less than Navajo. We have more Navajo doctors but they are practicing outside because they are treated better and they get higher paying—and so on. But we are also beginning to talk about medical school and more dosing program so more people can begin to think about the health profession. I think that is the key to long-term to help medical professionals stay on Navajo to do retention there, so we need to do that.

Mr. SIMPSON. Mr. Moran.

#### SCHOOL ASSAULT AND DOMESTIC VIOLENCE PREVENTION

Mr. MORAN. I was wondering about the vote we have coming up and it has been called, so I do not want to take long, but let me just mention a couple things quickly.

The Urban Indian Health program eliminated sexual assault and domestic violence prevention programs. I wonder what impact that had on Urban Indian Health. But I need kind of a quick answer because I want to be able to give Ms. McCollum and Ms. Pingree an opportunity to ask and Mr. Cole.

Mr. BARNETT. As far as its impact on the health, it resulted in a reduction of about \$1 million. So the total urban funding of \$43 million does not include that additional \$1 million. So we had a \$1 million loss.

Mr. MORAN. Okay.

Mr. BARNETT. And then as far as the impact of that loss, it is going to take a little while for us to put the data together.

Mr. MORAN. As many people fought so hard and particularly Mr. Cole to get Indians included in the protection and then that program is eliminated—and this will not be a question, but it does seem that that Special Diabetes Program for Indians was quite successful, Mr. Chairman, and it would seem that it might have applicability to other diseases, particularly those that are behaviorally oriented. So hopefully, we will hear more about that. But I do not want to take up any more time because we are under the pressure of a vote taking place right now.

Mr. SIMPSON. Mr. Cole.

#### FUNDING BARRIERS

Mr. COLE. Thank you, Mr. Chair. And just a couple observations and then kind of a question and then an offer. As I reflect on Dr. Roubideaux's testimony and the testimony of the four witnesses on this panel, it is clear we have actually made a difference. I mean, we have got big problems but the resources have measurably improved things, which is kind of what you look for. And I think this committee can be awfully proud of that, particularly you, Mr. Chairman, and you, Mr. Moran, because you guys laid the groundwork and built the bipartisan coalition for that to happen. So we know we need to do more.

I am particularly concerned, and Mr. Barnett, you and I have talked about this before, but we clearly have some barriers that prevent the flow of money into these urban facilities. We have got one in Oklahoma City and one in Tulsa there that are unbelievably good, and honestly, if those patients are not taken care of there, they are going to flow in probably as indigent patients into other areas and not be looked after as well. I would like to sit down with you and perhaps Ms. McCollum would work with me on this is my fellow co-chairman and see if we can identify what some of these structural barriers are.

And you can count on us to try to do the best we can, everybody on this committee to try and help on the funding side. So I am not trying to avoid that, but the definitional problems that you mentioned, those kinds of things, and perhaps Dr. Roubideaux would help us with that, too, and the Department so that we just try to remove bureaucratic barriers that are getting in the way and making it more difficult to function so that when we manage to infuse part of the system, we do not overlook—because I recognize how many, you know, Native Americans get treatment at those facilities, and a long way away from home in many cases. They are not where they can easily access trouble facilities. And we want to make sure that network of urban centers are good. So I would like to sit down and work with you, see if we can—not necessarily something we can do as appropriators, but maybe we can move something through the normal legislative process and make this a little bit easier.

Mr. MORAN. We can do anything.

Mr. COLE. Yeah, well, if they will let us, yes.

Mr. BARNETT. Well, we will let you.

Mr. COLE. Okay.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you. And I totally agree with what we are hearing about, you know, the challenges of urban settings for dentistry. I have one over here. For dentistry it is even worse and the urban settings because we do not have dental clinics to my knowledge.

Mr. BARNETT. Most do not, exactly.

Ms. MCCOLLUM. Maybe few do. Yes, mine does not.

So I want to just kind of bring up another area, and it was told in a story by a Native American doctor, Dr. Warren, and it was amazing. He talked about how he was working down at the Phoenix Indian Medical Center. He had his grandmother come down living with them to provide elder care. They are both enrolled out of Pine Ridge. She was not doing really well. They would not see her in the Phoenix Indian Medical Center because they said, well, you have to go back to Pine Ridge. And here he is trying to provide intergenerational care which is very good for families, for his children, for him, for her, so she delayed, delayed, delayed, delayed. Finally, she was diagnosed with lung cancer. So if she wanted treatment, she has to go back.

So this is another issue, another burden that we put, especially on families. Here is somebody who went and got a medical degree and is working.

I think it is unethical, so is that something in Indian Country that we could work with with the Administration, with Congress to kind of come up—and part of that gets to the full funding. I know it is a big problem that we will be working on for a while.

Mr. BARNETT. Yes, and I think our programs would be committed to working with IHS and with Congress to explore this. Our programs, because of the authority coming from the Title V of the Indian Health Care Improvement Act are able to serve those individuals that perhaps cannot be served at a tribal or IHS facility because of where they are located. So we can serve those people. The problem is we do not have the funding. We especially do not have funding for specialty care like cancer, services like that. So I think we could explore an option and try to put our heads together.

Mr. SIMPSON. Ms. Pingree.

Ms. PINGREE. I will be quick. And I just want to thank you for your testimony and the work that you are doing today. I am new to the committee but lucky enough to have four tribes in my State that I have been able to work with a little. And I know how appreciative they are of Indian Health Services when they work and the preventative programs like specialist diabetes care and how worried they are about the sequester and the cuts. So I am wholeheartedly in support of what you are doing.

And Dr. Fields, I appreciate seeing that we have been adding to the roles of dentist. I know that is a huge issue in rural areas and making sure we have adequate care. And I just want to echo what the chair said that I think when people from the tribes have the ability to aspire to being in healthcare themselves and making those opportunities available, they are more likely to return to their communities. And just to get a brownie point, I want you to know that I went to the dentist yesterday, and even though it was

a really busy day for me, I was afraid not to go because my dentist yells at me if I do not show up. So I have come to understand.

Mr. FIELDS. That is a good dentist.

Mr. SIMPSON. He must have gone to The Ohio State University. I went to The Washington University in St. Louis.

Mr. FIELDS. Your chairman on this committee will also yell at you if you do not show up.

Mr. SIMPSON. I appreciate the shortness of this panel, or I apologize for it. We have a vote going on, got about 4 minutes left in it, but I want to assure you all that your testimony is important and we take it very seriously, and we will be in touch with all of you in the coming days and months as we try to put together a bill for '14, and hopefully, we will get to a bill for '14 at some point in time. I appreciate the Dental Association being very active in this and trying to address a real need out there in Indian Country. I thank all of you.

Mr. FIELDS. Thank you.

Mr. BARNETT. Thank you.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Indian Health  
March 19, 2013

Questions for Dr. Roubideaux for the Record

Questions from Chairman Simpson

**Health Disparities**

I mentioned in my opening statement the 2010 goal of providing the resources, processes, and structure to eradicate the health disparities between American Indians and Alaska Natives, and the general U.S. population. I realize that responsibility doesn't entirely fall on this subcommittee's shoulders, but a significant portion of it does. And so I'd like to talk about what we can be doing to help ensure that this goal doesn't become yet another in a long line of broken promises. So let's start with the basics:

**Simpson Q1:** What are the disparities that the federal government should be tracking?

Answer: Health disparities that the federal government should be tracking related to the AI/AN population include: mortality, life expectancy, leading cause of death, prevalence rates of long-standing conditions such as diabetes, unintentional injuries, and substance abuse as well as more recently emerging chronic health conditions such as obesity and heart disease that impact not only longevity but quality of life for Indian people and expenditures for Indian health care.

**Simpson Q2:** Is the government tracking them?

Answer: IHS regularly tracks the health status of the population it serves through its data collection activities that are regularly published in *Trends in Indian Health* and *Regional Differences in Indian Health*. These reports include comparisons of Indian data with those of other populations in a number of instances, which provide insights into disparities. Trends in mortality, morbidity and life expectancy are the ultimate outcome indicators to compare with other populations, and IHS regularly tracks mortality rates for the overall population and for a number of leading causes of death. IHS has seen a decrease in all-cause mortality and an increase in life expectancy at birth over time. In terms of morbidity for certain conditions, progress has been made in reducing death rates associated with alcohol, diabetes, heart disease, tuberculosis, pneumonia and influenza, chronic liver disease and cirrhosis, and unintentional injuries. IHS plans to continue to build upon best practices, Tribal and community partnerships, and interagency collaborations to reduce and track these disparities. IHS also tracks the quality of care that it delivers to the patients it serves, and can monitor disparities in access and quality of care compared with other groups.

IHS also tracks its performance through a variety of mechanisms, including its GPRA indicators. IHS has recently improved its ability to do public health surveillance due to the development of our National Data Warehouse, and improvements in and implementation of our Electronic Health Record.



**Simpson Q3: Are the disparities shrinking?**

Answer: Yes, disparities are being reduced in many areas, but further work is needed. IHS has many examples of how it is working to reduce health disparities in a number of areas. For example, improvement in alcohol related disparities are a focus of IHS' efforts to implement primary care based behavioral health intervention such as the Alcohol Screening and Brief Intervention (ASBI). IHS and its federal partners (i.e., SAMHSA, HRSA, etc.) have broadly promoted this intervention to identify high-risk individuals before their actions or behavior becomes more clinically significant. Substantial interagency coordination and collaboration among federal partners promises to bring continued improvements as federal efforts and resources will assist in determining effective prevention and treatment programs.

See attached table, "Indian Health Service Derivative Mortality Disparity Table." Except for mortality rates due to Motor Vehicle Crashes or Suicide (intentional self-harm), data suggests that among the American Indian/Alaska Native (AI/AN) population served by IHS compared to the US All Races Population, the mortality rates are improving both for AI/ANs over time. Even when one accounts for how rates are accelerating or decelerating in the US All Races Population for homicide (assault) and tuberculosis, the mortality rates are declining in the AI/AN population served by IHS more rapidly than in the US All Races Population.

**Simpson Q4: If so, have the additional funding resources provided by this subcommittee helped?**

Answer: Yes, the increases in funding over the past few years have helped improve the health of AI/AN patients served by IHS in numerous ways. The 46 percent increase in Contract Health Service (CHS) funding (now proposed to be called Purchased/Referred Care) has resulted in almost half of all federal CHS programs being able to fund more than emergent or acutely urgent care services. The additional funding supports the Methamphetamine and Suicide Prevention Initiative and has resulted in the delivery of 7,000 substance abuse and mental health encounters via tele-health and more than 200,000 encounters with at-risk youth provided as part of evidence- and practice-based prevention activities. For the 66 IHS-managed CHS programs (which receive 46 percent of the CHS budget), please refer to the corresponding increases in the ability to purchase inpatient admissions, outpatient visits and one-way transportation trips and the Catastrophic Health Emergency Fund (CHEF) reimbursements from 2008 to 2012:

	<u>2008</u>	<u>2012</u>	<u>% increase</u>
Inpatient Admissions	14,636	17,255	17%
Outpatient Visits	227,983	271,334	20%
One-Way Transportation Visits	17,720	21,463	21%

CHEF cases reimbursed represents all IHS and Tribally-managed CHS programs that submitted CHEF cases for reimbursement

	<u>2008</u>	<u>2012</u>	<u>% increase</u>
# of CHEF cases reimbursed	1,084	1,879	73%

Additional funding also dramatically increased access both to services associated with improved diabetes care and reduced mortality and additional clinic staffing for newly constructed health care facilities (e.g., providers, nurses, educators, pharmacists).

**Simpson Q5:** Does the IHS have a strategic plan that sets as its fundamental goal the eradication of health disparities between American Indians and Alaska Natives, and the general U.S. population? If not, should they?

Answer: The IHS uses the Department of Health and Human Services (HHS) Strategic Plan along with the HHS Secretary's Strategic Priorities as the foundation of our goal to eradicate health disparities. The IHS further employs its Agency Priorities as a strategic framework to support our mission and for improvement and performance measurement. The IHS priorities include:

1. To renew and strengthen our partnership with Tribes
2. To reform the IHS
3. To improve the quality of and access to care
4. To make all our work accountable, transparent, fair and inclusive

These priorities also map directly to the Department of Health and Human Services (HHS) Goals mentioned above and provide a foundation for addressing health disparities. IHS is also a part of the Secretary's first ever HHS Action Plan to Reduce Racial and Ethnic Disparities, 2011.

The 2002 Institute of Medicine Report – Unequal Treatment Confronting Racial and Ethnic Disparities in Health Care – found that even with access to health care, and after adjusting for socioeconomic factors, the quality of care differs due to many factors, including clinical appropriateness, patient preferences, operation of health care systems, the legal and regulatory climate, and discrimination, resulting in worse outcomes for racial and ethnic minorities. IHS is already implementing many of the solutions recommended in the report, including: strengthening the patient-provider interaction; providing culturally appropriate services; using evidence based guidelines; increasing access to services (especially with our recent funding increases); using multidisciplinary teams, patient education, measurement of data on quality and monitoring progress (all a part of our Improving Patient Care program); increasing AI/AN providers; and increasing awareness of disparities.

**Simpson Q6:** In the House report accompanying the FY13 Appropriation bill, we encouraged IHS to reinstate health research and monitoring of trends, including updating the Trends in Indian Health and Regional Difference in Indian Health report.

Are efforts underway to get this going again?

Answer: Yes. IHS anticipates the publication of three editions of Regional Differences in Indian Health (2004-5; 2006-7; 2012), and reports on Health Disparities, Women's Health, Vision Care, and Behavioral Health by September 30, 2013 and Trends in Indian Health (2012) by June 2014.

Also, another edition of *Regional Differences in Indian Health* (2013) is planned for completion by September 30, 2014.

**Simpson Q7:** Monitoring of status and trends typically falls by the wayside in many programs when budgets get tight. But without this effort by the IHS, how are we ever going to measure our progress towards eradicating these health disparities?

Answer: The IHS has recognized the need for ongoing and timely monitoring of health trends as referenced by the Committee and our surveillance activities are ongoing and are inherent to the functions of our agency. To support this activity the IHS will continue to produce statistical information on health trends in the on-going publication of aggregated national statistical reporting (*Trends in Indian Health*), as well as a breakout by IHS Area (*Regional Differences in Indian Health*). Additionally, as noted above, the IHS plans to produce several focused reports on Health Disparities, Women's Health, Vision Care, and Behavioral Health as referenced by the Committee. In addition, a report on the baseline results of our first Oral Health Survey has been prepared and is undergoing review. The development of our National Data Warehouse is also creating a new source of data to better monitor trends in outcomes and quality of care.

**Simpson Q8:** If this subcommittee continues to fund the Indian Health Service at roughly the same rates of increase as it has over the past dozen years or so, will this country ever reach its stated goal of eradicating these health disparities as I mentioned in my opening statement?

Answer: The increased funding received over the past few years is helping us close the gap in disparities for AI/ANs. Between 1996 and 2005, overall death rates for Indian people have declined by 11 percent, including decreases of 15 percent from diabetes, 29 percent from diseases of the heart, and 30 percent from cerebrovascular disease. Continued focus on effective and efficient use of these resources will help us continue to make progress toward eliminating health disparities for the AI/ANs we serve. IHS is hopeful that with continued support, the AI/AN community will continue to move toward eradication of health disparities as noted by the Committee.

**Simpson Q9:** What do you attribute these improvements to?

Answer: Access to quality health care is a critical part of improving the health status of a population. The experience of the Special Diabetes Program for Indians over the past 15 years has shown that greater access to quality diabetes treatment and prevention services has made a substantial difference. Diabetes prevention and treatment services developed and administered in partnership with Tribes and communities has had perhaps the greatest impact on the improved death rates listed above (deaths from diabetes, heart disease, and cerebrovascular disease). These successes are directly attributable to proven strategies for diabetes prevention and prevention of cardiovascular disease complications that include the Special Diabetes Program for Indians, the Healthy Heart Program, and various Health Promotion activities that have raised awareness and opportunities for physical activity, healthful nutrition, tobacco cessation, obesity prevention, and dissemination of best practices. Collaboration with multiple partners to optimize decision support tools, clinical information systems, and coordination of care have also been instrumental in reducing death rates from diabetes and cardiovascular disease. The reduction in new cases of End Stage Renal Disease in AI/ANs over the past decade is perhaps the first significant example of a national trend in reduction in the complications of diabetes during a time when access to

quality diabetes treatment and prevention services markedly increased for this population. Increased funding that results in improved access to quality health care creates the best chances for improved outcomes and reduced disparities.

**Simpson Q10:** Did the IHS institute any special or focused programs to bring about these improvements?

Answer: Yes, as described above the Special Diabetes Program for Indians, Healthy Heart Program, Improving Patient Care (IPC) program, tele-health, web-based clinical resources and training, and other programs were developed to improve access to and quality of health care for AI/ANs. The Healthy Heart Program utilizes case management to improve blood pressure, glucose, and lipid control for patients living with diabetes to reduce their risk for the development of cardiovascular disease. The IPC Program is the IHS patient-centered medical home model that was started in 2006 and has resulted in over 123 care teams nationwide focused on improving prevention and management of chronic diseases for empaneled patients. However, sometimes special initiatives are not necessary when improvements to basic access to care can occur. For example, the recent increases in CHS funding are now associated with recent increases in some GPRA indicators that had not had increases in several years. The clearest example is mammography, which is almost exclusively funded through referred care (CHS). The percentage of women receiving recommended mammograms had remained in the low- to mid-40 percent range for many years but recently it has started to increase and in FY 2012 was 51 percent. The only change impacting mammograms during that time was the increased funding for the CHS program, resulting in some facilities being able to fund more than life or limb referrals, and in some cases, preventive screenings such as mammograms.

#### **Funding and Program Performance**

As I mentioned in my opening statement, appropriations for the IHS increased from \$2.4 billion in fiscal year 2000 to just under \$4.4 billion in fiscal year 2012.

**Simpson Q11:** Where has the IHS invested the additional \$2 billion and why?

Answer: For the time span between 2000 and 2012, 39 percent of the \$2 billion was invested in program increases, i.e., funding that enables IHS to enhance or expand program activities. Within the 39 percent, almost 45 percent of the funding went to CHS, 30 percent went to other program line items and 25 percent went to the Indian Health Care Improvement Fund and Facilities appropriations to improve access to quality healthcare and enhance the public health infrastructure. The remaining 61 percent of the \$2 billion was invested in addressing inflation, pay increases, population growth and additional staffing for newly constructed health care facilities. These increases generally are referred to as current services increases because they are intended to maintain the services at levels at least equivalent to prior years. Historically, the IHS has succeeded in improving the health status of the AI/AN population, primarily by focusing on preventive and primary care services and developing a community-based public health system. Improvements in life expectancy and mortality for many conditions during that time indicate the critical role of these additional resources in reducing health disparities for AI/ANs.

**Simpson Q12:** How did IHS determine priorities for the funding?

Answer: IHS conducts an annual budget formulation process that includes significant Tribal consultation on budget priorities, and we also factor in workload, need, outcome data, and guidance from the Administration and Congress.

**Simpson Q13:** What has proven to be the most cost effective use of the additional funds?

Answer: IHS already operates at an efficient level with the funding it receives, so cost savings are best described as outcomes from treatment and prevention services which reduced morbidity and mortality. The most effective use of the additional appropriations from a clinical and public health perspective has been improvements in access to and the quality of health care in general, and increased access to specific types of services such as the increased delivery of immunizations, screening, case management particularly for diabetes, public health nursing, decision support tools, and direct clinical services and preventive care.

The most cost-effective use of additional Facilities appropriation funds is improved access to quality healthcare by upgrading or replacing aged healthcare facility infrastructure. AI/ANs are provided healthcare from some of the oldest hospitals/clinics in the country. Facilities appropriations increases also effectively fund the provision of water and sewer facilities to individual homes and communities and expand the Injury Prevention cooperative agreement program. Injuries are the leading killer for AI/ANs ages 1-44.

**Simpson Q14:** What kind of assessment tools does the IHS use to measure the effectiveness of its programs?

Answer: IHS measures and tracks the performance and effectiveness of its programs, both administrative and clinical, through a number of strategies and assessments. IHS is a part of the HHS Strategic Plan and uses its Agency Priorities as a strategic framework for improvement and performance measurement. IHS also has an overall agency performance management plan that provides a framework for specific, measurable performance indicators to manage the performance of its employee contributions to the IHS mission and the Agency Priorities. In terms of program performance, IHS Headquarters and Area Offices regularly conduct programmatic reviews to assess fiscal and program accountability, productivity, timeliness and adherence to policies, procedures and program direction by staff and programs. IHS regularly assesses the effectiveness of its administrative controls and programs and responds to reviews and recommendations from outside authorities such as the Government Accountability Office and the Inspector General.

IHS also conducts continuous quality improvement activities to ensure that measurable improvements in programs and services are ongoing. GPRA data and trends collected on a quarterly and annual basis provide a means for regular tracking of performance progress in a wide variety of clinical screenings, treatments, and other interventions. The Diabetes Care Audit is conducted annually for the population diagnosed with diabetes. Results of both of these tools are used to guide and enhance program services. Clinical Services require routine assessment for continuous quality and performance improvement for accreditation and patient safety purposes. All IHS facilities are accredited by the Joint Commission on Accreditation of Healthcare Organizations, Centers for Medicare and Medicaid Services, the Accreditation Association for Ambulatory Health Care or other nationally recognized accreditation body.

**Simpson Q15:** If you determine a program is ineffective how do you respond from headquarters?

Answer: If specific programs or facilities are found to have deficiencies or trend towards not meeting applicable performance measures, IHS senior leadership are responsible for implementing corrective action plans with those programs to ensure improvements within a specific time frame. If the problem relates to performance issues with individual employees, the performance management process is used to implement opportunities for improvement and progressive discipline if improvements are not achieved. Since performance improvement and quality improvement strategies are a part of IHS' daily business practices, problems with program performance can be dealt with in a timely manner to ensure no disruption of services. Regular meetings and communication with senior leadership throughout the agency allows for timely actions to address program performance issues.

### **Sequestration**

**Simpson Q16:** How much will the IHS lose under the sequester?

Answer: Under the sequester, IHS is losing \$220 million of discretionary and mandatory funding.

**Simpson Q17:** How are you prioritizing funding decreases?

Answer: The cuts will be applied proportionally across all programs, projects, and activities (PPAs) as required by law. Below the PPA level, IHS is targeting decreases at activities least likely to affect patient care to the extent possible.

**Simpson Q18:** Can you absorb the entire loss through the end of the fiscal year through restricted travel and non-essential hires?

Answer: IHS has put in place an efficient spending plan to reduce management travel, training the purchase of new and replacement office equipment, and other administrative type costs, which preserve funding for direct health care services as much as possible. IHS also has restricted hiring and discontinued contracts for temporary employees to the extent possible.

**Simpson Q19:** What constitutes essential versus non-essential staff?

Answer: The terms "essential" and "non-essential" staff are specific terminology used in the case of a lapse of appropriations causing a government shutdown. In the event of a lapse in appropriations, IHS would follow HHS, OMB and OPM guidance to develop a contingency staffing plan in order to continue the provision of direct medical services. Sequestration is a reduction in the overall appropriation, so these terms do not apply. In the case of sequestration, decisions on staffing are based on protecting and supporting the core mission of IHS, which is maintaining direct health care services and necessary staff, equipment, supplies, and facilities that support that function, as well as providing high priority purchased care.

**Simpson Q20:** What instructions have you given to the Tribes that have 638 contracts, and what advice are you giving them on how to deal with funding decreases?

Answer: Tribes with '638 contract and compacts received a letter indicating their final funding base levels for FY 2013 after reductions for the 0.2% rescission and sequestration. While IHS has described the general steps it is taking to absorb the cuts, Tribal managed programs have the authority to make their own decisions about how to absorb these cuts to their funding.

**Simpson Q21:** Does the OMB determination that IHS discretionary programs were not exempt from sequestration effectively constitute a Statement of Administration Position, or, if not, will the Administration propose a legislative change?

Answer: IHS discretionary programs are not exempt from the Joint Committee sequester because the law states that the sequester be carried out under section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA). Section 251A includes no exemption for IHS. The President has laid out a specific plan in the FY 2014 Budget to replace sequestration and reduce the deficit in a balanced way by cutting spending, reforming entitlements, and undertaking tax reform that reduces tax benefits for the wealthiest Americans. He is ready to work with Congress to further reduce deficits while continuing to make critical investments.

#### **Contract Health Services**

Your written testimony states that the Catastrophic Health Emergency Fund (CHEF) used to run out of funding in June but now is able to fund cases through August thanks to increased funding.

**Simpson Q22:** What do you do about catastrophic health emergencies in September?

Answer: The CHEF fund provides reimbursement to offset high cost cases (after meeting a threshold) at the local CHS program level. These high cost cases were already paid for by the local facility with CHS funding. When CHEF funds are depleted the CHS program must absorb the entire cost of the high cost case, which limits their ability to fund additional CHS care. High cost cases can have a significant impact on local CHS program budgets, especially those smaller CHS programs with limited budgets. In FY 2012 CHEF was funded at \$51.5 million, which funded 1,879 high cost cases. However, there were 641 high cost cases submitted that were not reimbursed by CHEF at a total cost of \$13,664,304.

**Simpson Q23:** We've all heard the saying, "Don't get sick after June". Is there any truth to that anymore?

Answer: With increases in CHEF and CHS funding, IHS and Tribally-managed CHS programs are able to fund more than emergent and urgent care. Many of the CHS programs are now able to fund lower priority cases and focus more on prevention. IHS-managed CHS Programs are to maintain a weekly spending plan by prorating their allocations by the appropriate amount of weeks for each allocation to assure funds are available throughout the year to cover a certain level of care. In past fiscal years, CHEF funds were depleted by May or June, but are now available to reimburse cases through August.

**Simpson Q24:** How is CHS money distributed?

Answer: CHS funds are distributed based on the previous year's allocation (base funds), with any inflation and population growth funding increases distributed against the base budget. When

new funds are added to the CHS appropriations they are distributed using a formula developed by the IHS and Tribes through the Tribal consultation process. The formula for new funds has three basic factors multiplied together: active user population, cost of purchasing health care services within a geographic area, and access to the nearest IHS/Tribal inpatient health care facility.

**Simpson Q25:** What types of procedures is CHS money spent on?

Answer: CHS funds are spent based on a medical priority system when funding is limited and about half of CHS programs are only able to provide priority one care which is emergent and urgent care. These diagnostic or therapeutic services are necessary to prevent the immediate death or serious impairment of the health of the individual. Some CHS programs are able to fund all priority one care and some level two preventive services which are treatment of acute conditions, and care primarily intended for symptomatic relief or chronic maintenance. At some of the larger CHS programs, many of the services listed as Priority Level II are available at IHS direct care facilities. Smaller health care facilities with limited direct health care services have to purchase more care from the private sector depending on available funds. A small number of IHS managed CHS programs report being able to provide some inpatient and outpatient level three primary and secondary care services involving the treatment of prevalent illnesses or conditions with significant impact on morbidity and mortality. As a result of recent increases in CHS funding, almost half of federal CHS programs are able to fund referrals at priority levels beyond medical priority 1.

**Simpson Q26:** Do recipients report back how they spent the money?

Answer: Patients do not receive CHS funding directly. IHS-managed CHS programs document their expenditures on referrals and services purchased in the private sector, in their local records and through the IHS financial systems. IHS can obtain information on CHS services purchased from the private sector from the Fiscal Intermediary (FI) for the IHS managed CHS programs and for some Tribally-managed CHS programs that choose to use the FI system.

**Simpson Q27:** Some Tribes get only CHS money from IHS. Do they use the money differently from IHS facilities?

Answer: A few Tribes only receive CHS funding from IHS, which usually is the case of a small Tribe that already has self-insurance or for whom the annual appropriation is not enough to fund and staff a clinic or hospital. These Tribes use CHS funding to supplement Tribal resources for health care.

**Simpson Q28:** What is the effect of the sequester on CHS funding?

Answer: The FY 2013 sequester reduces the CHS budget by \$41,979,175. This will reduce the number of CHS services purchased from the private sector by approximately 150 inpatient admissions, 5,700 outpatient visits, and 200 one-way patient travel trips.

**Simpson Q29:** What are the projected costs for CHS two, five, and 10 years out?

Answer: Using the current inflation rate of 3.6 percent, and the base amount of funding requested in FY 2014, the projected costs for CHS in FY 2016 are \$942,970,000. Beyond



FY 2016, it is difficult to project CHS costs without knowing the inflation rate for these future years. Unfunded costs, i.e., for denied and deferred services are not included in this projection, which totaled \$973 million in FY 2012.

#### **Staff Vacancies**

**Simpson Q30:** What is the current staff vacancy rate, and how many of those are senior level personnel?

Answer: The following are the vacancy rates for IHS Health professions: Dentist 10 percent; Nurse 15 percent; Physician 20 percent; Optometrist 12 percent; Pharmacist 6 percent; Physician Assistant 30 percent; and Advanced Practice Nurse 18 percent.

The current SES level vacancies include the following:

1. Chief Executive Officer, Gallup Indian Medical Center ES-670
2. Director, Aberdeen Area ES-340
3. Director, Tucson Area ES-340
4. Chief Information Officer, Office of Information Technology ES-340

**Simpson Q31:** Is this an unusually high number?

Answer: No. A majority of IHS positions are often located in remote or rural areas. IHS is continually challenged to attract sufficiently qualified candidates for current vacancies nationwide despite extensive recruiting efforts. Retention of program staff also is adversely impacted by the remoteness and isolation of these health programs and facilities. IHS continues to compete with the private sector that offers higher compensated employment choices throughout the nation. IHS also uses a number of recruitment and retention strategies such as the IHS loan repayment and scholarship programs, and our partnership with HRSA and the National Health Service Corps has enabled more health professionals to work in our facilities to help address staffing needs.

There is no significant change in trends for staffing related to senior level positions. For senior level positions, employees may remain in the positions over an extended period of time. At other times, a number of these positions become vacant as a result of retirements, resignations, moves to the private sector, or hires directly by the Tribes or Tribal organizations.

**Simpson Q32:** How many of these positions have you advertised?

Answer: Applications for the following senior level positions have been advertised and the applications are under review by IHS:

1. Chief Executive Officer, Gallup Indian Medical Center ES-670.
2. Director Aberdeen Area ES-340.
3. Director Tucson Area ES-340.
4. Chief Information Officer, Office of Information Technology ES-340.

Clinical positions are regularly advertised on the IHS website.

**Simpson Q33:** How have the vacancies impacted your ability to move forward with programs?

Answer: Vacancies at the senior level of Headquarters and Area Offices do not necessarily impact the direct health care programs. When a vacancy occurs, an existing IHS employee is named as “acting” who has a thorough familiarity with the programs and possesses the ability and knowledge to ensure continuation of operations. For these senior level positions, the acting may be a Deputy-level Director and is given full authority to make decisions while the recruitment, selection, and appointment process proceeds. IHS continues to move forward with its programs and reform efforts and fills critical positions as needed to ensure continued progress. Clinical vacancies impact access to direct health care, but our facilities use a number of strategies to ensure coverage of needed services, including temporary or contract providers while recruitment efforts are conducted.

### **Urban Indian Health**

Executive Director Barnett testified that 71 percent of American Indians and Alaska Natives live in cities but that the only line item benefitting them—the Urban Indian Health line item—is less than 1 percent of the IHS budget.

**Simpson Q34:** Is that accurate?

Answer: The Urban Indian Health line item is 1 percent of the IHS Appropriations. However, Urban Indian Health programs also receive funding from other line items in the IHS Appropriations, i.e., Diabetes, Mental Health and Alcohol and Substance Abuse. They may also receive reimbursement from other Federal program and private payers as well.

**Simpson Q35:** Has this line item been overlooked, and, if so, why?

Answer: No, the Urban Indian health line item has not been overlooked. The IHS was originally developed as a primary care system located on or near Indian reservations, so it is mainly focused on providing health care in rural areas.

**Simpson Q36:** Do American Indians and Alaska Natives living in urban areas have access to other healthcare options that those living in rural areas do not have?

Answer: Yes. Some of those options include community health centers, urgent care, long term care and hospitals. However, these other options often do not provide culturally appropriate care, so the IHS funded urban Indian health programs provide a unique source of culturally appropriate health care for urban Indians.

**Simpson Q37:** While I’m sure you wouldn’t advocate diverting base funding from other areas in the IHS budget in order to increase the Urban Indian Health line item, is it fair to say that this subcommittee should consider concentrating any future funding increases in this area?

Answer: Funding increases for the entire Indian health system (I/T/U) should be distributed in a fair and equitable manner, in consultation with Tribes and also conferring with urban Indian organizations.

**Simpson Q38:** If the subcommittee increases funding for this line item, should the increase go to expand programs to cities that are currently underserved, or to strengthen existing programs?

Answer: Previous discussions with urban Indian health programs reveal a preference for funding increases to be used to strengthen the financial efficiency and effectiveness of currently funded organizations. However, any funding proposals would require Tribal consultation and conferring with urban Indian organizations.

**Simpson Q39:** How do you determine whether a city is underserved?

Answer: IHS would conduct a needs assessment to determine if a city is underserved. The needs assessment process involves identifying:

- (1) the extent of unmet health care needs of urban Indians in the urban center involved;
- (2) the size of the urban Indian population in the urban center involved;
- (3) the accessibility to, and utilization, of health care services (other than services provided under the Indian Health Care Improvement Act, As Amended, Title V, Urban Health Services for Urban Indians [25 USC Section 1651] by the urban Indians in the urban center involved;
- (4) the extent, if any, to which the activities in Section 1653, Contracts and Grants for the Provision of Health Care and Referral Services, (a) Requirements, would duplicate (A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to Title 25 USC Section 1651, or (B) any project funded under Title 25 USC Section 1651;
- (5) the capability of an urban Indian organization to perform the activities set forth in Section 1653(a) Requirements and to enter into a contract with the HHS or to meet the requirements for receiving a grant under Section 1653(a) Requirements.
- (6) the satisfactory performance and successful completion of an urban Indian organization of other contracts with HHS under Title 25 USC Section 1651,
- (7) the appropriateness and likely effectiveness of conducting the activities set forth in Section 1653, Contracts and Grants for the Provision of Health Care and Referral Services in an urban center, and
- (8) the extent of existing or likely future participation in the activities set forth in Section 1653(a) by appropriate health and health-related Federal, State, local, and other agencies.

**Simpson Q40:** What kinds of additional services could urban Indian health programs (UIHPs) provide if they had access to 100% Federal Medical Assistance Percentage (FMAP)?

Answer: Since the State would not have to reimburse IHS facilities for services, 100% FMAP may encourage States to be more flexible and creative in working with Indian health programs to address health disparities in culturally appropriate ways, such as through demonstration projects, outstationing of eligibility workers and other approaches.

**Simpson Q41:** How much additional revenue could UIHPs expect to receive from Medicaid if they had 100% FMAP?

Answer: There would be no additional revenue to the urban Indian health programs, unless the State or Federal Government implemented specific demonstration projects or other changes that provided for additional revenues or resources.

**Simpson Q42:** Do Urban Indian Health Programs submit data in accordance with the Government Performance and Results Act?

Answer: Yes, all UIHPs submit GPRA data.

**Simpson Q43:** If so, is there data that shows whether or not the programs are successful in reducing health disparities for American Indians in urban centers?

Answer: Yes, some UIHPs meet and exceed some of the GPRA performance measure targets.

#### Children

**Simpson Q44:** What do you think is the greatest health threat for children in Indian country, and what should this subcommittee be doing to address it?

Answer: The greatest threat for children in Indian Country is childhood obesity. By ages 2 to 5 years, AI/AN children showed disproportionate rates of obesity (25 percent) and overweight (20 percent), as assessed and documented in the IHS Clinical Reporting System in 2008. Analysis of other race and ethnicities of the same age group show a bell shaped curve with more overweight than obese children. Childhood overweight/obesity is largely preventable and is much easier to prevent than treat. Recent studies have concluded that some risk factors for childhood obesity exist even before birth.

Also, childhood type 2 diabetes among AI/AN children occurs at a higher rate than among children of other ethnicities. One of the largest increases in diagnosed type 2 diabetes prevalence is among AI/AN adolescents aged 15–19 years – an increase of 110 percent from 1990 to 2009.

**Simpson Q45:** How should we measure progress?

Answer: IHS measures progress with a childhood obesity measure that is the percentage of children ages 2–5 years with a BMI at or above the 95<sup>th</sup> percentile, classifying the child as obese. The 2012 result was 24 percent of children in this age bracket were considered obese.

#### Teen Suicide

**Simpson Q46:** Is teen suicide a growing problem?

Answer: Suicide is a serious public health problem for youth in IHS service areas. The IHS Headquarters publication *Trends in Indian Health 2002 – 2003* reports suicide for AI/AN youth is 3 times that of the national average. Suicide is the second leading cause of death for AI/AN youth ages 15 to 24 and make up 64 percent of all suicides. When compared to other racial and

ethnic groups, AI/AN youth have more serious problems with mental health disorders related to suicide, such as anxiety, substance use disorders and depression.

**Simpson Q47:** What programs have you put in place to address it?

Answer: Suicide is a complicated public health challenge with a myriad of contributors in AI/AN communities. The IHS Suicide Prevention Initiative has provided a critical framework for addressing the tragedy of suicide. This Initiative builds on the foundation of the HHS “National Strategy for Suicide Prevention” and the 11 goals and 68 objectives to reduce suicidal behavior and its consequences, while ensuring we honor and respect AI/AN traditions and practices.

IHS has five targeted approaches for suicide prevention and intervention:

1. Assist I/T/U programs and communities in addressing suicide utilizing community level cultural approaches;
2. Identify and share information on best and promising practices;
3. Improve access to behavioral health services;
4. Strengthen and enhance IHS’ epidemiological capabilities; and
5. Promote collaboration between Tribal and Urban Indian communities with Federal, State, national, and local community agencies.

There are several suicide prevention activities occurring throughout the IHS such as: suicide prevention strategic plans, suicide prevention task forces, and providing suicide prevention training. IHS recognizes traditional knowledge, along with the role of Elders and spiritual leaders, as an integral aspect of healing, resilience, and wellness. The efforts in suicide prevention build on the strong resilience of AI/AN communities.

IHS and SAMHSA collaborate and mutually support efforts in addressing mental health and substance abuse programs throughout Indian Country. In the area of suicide, IHS and SAMHSA offer an integrated array of prevention and treatment resources for Tribes, Tribal and Urban Indian communities. IHS is also represented on the Native Aspirations Tribal Evaluation Workgroup funded by SAMHSA to help communities prevent youth violence, bullying, and suicide. IHS and SAMHSA regularly meet to coordinate suicide prevention activities in Indian Country.

IHS maintains the IHS Community Suicide Prevention Web site which provides culturally appropriate information about best and promising suicide prevention and early intervention programs and training opportunities. <http://www.ihs.gov/NonMedicalPrograms/nspn/>

In February 2012, IHS released a bullying prevention marketing campaign for AI/AN youth in partnership with the Northwest Portland Area Indian Health Board. The campaign, titled “Stand Up, Stand Strong, Together We Prevent,” features [www.stopbullying.gov](http://www.stopbullying.gov) and the suicide prevention lifeline. [http://www.npaihb.org/epicenter/project/mspi\\_prevention\\_media\\_resources/](http://www.npaihb.org/epicenter/project/mspi_prevention_media_resources/)

**Simpson Q48:** How are you measuring progress?

Answer: IHS has made substantial efforts to improve behavioral health data collection in the Resource and Patient Management System (RPMS). Behavioral health information can now be integrated with primary care and other clinical information supporting coordinated care and improved health outcomes. As increasing numbers of clinics adopt the integrated model, data will become available that may help identify opportunities for intervention in medical, behavioral health, and community settings.

IHS has developed a standardized suicide surveillance reporting tool to document incidents of suicide which is available to all providers in the RPMS health information system. The Suicide Reporting Database provides a detailed picture of suicide attempts and identifies salient factors contributing to suicide related events. Suicide intervention and prevention efforts are updated utilizing the clinical and epidemiological data captured during service delivery.

IHS GPRA measures include screening for depression in primary care settings in order to assist in identifying patients at risk for developing suicidal ideation. Tools have been selected to screen for depression, monitor response, track responses over time, and are incorporated into the IHS Electronic Health Record. IHS has consistently met or exceeded target goals for this measure.

**Simpson Q49:** Do you need more mental health providers?

Answer: There is a critical need for recruitment and retention of additional behavioral health providers and this continues to be a priority for the IHS. The Surgeon General's Report on Mental Health reveals the availability of approximately 101 AI/AN mental healthcare professionals per 100,000 AI/ANs in contrast to the 173 available per 100,000 white persons.<sup>i</sup> AI/ANs are also overrepresented among high-need populations requiring mental health services (e.g., people who are homeless, incarcerated, drug and alcohol abusers, and exposed to trauma as well as children who are in foster care).<sup>ii</sup> In addition, the Office of Minority Health reports that AI/ANs experience higher rates than all races in the following areas: serious psychological distress; feelings of sadness, hopelessness, and worthlessness; feelings of nervousness or restlessness; and suicide.<sup>iii</sup>

<sup>i</sup> US Department of Health and Human Services. The Office of Minority Health. (n.d.). *Mental Health and American Indians and Alaska Natives*. Retrieved June 18, 2010, from <http://minorityhealth.hhs.gov/templates/content.aspx?ID=6475>.

<sup>ii</sup> Substance Abuse and Mental Health Services Administration, Center for Mental Health Services. (1999). *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services.

<sup>iii</sup> Office of the Surgeon General, Substance Abuse and Mental Health Services Administration. (n.d.). *Mental Health: Culture, Race, Ethnicity - Fact Sheets*. The Surgeon General's Report. Office of the Surgeon General. Retrieved June 18, 2010, from <http://mentalhealth.samhsa.gov/crc/fact4.asp>.

**Simpson Q50:** If so, what is the best way to recruit them?

Answer: The IHS offers three financial incentive programs to recruit and retain behavioral health providers. Indian students and providers may apply for the IHS Health Professions Scholarship and both Indian and non-Indian providers may apply for the IHS Loan Repayment Program to obtain financial support in exchange for a service obligation in IHS-designated

facilities. Individuals may also apply for the American Indians into Psychology Program (INPSYCH).

The IHS Health Professions Section 104 Scholarship Program, through a competitive awards process, provides full or partial tuition support and a monthly stipend in exchange for a two- to four-year service obligation. Upon completion of the training and appropriate clinical licensure, scholars work in IHS-designated facilities located in designated health professional shortage areas.

The IHS Loan Repayment Program offers loan repayment awards for a two-year service commitment in IHS-designated facilities, with the option of additional loan repayment for continued years of service. Loan repayment recipients may work in IHS facilities, Tribal organizations, and urban Indian health programs.

The American Indians into Psychology Program (INPSYCH) is a grant program that is designed to recruit American Indian undergraduate students into psychology and recruit and train American Indian graduate students into clinical psychology to serve American Indian and Alaska Native communities. INPSYCH's goal is to raise awareness in Tribal communities about the field of psychology. The program gives stipends to undergraduate and graduate students pursuing careers in psychology, and it establishes training opportunities for psychology graduate students within Tribal communities.

#### **Dental Health**

Dr. Fields testified that it should be a goal to get IHS dental services to approach the national utilization rate of 37% for adults and 46% for children.

**Simpson Q51:** Isn't that low?

Answer: The estimated utilization rates for the U.S. population are descriptive statistics reflecting or estimating the current status for the entire U.S. population. The ADA representative suggests that IHS aim to replicate the estimated utilization rates for the U.S. population: 37 percent for adults, 46 percent for children. The true utilization rate for the U.S. population is likely significantly lower than the statistics quoted by the ADA due to self-reporting by patients via survey. The utilization rate of dental services is dependent upon both available resources and demand for care.

- Available resources: While each dental field program within IHS is different in this regard, many do not have the resources necessary to provide services for a larger number of patients.
- Demand for care: Demand for oral health care and utilization of care are closely linked to social economic strata (SES). The population assessed by the ADA to compile their estimated utilization rates exhibits a relatively high SES. Utilization and demand would be expected to be significantly lower in a subpopulation with a relatively lower SES.

There are numerous significant differences between the IHS dental care system and the U.S. private sector system of care from which the American Dental Association (ADA) drew these estimated utilization rates. Therefore, it is not a realistic comparison to set IHS goals based on

U.S. population characteristics. The primary difficulty in making the comparison is that the IHS direct care population lives primarily in rural and remote settings. The cost of travel for IHS dental patients is significantly higher than the US population leading many to not seek dental care on a routine basis.

Current annual utilization of IHS dental services is 28.8 percent. This is measured by direct data collection. This statistic does not capture those AI/ANs who seek care outside the IHS system, or at Tribal programs that choose to refrain from reporting utilization data.

**Simpson Q52:** Why don't people go to the dentist?

Answer: The reasons the U.S. population does not utilize dental services to a greater extent have been well researched. Reasons commonly cited include:

- Perceived high cost of care
- Fear of dental procedures, especially those involving needles
- Lack of dental insurance
- Oral health, especially for those in lower social economic strata, is a relatively low priority. Conversely, valuing health services in general has been shown to be associated with relatively higher educational attainment, higher income, and higher-paying, more challenging employment.

AI/ANs face additional barriers in addition to the perceptions listed above for the U.S. population:

- Geographic isolation: it is simply more difficult to arrange transport to the nearest available dental facility.
- Cost of transportation: many individuals do not own cars, or do not have funds available for gasoline necessary to travel relatively long distances to the nearest dental facility.
- AI/ANs as a group are of relatively low social economic strata.

**Simpson Q53:** Why do you think that the tooth decay rate for American Indian children is 300 times higher than the rest of the population?

Answer: As noted above, the AI/AN population tends to be located in isolated geographic areas and tends to be of a relatively lower social economic strata (that is, relatively lower educational levels, lower income levels, and higher unemployment rates. They have multiple other health challenges and, therefore, likely have lower rates of accessing care in general.

Only 20.2 percent of Tribal water systems are fluoridated, and recently, researchers have generated findings that suggest AI/ANs may have significantly higher concentrations of bacteria known to cause decay. AI/ANs have far less access to care, especially in relatively remote or isolated locales, than the average U.S. citizen. All of these factors contribute to an increased prevalence of tooth decay, and an increased severity of decay.

**Simpson Q54:** Do you think that the Early Caries in Children campaign will have an effect? If so, why, and how will you measure it?



Answer: The IHS Early Childhood Caries (ECC) Collaborative is aimed at reducing the prevalence of tooth decay in 0-5 year-old children. Tooth decay in young children, called early childhood caries, has myriad social and economic impacts including lower self-esteem, missed school days and poorer school performances, and poorer nutrition.

IHS believes it will have at least a modest or realistic positive effect, as many interventions known to be effective in other population groups are being utilized.

A baseline assessment of oral health status was done in 2010, a nationwide survey of almost 8,500 zero-5 year-old AI/AN children was conducted to provide baseline data for the ECC Collaborative. This was the largest nationwide survey ever in this demographic. In 2015 we will measure the effect of the ECC initiative by measuring any improvements compared to this baseline assessment. Upon the conclusion of the 5-year ECC project, a follow-up nationwide survey will be conducted to assess the effectiveness and impact of this program. Measurements include the tooth decay rate, dental utilization by this age group, and the number of preventive services, including sealants, fluoride varnish applications, and preventive fillings provided across the 322 IHS dental programs.

### **Emerging Issues**

**Simpson Q55:** Have you seen new diseases or health concerns emerge in the last 5 years that you are unable to address?

Answer: The rise in chronic diseases, including obesity, diabetes, cardiovascular disease, and hypertension are conditions IHS can address with quality health care but which are impacted by factors outside the health care system, so IHS is only a part of the solution. Our partnership with Tribes is critical to addressing some of the underlying factors in communities that are contributing to these growing conditions, which are also increasing in the United States. Solutions such as access to healthier food options, safe places for physical activity, reductions in unemployment and crime and better support for schools are solutions needed in the long term but are complex community issues that require Tribal involvement and partnerships.

As with the rest of the nation, healthcare-associated infections are difficult to prevent, treat, and monitor, especially when antibiotic resistant bacteria are involved. Staff training and education in hand hygiene, appropriate protective gear, patient education, routine monitoring of sterilization procedures, laboratory and surgical practices, infection control, sanitation programs, and other approaches are part of the IHS quality improvement and accreditation efforts. IHS is attempting to improve its ability to prevent and respond to healthcare associated infections through collaboration with the Partnership for Patients initiative, development of metrics, and the IHS Hospital Consortium that aims to further standardize credentialing and privileging, policies, medical staff bylaws, and patient safety protocols within all IHS managed hospitals.

Questions from Mr. Valadao**Catastrophic Health Emergency Fund**

Dr. Roubideaux, unfortunately, we have all heard one time or another the saying from Indian Country “don’t get sick after June.” This committee under the leadership of Chairman Simpson and Ranking Member Moran has worked to address shortfalls in Indian Health Services and hopefully put an end to the veracity of that saying. In your prepared statement, you note that because of increased federal support, the IHS Catastrophic Health Emergency Fund (CHEF) now is able to fund cases through August. It’s my understanding the new fiscal year does not begin until Oct. 1. I’m afraid to ask,

**Valadao Q1:** What happens to individuals that need to draw on the CHEF between August and the beginning of the new fiscal year?

Answer: The CHEF fund is a part of the Contract Health Service (CHS) line item funding, used for care purchased in, or referred to, the private sector which cannot otherwise be provided by IHS. The CHEF fund provides reimbursement to facilities for high cost cases (after meeting a threshold) to offset the high cost of the case on CHS funds at the local CHS program level. Therefore, the cost of care for the individual has already been paid by the facility. CHEF is essentially a fund where facilities can request reimbursement for charges related to care associated with unusually high costs. When CHEF funds are depleted the local CHS program absorbs the cost of the high cost case which then limits their ability to fund additional CHS care. High cost cases can be a real burden especially on smaller CHS programs that have limited CHS budgets. Facilities must prioritize funding referrals using a medical priority system that funds the most urgent referrals first. If a facility is only funding medical priority 1, life or limb, referrals due to funding limitations, getting a high cost case reimbursed by the CHEF funding frees up CHS funding to fund other referrals. This can be the difference between either funding all priority I cases or not being able to fund all priority I cases. In FY 2012 CHEF was funded at \$51.5 million and reimbursed 1,879 high cost cases; however there were 641 high cost cases submitted that were not reimbursed by CHEF at a total cost of \$13,664,304.

The “don’t get sick after June” phrase used by Tribal advocates actually was in reference to the overall CHS funding not being enough to fund all referrals, and past management practices that funded referrals one by one until the funding ran out, which was usually mid-year. Now, IHS facilities better manage CHS funding throughout the year to ensure that priority referrals can still be paid for towards the end of the year. CHS still results in denied and deferred care; hence, the President’s budget request for an increase for FY 2014. As stated during the hearing, the total amount of denied and deferred care for CHS in FY 2012 was \$973 million.

**Valadao Q2:** What can be done by IHS and Congress to ensure the CHEF is able to provide for Native Americans throughout the fiscal year?

Answer: Based on FY 2012 data, to have fully funded the CHEF program in FY 2012, it would have required an additional \$13,664,304 for a total CHEF budget of \$64,664,304. In addition, once the CHEF budget is depleted at the end of the year many programs do not submit CHEF cases - so not all unfunded CHEF cases are reported.

To meet the unmet need of the overall CHS program would require an additional \$973,531,397 in FY 2013 for a total CHS budget of \$1,817,106,397.

**Personal Property**

Dr. Roubideaux, your statement notes the Service has made an effort from the national to the local level to better account for its personal property and hold individuals accountable.

**Valadao Q3:** Has the Service begun to realize budgetary savings from these new practices?

Answer: IHS's efforts to strengthen personal property management have resulted in improvements in accountability, accounting, and reporting of personal property. Most of the IHS' previously reported "missing" property was eventually found either not to be missing, or represented undocumented disposals of old, unusable equipment. Therefore, there was no significant cost associated with this property. The improvements IHS has made in this respect are better documentation of disposals, and reductions in shortages by improving personal accountability on hand receipts, which employees sign for all equipment in their possession. IHS has not identified budgetary savings from these new practices. However, if an individual loses personal property, such as a laptop, they are required to reimburse the government for its cost.

**Valadao Q4:** If so, how much?

Answer: IHS has not identified savings per se, but is confident that resources are being spent more efficiently and effectively on personal property since the agency is more accountable for tracking it. Since the new accountability processes were put in place, loss of personal property has been a rare occurrence, and there have been instances since the new processes were put into effect where employees who lost personal property have been required to reimburse the government for the cost of the equipment.

**Valadao Q5:** If not, when does the Service expect to see savings?

Answer: IHS expected the outcome to be more efficient and effective use of resources and that has been the case.

**Valadao Q6:** How does the Service plan to reallocate these savings?

Answer: IHS does not expect to realize savings requiring reallocation as result of these new practices.

### Domestic Violence

Dr. Roubideaux, your statement indicates that because of the IHS Domestic Violence Prevention Initiative, 344 Sexual Assault Forensic Examination (SAFE) kits have been submitted by the IHS to law enforcement. While I applaud the work the Service has done on this front, I can't help but feel that 344 SAFE kits seems low when compared to the statistic that 1 in 3 native women will be sexually assaulted in their lifetime.

**Valadao Q7:** How does your statistic of 344 SAFE kits submitted compare to the rate of sexual assaults in Indian Country?

Answer: The statistic of 344 SAFE kits cannot be appropriately compared to the rate of sexual assaults in all of Indian Country. The data represents the success of 8 hospital-based IHS Domestic Violence Prevention Initiative (DVPI) funded Sexual Assault Examiner – Sexual Assault Response Team (SAE-SART) programs. Due to the lack of a current diagnosis or procedure code, this number does not reflect the number of SAFE kits collected in the remaining IHS and Tribal facilities. If the patient receives care at a non-IHS facility, that data is not available to IHS. Moreover, not all victims of sexual assault seek health care services. While IHS data may represent a section of the population seeking health care services, it is not an accurate depiction of the rate of sexual assault in Indian Country.

**Valadao Q8:** If 344 is low by comparison, how does the Service intend to increase the number of SAFE kits it submits to law enforcement?

Answer: As previously stated, the DVPI 344 SAFE kits statistic cannot be directly compared to the rate of sexual assaults in all of Indian Country. However, the IHS Sexual Assault Policy does outline the requirements for the collection and submission of evidence to law enforcement. The policy applies to all IHS managed hospitals, outpatient clinics, and health stations. The implementation of the policy should ensure more consistent and uniform clinical practice.

In 2012, the IHS incorporated revisions to the IHS Sexual Assault Policy to improve the uniform clinical care guidelines; and expand policy requirements to outpatient clinics and health stations for patients who have been sexually assaulted. The IHS also began developing an Implementation and Monitoring Plan for the IHS Sexual Assault Policy to help ensure that IHS managed facilities are in compliance with policy requirements.

In support of the policy the IHS offered seven regional SART trainings, seven regional Sexual Assault Examiner (SAE) trainings, and four clinical skills trainings to providers from I/T/U health care facilities. All trainings were well attended.

Sexual assault forensic equipment, including SAFE kits, was offered to all 45 IHS and Tribal hospitals and equipment distribution is currently in progress.

In 2013, the IHS will continue to offer SAE and clinical skills training. Forensic equipment will continue to be purchased for IHS and Tribal hospitals and clinics. Technical assistance will be provided to IHS and Tribal hospitals and clinics for policy development, revisions, and program implementation. A second national IHS SANE-SART Coordinator will be hired to assist in providing comprehensive domestic and sexual violence response efforts.

**Valadao Q9:** What challenges does the Service face in increasing the number of SAFE kits it offers?

Answer: Challenges to the overall delivery of SAE services are being addressed through the IHS Sexual Assault Policy, the implementation and monitoring plan, training efforts, and the distribution of forensic equipment through the Domestic Violence Prevention Initiative.



**U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Indian Health  
March 19, 2013**

**Questions the National Indian Health Board for the Record**

Questions from Chairman Simpson

**Health Disparities**

As the National Indian Health Board mentioned in the opening statement, the 2010 goal of providing the resources, processes, and structure to eradicate the health disparities between American Indians and Alaska Natives, and the general U.S. population. NIHB realizes that responsibility doesn't entirely fall on this subcommittee's shoulders, but a significant portion of it does. And so we would like to talk about what we can be doing to help ensure that this goal doesn't become yet another in a long line of broken promises. And so, let's start with the basics:

**Simpson Q1:** What are the disparities that the federal government should be tracking?

**NIHB A1:** In order to fully understand the issues, we must first have data to support it. The federal government, through funding to Indian Health Service (IHS), Centers for Disease Control and Prevention (CDC), or state health agencies, should be tracking all health indicators for American Indian and Alaska Native (AI/AN) populations. Currently, there is limited access or credible data found through those agencies. From the 2010 "Deaths: Final Data," report, there were only 74 selected causes of death related to AI/AN specific data compared to 113 causes of death for all other races. However as a part of all CDC data, most AI/AN specific data comes with this assumption offered by CDC under their Technical Notes: Data for specified races other than white and black should be interpreted with caution because of inconsistencies between reporting race on death certificates and on census and surveys.

The Indian Health Service has funding to produce "Trends in Indian Health" document showing the health disparity status over time. The last release of this information was 2003-2004.

Another key factor in answering this question is how the federal government tracks these disparities. The federal government supplies state and local government funding to carry out assessments, however many of these states and local government do not include the Tribe located in their area. This key breakdown in funding hinders Tribes and the federal government in tracking and analyzing health disparities in Tribal communities.

In addition, the thirteen Tribal Epi-Centers around the nation need assistance building capacity to collect and analyze health data and conduct Tribal health surveillance. The Indian Health Care Improvement Act requires State health departments to share data with the Tribal Epi-Centers, including Tribal data, yet Tribes report facing significant barriers to receiving this information.

**Simpson Q2:** Is the government tracking them?

**NIHB A2:** The government does track some indicators through the United States Census, CDC, IHS, and other key national surveys. However, most of the data is found to be non-generalizable for AI/AN populations. Also, there is an issue of credibility when the method of surveying chosen for most of the processes are not an acceptable form of surveying among Tribes.

**Simpson Q3:** Are the disparities shrinking?

**NIHB A3:** Yes. The health status of AI/ANs has improved since 1972-1974 and proves that with an increase in resources, funding and other support, corrective action of health inequities is possible. Some of the positive changes are evident from the lower mortality rates. For example, tuberculosis mortality has declined 84 percent and deaths due to unintentional injuries have declined 58 percent. Additional reduced age-adjusted mortality rates include: homicide (55 percent), cerebrovascular (49 percent), alcohol-induced (44 percent), and heart disease (32 percent). (Indian Health Service. Division of Program Statistics, "Trends in Indian Health," 2002-2003 edition.)

**Simpson Q4:** If so, have the additional funding resources provided by this subcommittee helped?

**NIHB A4:** We do not have enough information to answer this question fully; however, it is our belief that it has. With additional time, we would be able to answer this question more fully.

In regards to the Special Diabetes Program for Indians, the program continues to save millions of taxpayer dollars through preventative measures that reduce the numbers of AI/AN in need of dialysis (Medicaid statistics indicate that dialysis for one patient per year costs \$90,000) it has been very beneficial and a premiere US appropriations funded program. This is saving many AI/AN lives, as well.

**Simpson Q5:** Does the IHS have a strategic plan that sets as its fundamental goal the eradication of health disparities between American Indians and Alaska Natives, and the general U.S. population? If not, should they?

**NIHB A5:** IHS follows the nationwide strategy for eradication of health disparities as presented in the "Healthy People 2020" report. Although the goals are the same for IHS as they are for any other US health agency, the status of AI/ANs in many areas is markedly lower. Even though the US health system



has seen improvements, AI/AN communities continue to struggle with health issues that other communities have long eradicated or greatly reduced. One could assume that with sustained, focused, community driven prevention and support, AI/AN communities could also improve their health status.

In the U.S. House of Representatives report accompanying the FY 2013 Appropriations bill, we encouraged IHS to reinstate health research and monitoring of trends, including updating the “Trends in Indian Health and Regional Difference in Indian Health” report.

**Simpson Q6:** Are efforts underway to get this going again?

**NIHB A6:** NIHB has contacted IHS and they have indicated that they are working on a current version of the “Trends in Indian Health” report. This will be released once all the approvals are verified.

**Simpson Q7:** Monitoring of status and trends typically falls by the wayside in many programs when budgets get tight. But without this effort by the IHS, how are we ever going to measure our progress towards eradicating these health disparities?

**NIHB A7:** Monitoring of status and trends typically falls by the wayside in many programs when budgets get tight. But without this effort by the IHS, how are we ever going to measure our progress toward eradicating these health disparities? There must be a comprehensive response to the lack of data on health disparities in Indian Country. We need to focus more attention on understanding the issues, so that Tribes can empower themselves to find solutions. Some of the solutions to this issue include:

- Support for Tribal Epidemiology Centers to expand their work under the current funding from CDC and other sources. This will allow Tribes to get timely information on their population’s health
- Enforce IHClA data-sharing requirement for States
- Increase capacity of Epi-Centers to do research in AI/AN health populations
- Build capacity for Tribal “IRBs”
- Increase the numbers of AI/ANs qualified to conduct epidemiological research

**Simpson Q8:** If this subcommittee continues to fund the Indian Health Service at roughly the same rates of increase as it has over the past dozen years or so, will this country ever reach its stated goal of eradicating these health disparities as I mentioned in my opening statement?

**NIHB A8:** The increased funding from this subcommittee has certainly put Indian Country on the path to eradicating the many health disparities that persist in Tribal communities. Between 1996 and 2005, overall death rates for AI/AN people have declined by 11 percent, including 15 percent from diabetes, 29 percent from diseases of the heart, and 30 percent from cerebrovascular disease.

**Simpson Q9:** What do you attribute these improvements to?

**NIHB A9:** The recent increases of funding to IHS have resulted in the biggest marked drop in health disparities in the last 30 years. There has also been more Tribal support for federal programs occurring throughout Indian Country. This support has allowed partnerships and the sharing of information to occur. Increased financial support of Congress for both the direct provision of health care, public health, outreach and education and related health care system needs will see every Tribe improve the health of their communities.

**Simpson Q10:** Did the IHS institute any special or focused programs to bring about these improvements?

**NIHB A10:** IHS has continually sought to deliver the best health care services with the level of funding provided. In recent years, IHS has become more involved in public-private partnerships and has increased its focus on public health and prevention. The increase in public health funding has enhanced the number of Tribes interested in working with IHS. This needed funding helps to promote health and decrease disease through numerous programs run by IHS clinics, Tribal public health departments, Tribal Health Departments, Urban Indian Programs, etc. These programs have helped to reduce AI/AN health disparities with support from IHS.

#### **Funding and Program Performance**

As I mentioned in my opening statement, appropriations for the IHS increased from \$2.4 billion in fiscal year 2000 to just under \$4.4 billion in fiscal year 2012.

**Simpson Q11:** Where has the IHS invested the additional \$2 billion and why?

Over the past decade, the additional funding has been spread across every line item of the IHS budget but the true return of this investment is unknown. Indeed, these increases have led to serving more Indian beneficiaries and providing more services. For example, in 2005, the IHS provided personal health care services to more than 1.4 million AI/ANs. Today, IHS serves 2.1 million AI/ANs. Since FY 2008, the IHS budget has increased by 29% with line items such as contract health services, contract support costs, and health care facilities construction receiving the highest percentage increases. This translates to more specialty care services, support for Tribal programs and more facilities for providing care. However, if you apply the population growth of IHS beneficiaries and inflation rates (both medical and non-medical) over this period, this reduces the true scale of the \$2 billion increased into the IHS. For example, the FY 2013 President's Budget included a 1.5% non-medical inflation rate and a

3.6% medical inflation rate. Yet, the actual inflation rate for different components of the IHS health care delivery system is much greater. As a component of the Consumer Price Index (CPI), inpatient hospital care is currently at 4.1% and outpatient hospital care is at 5.6%. The true rates of medical and non-medical inflation should be applied across the line items in developing the IHS budget. Otherwise, the projections developed underestimate the true level of funding needed to maintain current services.

**Simpson Q12:** How did IHS determine priorities for the funding?

**NIHB A12:** Each year, IHS receives input from Tribes on the budget priorities as a result of a budget formulation and consultation process that involves IHS, Indian health program representatives and providers from the local to the national level. Over a year and half before the President's Budget is released for a specific fiscal year, the budget formulation process begins at the local level, where budget priorities are established based on the health priorities of the local community. The Tribal leadership and program staff from each of the 12 IHS Areas develop and submit budget recommendations for an agency budget request for a given fiscal year. These recommendations are consolidated into a national set of budget and health priorities by a national Tribal budget formulation workgroup. Members of this workgroup include Tribal representatives from each of the 12 IHS Areas. The representatives of this workgroup present these Tribal priorities to HHS. The Workgroup provides input and guidance to the IHS Headquarters budget formulation team throughout the remainder of the budget formulation cycle for that fiscal year. We understand that the Tribal priorities are instrumental in informing senior officials of other HHS agencies of the health needs of the AI/AN population so that they have the opportunity to include those priorities in their individual budget requests to HHS.

**Simpson Q13:** What has proven to be the most cost effective use of the additional funds?

**NIHB A13:** We would be hard pressed to identify one area that is the most cost-effective use of the recent additional funding as the Indian health care system has been completely underfunded for years. Each additional dollar brings our People one step closer to moving toward experiencing an Indian Health care system fully capable serving their health care needs. As noted in the written testimony, additional data is needed to help analyze both the need and impact of recent additional funds to IHS. Tribes need accurate, timely, and accessible data to appropriately assess the health care needs for AI/ANs. Tribes need this data to identify priority health needs, to plan health care delivery and public health programs, to implement those plans, and evaluate health activities. With this foundational knowledge, Tribes can make the best possible decisions for allocation of scarce financial resources.

**Simpson Q14:** What kind of assessment tools does the IHS use to measure the effectiveness of its programs?

**NIHB 14:** IHS reports on the quality of care it provides patients for the Government Performance and Results Act (GPRA) which measures include clinical, such as various diabetes measures, cancer screening and others; Office of Information Technology (OIT)-related, such as increasing sites using certain software; quality of care, such as % of accredited hospitals; prevention, such as immunizations and injury prevention; and infrastructure, such as access to or improved sanitation facilities. As noted in our testimony, the IHS was one of only several federal agencies, working in partnership with Tribes, to meet 100% of their GPRA performance measures in 2011. IHS continues to work to meet performance targets through innovative programs, such as the Improving Patient Care Initiative (IPCI), which is a patient-centered medical home initiative that is designed to improve the coordination and quality of care for patients. In addition, Tribes have expanded IPCI to 100 sites in the Indian health system.

**Simpson Q15:** If IHS determines a program is ineffective how do they respond from headquarters?

**NIHB Q15:** We assume that if a program is deemed ineffective that funding would be discontinued. However, we have seen in recent years that program funding has been cut due to limited funding and not based on effectiveness. These cuts have been made to the small grant programs which included funding for long term care demonstration programs and health promotion and disease prevention projects. In addition, the IHS would undertake a Tribal consultation process to ascertain the Tribes' perspective on the ineffectiveness of the program in question.

#### **Sequestration**

**Simpson Q16:** How much will the IHS lose under the sequester?

**NIHB Q16:** Under the sequester, the Indian Health Service is subject to a 5.1% automatic cut to both the Indian Health Services and Facilities budget accounts and a 2% cut to the Indian Health Service Special Diabetes Program for Indians (SDPI) mandatory budget account. This translates into a total budget reduction of \$220 million for the Indian Health Service under the sequester beginning on March 1, 2013. The Indian Health Service is also subject to a FY 2013 rescission of 0.2% rescission from the recently-enacted Consolidated and Further Continuing Appropriations Act of 2013 (P.L. 113-6), translating into an \$8 million reduction for the Indian Health Service FY 2013 budget. Last month, the White House projected that the IHS and Tribal hospitals and clinics would be forced to provide 3,000 fewer inpatient admissions and 804,000 fewer outpatient visits because of the IHS budget reduction under sequestration.

**Simpson Q17:** How is IHS prioritizing funding decreases?

**NIHB Q17:** At this time, IHS is still evaluating the specific program and Area impacts of sequestration.

**Simpson Q18:** Can IHS absorb the entire loss through the end of the fiscal year through restricted travel and non-essential hires?

**NIHB Q18:** No. The Alaska Native Tribal Health Consortium has already announced that it will discontinue its Community Health Aid training program as a result of the sequester. The \$220 million reduction through the end of the fiscal year will come out of hundreds of Tribally operated programs – not just those directly operated by IHS. Nearly half of these cuts will be taken directly out of the Tribes’ who serve their people. Additionally, the question does not take into account the additional 0.2% budget rescission that the Indian Health Service will be subject to under the recently-passed Continuing Resolution for FY 2013. These devastating funding reductions will have harmful effects on the health care delivery and access care for all federally recognized American Indian and Alaska Native Tribes.

**Simpson Q19:** What constitutes essential versus non-essential staff?

**NIHB A19:** “Essential” employees are those performing duties vital to national defense, public health, and safety, or other crucial operations. Essential employees are indispensable to the emergency service function of his or her employing agency or department and is required to assist the department or agency in meeting its operational needs. “Nonessential” employees are employees who are not necessary to the emergency service function of his or her employing agency or department and is not required to report to work.

**Simpson Q20:** What instructions has IHS given to the tribes that have 638 contracts, and what advice is IHS giving them on how to deal with funding decreases?

**NIHB Q20:** At this time, IHS has asked that all funding decrease inquiries from Tribes that have 638 contracts be directed to their respective IHS Area Director or to the IHS Director’s Office. As detailed guidance and advice on how to deal with the funding decreases will likely be issued by the IHS in the near future, the IHS continues to issue e-updates to the Area Offices on the budget impact of sequestration.

#### **Contract Health Services**

Dr. Roubideaux’s written testimony states that the Catastrophic Health Emergency Fund (CHEF) used to run out of funding in June but now is able to fund cases through August thanks to increased funding.

**Simpson Q21:** What does IHS do about catastrophic health emergencies in September?

**NIHB Q21:** When CHEF funds are depleted, requests for reimbursement for expenses from high-cost medical cases are not authorized and are denied by the Indian Health Service. The CHS program does not function as an insurance program with a guaranteed benefits package. The Indian Health Service classifies CHEF case funding on a “first-come-first-served” basis. When funds are available, the CHS program will cover health care services provided to patients who meet CHS eligibility requirements.

The practical implication of these denials is seen in the increased number of amputations experienced by AI/AN diabetes patients. This is due to the denial of preventive services paid through CHS dollars, such as seeing a podiatrist for a foot wound. Rather than receiving much more economical, effective and humane care, in this instance the diabetic patient will not have his or her health care approved unless it is a matter of “Life or Limb.” Thus, amputations would be an approved service in this scenario: preventive services would not!

To maximize CHS funding, the Indian Health Service encourages the use of alternative resources such as Medicare and Medicaid to increase the purchasing power of existing CHS dollars. The IHS works closely with the Centers for Medicare & Medicaid Services (CMS) to provide outreach and education to Indian Country to ensure that eligible patients are signed up for Medicare and Medicaid. IHS also trains staff and patients to maximize the enrollment of eligible American Indians/Alaska Natives in CMS and private insurance programs.

**Simpson Q22:** We’ve all heard the saying, “Don’t get sick after June”. Is there any truth to that anymore?

**NIHB Q22: YES. Depending on the Tribe.**

While recent funding increases to the IHS budget have improved the Indian health care system, the saying “don’t get sick after June” remains a sad reality throughout Indian Country. Unfortunately, the IHS has long been plagued by woefully, inadequate funding and this has made it impossible to supply Indian people with the level of care they need and deserve.

The adverse impact of sequestration and rescission cuts to the IHS budget will continue to undermine needed health care in Tribal communities and its true cost will be measurable in lives as well as dollars. Along with the long underfunding of the IHS at a 56% level of need, inflation and population growth are additional obstacles that IHS must face in its ability to provide health care to American Indians and Alaska Natives. As the IHS must prioritize program funding decreases, the Tribal health care system will be burdened even more as existing available resources for costly urgent, emergent, and chronic care will be drained at an even greater rate.

As Indian Country faces greater funding reductions for needed health care services in FY 2013 and beyond, the saying “don’t get sick after June” remains a harsh reality for American Indian and Alaska Native healthcare.

**Simpson Q23:** How is CHS money distributed?

**NIHB Q23:** IHS uses three primary methods--base funding, annual adjustments, and program increases--to determine the allocation of CHS funds to the IHS area offices, which then distributes the funds to individual CHS programs. IHS uses these methods sequentially. Base funding is the amount of CHS funds that equal the total amount of all CHS funds that each area received in the prior fiscal year. When appropriations for CHS are higher than the amount needed for base funding, IHS uses national measurements of population growth and inflation to determine annual funding adjustments. Each Indian Health Service area office receives the same percentage increase for the annual adjustments.

Since 2001, when IHS received additional funding for what it refers to as "program increases," IHS has used the CHS Allocation Formula to determine how to allocate those program increases to the 12 area offices. According to IHS officials, IHS established the CHS Allocation Formula in part to ensure that American Indians and Alaska Natives had equitable access to specialty care through fund used to contract health care providers and services. The Allocation Formula is based on a combination of factors, including variations in the number of people using health care services, geographic differences in the costs of purchasing health care services, and access to IHS or tribally operated hospitals.

**Simpson Q24:** What types of procedures is CHS money spent on?

**NIHB Q24:** Contingent upon the level of funding, the following services and procedures (though not exhaustive), may be covered under the CHS program: Physician services; Inpatient hospital services; Outpatient medical/surgical services including emergency room services at free standing ambulatory or hospital based locations; Outpatient evaluative and crisis intervention mental health services; Medical services for substance abuse; Dental services; Diagnostic laboratory and diagnostic and therapeutic radiologic services; Podiatric services and equipment; Home health services, if within medical priorities (e.g. a cancer patient can be treated at home more cost effectively than being admitted to a hospital for treatment); and Preventive health services.

**Simpson Q25:** Do recipients report back how they spent the money?

**NIHB Q25:** Yes. CHS funding recipients are required to report back to the IHS on how they spent CHS funding. Guidelines for meeting the reporting requirements at the Area and service unit/tribal contractors' levels are designed to ensure uniformity, accuracy, and timeliness of reports to assist in effective management of the CHS program.

The Area Office monthly report shall also include a brief narrative discussing any measures implemented by the Area to balance the Area CHS budget for the entire fiscal year. The Area Director is ultimately responsible for the Area CHS program. The Area Director is required to monitor the CHS program by reviewing the spending rate of each service unit/tribal contract each month. Through the CHSO and CHS staff, immediate action to address identified problems will be undertaken.

The service unit CHS reports includes a brief narrative discussing measures implemented at the service unit to balance the service unit CHS budget for the entire fiscal year. It is the responsibility of the Service Unit Director, working with service unit staff, to manage the local CHS program. In order to be effective, the clinical staff and other service unit management staff need to be kept informed of the fund status of the service unit CHS program on a weekly basis. To address this need, each service unit must have a weekly report for use in its day to day management of the CHS program.

**Simpson Q26:** Some tribes get only CHS money from IHS. Do they use the money differently from IHS facilities?

**NIHB Q26:** Tribes that manage their own CHS programs under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) follow CHS regulations but also have the ability to redesign Tribal CHS programs to meet the specific health care needs of their Tribal members. This allows a Tribe to cover services that may not be provided at an Indian Health Service-operated facility. "638-contracting" enables Tribes to also develop and use alternative sources of funding and improve the management of their health programs.

**Simpson Q27:** What is the effect of the sequester on CHS funding?

**NIHB Q27:** While the Indian Health Service has not issued any specific guidance or information on the specific effect of the sequester on CHS funding at this time, CHS funding is included in the 5.1% sequester of the Indian Health Services nondefense, discretionary budget account, which translates into a \$195 million budget reduction.

**Simpson Q28:** What are the projected costs for CHS two, five, and 10 years out?

**NIHB Q28:** As the nation addresses ways to reduce the federal deficit over the next ten years, it is difficult at this time to estimate the projected costs for CHS. The implementation of the sequester and how that will impact specific IHS programs like CHS waits to be seen. Other obstacles to projecting future CHS costs are the rates for Medical Inflation and Non-Medical Inflation identified by the Office of Management. Both are primarily aimed at CHS costs and the Consumer Price Index. Population growth is another barrier on projecting future CHS costs because of its impact on IHS's ability to provide a continued level of care.

#### **Staff Vacancies**

**Simpson Q29:** What is the current staff vacancy rate, and how many of those are senior level personnel?

**NIHB Q29:** On the IHS.gov website, 665 open job positions are listed, which includes current vacancies and vacancies that are predicted in the next six months. On the USAjobs.gov website, 323 current job position vacancies are listed. 91 of those positions are at the GS levels 13-15.



The chart below provides further details the IHS Vacancy Rate:

Discipline	2011	2012	2013
Physician	24%	21%	20%
Nurse	17%	15%	15%
Dentist	10%	10%	10%
Optometrist	10%	10%	10%
Pharmacist	5%	6%	5%

**Simpson Q30:** Is this an unusually high number?

**NIHB Q30:** Compared to MAINSTREAM American, YES. Since last year, the percentage of job vacancies has dropped down from 24 to 21%. However, this is still a high number.

**Simpson Q31:** How many of these positions have been advertised?

**NIHB Q31:** These vacancies are advertised and listed on the USAjob.gov and IHS.gov websites.

**Simpson Q32:** How have the vacancies impacted IHS's ability to move forward with programs?

**NIHB Q32:** Vacancies definitely impact patient care. For example, in a rural clinic that only has one doctor, if that doctor leaves, then residents do not have any access to healthcare. There would not be a doctor to treat patients and recruiting another doctor to the rural clinic can be difficult because of geographic reasons. The lack of fulfillment of primary physicians, nurses, and health officials can be detrimental on AI/AN health care. As a result, improvements on healthcare are sometimes delayed. In addition, if a community does not have reliable access to the services of a physician, they often feel fortunate if they have access to an Allied Health Professional, such as a nurse practitioner or physician's assistant.

**Urban Indian Health**

Executive Director Barnett testified that 71 percent of American Indians and Alaska Natives live in cities but that the only line item benefitting them—the Urban Indian Health line item—is less than 1 percent of the IHS budget.

**Simpson Q33:** Is that accurate?

**NIHB A33:** Yes. Only 38 urban health programs, receiving approximately \$43 million, are tasked with serving the health care needs of 71% of the AI/AN population. While there are a handful of IHS grant program funding that urban programs are eligible to apply for, the vast majority of funding is appropriated to line items that urban programs cannot benefit from. This includes contract health services, contract support costs, hospitals and clinics funding, and facilities improvements.

**Simpson Q34:** Has this line item been overlooked, and, if so, why?

**NIHB Q34:** Because IHS is drastically underfunded, it is difficult to focus on urban Indian health programs when rural areas have very limited resources to healthcare. At this time, we know that many Tribal members live between urban sites and traditional Tribal reservation-based communities. We still don't know the true needs of an urban Indian health community. We understand that IHS has conducted a needs assessment of the health needs of urban Indian communities, and we look forward to seeing the full report when it is released.

**Simpson Q35:** Do American Indians and Alaska Natives living in urban areas have access to other healthcare options that those living in rural areas do not have?

**NIHB Q35:** While there are more resources in urban communities as compared to rural and remote areas for all citizens in the United States, the resources for AI/ANs living in cities are not always accessible or provide the cultural competent care necessary for AI/ANs.

**Simpson Q36:** While I'm sure you wouldn't advocate diverting base funding from other areas in the IHS budget in order to increase the Urban Indian Health line item, is it fair to say that this subcommittee should consider concentrating any future funding increases in this area?

**NIHB Q36:** NIHB stands with the Tribes in calling for full funding of the Indian Health Service. However it is critical to note that funding increases for the urban Indian health line item have not kept up with either CPI or medical inflation, and falls far behind the rate of increases provided for the rest of the IHS. All the while, the population of urban Indians continues to rise, from 61% of the total AI/AN population in 2000, to 71% in 2010.

**Children**

**Simpson Q37:** What do you think is the greatest health threat for children in Indian country, and what should this subcommittee be doing to address it?

**NIHB Q37:** Suicide is the second leading cause of death of AI/AN Youth, behind accidental injuries. The increase in Teen/Youth Suicide on reservations has increased over the last two decades. This is extremely alarming, due to the fact that the AI/AN youth population is pivotal to any efforts regarding the future health of AI/AN communities and one life lost to suicide is one too many. Congress must support the reauthorization of the Methamphetamine and Suicide Prevention Initiative that is currently finishing its last year of funding through IHS to help continue the fight against youth suicide in Indian Country.

In addition, childhood obesity among American Indian and Alaska Native children is a crisis, and, unlike children of all other racial and ethnic groups, AI/AN children's obesity rates continue to climb.

**Simpson Q38:** How should we measure progress?

**NIHB Q38:** Progress can be measured by the decrease in the number of suicides occurring in AI/AN youth, as well as measuring the increase in the number of AI/AN students graduating high school and college, employment rates of Youth, and other indicators, such as those used in mainstream American communities, that will lead to a successful and balanced member of AI/AN community.

As for obesity, a straight decline in incidence and prevalence will provide the measures for successful programs and actions.

**Teen Suicide**

**Simpson Q39:** Is teen suicide a growing problem?

**NIHB Q39:** Yes. Suicide rates are more than double for AI/ANs than the general U.S. population. AI/AN teens experience the highest rate of suicide among any population group in the US.

**Simpson Q40:** What programs has IHS put in place to address it?

**NIHB Q40:** The Methamphetamine and Suicide Prevention Initiative (MSPI) is an established program designed to combat the issue of youth suicide in AI/ANs. It's funding expires in September 2013.

**Simpson Q41:** How is IHS measuring progress?

**NIHB Q41:** The IHS is measuring progress through national outcome measures related to suicide:

Measure #2: Reduce the incidence of suicidal activities (ideations, attempts) in AI/AN MSPI sites through prevention, training, surveillance and intervention programs (number of suicide related events, number of completed suicides);

Measure #4: The proportion of youth who participate in practice or evidence-based preventions or interventions (total number of youth under 18 who are participating in MSPI prevention or intervention services);

Measure #5: Establishment of trained suicide crisis response teams (total number of “active” trained suicide crisis teams in MSPI defined service area, number of persons trained in suicide response).

Measure #6: Increase Tele-behavioral health encounters (number of tele-behavioral health encounters.)

**Simpson Q42:** Does IHS need more mental health providers?

**NIHB Q42: YES.** IHS continues to experience mental health professional shortages and high turnover rates. For this reason, many AI/ANs tend to under-utilize mental health services due the absence of a mental health provider, lack of adequately trained providers or the inability to secure a scheduled appointment in a timely manner. Also, AI/ANs tend to discontinue therapy more often than the general U.S. population, possibly due to culturally inappropriate services or lack of funding/access to services.

**Simpson Q43:** If so, what is the best way to recruit them?

**NIHB Q43: This is a complex and critical issue and the National Indian Health Board calls on the Committee to hold hearings on this issue.** Two ways to increase/improve mental health provider recruitment efforts are to offer an increased number of loan repayment or retention packages for providers who are leaving positions. Another way would be to issue a call for mental health providers through the U.S. Commissioned Corps in order to possibly have the National Public Health Workforce to help supplement the IHS system.

#### **Dental Health**

Dr. Fields testified that it should be a goal to get IHS dental services to approach the national utilization rate of 37% for adults and 46% for children.

**Simpson Q44:** Isn't that low?

Under Healthy People 2020, which is based on the Medical Expenditure Panel Survey (MEPS), the baseline for access to dental services by adults and children was within this range: 44.5% of persons aged 2 years and older had a dental visit in the past year in 2007. (Available at <http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicId=32>)

**Simpson Q45:** Why don't people go to the dentist?

**NIHB Q45:** For the Indian Health Care Delivery System and the individuals, the priority to access Dental health care is not as high as access to medical care. Basic restorative care and basic dental services, such as dental emergency care, education and prevention, are not available to most AI/AN people. The IHS dental health program is primarily limited to children. For adults, it typically provides only emergency care if anything at all. Therefore, the Dental Program is challenged to provide these limited services to an increasing population with some of the highest rates of tooth decay and gum disease in America. The Dental Program requests a three direction approach involving community education, facility construction, and recruitment. Community education covers continuous Dental Health Promotion and Disease Prevention awareness within communities along with excellent one-on-one dental patient education. The facility priority recognizes the need for quality materials applied with quality dental equipment that is housed in a quality facility and surrounded by quality housing for providers. Recruiting consumes most of the Area Dental Program's efforts because qualified dentists are in short supply nationwide (with approximately 40% of dental positions in community health centers currently vacant).

**Simpson Q46:** Why do you think that the tooth decay rate for American Indian children is 300 times higher than the rest of the population?

**NIHB Q46:** This is due to poor access to preventative care and treatment, lack of dental health education during pregnancy and lack of access to basic dental preventative services. Increased and varied methods to prevent tooth decay in children, common everywhere in American except Indian Country, are needed. These include fluoride varnishes and other sealants, aggressive educational programs (e.g. reducing consumption of sugared beverages), and the use and meaningful implementation of new protocols to prevent periodontal disease (such as use of antibiotics and home oral hygiene regimens). One core preventive dental health measure is fluoridation of Tribal water systems, an activity that requires coordination with Tribal, IHS, Environmental Protection Agency (EPA) and other governmental agencies and jurisdiction. Dentists and Dental Health Aid Therapists are needed throughout Indian Country.

**Simpson Q47:** Do you think that the Early Caries in Children campaign will have an effect? If so, why, and how will you measure it?

**NIHB Q47:** Absolutely. The Sisseton Wahpeton Oyate Tribal Council passed a Tribal Law to outlaw childhood caries in 3 years: Cavity Free in 2-0-1-3" is a three-year initiative established to achieve a public health goal set by the Tribal Council "for all Sisseton-Wahpeton children beginning kindergarten in the year 2013 to be free of tooth decay" through innovative oral health

strategies. "It takes all three to be cavity-free," utilizes the following tri-pronged approach [1] good diet and dental hygiene, [2] remineralization to strengthen the tooth enamel, and [3] a product to promote a normal, healthy balance of oral bacteria and prevent overgrowth of cavity-causing bacteria. Early caries campaigns can be highly successful.

We also believe that additional approaches can and will work, such as overcoming barriers to dental access by filling dental vacancies and expanding workforce options to include, as a part of the dental team, expanded function dental assistants, hygienists and dental health therapists. The tribally-initiated DENTEX Dental Health Aide Therapist (DHAT) program in Alaska is an example of a successful needs-based innovation. The DENTEX program trains DHATs as mid-level providers in order to enhance access to dental services in rural Alaska. DHATs focus on prevention, pain and infection relief, and basic restorative services. The World Health Organization cites 42 countries that currently use DHATs. The DHAT program in Alaska was largely modeled on the DHAT programs from New Zealand, the United Kingdom and Canada. DHATs are significantly improving access to year-round oral health care for individuals who previously might only see a dentist once each year.

#### Emerging Issues

**Simpson Q48:** Have you seen new diseases or health concerns emerge in the last 5 years that IHS is unable to address?

**NIHB Q48:** Like the rest of the Country, Indian Country is facing new areas of health issues and concerns. Some new areas of concern included, but are not limited to:

**Behavioral health** is the top tribal health priority and includes mental health; alcohol and substance abuse; and family violence, including domestic/intimate partner violence and child abuse and child sexual abuse. The high incidence of mental health disorders, suicide, violence, substance abuse and behavior-related chronic disease in Indian country is well-documented.

**Cancer** is now the second leading cause of death among AI/ANs. The rate of cancer deaths has been declining since 1990 among the U.S. AI/ANs have higher mortality rates than the general population from specific cancers and have more devastating outcomes after diagnosis. Limited access to cancer screening and lack of specialized care contribute to the increasing AI/AN cancer mortality rate. The standard of care for four cancers (cervical, breast, prostate and colorectal), accounting for about 50% of all cancers, includes prevention, screenings and early diagnosis. However, access to preventive services, such as mammograms and pap smears, is a major impediment to early diagnosis and successful treatment of cancer in Indian Country. Another major contributor for the increased cancer mortality among AI/ANs is the lack of resources to assist patients in navigating the health care delivery system and to provide access to specialized cancer treatments and technology.

**Elder Care:** As more AI/ANs live to adulthood and old age, the elderly population aged 55 and older is projected to increase from 5.5% (total U.S. AI/AN population in 1990) to 12.6% in 2050. The shifting

demographic profile of the population calls for focused attention on the health status of AI/AN elders. Tribal leaders look forward to the implementation of the new authorities provided in the reauthorized Indian Health Care Improvement Act pertaining to elder health.

The IHS and Tribes are able to respond but full prevention and treatment services may be only available at limited sites. In most cases, Indian beneficiaries must rely on Contract Health Services to receive the necessary specialty care to treat such health issues.

**Vaccination Shortages on Tribal reservations:** IHS does not control the number or frequency of vaccinations being supplied to each Tribal or IHS clinic. These are supplied by each State Vaccination Preparedness Team. In some instances, Tribes are not given equal share. This was evident in the 2011 outbreak of the H1N1 virus that severely affected Tribes in the upper mid-west portion of the United States.

Questions from Mr. Valadao**Charitable Physician Services**

Vice President Jim, many medically underserved parts of the planet benefit from physicians' charities to provide lifesaving medical care to those in need. In your testimony you indicate that although attempts have been made to replicate these sorts of charitable services in Indian Country, it has proven difficult.

**Valadao Q1:** What reforms are necessary to promote charitable physician services in Indian Country?

- Reform of the Federal Tort Claims Act (FTCA) that would allow non-IHS physicians to have medical malpractice insurance coverage for free medical services provided in Indian or Tribal facilities;
- Extension of FTCA coverage to private facilities where physicians are providing free health care to AI/ANs;
- Flexibility with state licensure requirements so that licensed physicians can cross state borders to provide voluntary medical services;
- Incentivize participation, such as tax code flexibility to allow the value of volunteer physician services to be tax deductible.

**Valadao Q2:** Is this a model that can serve Native Americans across the country, or is it only viable in areas that have an abundance of physicians?

This model can be used throughout Indian Country. The success of this model relies first on partnerships created between Tribes and the physician community. There are additional supports that are needed to make this model work; such as improved equipment; housing for visiting physicians; durable medical equipment; nursing services; aftercare (i.e., physical therapy, rehabilitation services, etc.). With proper administrative support, planning and policy, American Indian and Alaska Native charitable health care initiatives could be an astounding and innovative success.



U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing: Indian Health  
March 19, 2013

**Questions for the Record for Mr. Barnett**

Questions from Chairman Simpson

**Health Disparities**

I mentioned in my opening statement the 2010 goal of providing the resources, processes, and structure to eradicate the health disparities between American Indians and Alaska Natives, and the general U.S. population. I realize that responsibility doesn't entirely fall on this subcommittee's shoulders, but a significant portion of it does. And so I'd like to talk about what we can be doing to help ensure that this goal doesn't become yet another in a long line of broken promises. So let's start with the basics:

**Simpson Q1:** What are the disparities that the federal government should be tracking?

Answer: There are a variety of health conditions that need attention including both curative and preventive conditions, such as diabetes, depression, substance abuse, cancer and heart disease. Under health reform, preventable conditions that benefit from early diagnosis and treatment may be most effective in this cost conscious reform effort. Urban programs do a fair job at tracking diabetes, for example, but what we fail to track is the confounding factors that influence treatment, compliance, etc.

There is a need for better identification and care for individuals with mental health problems and substance abuse needs. Dental care has been lacking for quite some time and the link between chronic oral infection and heart disease is now well accepted. But to track these conditions, there is a great need to create a proper infrastructure. At the local level, disaggregating data for urban Indians is not being done routinely if at all. The Urban Indian Health Institute was established back in 2000 but limited resources have precluded the proper development of this division to identify and track health conditions among urban Indians as a surveillance strategy.

**Simpson Q2:** Is the government tracking them?

Answer: The Indian Health Service has not directly developed a proper tracking system for

urban Indians. Its use of GPRA and UDS reporting does not accurately reflect the scope of the program defined for the Indian Health Service and therefore the reporting does not reflect accurately the program needs or health standing for urban Indians. UIHI staff have discussed the need for a study center with the Office of Minority Health at CMS seeking funds to establish a system as required by Section 4306 (b) of the Affordable Care Act. As yet funding has not been provided.

**Simpson Q3:** Are the disparities shrinking?

Answer: For urban Indians, we still do not have a baseline that would allow us to determine movement related to health disparities. Data from the diabetes audits conducted for the Special Diabetes Program for Indians show cautious optimism that improvement is occurring albeit limited. Without a firm baseline for which to base change over time, the ability to demonstrate improvements in disparities is not possible.

**Simpson Q4:** If so, have the additional funding resources provided by this subcommittee helped?

Answer: The bulk of resources directed to the Indian Health Service are distributed to the IHS and tribes. Few resources are directed to help urban Indians who now represent more than 70% of Americans self-identifying as of American Indian or Alaska Native heritage. Since urban funding comes from a single line item in the IHS budget, funds not directly granted for urban Indians are used elsewhere in the IHS and tribal system.

**Simpson Q5:** Does the IHS have a strategic plan that sets as its fundamental goal the eradication of health disparities between American Indians and Alaska Natives, and the general U.S. population? If not, should they?

Answer: NCUIH supports such an effort, if one exists.

Answer: In the House report accompanying the FY13 Appropriation bill, we encouraged IHS to reinstate health research and monitoring of trends, including updating the Trends in Indian Health and Regional Difference in Indian Health report.

**Simpson Q6:** Are efforts underway to get this going again?

Answer: IHS has indicated that they are reinstating this effort.

**Simpson Q7:** Monitoring of status and trends typically falls by the wayside in many

programs when budgets get tight. But without this effort by the IHS, how are we ever going to measure our progress towards eradicating these health disparities?

Answer: This challenge is complicated by the fact that GRPA and UDS reporting does not accurately reflect program needs or health standing for urban Indians.

**Simpson Q8:** If this subcommittee continues to fund the Indian Health Service at roughly the same rates of increase as it has over the past dozen years or so, will this country ever reach its stated goal of eradicating these health disparities as I mentioned in my opening statement?

Answer: The rate of increase for Urban programs has been significantly lower than the rate of increase to the overall IHS budget. However, urban programs are making progress with the moderate funding they have and we fully expect that with increased funding health disparities could be addressed in full.

*Between 1996 and 2005, overall death rates for Indian people have declined by 11 percent, including 15 percent from diabetes, 29 percent from diseases of the heart, and 30 percent from cerebrovascular disease.*

**Simpson Q9:** What do you attribute these improvements to?

Answer: SDPI is likely to be the cause of these improvements, in part because diseases of the heart and cerebrovascular disease are co-occurring with diabetes.

**Simpson Q10:** Did the IHS institute any special or focused programs to bring about these improvements?

Answer: Special Diabetes Program for Indians.

### **Funding and Program Performance**

As I mentioned in my opening statement, appropriations for the IHS increased from \$2.4 billion in fiscal year 2000 to just under \$4.4 billion in fiscal year 2012.

**Simpson Q11:** Where has the IHS invested the additional \$2 billion and why?

Answer: The majority of new funding for IHS has gone to contract health services and support costs. The reason for this is because IHS and tribal facilities have limited ability to provide specialty care. Urban programs, however, cannot access contract health resources.

**Simpson Q12:** How did IHS determine priorities for the funding?

Answer: IHS determines its funding priorities through annual tribal consultation, and as expressed through the Director's limited discretion.

**Simpson Q13:** What has proven to be the most cost effective use of the additional funds?

Answer: Because urban Indian health programs leverage \$1.5 dollars for every \$1 of IHS funding, we believe that urban Indian health programs are the most cost-effective use of IHS funds.

**Simpson Q14:** What kind of assessment tools does the IHS use to measure the effectiveness of its programs?

Answer: GPRA and UDS, but the usefulness of these measurement tools is limited by the fact that they are not designed to accurately and comprehensively measure urban Indian health or the services provided by urban programs.

### **Sequestration**

**Simpson Q15:** How much will the IHS lose under the sequester?

Answer: The Indian Health Service will lose approximately \$220 million as a result of the sequester. This represents about 5% of the total discretionary IHS budget. Urban Indian Health Programs, currently funded at about \$43 million will lose approximately \$2.15 million in IHS funding. IHS has indicated that the final urban Indian funding amount for the remainder of FY2013 is still being calculated by OMB and will be made available shortly.

**Simpson Q16:** How is IHS prioritizing funding decreases?

Answer: These funding decreases are being applied by IHS across the board.

**Simpson Q17:** We've all heard the saying, "Don't get sick after June". Is there any truth to that anymore?

Answer: This expression does not apply to Title V Urban Indian Health Programs, because our programs do not have access to the millions of dollars IHS distributes through Contract Health Services.

### Urban Indian Health

You testified that 71 percent of American Indians and Alaska Natives live in cities but that the only line item benefitting them—the Urban Indian Health line item—is less than 1 percent of the IHS budget.

**Simpson Q18:** Has this line item been overlooked, and, if so, why?

Answer: Yes. Urban Indian Health Programs have been overlooked because there's a lack of familiarity with how IHS funding is allocated. The complexity of the Indian health care delivery system has created a number of misconceptions about Indian Health Service funding. Perhaps the most common misconception is that funding provided to IHS, generally, will result in increased services for urban Indians, specifically. This is not the case because urban Indian health programs are funded under a separate IHS line item. Only 38 urban health programs, receiving approximately \$43 million, are tasked with serving the health care needs of 71% of the AI/AN population. While there are a handful of IHS grant programs that urban programs are eligible to apply for, the vast majority of funding is appropriated to line items that urban programs cannot benefit from, such as contract health services, contract support costs, hospitals and clinics funding, and facilities improvements. The ability of urban programs to correct these misconceptions and perform effective stakeholder education is frustrated by the lack of a government-to-government relationship between urban Indians and the United States. While Executive Order 13175, Cabinet department-level consultation policies, advisory committees, and various federal statutes all provide for government to government consultation between tribes and the United States, urban Indian health programs have no such relationship. While the permanently reauthorized Indian Health Care Improvement Act requires the IHS to confer to the "maximum extent practicable" with Title V urban programs, all too often urban programs are excluded from tribal consultation activities. Often, the reason proffered for excluding urban Indian organizations from consultation is because of the potential applicability of the Federal Advisory Committee Act (FACA). In the case of the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group, Congress allowed for urban Indian participation by statutorily exempting urban representation from triggering FACA. NCUIH strongly recommends that Congress create a similar exemption from FACA for urban Indian health program representation on advisory committees and other consultative bodies. The lack of urban Indian representation in consultation has real financial consequences for urban Indian health, especially when urban Indian health providers are precluded from consultation with federal decision-makers who mistakenly assume that tribal consultation alone will suffice to provide information about the concerns of all American Indians and Alaska Natives.

**Simpson Q19:** Do American Indians and Alaska Natives living in urban areas have access to

other healthcare options that those living in rural areas do not have?

Answer: While there are more resources in urban communities as compared to rural and remote areas for all citizens in the United States, for American Indian people living in cities these resources are not always accessible or even useful for the consumer. A recent needs assessment within one of our urban Indian health programs identified transportation, insurance status, and the lack of culturally competent providers as the biggest barriers to care. These same barriers are occurring for AI/AN people in cities across the U.S. It is critical to note that the Trust Responsibility is an obligation to provide for the health care needs of American Indian and Alaska Natives in exchange for the millions of acres of tribal lands ceded to the United States. Just as the availability of health coverage under the Affordable Care Act, Medicare, Medicaid, or the Veterans Administration cannot be used to justify the meager funding of the IHS, neither can the potential availability of other safety-net health resources suffice for the provision of health care through the IHS, tribal, and urban Indian health care delivery system.

Urban Indians living in poverty are "medically poor". While they might be two blocks away from a provider's office, if that Indian person does not have acceptable coverage or the ability to pay their visit in full, then they remain medically poor. UIHPs are distinct entities providing culturally appropriate care in fulfillment of the federal trust responsibility. This is not true of Kaiser, Sutter, or other private medical practices.

**Simpson Q20:** While I'm sure you wouldn't advocate diverting base funding from other areas in the IHS budget in order to increase the Urban Indian Health line item, is it fair to say that this subcommittee should consider concentrating any future funding increases in this area?

Answer: NCUIH stands with the tribes in calling for full funding of the Indian Health Service. However it is critical to note that funding increases for the urban Indian health line item have not kept up with either CPI or medical inflation, and fall far behind the rate of increases provided for the rest of the IHS. All the while, the population of urban Indians continues to rise, from 61% of the total AI/AN population in 2000, to 71% in 2010.

**Simpson Q21:** If the subcommittee increases funding for this line item, should the increase go to expand programs to cities that are currently underserved, or to strengthen existing programs?

Answer: Our first priority is to strengthen existing programs. These programs survive in spite of significant competition from better-funded, larger health providers and hospitals. Then we wish to expand urban Indian health care to all of the cities identified as having a significant unmet need for services. We also wish to explore other models of urban Indian health delivery –including demonstration projects, joint ventures with other HHS operating divisions, and dedicated PHSC Sec. 330 Community Health Center funding. Some of these innovations can be

achieved through agency initiative, while others may require Congressional statutory changes. We seek to work with you in partnership to explore these possibilities.

**Simpson Q22:** How do you determine whether a city is underserved?

Answer: Urban Indian health program funding has been allocated on a historical basis, generally tracking with those cities which were significant destinations for American Indians during the Relocation period. Title V of the Indian Health Care Improvement Act gives the Secretary of Health and Human Services the authority to designate a particular city as a Title V "urban center", having a sufficient need to warrant IHS-funded urban health centers. In practice, the HHS Secretary's authority is exercised by the IHS Director.

**Simpson Q23:** What kinds of additional services could urban Indian health programs (UIHPs) provide if they had access to 100% Federal Medical Assistance Percentage (FMAP)?

Answer: Adult dental, chiropractic, podiatry, psychology/behavioral health are just a few of the types of services that states may choose to allow for Indian health facilities covered under 100% FMAP.

**Simpson Q24:** How much additional revenue could UIHPs expect to receive from Medicaid if they had 100% FMAP?

Answer: Because Medicaid varies per state, the precise figure is not known. But in California alone, urban Indian health programs billed Medicaid \$3.5 million in adult dental services. When the state eliminated adult dental as an optional Medicaid benefit, the California urban programs lost this income. As more states adopt waivers aimed at providing optional Medicaid benefits to Indian patients, urban programs and patients will not be able to access these services without 100% FMAP.

**Simpson Q25:** Do Urban Indian Health Programs submit data in accordance with the Government Performance and Results Act?

Answer: Yes.

**Simpson Q26:** If so, is there data that shows whether or not the programs are successful in reducing health disparities for American Indians in urban centers?

Answer: Unfortunately the data being collected through the Uniform Data System (UDS) measuring access, quality, and efficiency of care does not accurately capture the work of the

Urban Indian Health programs in aggregate. First, the UDS measures the services of full-ambulatory clinics providing comprehensive services. However, many of the urban Indian health programs are providing only limited ambulatory and/or outreach and community services, providing critical links like Medicaid enrollment, WIC, TANF, case management, and care coordination among other supports. Many of these programs provide behavioral health services and run critical youth prevention services, like the American Indian Life Skills, an evidence-based practice for preventing youth suicide, and the Gathering of Native Americans, a youth prevention camp focused on preventing substance abuse and other negative outcomes for Native youth. These are just of a few examples of the many programs, services, and supports of the UIHPs that are not being documented through the UDS. This means that the UDS both undercounts the number of people being served through the UIHPs and fails to account for a wide range of preventive and health support services being provided by the programs. Second, some of the programs are not contracted by the IHS to provide some services that are reported on the UDS. However, they are required to report on these measures. Depending upon how the data analysis is conducted, this could skew the data significantly when you aggregate data across all of the UIHPs.

### Children

**Simpson Q27:** What do you think is the greatest health threat for children in Indian country, and what should this subcommittee be doing to address it?

Answer: AI/AN youth in urban areas are experiencing high rates of substance abuse, suicide and violence exposure. An estimated 10.9% of AI/AN urban youth nationally report a suicide attempt within the last year requiring hospitalization, a rate that is 4 times greater than the national average (Urban Indian Health Institute [UIHI], 2009). An analysis of the Youth Risk Behavior Survey found that urban AI/AN youth were significantly more likely to have consumed alcohol prior to age 13 than were whites (40.5% vs. 28.1%; UIHI, 2009). Urban AI/AN youth were two times more likely than whites to have ever used heroin, injected illegal drugs, or used cocaine within the last 30 days and demonstrated higher rates of marijuana use (UIHI, 2009). The presence of a number of risk behaviors in the Youth Risk Behavior Survey years 1997-2003 were at least two- fold higher in AIAN compared to white youth in urban areas nationwide (Rutman, Park, Castor, Taulii, & Forquera, 2008). Being forced to have unwanted sex (16.4% and 6.6%, respectively) and being physically hurt by a boy/girlfriend (17.0% and 8.0%) were among these risk factors. These issues are exacerbated by generations of historical and intergenerational trauma and the efforts needed to address these very interrelated conditions includes increased focus on the prevention and treatment of trauma exposure and the effects for the entire family and initiatives that supporting building strong youth identity and life skills.

Clearly Indian children face a variety of challenges all needing greater resources and thoughtful



guidance. Children on Indian reservations likely have different needs than Indian children in cities. We know, for example, the youth in cities face problems with poor performance in school, threats of gang involvement, teen pregnancy, suicide, and the myriad of social and health problems that derive from generations of isolation and neglect. Solving these problems will take time, resources, and study.

Several years ago, the UIHI sought funding to conduct a national youth Behavioral Risk Factor Surveillance study to document needs and help prioritize resource allocation. Working with experts from Johns Hopkins and Stanford University, the proposal called for an investment of several years and approximately \$3 million in expenses. Discussions with officials at NIH, CDC, and other federal agencies were unsuccessful in acquiring financial support for this activity. But as we proceed, the importance of a study of this magnitude cannot be overstated. If we are truly interested in helping Indian children, then we need research data scientifically acquired to help us with our planning and prioritization.

It would be useful if the subcommittee held hearings on Indian child health specifically and included testimony on urban Indian youth as well. Tribal influences dominate Indian policy discussions. While we value the importance that tribes play in the nation, urban Indian youth are often forgotten or just an afterthought in our plans. But as the population shifts to more Indians living in cities, we cannot understand the full extent of the challenges Indian youth face without also factoring in those living in cities. Directed resources to perform baseline studies to help set up systems for identification and tracking of health conditions among urban Indian youth would be a worthwhile national investment.

**Simpson Q28:** How should we measure progress?

Answer: A true measure of progress is probably generational rather than short term. In some respects, the nation as a whole has seen a steady decline in its health metrics. For example, the United States ranks 34<sup>th</sup> in infant mortality, a primary standard for international health status. Two decades ago, the United States ranked near the top. Improvements in emerging countries and universal health care in most developed nations has surpassed the United States in these basic measures. There are a variety of international standards that would help us better understand problems and design solutions. Many are not health or medical industry specific. For example, we know that better infant nutrition, early reading, tutoring and mentoring for Indian children for school, etc. can pay off handsomely for both their economic future and their health. Studies repeatedly show that improvements in income have a direct relationship to improved health. Education is the key to finding a livable wage job and building a more secure future.

Health wise, going back to basics for the IHS – immunizations, prenatal services, family

planning services, nutrition education and access to wholesome foods would be useful areas for concentration and metrics can be designed to identify and track these objectives. Basic diagnostic information, hospitalizations, environmental factors, etc. are achievable standards for us in building trackable metrics to assess health conditions. Verification of best practices often used as a barometer of progress need to be performed specifically on Indian populations, both reservation and urban so that limited resources are not improperly expended. Evidence exists that show that racial differences do influence interventions making claims of best practice suspect without proper verification studies. But once again, to fulfill these verification studies, the infrastructure to do this work is needed if we truly wish to build a future based on fact and not supposition. Sound scientific study, organized and reported in a useful manner is the key. Meeting this goal will require investment in infrastructure to perform studies and organize information distribution to inform policy and resource prioritization.

### **Teen Suicide**

**Simpson Q29:** Is teen suicide a growing problem?

Answer: An estimated 10.9% of AI/AN urban youth nationally report a suicide attempt within the last year requiring hospitalization, a rate that is 4 times greater than the national average (Urban Indian Health Institute [UIHI], 2009).

In one community-based study, almost one-fifth of the urban Indian youth surveyed (18.6%) reported that they have thought about ending their lives within the last month (Pettingell et al., 2008).

**Simpson Q30:** What programs have you put in place to address it?

Answer: Most of the urban Indian health programs are implementing prevention programs that focus on building cultural identity of youth and life skills. Both of these approaches have support in the research literature as effective strategies for preventing suicide. However, limited funding exists to support the cultural prevention programs that are so critical for giving youth a strong sense of identity to be resilient and resist negative pressures in their environments. Initiatives like the Methamphetamine and Suicide Prevention Initiative provides funding to support many of the culturally-based prevention programs.

**Simpson Q31:** How are you measuring progress?

Answer: Communities are more often relying on the development of strong local evaluations to document outcomes of youth and families. National evaluations create many challenges in

tracking the work of the communities given the diversity in the local service systems, needs, and ultimate services and programs being provided. Efforts to support increase capacity for evaluation at the local level is critical for ensuring that data is meaningful and useful for improving programs and services within communities.

**Simpson Q32:** Do you need more mental health providers?

Answer: Yes, there are some urban programs that have been unable to fill positions for years and the loss of a provider results in significant access challenges for AI/AN communities.

**Simpson Q33:** If so, what is the best way to recruit them?

Answer: It is important that the programs have competitive salaries for professional staff. This is challenging given that the programs are being funded at 18.5% of need. Additional incentives may support recruitment of mental health providers in urban Indian communities including opportunities to receive student loan forgiveness and/or payments towards student loans.

#### **Emerging Issues**

**Simpson Q34:** Have you seen new diseases or health concerns emerge in the last 5 years that you are unable to address?

Answer: Although not a new concern, trauma continues to play a significant role in the many health conditions and issues that AI/AN communities facing and we are learning more about the inter-connection between trauma and other health and mental health conditions. For AI/AN youth and families living in urban areas, the traumas are not only within families but also the random violence that occurs in many cities. Little is known about the rates, experiences, and effects of trauma for urban Indian populations but as we have learned from the ACE study, trauma has very serious consequences and outcomes, even within the social determinants of health. Addressing inter-generational, familial, and community violence and effects will be critical for improving the health and wellbeing of urban Indian populations.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
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**Questions for the Record for Dr. Fields**

Questions from Chairman Simpson

**Health Disparities**

I mentioned in my opening statement the 2010 goal of providing the resources, processes, and structure to eradicate the health disparities between American Indians and Alaska Natives, and the general U.S. population. I realize that responsibility doesn't entirely fall on this subcommittee's shoulders, but a significant portion of it does. And so I'd like to talk about what we can be doing to help ensure that this goal doesn't become yet another in a long line of broken promises. So let's start with the basics:

**Simpson Q1:** What are the disparities that the federal government should be tracking?

**Dr. Fields:** In regards to oral health - the IHS should be tracking traditional oral health indicators - early childhood caries, edentulism, oral cancer and oral disease associated with diabetes.

**Simpson Q2:** Is the government tracking them?

**Dr. Fields:** The IHS Division of Oral Health's Surveillance Plan for 2011-2020 calls for tracking the oral health of AI/ANs from preschool to the elderly. Only the preschool-5 years old and the 6-9 year olds surveys have been implemented. However, carrying out this surveillance research is contingent upon having the necessary resources and a system-wide electronic dental record system that would expedite the research.

**Simpson Q3:** Are the disparities shrinking?

**Dr. Fields:** We will not know until the surveillance research of the preschool population participating in the Early Childhood Caries prevention program is completed in 2015 and cannot comment on the other dimensions.

**Simpson Q4:** If so, have the additional funding resources provided by this subcommittee helped?

**Dr. Fields:** We can comment on the process and care delivery aspect. According to the GPRA numbers there has been an improvement in the delivery of care and some prevention methods. The most recent data from the IHS Division of Oral Health shows that in 2011, the IHS placed

276,893 dental sealants, 19,632 sealants over its goal. IHS dentists reported treating 28 percent of the patients who needed care which is 5% more than they serviced in the 1990s. Additionally, the IHS reported that 161,461 AI/AN students had received at least one topical fluoride treatment. This was 25,857 applications over its goal. The IHS dentist vacancy has been reduced from 140 to 40 in the last 3 years. We believe that one of the reasons why the GPRA numbers exceed goals is because of the increased number of IHS dentists.

**Simpson Q5:** Does the IHS have a strategic plan that sets as its fundamental goal the eradication of health disparities between American Indians and Alaska Natives, and the general U.S. population? If not, should they?

**Dr. Fields:** The Division of Oral Health has a plan for significantly reducing early childhood caries and has already taken the first step to implement it. If childhood disease can be eliminated or decreased it will close the disparity gap for much of oral disease for a lifetime. Of equal concern is addressing oral disease that affects diabetics. Ensuring that there is a sufficient dentist workforce to address diabetic oral conditions will be a key factor for controlling this disease.

**Simpson Q6:** In the House report accompanying the FY13 Appropriation bill, we encouraged IHS to reinstate health research and monitoring of trends, including updating the Trends in Indian Health and Regional Difference in Indian Health report. Are efforts underway to get this going again?

**Dr. Fields:** Yes, the Division of Oral Health has an Oral health Surveillance plan to be conducted from 2011-2020.

**Simpson Q7:** Monitoring of status and trends typically falls by the wayside in many programs when budgets get tight. But without this effort by the IHS, how are we ever going to measure our progress towards eradicating these health disparities?

**Dr. Fields:** We agree that tight budget could adversely impact completing the planned surveillance on time. But, the surveillance information is vital for knowing how best to target limited resources so they have the most effect in the toughest times.

**Simpson Q8:** If this subcommittee continues to fund the Indian Health Service at roughly the same rates of increase as it has over the past dozen years or so, will this country ever reach its stated goal of eradicating these health disparities as I mentioned in my opening statement?

**Dr. Fields:** No. The funding that the Committee has provided has allowed the Division of Oral Health to maintain a consistently deficient position. But it doesn't allow the Division to fully implement the electronic dental record or advance broad-based disease focused programs.

### Children

**Simpson Q9:** What do you think is the greatest health threat for children in Indian country, and what should this subcommittee be doing to address it?

**Dr. Fields:** We can only speak from the perspective of oral health. It is vital for a lifetime of health to prevent oral infection as early as possible. The Committee has been very supportive of the ECC Prevention program and we hope that you will continue to support it so that there are not gaps or delays in its full implementation. This disease has unique aspects to it that will require unique and new approaches that are only beginning to emerge.

**Simpson Q10:** How should we measure progress?

**Dr. Fields:** Continued periodic surveillance that will allow the IHS to track trends and implementation of prevention, education and treatment methods. Ensuring that all IHS and Tribal dental clinics are connected with an electronic dental record will help to make the gathering of this information timely and easier to capture.

### Dental Health

You testified that it should be a goal to get IHS dental services to approach the national utilization rate of 37% for adults and 46% for children.

**Simpson Q11:** Isn't that low?

**Dr. Fields:** Based on the 2010 Medical Expenditure Panel Survey (MEPS), the percent with a general practice (GP) dental visit for adults 19-64 was 37%. For children aged 2-18, the percent with a GP dental visit in 2010 was 46%. If one takes into account visits to dental specialists, the percent with a dental visit for adults in 2010 was 39% and the percent with a dental visit for children in 2010 was 50.5%. The MEPS is known to be the survey with the most accurate rates of health care utilization.

Even privately insured adults and children fall far from ideal for participation in dental care programs. Many people do not highly value or prioritize oral health, through no singular fault of their own.

We often hear patients say, "I didn't think I had to see a dentist because nothing hurt" or "I didn't think it mattered if the baby teeth decayed. They are just going to fall out anyway." Comments like these indicate that as a nation we need to do more about oral health literacy.

Consequently, the ADA and 36 other dental organizations joined together with the Ad Council in a new national TV focused on minority children who have the highest oral disease rates. Tribal organizations, a local community or school can download and use the materials too.

We know that if we want to close the disparity gap and get more people to see a dentist that we have start at the earliest age to educate children about the importance of oral health and how to have good oral health habits.

**Simpson Q12:** Why don't people go to the dentist?

**Dr. Fields:** This really is the result of an oral health literacy issue that is similar to overall health literacy mentioned by the others who testified at the hearing. Further, access issues other than availability of providers (transportation, hours of care or child care support etc) play important roles, too. Many people also face financial barriers, particularly poor adults. Many adults simply do not have any dental coverage, especially since states have the option to waive dental benefits through their Medicaid programs. Based on data from the MEPS, we know that the rate of private dental insurance for adults 19-64 has dropped from 62% in 2001 to 56% in 2010.

**Simpson Q13:** Why do you think that the tooth decay rate for American Indian children is 300 times higher than the rest of the population?

**Dr. Fields:** It is 300% or 3 times as high on average. The IHS through the 1990s was greatly understaffed. As you can see from our testimony with more dentists, the IHS is able to see more patients and provide prevention treatments like fluoride varnishes and sealants. Too many tribal homes and schools do not have access to fluoridated water. Fluoridated water is the most cost effective way to reach the most people.

But, we also know from symposiums that the ADA has sponsored that there is still something very different about tooth decay among Native children. We need to understand why preventive strategies that work in other populations have shown no demonstrable long term benefit in American Indian and Alaska Native communities.

**Simpson Q14:** Do you think that the Early Caries in Children campaign will have an effect? If so, why, and how will you measure it?

**Dr. Fields:** We think many children will benefit from the campaign. However, to what extent is the unknown. We will rely on the pre and post data gathered by the IHS to make further determinations.

**Emerging Issues**

**Simpson Q15:** Have you seen new diseases or health concerns emerge in the last 5 years that you are unable to address?

**Dr. Fields:** It is now being recognized that ECC in this population is a variant of what is seen elsewhere and different measures, both preventive and therapeutic, are needed to successfully treat it. Proven remedies have evaded clinicians and investigators to this point.

[The following statements were submitted for the record:]





## NATIONAL CONGRESS OF AMERICAN INDIANS

### TESTIMONY OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

#### OVERSIGHT HEARING – INDIAN HEALTH HOUSE APPROPRIATIONS SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

MARCH 26, 2013

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*Chickasaw Nation*

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**Ned Norris, Jr.**  
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**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson Pata**  
*Tlingit*

#### INTRODUCTION

The National Congress of American Indians (NCAI) is the intergovernmental body for American Indians and Alaska Native tribal governments. For nearly 70 years, tribal governments have come together through NCAI to consider issues of critical importance to tribal governments and endorse consensus policy positions. As such, NCAI provides the following testimony for the Oversight Hearing on Indian Health before the House Appropriation Subcommittee on Interior, Environment, and Related Agencies.

The treaties and agreements made with tribal nations who ceded millions of acres of their homelands to the US are the foundation for the federal trust responsibility. In fulfilling the duties of the federal trust responsibility, Congress must ensure the protection and advancement of the financial status of the Indian health care providers, such as the Indian Health Service (IHS). Fulfillment of these duties and obligations resides in the discretionary portion of the federal budget and the IHS will be impacted severely by the 2013 sequester.

#### RECOMMENDATIONS

NCAI urges the Subcommittee to uphold the federal trust responsibility by protecting the IHS budget and developing a long-term plan to fully fund the IHS, including an advanced appropriations scheme. These recommendations parallel the National Indian Health Board's testimony – which NCAI supports – and are high priorities of tribal governments and tribal leaders.

Additionally, NCAI urges this Subcommittee to ensure that all American Indian and Alaskan Native citizens have access to health care and services in the coming years. To do so, Congress must pass a technical amendment to streamline the definition of “Indian,” which is used loosely in the Affordable Care Act (ACA). The current administrative interpretation of the differing “Indian” definitions in the ACA will leave a subset of tribal citizens without access to all of the opportunities and protections under the law. A legislative fix that uses the Centers for Medicare and Medicaid definition of “Indian” will align the language with IHS eligibility regulations and provide full access to health care services for all American Indians and Alaska Natives.

NCAI also supports the American Dental Association's (ADA) recommendations to provide additional appropriations to fully staff the Division of Oral Health and to increase the dental workforce in IHS and tribal facilities through continued support of the Loan Repayment Program. In addition, NCAI asks the appropriations subcommittee to support expansion of the Dental Health Aide Therapist (DHAT) program—a mid-level dental provider's certification program—to provide greater access to basic oral health care in Indian Country. Dental therapists can educate patients about oral health and prevention, perform dental evaluations, give fluoride treatments, place sealants, clean teeth, place fillings, and perform simple extractions. Like nurse practitioners and physician assistants in the field of medicine, dental therapists expand the reach of dentists and free them to perform advanced treatments. NCAI supports implementation of the DHAT program because it provides an opportunity to fill a significant need for oral health care and education in rural and remote tribal communities, as well as to build a pipeline for dental providers.

An additional request relates to IHS Contract Support Costs (CSC). Indian Country recommends that Congress fully fund IHS CSC in FY 2014. The choice of tribes to operate their own health care systems and their ability to be successful in this endeavor depends upon the availability of CSC funding to cover fixed costs. Without full funding, tribes are forced to reduce direct services in order to cover the CSC shortfall. Adequate CSC funding assures that tribes, under the authority of their Self-Determination Act contracts and Self-Governance compacts with IHS, have the resources necessary to administer and deliver the highest quality health care services to their members without sacrificing program services and funding. Most importantly, full funding of contract support costs is a contract obligation that the federal government must honor by law. The total amount required to fully cover contract support cost requirements in FY 2014 was estimated to be \$617 million in December of 2012 by the National Tribal Contract Support Costs Coalition.

#### **Conclusion**

NCAI thanks this Subcommittee for all of the efforts made in the last few years to begin honoring the promises the federal government made through treaties and agreements with Indian nations, especially in regard to funding for the IHS. We look forward to continuing to work with this Subcommittee on these solemn obligations. If you have any questions, please contact Terra Branson at [tbranson@ncai.org](mailto:tbranson@ncai.org) or 202-466-7767 or Amber Ebarb at [aebarb@ncai.org](mailto:aebarb@ncai.org).

**Thomas D. Wooten, Chairman, Samish Indian Nation  
Testimony before the U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Oversight Hearing on Indian Health  
March 19, 2013  
Submitted on March 25, 2013**

My name is Thomas D. Wooten. I am the Chairman of the Samish Indian Nation ("Tribe"), a federally recognized tribe located in our aboriginal homelands in northwestern Washington. I represent nearly 1,500 tribal members. I want to thank Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee for holding this important oversight hearing on Indian Health. Thank you for the opportunity to submit written testimony on this subject.

**Background**

The Samish Tribe is a Coast Salish tribe of Indians whose aboriginal territory was bounded by the southeast tip of San Juan Island, Deception Pass, Padilla Bay, Samish Bay, Chuckanut Bay, and the northern end of Lopez Island. The Tribe was a signatory to the 1855 Treaty of Point Elliot ("Treaty"). The promise to promote the welfare of our people is among the various promises made by this Treaty, which sadly has not been kept. At the time the Tribe signed this Treaty, the population of our Tribe was significantly reduced to less than 200 people due to deaths caused by measles, smallpox, and other diseases. Since signing this Treaty, the United States has diminished the land base of the Tribe several times. The Tribe is currently seeking to have its homelands restored so that it can continue to provide essential and basic governmental services to tribal members and to preserve its traditional way of life. For example, the Tribe provides to its members housing, preschool and eldercare activities including meals, agriculture and natural resources conservation programs, and as explained below limited healthcare services.

**Uncertainty Over Federal Resources for Indian Health Service**

We are well aware of the uncertainty about funding for IHS, especially given the recent implementation of sequestration. Even though the Congress has avoided a federal shutdown by passing a Continuing Resolution to fund the federal government for the remainder of the FY13, the impact of sequestration is significant. The Indian Health Service Director, Dr. Yvette Roubideaux, recently informed the Subcommittee that the mandatory cut means that the "\$220 million reduction in IHS' budget authority for FY13 is estimated to result in a reduction of 3,000 inpatient admissions and 804,000 outpatient visits...."

Indian tribes, including the Samish Indian Nation, ceded or had taken from them millions of acres of tribal homelands to help build this great nation. In return, the United States promised to

provide for and further the health, education, safety, and general care of Native Americans. Accordingly, hundreds of federal laws acknowledge the federal government's obligations to provide services to address needs of Native Americans and tribal communities. Unfortunately, the U.S. has failed to fully fund these programs. As a result, many tribal governments struggle to address the growing needs of their communities and must stretch every dollar to meet these budget shortfalls.

While programs such as Social Security, Medicare, Medicaid and the Veterans Administration are saved from mandatory cuts due to sequestration, we are disappointed that IHS is not exempt given the federal government's trust responsibility to American Indians. Treaty promises are not discretionary. *We urge the Subcommittee to honor the treaty and trust obligations owed to Indian tribes and to provide full funding for the IHS.*

#### **Samish Indian Nation's Health Care Services**

The Tribe receives annual funding from the Indian Health Service ("IHS") under a contract negotiated with the IHS pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended ("638 contract"). Under the 638 contract, tribal members receive health services within a designated ten county Health Service Delivery Area ("Area"), primarily through the Contract Health Services program ("CHS"). In FY12, the Tribe received \$1,276,988 in funding to help address the health care needs of our people.

The following table displays the 638 contract funding levels:

<b>PROGRAM</b>	<b>FUNDING LEVEL</b>
Hospitals & Clinics	\$28,799
Dental	\$2,411
Mental Health	\$801
Alcohol	\$26,592
Public Health Nurse	\$675
Health Education	\$188
Contract Health Resource	\$624
Contract Support Costs Direct	\$87,299
Contract Support Costs Indirect	\$268,826
<u>Contract Health Services</u>	<u>\$860,773</u>
<b>Total FY12 Funding</b>	<b>\$1,276,988</b>

#### *Increased Funding for Contract Health Services*

While Samish tribal members live within the Tribe's designated ten county Area, the Tribe does not provide direct clinical services for medical or dental care. Instead, a financial burden is placed on our tribal members who must travel to receive preventative and basic care services at one of the 12 tribally operated facilities in our Area. Tribal members report that accessing services at some of these facilities is difficult for various reasons. In addition, many tribal

members do not have private health insurance to cover medical expenses for healthcare services provided at non-IHS facilities. Therefore, the Tribe relies heavily on the CHS program to purchase care from private providers to ensure that the healthcare needs of our tribal members are met.

The CHS program funds medical and healthcare services for patients when healthcare is not available in IHS or tribal facilities. These services might include hospital care, physician services, outpatient care, laboratory services, dental, radiology, pharmacy, and transportation services. In addition, the Tribe is not located near an IHS operated hospital and it relies almost entirely on the CHS program to purchase essential healthcare services for our tribal members who must go to full service metropolitan hospitals for costly urgent, emergent and chronic care. We support the President's FY13 budget request of \$897.6 million for CHS, an increase of \$54 million above the FY12 enacted level, which includes an increase of \$34 million for inflation and \$20 million to fund additional inpatient admissions, increased outpatient visits and ambulance trips. ***We urge the Subcommittee to increase funding for the CHS program so that tribes may continue to purchase essential healthcare services for tribal members.***

*Administrative Flexibility in the Contract Health Services Program*

The Tribe supports increased administrative flexibility within the IHS regarding the CHS program to allow tribal governments to implement cost containment measures such as establishing caps on annual expenses for services such as dental, vision, hearing aids, or placing limits on the number of patient visits for physical therapy or mental health services. Administrative flexibility furthers tribal self-determination. However, this flexibility is not permitted under the current IHS system.

According to IHS, Section 222 (Liability for Payment) of the Indian Health Care Improvement Act prohibits caps on certain procedures. As a result, tribes such as the Samish Indian Nation that offer preventive or non-emergent services under the CHS program are forced to cover these services without any limitations, or to not offer them at all. This "all or nothing" approach drains our CHS funds and lessens the number of tribal members who benefit from these services.

Alternatively, Tribes can use tribal funds to establish limitations on these services. The Samish Tribal Council determined that having caps and limits for dental and visions services and hearing aids is prudent, and we offer our tribal members these services outside of the CHS program using tribal funds only. Without administrative flexibility in the CHS program to allow tribes to place caps or limitations on preventive or non-emergent services serves to impede tribal autonomy, places an administrative burden on the Tribe, and requires the Tribe to redirect scarce tribal resources to assure that more tribal members have access to these services. Administrative flexibility in this area is consistent with current IHS policy and practice, which allowed the Tribe to adopt a prescription formulary in 2011 as a cost containment measure. ***We urge the Subcommittee to grant the IHS administrative flexibility in implementing the CHS program to afford tribes the opportunity to make prudent decisions on how to use CHS funds for certain procedures.***

*Increased Funding for Contract Support Costs*

Contracts Support Costs (“CSC”) is the administrative costs incurred by tribes as a result of assuming the operation of federal programs under a 638 contract. The Tribe’s FY12 funding for CSC is 28% of the total funding under its 638 contract. This amount falls short of the full amount owed to the Tribe. The federal government’s obligation to fully fund contract support costs is necessary to fulfill the policy of tribal self-determination. The U.S. Supreme Court (“Court”) has confirmed this principle in three decisions. See, *Cherokee v. Leavitt*, 543 U.S. 641 (2005); *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012) and *Artic Slope Native Ass’n, Ltd. v. Sebelius*, 133 S.Ct. 22 (2012). Despite these Court rulings, the President’s FY13 budget request of \$476 million falls short of the need. The Tribe supports the Subcommittee’s efforts to fund the projected shortfall so that the federal government can fulfill its contractual obligations. We commend the Subcommittee for recommending \$546 million for CSC in FY13, which is \$70 million above the President’s request. ***We urge the Subcommittee to close the contract support gap by fully funding Contract Support Costs. In addition, we urge the Subcommittee to direct the IHS to use its Contract Support Costs Shortfall Reports to determine the appropriate level of CSC funding to resolve outstanding claims for these costs.***

*Permanent Authorization for Special Diabetes Program for Indians*

The Special Diabetes Program for Indians (“SDPI”) serves an urgent need for the Samish people who suffer from the devastating effects of western-influenced diets and loss of access to our traditional and healthy seafood. According to IHS, American Indians and Alaska Natives “have the highest age-adjusted rate of diagnosed diabetes among all racial and ethnic groups in the United States—roughly twice the rate of the general population.” The mortality rate among our population is nearly three times that of the general population. The IHS has evaluated this program and released an audit of the program results that revealed incredible success in diabetes prevention and cardiovascular risk reduction. The SDPI was first established in the Balanced Budget Act of 1997 and has been reauthorized at \$150 million per year since then. With SDPI set to expire in FY13, Congress reauthorized the program through September 2014 in the American Taxpayer Relief Act of 2012. In the 14 years since the SDPI has been established, significant progress has been made to tackle this devastating disease. In 2010, Congress permanently authorized the Indian Health Care Improvement Act to demonstrate the continued commitment of the federal government to address the healthcare needs of American Indians. ***We urge the Subcommittee to build upon this effort and to support permanent authorization of the SDPI program so that tribes can continue the fight diabetes.***

**Conclusion**

We appreciate the work of the Subcommittee to increase IHS funding. Because of your efforts, IHS appropriations have increased by 29% since 2008, which has helped tribes such as the Samish Indian Nation to address the healthcare crisis that has plagued our communities for far too long. While we appreciate the uncertainty regarding federal resources, we urge the Subcommittee to honor the federal treaty and trust obligations to tribes, further tribal self-determination, which are legal and policy principles deeply rooted in this nation's history, and to provide full funding to the Indian Health Service to assure the highest possible health status for our tribal members. Thank you for your time and dedication to address Indian health issues.

By: \_\_\_\_\_

**Thomas D. Wooten**

**Tribal Chairman**

Certified by: \_\_\_\_\_

**Dana M. Matthews**

**Tribal Council Secretary**

# The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION  
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FORT HALL BUSINESS COUNCIL  
P.O. BOX 306  
FORT HALL, IDAHO 83203

March 26, 2013

Nathan Small, Chairman  
Fort Hall Business Council  
Shoshone-Bannock Tribes

Re: Written Testimony

## Introduction

There remains a special legal obligation to tribes to provide the highest possible health care to Native Americans. Health care is an obligation of the federal government to the Shoshone-Bannock Tribes under the Fort Bridger Treaty of 1868. Because of this obligation, health care services to the Shoshone-Bannock Tribes should be fully funded by federal government.

Unfortunately, the amount of federal dollars for health care to Native Americans dwindles every year. Today, the Fort Hall Indian Health Service clinic is expected to fund 54% of personnel and operating costs through third party resources. Current federal funding to the Tribal Health and Human Service (THHS) Department only covers about 75 percent of the need. Part of the shortfall is due to the fact that federal funding levels are based on the service unit population even though people outside the service unit utilize the programs.

The organization of the Shoshone-Bannock THHS Department consists of various health and human services programs and has 82 employees. The tribal health department serves a multi-county area and is governed by a seven-member business council, the Fort Hall Business Council (FHBC).

The Shoshone-Bannock are one of many tribes that are in the process of phasing out a number of federally governed programs in order to practice self-governance. Practicing self-governance provides the tribe with more control over their programs and how they are administered. Contract Health Services, Maternal Child Health/ Public Health Nursing, Mental Health Services, Community Health Representatives, Alcohol and Drug programs have been contracted (through 638 contracts) from IHS and are under the umbrella of the THHS Department. In addition the BIA Social Services Program was also a 638 contract that was placed under the THHS Department.

The local THHS Department and Indian Health Service (IHS) programs are the only two facilities in the nation that are jointly accredited through Accreditation Association for Ambulatory Health Care (AAAHC) Accreditation. Both departments operate independently of



each other so this is an ongoing challenge that requires extensive collaboration and coordination between the two entities to maintain the joint accreditation status.

#### **Challenges and Obstacles**

The THHS Department faces many challenges and obstacles to operating successfully. The majority of the funding is from IHS. Other funding sources include the State of Idaho, Bureau of Indian Affairs, Northwest Portland Area Indian Health Board (NPAIHB), private sources and Medicaid. The current IHS budget for the THHS Department health care needs is approximately \$10 million; over half of those funds are allocated specifically for Contract Health Services (specialty health services).

IHS funding is chronically under-funded and requirements become more stringent every year. Identifying and applying for additional grants takes additional staff time and resources that are already being spread thin. Without additional funding resources, the department cannot continue to provide the current services and expand to provide additional services.

With increases in the cost of living, the IHS base budgets barely cover costs of our employees. It is critical that we receive additional funds to operate the many programs THHS oversees. We need to retain employment of the various health professionals in order to provide services for our community. Most of our programs could use additional staff to expand their services to better match the health care needs of our reservation.

#### **Program Specific Concerns**

The current budget for the I.H.S. funded programs is underfunded and only covers costs for salary, fringe and indirect costs. With annual COLA's and step increases employees receive we are not going to be able to keep all positions for the various programs. In addition the 5% decrease will drastically effect our department.

Decreased funding to our local Contract Health Services program will have a large impact on services we provide for specialty services for our community. The implementation of Medicare-like payment rates has helped the CHS budget but with proposed budget cuts we will have difficulty meeting the needs of our community. This results in more complications in our chronic care patients and more costs that could have been prevented. Our local CHS program is experiencing an increase of Cancer; some patients do not qualify for alternate resources, therefore the costs fall on CHS. A decrease in funding would impact these services greatly.

Our current outpatient mental health program provides services to an array of people across the life span and provides much needed services to individuals. The program is a main revenue generator, cuts to this program effects not only this program but will have a snow ball effect into other programs. Additionally, without the needed mental health services, people within our community will not be able to manage their mental illness with a wide variety of disastrous outcomes many potentially fatal for the individual or others in the community.

With the budget cut proposal the Four Directions Treatment Center program would have to eliminate employee position(s). This will negatively impact our ability to provide much needed substance abuse treatment services to the tribal community members. Our FDTC treatment program currently provides a wide array of services: adult and adolescent outpatient treatment assessments, counseling, groups, case management, aftercare, prevention, etc. Utilizing our low carry forward dollars, it operates one of the few native run residential treatment centers in the Western United States. It is a fact with less employee positions the FDTC program will need to reduce some of the current treatment services offered to the tribal community members.

Unfortunately, substance abuse and dependence is a very serious issue in our tribal community and with future budget cuts and loss of jobs, there will be a detrimental effect in our tribal community and an increase in the use of chemical substances.

Community Health Nursing Program will be affected by the budget cut as the base budget covers salaries, fringe and IDC only. A 5% budget cut would actually mean one position to be eliminated or a decrease in salaries or decreasing position(s) to part time. This would affect services to community as CHN currently provides Field Nursing services and clinical services to patients. Field patients would be most affected as we currently do not generate any revenue for the services provided in the field and field supplies and staff salaries take up 50% of the budget.

Budget cuts would affect the Community Health Representative Program, cuts could mean staff shortages to perform much needed services for our community and most importantly staff who work with community members at the grass roots level. Patient transportation, advocacy, interpreting/translation for patient and/or health care provider, health education and disease prevention and direct care would be affected as there wouldn't be enough staff to cover patient needs. It is unfortunate that the CHR Program would be considered part of the budgetary cuts as our funding is dependent on the actual documented services provided.

In addition our department operates the local BIA Social Services Program; the reduction in their budget of 5% will have significant impact on services to our children and vulnerable families. The program relies on both federal and pass-through state funding; the state funding is being cut drastically this year due to the federal budgets. The Social Services program's main function is Child Protection, our community has had young babies die by the hands of their caregivers at the start of this year, our ability to protect our most innocent and most vulnerable will be further hindered. Our children should not suffer in such heinous ways; we need our funding, which has previously already been cut, to protect them.

We have concerns about cuts to our local IHS Clinic, as we are jointly accredited and work as a team to provide health care so that continuity of care is maintained. They currently are grossly underfunded and have to seek third party revenue to meet current needs. Currently the uninsured users of the clinic is approximately 54%, approximate percentage of patients with Medicaid, Medicare, or both for the past 3 years equates to 30%. The clinic's base budgets were decreased in 2013 by 2%; carry over is minimal and next year's carryover will be next to none. In past years the carryover dollars have funded a significant number of positions as well as operating costs. Collections have been decreased substantially for the past 3 years with Private Insurance

collections. Currently the collections for Medicaid and Medicare are at a much lower projection compared to last year. The dollars are estimated amounts in the current 2013 budget for private insurance, Medicare, Medicaid including Reimbursements. The additional 5% decrease in funding will have a devastating impact on the number of patients our clinic will be able to serve and to the overall budget.

The Tribes conducted an Elder Needs assessment in 2010 and 83% of the elder population stated they would use a long term care facility on the reservation. A survey was completed in 2011 that indicated there is a need for an Elder Long Term Living Center. There is a provision in the Indian Health Care Improvement Reauthorization and Extension Act of 2009 that gives the IHS specific authorities for provision of long term care; which amended the Indian Health Care Improvement Act (IHCA) and was included in the Affordable Care Act. However there is no new funding specific to long-term care. Our tribal elders have prioritized this as a need for our Tribes.

In summary, if additional funding is not made available we are going to have to cut services to our community. The IHS budgets are only funded at 60% so that decrease is passed on to the tribes. The grants we receive have all decreased. A projected annual additional dollar amount needed to just continue current staffing is \$2million. The current IHS Base budget only covers program salary, fringe and Indirect Costs. With budget cuts, more dollars will be needed to maintain current staffing and provide operational costs (approximately \$250,000).

Thank you for your consideration in this matter.

Respectfully,



Nathan Small, Chairman  
Shoshone-Bannock Tribes  
P.O. Box 306  
Fort Hall, Idaho 83203  
(208) 478-3805



THURSDAY, APRIL 11, 2013.

**DEPARTMENT OF THE INTERIOR 2014 BUDGET  
REQUEST**

**WITNESSES**

**HON. KEN SALAZAR, SECRETARY OF THE INTERIOR**

**RHEA SUH, ASSISTANT SECRETARY, POLICY, MANAGEMENT, AND  
BUDGET**

**PAMELA HAZE, DEPUTY ASSISTANT SECRETARY, BUDGET, FINANCE,  
PERFORMANCE, AND ACQUISITION**

**OPENING REMARKS OF CHAIRMAN SIMPSON**

Mr. SIMPSON. Mr. Secretary, welcome back. You must be a glutton for punishment to want to come back so soon. But as I mentioned earlier, the nominee got confirmed yesterday, as you know, in the Senate in an 87-to-11 vote, so have you got a plane ticket back to Colorado pretty quickly?

Secretary SALAZAR. Tomorrow at 1:33.

Mr. SIMPSON. Well, welcome back. And I appreciate you taking the opportunity to come back and present the budget for fiscal year 2014 before us. I had a long glowing statement I was going to make. We are going to have votes at about 1:30 to 1:45 that will take us about a half-hour to 45 minutes, which might be problematic. I do not know. So I am not going to go through a long statement other than to say that I have truly enjoyed working with you. You have been willing to sit and talk to us and discuss issues and you explain your point of view and listen to our point of view sometimes, and so I have truly appreciated that. And frankly, we are going to miss you at the Department of Interior and I am going to miss working with you in that capacity.

But I was also going to go into the issue of sequestration and what happened in the Senate and the fact that they decided it was a good idea to take it down beyond the sequestration level, which I thought was devastating, but I am not going to go into that. I was going to chew them out a little bit but I hope they are getting the message. But it was unnecessary, frankly, to do that. And that was one of the reasons, and in fact the reason that I voted against the CR even though it was my chairman's bill. But I told him beforehand that that was problematic what they did with the Department of Interior in the CR and the Senate.

So without getting into a long statement or anything like that, again, welcome. And Mr. Moran?

**OPENING REMARKS OF MR. MORAN**

Mr. MORAN. Yes, thank you, Mike. And I want to echo your statements about the Secretary. I think you have been a terrific

Secretary and I am really sorry to see you leave. We are going to miss you.

I do have a few comments. Rick Healy and Tim Aiken did such a nice job getting some thoughts together. I am not going to suppress those. But you are known around town for wearing your cowboy hat but, as the Secretary, you have worn many different hats that reflect the multitude of responsibilities entrusted to the Interior Department and you have carried out all those responsibilities admirably. You put a good staff together, many folks you have kept like Pam, and Rhea, all of the folks, David, that we have had the privilege of working with have been terrific.

But speaking of that cowboy hat, we understand there was an unveiling recently of your secretarial portrait, and in that portrait you are wearing that cowboy hat as well. But also included is your family in the picture, and their presence certainly is a recognition not only of the support they have provided you put a reminder to all of us that the decisions we make today impact our children and grandchildren for generations to come. As that great Republican President and conservationist Teddy Roosevelt noted, "the Nation behaves well if it treats its natural resources as assets, which it must turn over to the next generation increased and not impaired in value."

Mr. Secretary, there is much to like in the fiscal year 2014 budget request for the Interior Department. It carries forth that stewardship legacy that President Roosevelt spoke about. The request attempts to turn the corner and put behind us the mindless sequester that we are now dealing with, and I know you share with us concern about the impact of these sequester cuts not only on the natural and historical resources entrusted to the Department but also its impact on your dedicated employees, who in many ways are bearing the brunt of this sequester through furloughs and program cuts. We can only hope that as fiscal year 2014 goes forward, we can restore some sanity to the budget process and provide the Department with the fiscal tools it needs to carry out its important work.

So Mr. Secretary, I want to again congratulate you on a job very well done. We will miss you, although we expect that Interior will remain in capable hands with your successor Sally Jewell, as Mike said, who was just confirmed.

Thank you, Mr. Chairman.

Mr. MORAN. Mr. Chairman, Ms. Lowey is here as well.

Mr. SIMPSON. We have the ranking member of the full committee with us today. Thank you for coming, Ms. Lowey.

#### OPENING REMARKS OF MRS. LOWEY

Mrs. LOWEY. Thank you very much, Mr. Chairman. And I am impressed. I understand this is your last day and you are here before this committee, and I regret I have not had the opportunity to work directly with you, but there are many good things you did that I am well aware of and I will just take a moment or two to thank you for your service to your country, to wish you good luck in your future endeavors. You look relaxed already, ready to move on.

I really do want to thank you for your service to your country, to the State of Colorado. You really have worked to restore the in-

tegrity of the Department of Interior. You have invested in renewable energy on public lands, you have led an ambitious initiative to harness offshore wind energy and forged a clear path in response to the Deepwater Horizon incident that rightly prioritized the recovery of the Gulf and instituted reforms to help prevent such an event from ever happening again.

I personally want to thank you for your attention to the damage on Ellis and Liberty Islands, Gateway National Recreation Area as a result of Hurricane Sandy. And turning to the budget, I was pleased to see that the Department recognizes the critical role that conservation and outdoor recreation can play in promoting job creation and economic growth through the America's Great Outdoors Initiative. However, I am very concerned about the drastic cut to the National Heritage Areas program.

My district is in the Hudson Valley and it utilizes the National Heritage area program for tourism and economic development, getting people outdoors, interacting with their community and natural environment. It is an important program and popular among my constituents. So I am hoping that as I work with my colleagues on the Committee and the incoming Secretary to continue to review the President's budget request and ensure that we adequately fund the initiatives that are so important for preserving our wild and scenic places while promoting economic development and job creation.

So good luck to you. And I hope we will meet again in the near future. Thank you for your service.

Mr. SIMPSON. Mr. Secretary.

#### OPENING REMARKS OF SECRETARY SALAZAR

Secretary SALAZAR. Thank you very much, Chairman Simpson and Ranking Member Moran, Ranking Member Lowey, Congresswoman Pingree, Congressman Serrano, Congressman Calvert, Congressman Cole, Congresswoman Herrera Beutler, and who do I have here? And Congressman Joyce, thank you so much for being here.

Let me first say to this full committee that it has been a true honor for me to serve the United States and our citizens and to work with all of you. My own frank view of Washington, D.C., and our Nation's capital is that it would work well if the rest of the Congress worked the way that this committee works, and so I just very much want to applaud you for your bipartisanship here, for the great leadership and expertise of both the majority and the minority staff. It has been an honor for us to work with you.

Pam Haze, who has been here for a long time with multiple Secretaries, continues to guide our budget at the Department of Interior, and today, I am joined also by the Assistant Secretary for Policy, Management, and Budget, Rhea Suh. Thank you for your positive comments about them.

Let me be very short in my opening statement and simply say the following. Our work together the last 4 plus years as been truly an extraordinary journey. We have done a lot. We have moved forward in a new energy world where we are harnessing conventional energy in the Gulf of Mexico and offshore of the United States. So, we move forward with a renewable energy revolution on public

lands as well as on the ocean floor, our work together as we have moved forward with the conservation agenda making sure people understand there is an economic nexus between conservation and outdoor recreation and a healthy economy. Some six million jobs a year come just from outdoor recreation.

And as you know, Mr. Chairman, Idaho is a great place for national parks and for the public icons that bring people to your State. Even in urban places, as you were saying, Congresswoman Lowey, when you think about the Statue of Liberty and the people who come to New York because of the Statue of Liberty and Gateway and so many other wonderful places there, we appreciate the work that all of you have done to help us implement that agenda.

First Americans and Alaska natives, I cannot think of a more wonderful champion than Congressman Cole and the work of this committee in addressing Cobell and water rights settlements around the country, law and order issues, and education. You have been a champion supported by the members of this committee as you have moved forward on that agenda.

Water, I am proud of the work that we have done. There are a number of different initiatives on water, understanding that we have some very tough times coming up, especially in key basins like the Colorado River basin and the Rio Grande basin. It will be a continuing challenge for us in the future.

Finally, our commitment to young people. Because of the leadership of this committee, we have been able to provide jobs over the last 4 years in the 21st Century Conservation Corps to some 84,000 young people around America. I am very proud of what we have been able to do in that vein as well.

Now, fast forward to where we are today, and part of the reason I wanted personally to come to the Committee in the waning hours of my time as Secretary of Interior is to tell you that I am concerned. I am concerned, frankly, because we will not be able to do the job that has been assigned to us by the United States Government unless we are able to get the appropriate resources into the Department of Interior. As you noted in your opening comments, Chairman Simpson, we at the Department today are in the ditch, frankly, because of the sequester, and then you include on top of that over \$200 million in cuts from the Continuing Resolution.

So to put that in the most stark of terms for me as the manager of the Department of Interior, we essentially are having to take an almost 10 percent cut just to implement the sequester in the remaining months that we have in this budget year between now and the end of October. When you add on top of that another \$200 million plus in cuts, it starts having real consequences all across the United States of America.

Now, I will only point to two or three examples that I think will tell that story. One is our payments to the States, Payments in Lieu of Taxes, and Mineral Revenue Payments that go out to many of the States around the country. You know, Governor Mead from Wyoming is not happy and we are not able to send out the money that Wyoming believes it is entitled to, but under the sequester we cannot do that. It is having impacts throughout the United States where we have to send out those payments to state and local governments, and they will be impacted significantly this year.



Number two, here in Washington and New York and in San Francisco and places all around the country where our United States Park Police stands up to provide law and order to some of the most important icons and most important events in our Nation, we are seeing what is happening with the Park Police today in a very dramatic fashion. On average, our Park Police will have to take 14 days of furlough between now and October 1. That is 14 days of furlough without pay. The consequence of that is whether it is the Statue of Liberty or whether it is the 30 million visitors that come to the National Mall every year here in Washington or those visitors that go to Gateway, to Golden Gate in San Francisco, we are not going to be able to provide the same level of security because we will not have the same kind of presence that we have had in the past. The Park Police, where we have made tremendous headway in recruiting some of the most highly talented people, including veterans who are returning from Afghanistan and Iraq, into the ranks of the United States Park Police, we have canceled the class for this fiscal year because we simply cannot afford it.

Finally, just to show another place where I think the cuts have been declining and are having an impact, you have joined me in what I think is a moral undertaking in terms of providing opportunity for young people to come and work in national parks and wildlife refuges and the Bureau of Reclamation and all of our facilities around the country. I am very proud of the fact that those opportunities have been available because of the resources that you have provided. Over 22,000 young people were hired last year. This fiscal year, there are going to be several thousand less, somewhere between 3,000 and 5,000 fewer young people we will be able to hire to help do the great work, on the Hudson or the great work at some of the wildlife refuges in Oklahoma, wherever we are around the country.

The sequester, coupled with the \$200 million plus cut in the CR has made it very difficult for the Department of Interior. As I said in my informal meeting with this committee a few weeks ago, I think the number one issue that faces my successor Sally Jewell is the fiscal crunch that we are having to go through at this point in time.

Finally, just a word about this budget. The President's budget is a good one. It is a thoughtful and a balanced one from my point of view. We worked very hard in putting it together, and if that budget is adopted by the United States Congress, it will take us out of the ditch that we find ourselves in and put us on a course that is more sustainable to fulfill the missions assigned to the Department of the Interior.

Putting it in the macro sense because I know many of you on this committee and certainly the staff on this committee know the history of the budget of the Department of Interior. But right now, the budget we are dealing with today at Interior is essentially the budget that funded all of our programs back in about 2006 and 2007.

Consider the growth that has taken place in the United States of America from that time until today. If you consider how much more activity we are doing with respect to energy, both oil and gas as well as renewable, if you think about places like the Bakken for-

mation where we are trying to assign BLM employees to help in the permitting there in the Dakotas, it is tough to deal with the realities of the responsibilities that have been placed on the Department of Interior today when we are facing such a shortage in terms of the resources now in 2013.

The 2014 budget proposal helps us get back on the right track and I hope that this committee, Mr. Chairman and ranking member, seriously considers the proposal that the President has put on the table.

[The statement of Ken Salazar follows:]

**STATEMENT OF KEN SALAZAR, SECRETARY OF THE INTERIOR  
BEFORE THE SUBCOMMITTEE ON INTERIOR, ENVIRONMENT  
AND RELATED AGENCIES,  
HOUSE COMMITTEE ON APPROPRIATIONS  
ON THE 2014 PRESIDENT'S BUDGET REQUEST**

**April 11, 2013**

Mr. Chairman and members of the Committee, I am pleased to be here today to present the details of the 2014 budget request for the Department of the Interior. I want to thank the members of this Committee for your support throughout my time as the Secretary of the Interior. We have had a very productive relationship, working collaboratively on the expansion of renewable energy access while protecting the environment. Together, we have reformed offshore oil and gas programs and stood up three new entities to improve operator safety, environmental protection, and revenue collection. You have been advocates for expanding employment and job opportunities for youth and addressing significant challenges in Indian Country. Our partnership efforts have lifted the Department of the Interior, allowing us to recover from program erosion in prior years and increase opportunities to adequately manage land and resources and fulfill commitments that Congress has given us.

We rely on the support of this Committee to recognize the importance of our programs and needs. Although we may not always share the same views, we have been able to accomplish a lot working as partners.

**2013 Appropriations**

I would be remiss if I did not mention our final 2013 appropriation. I admit we were disappointed. In addition to the sequester of five percent, we sustained significant program reductions, and an additional across the board reduction. The sequester cut \$577 million from our programs and the continuing resolution imposed an additional \$201 million in reductions. These cuts push us back in time to funding levels we last saw in 2006. The final 2013 appropriation reverses much of the progress we have made under our watch.

We will survive these cuts in 2013, by freezing hiring, eliminating seasonal positions, and cutting back on our programs and services. These steps are essential to maintain our core mission to serve the public. However, they are not sustainable, as eroding our workforce, eliminating our summer field season, and deferring other important work cannot continue in future years without further severe consequences to our mission.

I look at the Bureau of Land Management, an agency that has a diverse and challenging set of responsibilities, and I feel a sense of loss about the impacts to their budget. BLM balances its dual missions to protect and conserve natural and cultural resources, oversee and manage the development of energy and minerals, and responsibly manage historic uses of public lands for grazing and timber production, while meeting public demands for wilderness designation and recreation. This agency of nearly 11,000 employees has the enormous responsibility of managing 245 million acres of land and a mineral estate of 700 million acres. BLM oversees 6,000 miles of trails in 14 States, hosts 59 million visitors annually, and oversees the production of 41 percent of the coal produced in this country. BLM's vast estate and complex mission requires balancing work and stretching resources across 17 western states. BLM strives to be a good neighbor. The

continuing resolution combined with the sequester, reduces the BLM operating budget by \$59.8 million or 6.2 percent. This reduction comes now, halfway through the fiscal year and at the start of field season. The outcome of the 2013 appropriation process in sum will stall our efforts to strengthen the management and permitting processes for oil and gas, minerals and coal on public lands; impede our protection and restoration of sage grouse habitat; reduce our partnerships that help to maintain trails and recreation opportunities; and slow the issuance of grazing permits and timber leases. BLM will also become a poor neighbor and poor landlord, because it will be necessary to reduce weed control, the protection of archeological sites, and limit access for hunting and fishing and other recreation.

In the coming months you will see these types of impacts across the country in all of our bureaus and offices. You will also see the impacts on your constituents because of cutbacks in programs and services and because of reduced revenue sharing, grants and contracts. We recently notified State Treasurers that they can expect to receive reduced mineral payments for the balance of the fiscal year and we notified county commissioners that Payments in Lieu of Taxes payments will be reduced.

This is a watershed moment for our Nation. We can't continue to mortgage our future by cutting back on programs that fulfill commitments to the Nation for natural and cultural resource stewardship, energy independence, and upholding our commitments to Indian Tribes. Interior's budget is one percent of discretionary spending – a small slice of the pie. However, cuts to our programs have disproportionate impacts that we cannot continue to erode if we are to keep operations across the country safe and viable. Our Department collects nearly \$13 billion annually through mineral extraction, grazing and timber activities on public lands, and recreation fees – an amount that is more than our discretionary budget. We share nearly \$5 billion of the revenues annually with States, Tribes, counties and others in the form of grants and direct payments. An additional \$2 billion of our budget is used in local communities across the Nation through contracts for goods and services. We are proud to boast that we use over 51 percent of these funds to contract with small businesses. Small businesses are the largest source of new employment in the Nation.

#### **2014 Budget**

The final 2013 appropriation is in stark contrast to our 2014 budget. Our 2014 budget represents a blueprint for our mission.

The 2014 budget request of \$11.9 billion includes \$10.9 billion for programs under the jurisdiction of the Interior, Environment and Related Agencies Subcommittee and included in the Interior bill. The budget for current appropriations is \$513.2 million or 5.0 percent above the 2012 level. The request includes reductions and savings of \$600.0 million. We made difficult choices in this budget, sacrificing in many areas, deferring projects, and programming savings for efficiencies in order to maintain funding for key priorities.

It is important to put this budget in context. The context is the complex mission that the Department of the Interior has and how the mission affects the lives of all Americans. Simply put, Interior works to protect America's Great Outdoors (AGO) and power the future. The Department serves as the steward for 20 percent of the Nation's lands, oversees the responsible development of 23 percent of U.S. energy supplies, is the largest supplier and manager of water in the 17 western States, maintains

relationships with 566 federally recognized Tribes, and provides services to more than 1.7 million American Indian and Alaska Native peoples. To continue our commitment to AGO, for the first time ever, the budget dedicates mandatory funding for the Land and Water Conservation Fund (LWCF) programs, with full funding at \$900 million annually beginning in 2015.

Nearly every American lives within an hour's drive of lands or waters managed by the Interior Department. In 2012, there were 483 million visits to Interior-managed lands. Recreational visits to Interior's lands had an economic benefit to local communities, particularly in rural areas, contributing an estimated \$48.7 billion in economic activity in 2011. Through its bureaus, Interior manages 401 units in the national park system, 561 national wildlife refuges, and more than 245 million acres of land in BLM's National System of Public Lands. Interior works to ensure America's spectacular landscapes, unique natural life, cultural resources, and icons endure for future generations. This Department tells and preserves the American story, and maintains the special places that enable the shared American experience.

Interior enables the safe and environmentally responsible development of conventional and renewable energy on public lands and the Outer Continental Shelf. The Department's oil and gas development activities accounted for nearly \$9.7 billion of the roughly \$13.7 billion in receipts generated by Interior's activities in 2012. For the past several years, Interior has targeted investments in America's energy future, particularly to encourage the development of renewable energy on the Nation's public lands and offshore areas where it makes sense. In 2009, there were no commercial solar energy projects on or under development on the public lands. From 2009 through March 2013, Interior authorized 37 renewable energy projects on or through the public lands which, if constructed, will have the potential to produce enough electricity to power more than 3.8 million homes.

Achieving success in all of these important responsibilities on behalf of the American people is the Department's primary focus. The American people deserve nothing less.

#### **Investing in America**

Through the America's Great Outdoors initiative, the Administration is working to expand opportunities for recreation and conservation, through partnerships with States and others, and the promotion of America's parks, refuges, and public lands. The benefits extend beyond the conservation of natural resources and engagement of Americans with the outdoors. According to the Outdoor Industry Association, the American outdoor recreation economy provides an estimated 6.1 million jobs, spurs \$646 billion in spending, and brings \$39.9 billion in Federal tax revenue and \$39.7 billion in State and local tax revenue.

The AGO initiative is encouraging innovative partnerships in communities across the Nation, expanding access to rivers and trails, creating wildlife corridors, and promoting conservation while working to protect historic uses of the land including ranching, farming, and forestry. These efforts are based on donations reflecting the support of local communities to protect these areas and create more open space. For example, in 2012, the Department established the Sangre de Cristo Conservation Area, which will conserve a wildlife corridor in the Southern Rockies spanning 170,000 acres. When completed, the easement will represent the largest donation ever to the Fish and Wildlife Service.

In Montana, the Swan Valley Conservation Area connects the Canadian Rockies with the central Rockies of Idaho and Wyoming. The FWS established the Area in partnership with landowners who voluntarily entered their lands into easements. The new Area will protect one of the last low-elevation, coniferous forest ecosystems in western Montana that remains undeveloped and provide habitat for species such as grizzly bears, gray wolves, wolverines, and Canada lynx.

In 2012, the Department established the National Blueways System (NBS) and the National Water Trails System under the AGO initiative. Recognition as a National Blueway for rivers and watersheds of national significance promotes and conserves economic, recreational, and natural values of healthy river systems from source to outlet and across watersheds. The NBS does not impose use limitations or regulatory requirements, but instead through collaborative efforts with others, recognizes and supports existing local and regional conservation, recreation, and restoration efforts by coordinating ongoing Federal, State, and local activities. The 410 mile long Connecticut River and its 7.2 million-acre watershed is the first river to be recognized as a National Blueway, followed by the recent designation of the White River in Arkansas and Missouri.

The new National Water Trails System network will increase access to water-based outdoor recreation in and around urban areas, provide national recognition and resources to existing local water trails, encourage community stewardship of local waterways, and promote tourism that fuels local economies across America. The water trails are a class of national recreational trails under the National Trails Systems Act of 1986. Nine rivers were designated National Water Trails in 2012.

The 2014 budget includes \$5.3 billion in current authority for AGO activities, an increase of \$179.8 million above 2012. Funding is focused on land acquisition programs supported through the Land and Water Conservation Fund as well as land management operations, and other grant and technical assistance programs to promote conservation and improve recreational access. This includes \$120.2 million for river restoration activities by the Bureau of Reclamation, a new addition to our AGO portfolio in 2014.

The AGO request includes \$10.0 million for a revitalized and refocused Urban Parks and Recreation Resource grant program, and \$3.0 million for a Historic Preservation Fund competitive grant program to support projects that help to tell the broader and diverse aspects of America's story.

In addition to this current request, the Administration will submit a legislative proposal to, for the first time ever, establish dedicated mandatory funding for LWCF programs, with full funding at \$900 million annually beginning in 2015. In 2014, this mandatory funding will supplement discretionary funds and provide an additional \$141.0 million for Interior programs, \$88.0 million for Interior's Federal land acquisition, and \$53.0 million for DOI recreational and conservation grants.

The 2014 budget continues a collaborative effort begun last year with the U.S. Forest Service in the Department of Agriculture to focus on the conservation and restoration of large landscapes and working lands, protecting ecosystems and the communities that depend on them. This approach works with partners at the local level to identify landscape areas or ecosystems for collaborative and leveraged conservation investments. Working jointly with the Forest Service, Interior has identified four focal landscape areas for targeted investment of \$169.3 million in 2014.

### **A Stronger Energy Future**

A stronger America depends on a growing economy that creates jobs. No area holds more promise than investments in American energy, with the potential to provide clean, low cost, reliable, and secure energy supplies. Success depends on the Country's ability to pursue an all-of-the-above energy strategy. Interior's energy resource programs are at the forefront of this objective. The 2014 budget includes \$771.6 million for renewable and conventional energy programs, an increase of \$97.5 million above 2012. This includes \$1.1 million for the Bureau of Reclamation to explore how to integrate renewable energy technology into their projects.

Interior oversees onshore production of oil, gas, and coal on over 700 million acres of subsurface mineral estate. The Department estimates the exploration and production of oil, gas, coal, hydropower, and minerals on Federal lands contributed nearly \$275 billion to the U.S. economy in 2011.

Interior continues its effort to expand safe and responsible onshore energy development. In calendar year 2012, the Bureau of Land Management held 31 onshore oil and gas sales and 33 are planned in 2013. The BLM sales resulted in 1,707 parcels of land receiving bids in 2012, 30 percent more than in 2009. Onshore oil and gas leasing reforms put in place in 2010 resulted in fewer protests; less than 18 percent of 2,064 parcels offered in fiscal year 2012 were protested, the lowest since fiscal year 2003, reducing costs and speeding development. In 2014, the Department proposes a total of \$127.1 million in current appropriations and offsetting fees for BLM's oil and gas program, representing an increase of \$23.0 million in program capacity. This includes \$48.0 million in proposed inspection fees, allowing for an increase of \$10.0 million in BLM inspection and enforcement resources, along with a reduction of \$38.0 million in requested appropriations for the program. The proposed onshore inspection fee is similar to the fee now charged to inspect offshore rigs and platforms.

The Department also plays a key role in efforts to strengthen the Nation's electric transmission grid. In 2012, Interior approved permits enabling more than 350 miles of transmission lines in seven states across Federal lands, including the 146 mile Pennsylvania-New Jersey Susquehanna-Roseland transmission line to improve electric service reliability in one of the most congested energy markets in the Country, and the 170 mile Sigurd to Red Butte transmission line in Utah, expected to provide enough energy to power over 400,000 American homes. This project is a key part of PacifiCorps' Energy Gateway Transmission Expansion to add about 2,000 miles of new transmission lines across the West.

Interior has been similarly active in supporting offshore production of oil and gas, while continuing to stress management and oversight reforms identified as a result of the Deepwater Horizon incident. At the end of 2012, more rigs were operating in the Gulf than in the previous two and a half years, equaling the number of rigs in the Gulf before the Deepwater Horizon oil spill. In 2012 alone, BSEE approved 112 new deepwater well permits, higher than in either of the two years preceding the Deepwater Horizon oil spill. At the same time, the Department has implemented safety and environmental management systems regulations; issued a new drilling safety rule to refine safety reforms and strengthen requirements; took steps to hold contractors accountable for their actions offshore; conducted the first full-scale capping stack deployment exercise to respond to a potential future well blowout scenario; and provided new guidance on oil spill response plans.

Interior released a new five-year program for offshore leasing last year, making areas containing an estimated 75 percent of the technically recoverable offshore oil and gas resources available for exploration and development. In March 2013, BOEM held the second Gulf of Mexico sale under the new OCS Plan, drawing 407 bids on 320 tracts covering more than 1.7 million acres offshore Alabama, Louisiana, and Mississippi, with high bids totaling \$1.2 billion. In 2012, BOEM launched an assessment of energy resource potential off the coast of the Mid- and South Atlantic. The same year, Interior oversaw the first new exploratory activity in the Alaskan arctic in a decade, with Shell Oil Company beginning limited preparatory drilling activities in the Chukchi and Beaufort Seas under strict safety and environmental oversight. The 2014 budget includes a legislative proposal to implement an agreement reached in 2012 with the government of Mexico to open up previously off limits transboundary oil and natural gas reservoirs in the Gulf of Mexico. The 2014 budget includes \$478.2 million for conventional offshore oil and gas activities.

Renewable energy, particularly solar and wind power, is a crucial and growing component of the Administration's all-of-the-above energy strategy. Among the significant results achieved for renewable power, since 2009, BLM has authorized more than 11,500 megawatts of energy on public lands and waters, established a road map for responsible solar development in the West designating energy zones, and flipped the switch on the first solar energy project to deliver power to the grid. The BLM also released the Final Environmental Impact Statement for a proposed 750 megawatt facility in Riverside County that would be one of the largest solar energy projects on public lands in the California desert. The BLM is also moving forward on wind energy, with a proposed complex in Wyoming that would generate up to 3,000 megawatts of power, making it the largest wind farm facility in the U.S. and one of the largest in the world. The 2014 budget includes \$29.1 million in BLM for onshore renewable energy programs.

Significant progress has been made to advance offshore wind energy. In 2012, BOEM issued the second non-competitive commercial wind lease off the coast of Delaware, and moved forward with first-ever competitive lease sales for wind energy areas off Virginia and Rhode Island/Massachusetts. These sales involve nearly 278,000 acres proposed for development of wind generation to produce electricity to power as many as 1.4 million homes. The 2014 budget includes \$34.4 million in BOEM for offshore Renewable Energy development.

#### **Spurring Growth and Innovation Through Science**

The proposed 2014 budget provides strong support for basic and applied science to support sustainable stewardship of natural resources as part of Interior's mission. The budget requests \$963.1 million for research and development across the Department, which is a \$143.6 million or 18 percent increase over FY 2012. These investments promote economic growth and innovation, ensure American competitiveness in the global market, strengthen natural hazard preparedness and improve the nation's knowledge of the natural resources and environmental capital that are the foundation of our Nation's socio-economic and ecological well-being. Program increases will support the application of science to address critical challenges in energy and mineral production, ecosystem management, invasive species, oil spill restoration, climate adaptation, and Earth observations (such as satellite and airborne land imaging and water and wildlife monitoring). As the Department's premier science agency, the U.S. Geological Survey is funded at \$1.2 billion under the President's proposed budget, an increase of \$98.8 million above the 2012 enacted level. Funding would support



the development of domestic energy, protect critical water resources, respond to natural disasters and advance climate change adaptation strategies.

Interior's mission requires a careful balance between development and conservation. The Department works to achieve this balance by working closely with its diverse stakeholders and partners to ensure its actions provide the greatest benefit to the American people. Central to this mission is the development and use of scientific information to inform decision making. Scientific monitoring, research, and development play a vital role in supporting Interior's missions and Interior maintains a robust science capability in the natural sciences, primarily in the U.S. Geological Survey. An example of how this expertise is applied is the USGS current work as part of an interagency collaboration on hydraulic fracturing, which is aimed at researching and producing decision-ready information and tools on the potential impacts of hydraulic fracturing on the environment, health, and safety, including water quality and inducement of seismic activity. The budget includes \$18.0 million to continue the inter-agency collaboration to investigate the impacts of hydraulic fracturing.

The USGS provides exceptional support to Interior bureaus, however USGS alone cannot provide for all of Interior's scientific needs. The USGS and other Interior bureaus work collaboratively to find answers and to translate and apply scientific information and tools to important natural resource management questions. Science funding at the bureau and office level allows bureaus and offices to collaborate to produce and translate science into management-ready information, providing required resources to purchase studies, models, and expertise, and to hire scientists to help managers interpret the vast body of knowledge generated by USGS, universities, and other scientific institutions. These resources help answer imminent and important natural resource management questions and provide near-term solutions to address urgent and emerging issues such as the white-nose syndrome in bats.

Interior agencies work collaboratively to bridge gaps in knowledge, leveraging the complementary skills and capacity to advance the use of science to support management decision making, ensure independent review of key decisions and science integrity, and adaptively use data to assist States, Tribes, and communities throughout the Nation.

#### **Water for a Growing America**

Although the Bureau of Reclamation is within the jurisdiction of the Energy and Water Subcommittee, it plays a critical role in addressing the Nation's water challenges which are of interest the Subcommittee. Reclamation maintains 476 dams and 337 reservoirs with the capacity to store 245 million acre-feet of water. The bureau manages water for agricultural, municipal, and industrial use, and provides recreation for millions of people. Reclamation's activities, including recreation, generate estimated economic benefits of over \$55 billion and support nearly 416,000 jobs.

These facilities deliver water to one in every five western farmers to irrigate about ten million acres of land, and provide water to over 31 million people for municipal and industrial uses and other non-agricultural uses. The water managed by Interior irrigates an estimated 60 percent of the Nation's vegetables each year. Reclamation facilities also reduce flood damages in communities where they are located and thereby create an economic benefit by sparing these communities the cost of rebuilding or replacing property damaged or destroyed by flood events.

Population growth, development, and a changing climate are creating growing challenges to the Nation's water supplies. In many areas of the Country, including the arid West, dwindling water supplies, lengthening droughts, and rising demand for water are forcing communities, stakeholders, and governments to explore new ideas and find new solutions to ensure stable, secure water supplies for the future.

Interior is tackling America's water challenges by providing leadership and assistance to States, Tribes, and local communities to address competing demands for water. Interior's programs are helping communities improve conservation and increase water availability, restore watersheds, and resolve long standing water conflicts. Interior is leading a national water conservation initiative, WaterSMART. The acronym stands for Sustain and Manage America's Resources for Tomorrow. WaterSMART is finding better ways to stretch existing supplies and helping partners plan to meet future water demands.

The USGS is a key partner in Interior's WaterSMART initiative, by contributing research as part of its WaterSMART Availability and Use Assessment effort. The 2014 budget for the USGS includes \$22.5 million for WaterSMART activities.

In 2012, USGS began a three year study of three focus areas in the Delaware River Basin, the Apalachicola-Chattahoochee-Flint River Basin, and the Colorado River Basin. The studies focus on water availability, investigating the components of a regional water budget to understand the amount entering and leaving each basin. This work contributed to The Colorado River Basin Water Supply and Demand Study released by the Department in December 2012, funded by the Bureau of Reclamation and the seven States in the Colorado River Basin. This first of a kind study projects an average imbalance in future water supply and demand greater than 3.2 million acre-feet by 2060. The study projects the largest increase in demand will come from municipal and industrial users, owing to population growth. The Colorado River Basin currently provides water to 40 million people. The study estimates this could double to nearly 76 million people by 2060, under a rapid growth scenario.

#### **Fulfilling the Trust**

This Administration has made it a top priority to help bring real and lasting change in Indian Country and to open a new constructive chapter of relations with Native Americans. The Administration has a comprehensive agenda to reform, repair, and rebuild Federal relations with Indian Country to ensure American Indians and Alaska Natives are offered the opportunities they deserve. This means respecting the inherent sovereignty of tribal nations and making sure the Federal government is honoring its commitments, fulfilling its trust responsibilities to tribal nations and individuals, providing resources, working cooperatively to build stronger economies and safer communities, and providing high quality education opportunities for Indian youth at schools funded by the Bureau of Indian Education.

Interior has worked diligently to restore tribal homelands. Since 2009, Interior has acquired more than 190,000 acres of land into trust and processed over 1,000 requests for land acquisitions that will allow for economic development, natural resource infrastructure, and health and housing projects to move forward as determined by the Tribes. The Secretarial appointed National Commission on Indian Trust Administration and Reform will help further these efforts as it undertakes a forward-looking, comprehensive evaluation of the Department's trust management.

One of the most significant recent developments regarding Interior's trust responsibilities was passage of the Claims Resolution Act of 2010, which ratified the \$3.4 billion Cobell settlement agreement and four tribal water rights settlements. The Cobell settlement became final on November 24, 2012, following action by the U.S. Supreme Court and expiration of the appeal period.

Interior has launched implementation of a \$1.9 billion Indian Land Buy-Back Program, authorized in the legislation, to purchase fractionated interests in trust or restricted land from willing Individual Indian Account holders at fair market value within a ten year period. The program enables tribal governments to use consolidated parcels for the benefit of their communities. Interior will administer the program by securing the Department's extensive expertise and services, primarily in BIA and the Office of Special Trustee for American Indians, to implement the operational aspects, including valuations and acquisitions. As an added incentive to willing sellers, the Indian Land Buy-Back Program will fund up to \$60.0 million for a scholarship fund for American Indian and Alaska Native students.

The entire program will be based on consultation with and participation of Tribes. Building on the Cobell settlement, the Administration has engaged Tribes in Nation-to-Nation negotiations on 59 additional settlements leading to over \$1.1 billion in settlements to resolve long standing trust accounting and trust management claims.

Interior has also taken another step to give Tribes and individual Indians greater control over their own lands with the finalization of the most sweeping reform of Federal surface leasing regulations in more than 50 years. The new regulations remove bureaucratic red tape and streamline the approval for home ownership, expedite economic development, and spur renewable energy. As a result, individuals and Tribes will have the ability to do fundamental things on tribal lands, like buy a home or build a business.

The 2014 budget proposes an interim solution in the way in which funds are budgeted for contract support costs, which are important to the furtherance of self-governance and Indian self-determination. The 1975 Indian Self-Determination and Education Assistance Act, as amended, allows Tribes to implement programs previously administered by the Federal government through contractual arrangements. In turn, the Department pays tribal contractors for reasonable costs associated with the administration of those programs, known as contract support costs. Contract support costs funds are used by tribal contractors to pay a wide range of administrative and management costs, including but not limited to finance, personnel, maintenance, insurance, utilities, audits, communications, and vehicle costs. These funds allow Tribes to manage the Federal programs for which they contract, as well as eliminate the need for Tribes to use program funds to fulfill administrative requirements. The 2014 request for these costs is \$231.0 million, an increase of \$9.8 million above the 2012 enacted level.

In light of the Supreme Court's *Salazar v. Ramah Navajo Chapter* decision, the Administration is proposing Congress appropriate contract support costs funding to Tribes on a contract-by-contract basis. To ensure as much clarity as possible regarding the level of contract support costs funding, the Administration will provide Congress a contract-by-contract funding table for incorporation into the appropriations act. The Administration proposes this change as an interim step. The broader

goal is to develop a longer-term solution through consultation with the Tribes, as well as streamline and simplify the contract support costs process which is considered by many as overly complex and cumbersome to both Tribes and the Federal government.

Another area of emphasis reflected in the 2014 budget is a commitment to resolve tribal water rights claims and ensure Native American communities have access to use and manage water to meet domestic, economic, cultural, and ecological needs. Including funding for technical and legal support and for authorized settlements involving tribal waters, the 2014 budget request totals \$159.6 million, which is an increase of \$25.9 million over 2012. This includes a total of \$135.3 million within the Bureau of Reclamation and Indian Affairs to implement water rights settlements, an increase of \$20.4 million above 2012. For communities benefiting from these settlements, a permanent water supply will vastly improve their quality of life and will offer greater economic security immediately as well as into the future.

To strengthen the Department's capacity to meet its trust responsibilities and more effectively partner with Tribes on water issues, \$3.4 million in increases are provided in BIA's budget to support Water Management and Planning, Water Rights Litigation, and to conduct a comprehensive Department-wide evaluation to strengthen engagement, management, and analytical capabilities of the Indian Water Rights Office and other bureaus and offices that work on these issues. An increase of \$766,000 in Reclamation's Native American Affairs Program and \$1.0 million in the Cooperative Water Program at USGS will also strengthen technical analysis in support of water rights settlement work.

Interior is working to improve other areas of services in Indian Country. In education, Interior is working with the Department of Education to develop a national education reform agenda to better serve Indian children in BIE schools. The two agencies signed an agreement to bolster cooperation and coordination. The budget includes \$15.0 million to fund an elementary and secondary school pilot program based on the successful Department of Education turnaround schools model and concepts. Grants will be awarded to BIE-funded schools demonstrating the greatest need for the funds and the strongest commitment for using the funds to substantially raise the achievement of students.

Interior is putting more law enforcement officers in Indian communities, and improving training and equipment. Interior's revamped recruiting process for BIA law enforcement officers has increased the number of applicants for those positions by 500 percent, resulting in the largest officer hiring increase in BIA history. A pilot program of intense community policing on four reservations experiencing high crime rates saw promising results, a combined reduction of violent crime of 35 percent after the first 24 months. Now, 12 months later, crime continues to drop for a new combined reduction of 55 percent. Interior has expanded this successful pilot program to two additional reservations. The 2014 budget of \$2.6 billion includes \$365.3 million for BIA's Public Safety and Justice programs, an increase of \$19.0 million.

#### **Interior's Budget In Context**

This budget continues funding for important programs that will protect the Nation's significant natural resources and cultural heritage, makes strategic investments in energy development, advances partnerships to leverage resources, and seeks improved outcomes for Indian communities.

These are key concepts, given the fiscal challenges we face and the policy choices you will face over the coming months as the House and Senate debate the 2014 budgets. A key consideration is the need to invest in programs that provide a strong economic return. Interior's programs and activities contributed an estimated \$385 billion to the Nation's economy in 2011 and supported an estimated 2.4 million American jobs. Energy and mineral development on Interior-managed lands and offshore areas generated more than \$275 billion of this economic activity and supported 1.5 million jobs. Recreation and tourism on Interior lands contributed \$48.7 billion and supported nearly 403,000 jobs. This economic output represents about 6.5 percent of the direct output of tourism-related personal consumption expenditures for the United States in 2011 and about 7.6 percent of direct tourism-related employment. Water supply, forage and timber activities, primarily on public lands in the West, contributed nearly \$41 billion and 290,000 jobs.

#### **Fiscal Responsibility**

This budget recognizes the need for fiscal responsibility. The priority programs that are level funded with 2012 and limited strategic investments proposed in 2014 are balanced by reductions in lower priority programs, deferrals and planning efficiencies.

**Balancing Difficult Choices** – Interior made its 2014 budget decisions in the context of the challenging fiscal environment. The 2014 budget of \$10.9 billion, eliminates and reduces lower priority programs, reduces duplication, streamlines operations, and captures savings. The 2014 request is \$513.2 million or a 5.0 percent increase compared with the 2012 enacted level.

The total 2014 budget contains \$600.0 million in program terminations, reductions, and savings from administrative efficiencies. Staffing reductions of 593 from 2012, are planned for 2014. Thus, despite increased resources needed for programs and services, Interior will continue to improve efficiency and reduce its workforce. These personnel reductions are focused on areas where there are funding reductions. Staffing reductions will be achieved through attrition, outplacement, and buy-outs in order to minimize the need to conduct reductions in force to the greatest extent possible.

This budget is responsible, with strategic investments in a few, targeted areas, and maintains the core functions that are vital to uphold stewardship responsibilities and sustain key initiatives. The budget also continues efforts to shift program costs to industry where appropriate. Permanent funding that becomes available as a result of existing legislation without further action by the Congress results in an additional \$6.3 billion, for \$18.3 billion in total budget authority for Interior in 2014.

#### **Major Changes in the 2014 Request**

**Bureau of Land Management** – The 2014 request is \$1.2 billion, an increase of \$32.6 million over the 2012 enacted budget. This includes an increase of \$23.5 million for BLM's two operating accounts, an increase of \$10.3 million in BLM's request for current appropriations for Land Acquisition, and a reduction of \$3.6 million that eliminates the Construction account.

To advance the America's Great Outdoors initiative, the request includes \$8.0 million in programmatic increases for recreation and the National Landscape Conservation System to improve opportunities for recreation, education, and scientific activities while enhancing the conservation and protection of BLM-managed lands and resources. An additional \$1.1 million will support

interagency AGO projects to demonstrate ecosystem and landscape-scale conservation.

The BLM will continue to promote and facilitate the development of renewable energy on public lands, as part of the New Energy Frontier initiative. The 2014 budget includes a program increase of \$9.1 million for renewable energy to support wind, solar, and geothermal energy, consisting of \$7.1 million in new funding and a \$2.0 million transfer of geothermal funds previously included within the Oil and Gas Management program. An additional \$13.0 million in program increases is requested to strengthen management of the oil and gas program. These increases are offset by a proposal to shift the cost of oil and gas inspection and enforcement activity from current appropriations to inspection fees charged to industry, allowing for a reduction of \$38.0 million in requested appropriations. The proposed inspection fees are estimated to generate \$48.0 million, providing for a net \$10.0 million increase in BLM's inspection and enforcement capability. There is an additional \$6.0 million increase requested in the Lands and Realty Management program to support identification and designation of energy corridors in low conflict areas and site high voltage transmission lines, substations, and related infrastructure in an environmentally sensitive manner.

The 2014 budget features a \$15.0 million increase to implement sage grouse conservation and restoration measures to help prevent the future listing of the species for protection under the Endangered Species Act.

The BLM funding for the Cooperative Landscape Conservation initiative increases by \$3.3 million. This includes \$2.5 million to support an integrated collaborative climate change adaptation effort to effectively plan for and respond to the impacts of climate change. An increase of \$776,000 in Soil, Water, and Air Management will implement programs to improve the use of Rapid Ecoregional Assessments. The budget request also includes an increased investment of \$2.8 million in the Youth in the Great Outdoors initiative.

Other program increases in the BLM budget include \$3.5 million in the Oregon and California Grant Lands account to support the Secretary's Western Oregon Strategy, \$2.0 million to implement reforms of the Wild Horse and Burro program, \$4.0 million in the Resource Management Planning program to support high priority planning efforts, \$2.5 million in the Soil, Water, and Air Management program for applied science projects aimed at improving BLM understanding and management of public lands, \$1.0 million in the Riparian Management program for increased science in support of program activities, and \$500,000 for activities related to the Klamath Agreements authorized under existing law. The budget includes increases of \$2.4 million and \$2.0 million, respectively, in the Coal Management and Other Mineral Resources programs to restore recent reductions in these programs. An \$8.2 million program increase is requested in the Bureau-wide Fixed Cost program to cover costs previously funded through program assessments. The budget includes a \$1.3 million increase in Deferred Maintenance to support land mobile radio improvements and a \$1.0 million increase in Administrative Support to fund the startup costs for a new congressionally-chartered charitable, non-profit foundation, the National BLM Foundation.

A \$14.1 million program decrease is proposed for grazing permit renewal and monitoring in the Rangeland Management program. However, the impact of this decrease will be mitigated by a new grazing administration fee of \$1.00 per animal unit month proposed on a pilot basis through appropriations language, estimated to raise \$6.5 million in 2014. The 2014 budget reduces programmatic funding for the Alaska Conveyance program by \$12.3 million from the 2012 level.

The BLM will explore opportunities to further streamline the program. The impact of this funding reduction will be further mitigated by a legislative proposal to use a portion of oil and gas revenues from the National Petroleum Reserve-Alaska to fund land transfers in support of the Alaska Conveyance program. The budget also includes a reduction of \$2.1 million in Information Technology Management.

**Bureau of Ocean Energy Management** – The 2014 operating request is \$169.4 million, including \$71.5 million in current appropriations and \$97.9 million in offsetting collections. This is an increase of \$11.9 million in net current appropriations above the 2012 enacted level.

The 2014 budget request includes program changes of \$5.8 million above the 2012 enacted level to promote offshore conventional energy development that is safe and environmentally responsible. The request includes an increase of \$1.3 million to support offshore renewable energy lease auctions. The request also includes an increase of \$3.0 million for conventional energy development activities to develop baseline characterization and monitoring capabilities in the Gulf of Mexico, support the acquisition and processing of geophysical and geological data for the Atlantic OCS, and advance the use of technology to support the review of development plans. The budget requests funding to be partially offset by fees to support the leasing of marine minerals such as sand and gravel needed to enhance the resiliency of coastal areas amid rising sea levels.

**Bureau of Safety and Environmental Enforcement** – The 2014 budget request is \$222.1 million, including \$98.2 million in current appropriations and \$124.0 million in offsetting collections. This is a total increase of \$24.8 million above the 2012 enacted level.

The 2014 budget includes an increase of \$4.2 million for environmental enforcement activities to foster environmental compliance, and support inspection, investigation, and enforcement activities. The request also includes an increase of \$14.2 million to increase operational safety capabilities, develop the National Offshore Training program for inspectors and engineers, and conduct research and development activities on critical safety systems associated with offshore oil and gas development. Funding is also requested to ensure the safety of oil and gas development in Alaskan waters and to enhance the use of technology in the Bureau's offshore inspection program.

**Office of Surface Mining** – The 2014 budget request for the Office of Surface Mining is \$143.1 million, a decrease of \$7.1 million from the 2012 enacted level. This includes a decrease of \$10.9 million in grants to States and Tribes to encourage these regulatory programs to recover a larger portion of their costs from fees charged to the coal industry, and an increase of \$4.0 million to provide additional technical support to State and tribal regulatory programs. The budget also includes increases for applied science to advance reclamation technologies. This request also proposes to finalize the transition of abandoned mine land reclamation from current to permanent funding.

**U. S. Geological Survey** – The USGS budget request is \$1.2 billion, \$98.8 million above the 2012 enacted level. The President's budget reflects the Administration's commitment to investments in research and development to support sound decision making and sustainable stewardship of natural resources. This includes science, monitoring, and assessment activities critical to understand and manage the ecological, mineral, energy, and water resources which underlie the prosperity and well-being of the Nation. Highlights of the budget include increases for science priorities in ecosystem

restoration, climate adaptation, invasive species, and earth observations, including streamgages, light detection and ranging, and managing critical data. The budget provides increased support to enhance sustainable energy development, address water resources challenges, and enhance America's Great Outdoors through the 21<sup>st</sup> Century Conservation Service Corps Youth initiative.

The USGS budget includes investments in important science programs to help meet societal needs. A program increase of \$14.5 million above 2012 for WaterSMART will be used to develop regional water availability models, integrate and disseminate data through online science platforms, and support the National Groundwater Monitoring Network. A program increase of \$7.2 million for the National Streamflow Information Program will fund more than 400 streamgages to strengthen the Federal backbone at high priority sites sensitive to drought, flooding, and potential climate change effects.

A program increase totaling \$10.0 million above 2012 for the National Climate Change and Wildlife Science Center/Department of the Interior Climate Science Centers includes an increase of \$3.5 million for grants focused on translational and applied science needed by resource managers for decision making. An increase of \$3.2 million will support coordination with other Federal climate science activities and ensure scientific results and products are made available to the public in a centralized, web-accessed format. An increase of \$2.5 million will support applied science and capacity-building for tribal climate adaptation needs in each of the eight CSC regions. A program increase of \$3.0 million above 2012 will enable completion of the national biological carbon sequestration assessment and development of tools in collaboration with other agencies to support biological sequestration activities on public lands.

The 2014 budget also provides a program increase of \$11.0 million above 2012 for the 3-Dimensional Elevation Program to collect LIDAR data, used for a wide range of applications in mapping, agriculture, planning, and natural resources management. Data collection will be coordinated with other agencies to implement a national LIDAR program to enhance science and emergency response activities, resource and vulnerability assessments, ecosystem based management, and tools to inform policy and management.

The budget includes a program increase of \$13.0 million above 2012 to support the continuation of a hydraulic fracturing research and development effort with the Department of Energy and Environmental Protection Agency, to better understand and minimize potential environmental, health, and safety impacts of energy development involving hydraulic fracturing. New work will address issues such as water quality and quantity, ecosystem, community, and human health impacts, and induced seismicity. A program increase of \$4.0 million above 2012 is also provided for science to support ecologically sound and sustainable development of renewable energy on Federal lands.

The 2014 budget includes a program increase of \$9.0 million in Core Science Systems for the Big Earth Data initiative. This interagency initiative will improve access to and use of data from the satellite, airborne, terrestrial, and ocean-based Earth observing systems. These investments will provide benefits in natural resource management and hazard mitigation, by improving access to critical information.



Program increases totaling \$15.5 million above 2012 in ecosystems activities will support a wide range of science, including ecosystems restoration work in the Chesapeake Bay, California Bay-Delta, Columbia River, Everglades, Puget Sound, Great Lakes, Upper Mississippi River, Gulf Coast, and Klamath Basin. Within this total, \$3.0 million will support the science and integration of ecosystems services frameworks into decision making and implementation of efforts to assess and sustain the Nation's environmental capital. A program increase of \$2.4 million will address invasive species such as Asian carp, brown tree snakes, white-nose syndrome in bats, coral reef health, and other emerging invasives of national concern.

A program increase of \$2.5 million above 2012 is requested to improve rapid response to natural disasters. Funding will improve the Federal government's capacity to provide timely and effective science and information to minimize potential risks posed by natural hazards. Funding will be invested in USGS monitoring networks for rapid response to earthquakes, volcanoes, landslides, tsunamis, floods, hurricanes, and other potential threats to people, infrastructure, and ecosystems.

**Fish and Wildlife Service** – The 2014 Fish and Wildlife Service budget includes \$1.6 billion in current appropriations, an increase of \$76.4 million above the 2012 level. This includes America's Great Outdoors initiative related increases of \$68.9 million in the Resource Management account. There is a \$3.9 million increase in the FWS North American Wetlands Conservation grants program. In 2014, funding for State and Tribal Grants remains at the 2012 level of \$61.3 million. The budget also includes \$1.2 billion available under permanent appropriations, most of which will be provided directly to States for fish and wildlife restoration and conservation.

In 2014, a total of \$1.6 billion is proposed for FWS as part of the Administration's America's Great Outdoors initiative to help reconnect people with the Nation's vast natural resources. This includes \$1.3 billion for operations, an increase of \$68.9 million over the 2012 level. As part of this initiative, the request includes a program increase of \$3.3 million to coordinate a landscape level conservation approach to river systems throughout the Country as part of the National Blueways System, a Department-wide initiative.

The 2014 budget also includes increases for programs funded through the Land and Water Conservation Fund. The 2014 budget proposal includes \$106.3 million for Federal land acquisition, of which \$70.8 million, a program increase of \$12.6 million, is in current funding and \$35.5 million is in new permanent funding. In addition, the budget proposes a total of \$84 million for the Cooperative Endangered Species Conservation Fund, of which \$8.3 million is a program increase in current funding and \$28.0 million is part of the LWCF permanent funding proposal. The 2014 Federal Land Acquisition program builds on efforts to strategically invest in interagency landscape-scale conservation projects while continuing to meet agency-specific programmatic needs.

The budget proposes an increase of \$7.2 million for activities associated with renewable energy development. The request supports scientific research into the impacts of energy transmission and development infrastructure on wildlife and habitat. The research will identify potential impacts associated with the development of energy infrastructure and strategies to minimize the impacts on habitat and species, including desert tortoise and sage grouse. This increase will enable FWS to participate more fully in priority landscape level planning and assist industry and State fish and wildlife agencies as they plan for the siting of renewable energy projects and transmission corridor infrastructure.

The budget request for the Resource Management account continues support for key programs including \$185.4 for Endangered Species, a program increase of \$7.6 million; \$499.2 million for the National Wildlife Refuge System, a program increase of \$12.7 million; \$68.3 million for Law Enforcement, a program increase of \$5.3 million; \$33.3 million for Science Support, a program increase of \$16.5 million; \$14.5 million for Aquatic Invasive Species, a program increase of \$5.5 million; and \$17.6 million for Cooperative Landscape Conservation, a program increase of \$6.7 million.

The 2014 budget request continues the FWS commitment to ecosystem restoration by including \$89.2 million composed of \$16.0 million for the Everglades; \$4.9 million to maintain 2012 funding for California's Bay-Delta; \$10.2 million to maintain 2012 funding for the Gulf Coast; \$10.3 million for the Chesapeake Bay; and \$47.8 million for the Great Lakes.

Funding for the Cooperative Landscape Conservation activity is \$17.6 million, an increase of \$2.1 million, and funding for Science Support is \$33.3 million, an increase of \$16.6 million. The budget supports applied science directed at high impact questions to mitigate threats to fish and wildlife resources.

The 2014 budget proposes a reduction of \$14.0 million for National Wildlife Refuge Fund payments to counties to offset local tax loss due to Federal land ownership. An estimated \$8.0 million in permanent receipts collected and allocated under the program would remain available to counties for this purpose. The budget also reduces funding for construction by \$7.5 million.

**National Park Service** – The 2014 budget request for NPS of \$2.6 billion is \$56.6 million above the 2012 enacted level. In 2014, a total of \$2.5 billion is requested for NPS as part of the America's Great Outdoors initiative. This includes \$2.3 billion for park operations, as represented by the Operation of the National Park System account, which is a total increase of \$48.4 million over 2012. The 2014 request for operations funds fixed costs of \$28.9 million and a net program increase of \$19.5 million for NPS operations. Among the increases in operations is \$6.0 million for Cooperative Landscape Conservation, \$5.2 million to control invasive and exotic species at parks, \$5.0 million to competitively fund the highest priority, non-recurring natural resource project needs at park units, \$3.0 million to address white-nose syndrome in bats at parks, \$2.1 million to fund resource and science needs at new park units, and \$1.0 million for Youth funding to engage youth in the great outdoors through employment and educational opportunities.

The request for the Historic Preservation Fund is \$58.9 million, a programmatic increase of \$3.0 million compared to 2012 enacted. Grants-in-aid to States and Tribes are continued at the 2012 level and \$3.0 million is provided for competitive grants targeted toward communities that are currently underrepresented on the National Register of Historic Places. Within the National Recreation and Preservation account, there are two programs tracked as part of the AGO initiative. Funding for the Rivers, Trails, and Conservation Assistance program is \$10.1 million, essentially level with 2012, and funding for the American Battlefield Protection Program assistance grants is essentially level with 2012 at \$1.4 million.

Programs funded out of the Land and Water Conservation Fund are also a key component of the Administration's AGO strategy. The budget requests \$100.4 million for the Land Acquisition and

State Assistance account, a net decrease of \$1.5 million. This includes \$40.0 million for the State Conservation Grants program, a \$5.2 million programmatic decrease, plus \$60.4 million for NPS Federal land acquisition, a programmatic increase of \$3.4 million. Of this amount, \$12.1 million is for Federal acquisition projects at park units selected as part of a collaborative process with other Interior bureaus and the Forest Service, and \$20.4 million is for projects to address core, NPS-specific mission priorities. The budget includes \$10.0 million to revitalize the Urban Parks Recreation and Recovery program. In addition to this current request, the Administration will submit a legislative proposal to permanently authorize annual funding, without further appropriation or fiscal year limitation, for the LWCF. This will provide an additional \$30.2 million for Federal land acquisition, \$20.0 million for the State Conservation Grants program, and \$5.0 million for UPARR grants in permanent funding in 2014.

Other funding includes a total of \$52.0 million for the National Recreation and Preservation account. This reflects a programmatic reduction of \$8.4 million from Heritage Partnership programs to encourage self-sufficiency for these non-Federal organizations. Funding for Construction totals \$160.0 million, a total increase of \$4.6 million. Of this amount, programmatic changes include an increase of \$5.3 million for line-item construction projects. Programmatic reductions include of \$1.8 million from construction program management and operations, \$760,000 from the housing improvement program, \$228,000 from equipment replacement, \$440,000 from construction planning, and \$2.4 million from management planning.

**Indian Affairs** – The 2014 budget includes \$2.6 billion for Indian Affairs programs, an increase of \$31.3 million from the 2012 enacted level. This includes increases of \$37.2 million for Operation of Indian Programs, excluding a proposed transfer of Contract Support Costs to a stand alone account. The budget also includes \$2.9 million in Indian Land and Water Claim Settlements. The budget includes decreases of \$16.5 million in the Construction account and \$2.1 million in the Indian Guaranteed Loan program.

The budget proposes program increases of \$37.3 million for the Trust land management programs and \$7.7 million in real estate services to assist Tribes in the management, development, and protection of Indian trust land and natural resources. Additional funding is provided for science and technical support to Tribes for the sustainable stewardship and development of natural resources. The funding will support resource management and decision making in the areas of energy and minerals, climate, oceans, water rights protection, endangered and invasive species, and resource protection enforcement. Of this funding, \$2.5 million will focus on projects that engage youth in the natural sciences and establish an office to coordinate youth programs across Indian Affairs. The budget also includes \$7.0 million, an increase of \$5.5 million, for the Klamath land purchase agreement.

In 2014, Contract Support Costs and the Indian Self-Determination Fund increase by \$9.8 million for a total of \$231.0 million for new and existing tribal 638 contracts. In response to the Supreme Court decision on contract support costs, the 2014 budget proposes to move both budget line items to an account separate from the Operations account.

Public Safety and Justice funding has a program increase of \$17.4 million to support additional law enforcement and officers, detention corrections staff, resource protection officers, and tribal court operations. The budget also includes \$3.0 million to address the needs of Indian communities with

elevated levels of domestic violence. The BIA Human Services program will partner with the Law Enforcement program to expand services to help stem domestic violence and care for its victims.

The budget supports student academic achievement in BIE funded schools by initiating a \$15.0 million pilot program to turn around lower performing elementary and secondary schools, provides \$2.5 million in increased funding to meet the needs of growing enrollment at tribal colleges, and boosts funding for scholarships by \$3.0 million for post-graduate fellowship and training opportunities in the natural sciences.

The budget proposes to initiate payments for the Taos Pueblo Indian Water Rights Settlement enacted as part of the Claims Resolution Act of 2010. Funding for the Nez Perce/Snake River settlement was completed in 2013.

The budget proposes to eliminate the \$12.6 million Housing Improvement Program. The \$650.0 million Housing and Urban Development Native American Housing Block Grant serves the same population as HIP. Tribes who receive HUD funding are not precluded from using HUD funding to provide assistance to HIP applicants.

The 2014 request reflects a reduction of \$19.7 million as the Bureau will undergo a consolidation in 2013 to streamline and improve oversight operations. The BIA will engage in extensive consultation with Tribes to identify strategies to ensure tribal needs and priorities are addressed. Following consultation, Indian Affairs will construct an implementation plan for a streamlined, cost-effective organization. The budget also includes \$13.8 million in administrative savings from reductions to fleet, travel, contractors, and awards.

**Departmental Offices and Department-wide Programs** – The 2014 request for the Office of the Secretary is \$268.9 million, an increase of \$7.0 million from the 2012 enacted level. Of this, \$121.1 million is for the Office of Natural Resources Revenue programs, an increase of \$1.6 million above the 2012 enacted level and includes a program decrease of \$380,000 in production verification and meter inspections and \$653,000 in program efficiencies. The budget proposes an increase of \$267,000 for minerals receipts modeling development to improve revenue estimation and reporting capabilities, and an increase of \$800,000 for various science initiatives. Other changes include the proposed transfer of the Indian Arts and Crafts Board from the Office of the Secretary to the Bureau of Indian Affairs of \$1.3 million, a program decrease of \$563,000 to valuation services, and a general reduction of \$86,000.

The budget request for the Office of Insular Affairs is \$92.0 million, a decrease of \$12.3 million from the 2012 enacted level. The budget includes an increase of \$766,000 to enhance the implementation of sustainable energy projects and \$3.7 million for general technical assistance. The budget also includes \$3.0 million, a reduction of \$2.0 million, to help mitigate the impacts and costs of Compact migration. Funding of \$13.1 million for the Palau Compact Extension is not requested for 2014 as it is expected the Compact will be authorized and funded in 2013.

The Office of Inspector General request is \$50.8 million, a program increase of \$984,000. Within this total, a program increase of \$840,000 is for mission support, consisting of a \$2.0 million increase for D.C. area office consolidation and a reduction of \$1.2 million associated with administrative efficiencies.

The Office of the Special Trustee request is \$139.7 million, \$12.4 million below the 2012 enacted level. The 2014 budget decreases Executive Direction funding by \$3.0 million and Program Operations and Support by \$9.4 million. Within the total are program decreases of \$7.0 million from Historical Trust Accounting and \$3.8 million is from Trust Accountability. Proposed funding for OST supports the Department's Indian fiduciary trust responsibilities.

The 2014 request for the Department-wide Wildland Fire Management program is \$776.9 million. The net program increase of \$194.2 million includes program increases of \$205.1 million split between the Suppression Operations account and the FLAME Fund to fully fund the 10-year suppression average, and \$3.0 million increase for the Burned Area Rehabilitation program. These program increases are partially offset by a net program reduction of \$88.9 million in the Hazardous Fuels Reduction program. This net reduction includes an increase of \$2.0 million to conduct a research study on the cost and resource effectiveness of hazardous fuels treatments. The 2014 request for the Wildland Fire Management account also includes a cancellation of \$7.0 million in prior-year balances.

The 2014 request for the Natural Resource Damage Assessment and Restoration Fund is \$12.5 million, a net program increase of \$6.1 million. The increase includes \$3.6 million to support additional restoration work and \$2.2 million for a Department-wide onshore Oil Spill Preparedness plan.

The Department's 2014 request for the Working Capital Fund appropriation is \$62.0 million, an increase of \$80,000 from the 2012 enacted level. Within this request is \$58.0 million for the Financial and Business Management System to complete the deployment of the last bureau, Reclamation. The budget proposes an increase of \$2.0 million to initiate the Department's Cultural and Scientific Collections Management initiative. Reductions include \$5.0 million for the proposed transition of the Department's Information Technology Transformation Initiative from appropriated WCF to the WCF centralized bill, \$2.5 million for the completion of the Department's Acquisition Improvement initiative in 2012, and a decrease of \$496,000 from the Service First/Consolidations initiative.

#### **Mandatory Proposals**

The 2014 budget includes 17 mandatory proposals that will be submitted to the Congress to collect a fair return to the American taxpayer for the sale of Federal resources, to reduce unnecessary spending, and to extend beneficial authorities of law. Revenue and savings proposals will generate more than \$3.7 billion over the next decade. The 2014 budget also includes three mandatory spending proposals estimated at \$8.1 billion in outlays over the next decade.

**Land and Water Conservation Fund** – The Department of the Interior will submit a legislative proposal to permanently authorize annual funding, without further appropriation or fiscal year limitation, for LWCF programs in the Departments of the Interior and Agriculture. During a transition to permanent funding in 2014, the budget proposes \$600.0 million in total LWCF programs funding, comprised of \$200.0 million permanent and \$400.0 million current funding. Starting in 2015, the fully authorized level of \$900.0 million in permanent funds will be authorized each year.

**Payments in Lieu of Taxes** – The authorization for permanent PILT payments was extended through 2013 as part of the Surface Transportation Extension Act of 2012. The 2014 budget proposes to extend authorization of the program an additional year through 2014, while a sustainable long-term funding solution is developed for the PILT Program. This proposal is estimated to outlay nearly \$410 million in 2014. The PILT payments help local governments carry out vital services, such as firefighting and police protection, construction of public schools and roads, and search and rescue operations. The payments are made annually for tax exempt Federal lands administered by the Department, including BLM, FWS, NPS, as well as the Forest Service, Federal water projects, and some military installations. The proposal utilizes the current PILT payment formula, which is based on population, receipt sharing payments, and the amount of Federal land within an affected county.

**Palau Compact** – On September 3, 2010, the U.S. and the Republic of Palau successfully concluded the review of the Compact of Free Association and signed a 15-year agreement that includes a package of assistance through 2024. Under the agreement, Palau committed to undertake economic, legislative, financial, and management reforms. The conclusion of the agreement reaffirms the close partnership between the U.S. and the Republic of Palau to strengthen the foundation for economic development in Palau by developing public infrastructure and improving health care and education. Compact funding will also undertake one or more infrastructure projects designed to support Palau's economic development efforts. The Republic of Palau has a strong track record of supporting the U.S. and its location is strategically linked to Guam and U.S. operations in Kwajalein Atoll. Permanent and indefinite funding for the Compact expired at the end of 2009. The 2014 budget assumes authorization of permanent funding for the Compact occurs in 2013. The cost for this proposal is estimated at \$189 million over the 2014 through 2023 period.

**Federal Oil and Gas Reforms** – The budget includes a package of legislative reforms to bolster and backstop administrative actions being taken to reform the management of Interior's onshore and offshore oil and gas programs, with a key focus on improving the return to taxpayers from the sale of these Federal resources. Proposed statutory and administrative changes fall into three general categories: 1) advancing royalty reforms, 2) encouraging diligent development of oil and gas leases, and 3) improving revenue collection processes. Royalty reforms include: evaluating minimum royalty rates for oil, gas, and similar products; adjusting onshore oil and gas royalty rates; analyzing a price-based tiered royalty rate; and repealing legislatively-mandated royalty relief for deep gas wells. Diligent development requirements include shorter primary lease terms, stricter enforcement of lease terms, and monetary incentives to get leases into production. Revenue collection improvements include simplification of the royalty valuation process, elimination of interest accruals on company overpayments of royalties, and permanent repeal of Interior's authority to accept in-kind royalty payments. Collectively, these reforms will generate roughly \$2.5 billion in net revenue to the Treasury over ten years, of which about \$1.7 billion would result from statutory changes. Many States will also benefit from higher Federal revenue sharing payments.

**Helium Sales, Operations and Deposits** – The Department will submit a legislative proposal to authorize the Helium Fund to continue activities supporting the sale of helium. Under the Helium Privatization Act of 1996, the Helium Fund is set to expire upon repayment of the helium debt, anticipated to occur the first quarter of 2014. This proposal will allow continued operation of the Helium program while facilitating a gradual exit from the helium market. To minimize impacts to the helium market, the proposal will gradually increase the sales price of helium while reducing the

total volume of helium sold each year, until the amount in storage reaches 3 billion standard cubic feet. At that point, the remaining helium will be reserved for Federal users. The proposal would enable the sale of helium and related products and deposits of net proceeds to the Treasury. Additional revenues from this proposal are estimated at \$480 million over the decade.

**Transboundary Gulf of Mexico Agreement** – The 2014 budget includes a legislative proposal to implement the Agreement between the U.S. and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico, signed by representatives of the U.S. and Mexico on February 20, 2012. The Agreement establishes a framework for the cooperative exploration and development of hydrocarbon resources that cross the United States-Mexico maritime boundary in the Gulf of Mexico. The Agreement would also end the moratorium on development along the boundary in the Western Gap in the Gulf. The Agreement provides access to an area along the U.S.-Mexico boundary in the Gulf of Mexico roughly the size of Delaware, for exploration and production activities. The area is estimated to contain up to 172 million barrels of oil and 304 billion cubic feet of natural gas. The budget assumes bonus bid revenues from lease sales in this area will generate an estimated \$50 million for the Treasury in 2014.

**Return Coal Abandoned Mine Land Reclamation Fees to Historic Levels** – The budget proposes legislation to modify the 2006 amendments to the Surface Mining Control and Reclamation Act, which lowered the per-ton coal fee companies pay into the AML Fund. The proposal would return the fees to the levels companies paid prior to the 2006 fee reduction. The additional revenue, with estimated net savings of \$54 million over ten years, will be used to reclaim high priority abandoned coal mines.

**Reallocate NPR-A Revenues to Priority BLM Alaska Activities** – The budget proposes to temporarily halt revenue sharing payments to the State of Alaska from NPR-A oil and gas development to reallocate these resources to a new Alaska Land Conveyance and Remediation Fund. This fund would supplement current appropriations and address priority BLM program needs in Alaska, specifically the remediation of oil and gas legacy wells in NPR-A and the completion of remaining land title conveyances to the State of Alaska, individual Alaska Natives, and Alaska Native Corporations. The regular 50/50 Federal-State revenue sharing arrangement would resume once the work on these two Alaska-specific activities is complete. This approach of temporarily suspending revenue sharing payments is similar to the approach taken by Congress to address priority site remediation needs in the Naval Oil Shale Reserve No. 3 located in the State of Colorado.

**Discontinue AML Payments to Certified States** – The budget proposes to discontinue the unrestricted payments to States and Tribes certified for completing their coal reclamation work. These payments can be used for general purposes and no longer contribute to abandoned coal mine lands reclamation. While the Surface Transportation Extension Act of 2012 capped annual payments to each certified State and Tribe at \$15.0 million, this proposal terminates all such payments, with estimated savings of approximately \$327 million over the next ten years.

**Reclamation of Abandoned Hardrock Mines** – To address the legacy of abandoned hardrock mines across the U.S. and hold the hardrock mining industry accountable for past mining practices, the Department will propose legislation to create a parallel Abandoned Mine Lands Program for abandoned hardrock sites. The program would be financed through the imposition of a new AML fee on hardrock production on both public and private lands. The BLM will distribute the funds

through a set allocation to reclaim the highest priority hardrock abandoned sites on Federal, State, tribal, and private lands. Additional revenue is estimated at \$1.8 billion for the 2014-2023 period, while outlays for reclamation projects, which lag behind collections, are estimated at \$1.3 billion over the same period.

**Reform Hardrock Mining on Federal Lands** – Interior will submit a legislative proposal to provide a fair return to the taxpayer from hardrock production on Federal lands. The legislative proposal will institute a leasing program under the Mineral Leasing Act of 1920 for certain hardrock minerals including gold, silver, lead, zinc, copper, uranium, and molybdenum, currently covered by the General Mining Law of 1872. After enactment, mining for these metals on Federal lands will be governed by the new leasing process and subject to annual rental payments and a royalty of not less than five percent of gross proceeds. Half of the receipts will be distributed to the States in which the leases are located and the remaining half will be deposited in the Treasury. Existing mining claims will be exempt from the change to a leasing system, but will be subject to increases in the annual maintenance fees under the General Mining Law of 1872. Holders of existing mining claims for these minerals could, however, voluntarily convert claims to leases. The Office of Natural Resources Revenue will collect, account for, and disburse the hardrock royalty receipts. The proposal is projected to generate revenues to the U.S. Treasury of \$80 million over ten years, with larger revenues estimated in following years.

**Net Receipts Sharing for Energy Minerals** – The Department proposes to make permanent the current arrangement for sharing the cost to administer energy and minerals receipts. Under current law, States receiving significant payments from mineral revenue development on Federal lands also share in the costs of administering the Federal mineral leases from which the revenue is generated. In 2014, this net receipts sharing deduction from mineral revenue payments to States will be implemented as an offset to the Interior Appropriations Act, consistent with the provision included since 2010. Permanent implementation of net receipts sharing is expected to result in savings of \$44 million in 2015 and \$421 million over ten years.

**Geothermal Energy Receipts** – The Department proposes to repeal Section 224(b) of the Energy Policy Act of 2005. Prior to passage of this legislation, geothermal revenues were split between the Federal government and States, with 50 percent directed to States, and 50 percent to the Treasury. The Energy Policy Act of 2005 changed this distribution beginning in 2006 to direct 50 percent to States, 25 percent to counties, and for a period of five years, 25 percent to a new BLM Geothermal Steam Act Implementation Fund. The allocations to the new BLM geothermal fund were discontinued a year early through a provision in the 2010 Interior Appropriations Act. The repeal of Section 224(b) will permanently discontinue payments to counties and restore the disposition of Federal geothermal leasing revenues to the historical formula of 50 percent to the States and 50 percent to the Treasury. This results in savings of \$4 million in 2014 and \$48 million over ten years.

**Federal Land Transaction Facilitation Act** – The Department proposes to reauthorize this Act that expired on July 25, 2011, and allow Federal lands identified as suitable for disposal in recent land use plans to be sold using this authority. The sales revenues would continue to fund the acquisition of environmentally sensitive lands and administrative costs associated with conducting the sales.

**Federal Migratory Bird Hunting and Conservation Stamps** – Federal Migratory Bird Hunting and Conservation Stamps, commonly known as Duck Stamps, were originally created in 1934 as the



annual Federal license required for hunting migratory waterfowl. Today, 98 percent of the receipts generated from the sale of these \$15.00 stamps are used to acquire important migratory bird areas for migration, breeding, and wintering. The price of the Duck Stamp has not increased since 1991, while the cost of land and water has increased significantly. The Department proposes legislation to increase these fees to \$25.00 per stamp per year, beginning in 2014. Increasing the cost of Duck Stamps will bring the estimate for the Migratory Bird Conservation account to \$61 million. With these increased receipts, the Department anticipates additional acquisition of an estimated 7,000 acres in fee and an estimated 10,000 acres in conservation easement in 2014. Total acres acquired for 2014 will then be estimated at 28,000 in fee title and 47,000 in perpetual conservation easements.

**Bureau of Land Management Foundation** – The budget proposes legislation to establish a congressionally-chartered National BLM Foundation. This Foundation will provide an opportunity to leverage private funding to support public lands, achieve shared outcomes, and focus public support on the BLM mission. The Foundation will be established as a charitable, non-profit organization to benefit the public by protecting and restoring the BLM's natural, cultural, historical, and recreational resources for future generations. The National BLM Foundation would be similar to other existing foundations which benefit Federal programs, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation.

**Recreation Fee Program** – The Department of the Interior proposes to permanently authorize the Federal Lands Recreation Enhancement Act, which expires in December 2014. The Department currently collects over \$200 million in recreation fees annually under this authority and uses them to enhance the visitor experience at Interior facilities. In addition, the Department will propose a general provision in the 2014 budget request to amend appropriations language to extend the authority through 2015.

#### **Offsetting Collections and Fees**

The budget includes the following proposals to collect or increase various fees, so industry shares some of the cost of Federal permitting and regulatory oversight.

**Fee Increase for Offshore Oil and Gas Inspections** Through appropriations language, the Department proposes inspection fees totaling \$65.0 million in 2014 for offshore oil and gas drilling facilities subject to inspection by the Bureau of Safety and Environmental Enforcement. These fees will support BSEE's expanded inspection program to increase production accountability, human safety, and environmental protection.

**New Fee for Onshore Oil and Gas Inspections** Through appropriations language, the Department proposes to implement an inspection fee in 2014 for onshore oil and gas activities subject to inspection by BLM. The proposed inspection fee is expected to generate \$48.0 million in 2014, \$10.0 million more than the corresponding \$38.0 million reduction in requested appropriations for BLM, thereby expanding the capacity of BLM's oil and gas inspection program. The fee is similar to those already in place for offshore operations and will support Federal efforts to increase production accountability, human safety, and environmental protection.

**Onshore Oil and Gas Drilling Permit Fee** – The 2014 budget proposes to continue a fee for processing drilling permits through appropriations language, an approach taken by Congress in the 2009 and subsequent Interior Appropriations Acts. A fee of \$6,500 per drilling permit was

authorized in 2010, and if continued, will generate an estimated \$32.5 million in offsetting collections in 2014.

**Surface Mining and Reclamation Permit Fee** – The 2014 budget continues an offsetting collection initiated in 2012, allowing the Office of Surface Mining Reclamation and Enforcement, to retain coal mine permit application and renewal fees for the work performed as a service to the coal industry. The fee will help ensure the efficient processing, review, and enforcement of the permits issued, while recovering some of the regulatory operating costs from the industry benefiting from this service. The fee, authorized by section 507 of SMCRA, will apply to mining permits on lands where regulatory jurisdiction has not been delegated to the States. The permit fee will generate \$2.4 million in offsetting collections in 2014.

**Grazing Administrative Fee** – The 2014 budget proposes a new grazing administrative fee of \$1 per animal unit month. The BLM proposes to implement this fee through appropriations language on a three-year pilot basis. The 2014 budget estimates the fee will generate \$6.5 million in 2014, which will assist BLM in processing grazing permits. During the period of the pilot, BLM will work through the process of promulgating regulations for the continuation of the grazing fee as a cost recovery fee after the pilot expires.

**Marine Minerals Administrative Fee** – The 2014 budget proposes to establish an offsetting fee in the BOEM Marine Minerals program to recover costs associated with processing offshore sand and gravel mining permits. The fees are estimated to generate \$470,000 in revenue in 2014, to offset the cost of the program, and would be implemented through existing regulatory authority under the Outer Continental Shelf Lands Act.

#### **Conclusion**

Thank you for the opportunity to testify on the President's 2014 budget request for the Department of the Interior. We have a tremendous opportunity to invest in programs and initiatives that will advance America's energy independence and economic growth. This budget balances fiscal constraint with proposals for forward looking investments that will advance the stewardship of lands and resources, renewable energy, oil and gas development and reforms, water conservation, youth employment and engagement, and improvements in the quality of life in Indian communities. For America to be at its best, we need be bold and strategic and advance the ideas and policies in this budget. I thank you again for your continued support of the Department's mission. I look forward to answering questions about this budget. This concludes my written statement.

**Ken Salazar**  
**Secretary of the Interior**

Ken Salazar, a fifth-generation Coloradan, was confirmed as the 50th secretary of the U.S. Department of the Interior on Jan. 20, 2009, in a unanimous vote by the U.S. Senate.

Prior to his confirmation, Salazar served as Colorado's 35th U.S. senator, winning election in November 2004 and serving on the Finance Committee, which oversees the nation's tax, trade, social-security, and health-care systems. He also served on the Agriculture, Energy and Natural Resources, Ethics, Veterans Affairs and Aging Committees.

As a U.S. Senator, Salazar was a leader creating and implementing a vision for a renewable-energy economy that is less dependent on foreign oil. He was involved in every major bipartisan legislative effort on energy since 2005, including helping craft the Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007. Salazar also tackled the challenge of providing affordable health care by fighting to broaden the Children's Health Insurance Program and by working to improve health care for older Americans.

Salazar has been a champion for farmers, ranchers, and rural communities, leading efforts to pass the 2007 Farm Bill and to create food and fuel security for America. He worked to help veterans in rural communities get better access to health care by creating the Office of Rural Health in the Department of Veterans Affairs and by pressing that agency to open new rural outreach clinics in Colorado.

He also exercised a leadership role in championing a new defense and foreign policy that restores American security and influence around the world and pressed for a change in mission in Iraq to better advance America's national security interests. Salazar worked to strengthen our military to ensure that we are able to confront emerging threats.

From 1999 to 2004, Salazar served as Colorado's thirty-sixth Attorney General, winning statewide elections in 1998 and 2002. He chaired the Conference of Western Attorneys General and received the Profiles in Courage award from his fellow state attorneys general for his dedication to preserving and promoting the rule of law.

As Colorado's attorney general, Salazar led efforts to make communities safer, fight crime, strengthen the state's sex offender laws, address youth and family violence, enhance and enforce Colorado's consumer protection laws, combat fraud against the elderly, and protect Colorado's environment. He established the first-ever Colorado Attorney General Fugitive Prosecutions Unit to apprehend and prosecute fugitive murderers, the first-ever Attorney General Gang Prosecution Unit, and an Environmental Crimes Unit.

From 1987 to 1994 Salazar served in the Cabinet of Gov. Roy Romer as chief legal counsel and executive director of the Colorado Department of Natural Resources, where he crafted reforms for oil, mining, and gas operations to better protect the environment and the public. He fought to uphold Colorado's interstate water compacts, created the Youth in Natural Resources program to educate thousands of young people about Colorado's natural resources, and authored the Colorado constitutional amendment creating Great Outdoors Colorado. He served as the first chairman of that movement, helping make it one of the most successful land conservation efforts in the United States.

Salazar's family settled in the American West before the United States was a country. After settling in New Mexico four centuries ago, his family planted roots in Colorado's San Luis Valley, where they have farmed and ranched the same land for five generations. Raised on a remote ranch without electricity or telephone, Salazar learned the values of hard work, family, and faith. Thanks to his parents' lessons, he and his seven brothers and sisters all became first generation college graduates.

A farmer for more than thirty years, Salazar was a partner with his family in El Rancho Salazar. He and his wife have owned and operated small businesses, including a Dairy Queen and radio stations in Pueblo and Denver.

Salazar worked for 11 years as a water and environmental lawyer with some of the top firms in the West. During his time in the private sector and as Colorado's Attorney General, Salazar worked on cases from the trial courts to the Colorado and U.S. Supreme Courts.

He received a political science degree from Colorado College in 1977, and graduated with a law degree from the University of Michigan in 1981. He also received honorary doctorates of law from Colorado College in 1993 and the University of Denver in 1999. Salazar and his wife, Hope, have two daughters, Melinda and Andrea, and one granddaughter, Mireya.

**Rhea Suh**  
**Assistant Secretary for Policy, Management and Budget**

Rhea S. Suh was confirmed by the U.S. Senate and sworn into office as Assistant Secretary for Policy, Management and Budget at the Department of the Interior on May 19, 2009. President Obama nominated her for this position on March 25, 2009.

As Assistant Secretary for Policy, Management and Budget, Suh oversees programmatic, administrative and financial policy for the Department, including budget formulation and implementation.

Before becoming Assistant Secretary, Suh served as a program officer and manager at the David and Lucile Packard Foundation, where she planned and managed a \$200 million, six-year initiative to build ecological integrity and resilience in key lands and watersheds in western North America.

From 1998 to 2007, Suh was a program officer at The William and Flora Hewlett Foundation, where she managed the foundation's portfolio of grants designed to protect the ecosystems of the western part of North America. She also created the Hewlett Foundation's energy program; spearheaded early efforts to support diverse communities, including environmental justice groups; and developed new strategies to strengthen the voice of hunter and angler groups on conservation issues. In addition, she led the Foundation's successful effort to help protect 21 million acres of coastal temperate rainforest, known as the Great Bear Rainforest, in British Columbia. Previously, she served as a consultant for the National Park Service where she developed educational strategies and programs for under-served constituencies, bringing National Park lessons to a broader audience in public schools.

During the Clinton administration, Suh served as a senior legislative assistant on the staff of Sen. Ben Nighthorse Campbell, where she worked on public lands management and regulatory issues with respect to energy, air and water.

Suh is a graduate of Barnard College, Columbia University, where she earned a Bachelor of Arts degree, and the Graduate School of Education at Harvard University, where she earned a Masters of Education, Administration, Planning and Social Policy. She has received both a Fulbright Fellowship and a Marshall Memorial Fellowship.

## Pamela K. Haze

## Deputy Assistant Secretary – Budget, Finance, Performance, and Acquisition

Pamela Haze is the Deputy Assistant Secretary – Budget, Finance, Performance and Acquisition. She was appointed to this position in October, 2009. She is responsible for oversight and management of the Department's programs and policies in budget, finance, acquisition and property management, performance management, and small and disadvantaged business.

Prior to her appointment as the Deputy Assistant Secretary, Ms. Haze was the Director of the Department's Office of Budget, a position she occupied beginning on January 5, 2007. She served as the Deputy Director and Co-Director of the Office of Budget from December, 1999 to December 2006.

Ms. Haze has spent the majority of her 34-year Federal career with the Department of the Interior. She worked for Interior bureaus including the Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Land Management, and the Bureau of Outdoor Recreation. Her experience with Interior agencies includes working as a planner, hydrologist, field biologist, contaminant biologist, program analyst, administrator, budget analyst, and manager.

Ms. Haze has experience with other Federal agencies including the Small Business Administration and the Office of the Federal Inspector for the Alaska Natural Gas Transportation System, an agency that was in operation during the 1980's to facilitate completion of the Alaska natural gas pipeline. She also worked for Cambridge Scientific Abstracts.

Ms. Haze received an undergraduate degree in wildlife biology and a graduate degree in environmental science/ecology at George Mason University.

## BUDGET REDUCTIONS

Mr. SIMPSON. Thank you, Mr. Secretary. And since you have been frank with us, I will be frank with you, too. I happen to agree with you that we got some real challenges and some real problems that are being faced because obviously sequestration and other things. We continue to focus on cutting spending on the  $\frac{1}{3}$  of the budget, the discretionary spending that we have been cutting. And that seems like all we ever do is just keep cutting that  $\frac{1}{3}$  of the budget and pretty soon you get down to where, under the budget resolution that passed, I do not know what our allocation will be at the \$966 billion level down from \$1042 billion but it will not be pretty. And I do not know that we can pass a budget at that level.

And at some point in time—and I would like your thoughts on this—we have got to start asking ourselves are we going to try to do everything we do in this budget and do—I am trying to think of a good word—the word I used you would not want on the web—a less-than-good job at doing everything, or do we come to the point where we say there are just some things we are not going to do and eliminate them and at least concentrate on the parts that we do do well? And that is a tough choice.

When you look at our entire budget, it is not only the Department of Interior, it is the Forest Service, it is a lot of smaller agencies like the National Endowment for the Arts and National Endowment for Humanities, the Woodrow Wilson Center, the Holocaust Museum, you can go through all these other ones, you could eliminate all those and you are not going to get a ton of money to try to fund some of these other programs within the Department of Interior, but I think we are getting to the point where we are going to have to make that kind of determination about where we are headed. Or do we take some functions that Department of Interior does and say we are just not going to do those anymore? I do not know.

It is a frustrating situation we find ourselves in and I understand the need that we have got to get this budget deficit under control. We have got to quit managing the budget deficit from appropriation to appropriation and from fiscal crisis to fiscal crisis and the debt ceiling to debt ceiling and put together something that is in the long-term interest of solving this problem so that we can continue to do those things that we should do. I do not know that we will get there, at least very quickly.

But I do have some concerns with some of your budget obviously. One of the things that happened during the consideration of the CR is the Senate decided we did not really need to fund wildfires at the level we had put in there, which means come fire season we are going to be draining other accounts that are already low to fund wildfire suppression. And then within the budget we have also reduced the proposed hazardous fuels reduction by \$87 million, which means we are not addressing the long-term problem and trying to reduce forest fire costs. What are your thoughts on that?

Secretary SALAZAR. First of all, Mr. Chairman, I very much agree with your broad assessment of what is happening here with this budget and the fiscal debate that is going on, and I think that is why it is so important for leaders like yourself and others to come

together with a long-term solution so we stop the stop and start going from one crisis to another as we deal with these budgeting issues. It is very difficult to run a government and manage operations when you have to go through the kind of fiscal times we have been through.

I also agree that when you are looking at only the discretionary part of the budget, it is a very small amount. If you look at the Department of Interior's dollars that come from the appropriations process, I understand from Pam it is less than 1 percent of the entire Federal budget, and yet it has this kind of consequence all across America. Dealing with these issues in the broad frame which you suggest I think is something that very much does have to be done.

#### WILDLAND FIRE

Specifically with respect to the Wildland Fire Program, I am concerned, and that is another issue to watch carefully because of the consequence of the sequester and the CR. When we just think about last summer and the huge fires in Idaho monitored out of Boise, the great fires we saw in almost every one of the western States including my home State of Colorado. Our expectation is the wildfire season is going to be even worse this year than it was last year because of the drought conditions that we are seeing throughout that entire area of the Rocky Mountains, as well as into the western part of the country. The consequence of not having enough money to be able to fight those fires and to do the preventive side of things with respect to hazardous fuels reduction is something that is of great concern. Our hope is that as we move forward we can find a way of addressing it.

Mr. SIMPSON. What do you do when you've got accounts that are already substantially reduced from what they have been in the past and all of a sudden you have these major wildfires and you have to start draining some of those accounts? What does that do to the other functions that the Department of Interior has to deal with?

And one thing you did not mention that also concerns me but I am sure it concerns you also is that this committee in a bipartisan way has tried to meet our obligations in Indian health, and Indian education. And after the CR, frankly, we have not been able to fully fund the contract support costs that we have an obligation to do and we put money in last year's budget for one additional school. Imagine that, one additional school in Indian Country, and we had that taken out in the CR by the Senate. It is problematic. But it is going to have a lasting impact.

It is easy to vote for a really serious conservative slash-and-burn budget on the theoretical, but then when you get down to individual appropriations and what it means, I do not know that we can pass any of our appropriation bills at the level that we have set our overall budget at.

So anyway, Mr. Moran.

Mr. MORAN. Yes, thank you, Mr. Chairman.



## FRACKING RULE

In January, BLM pulled back on its proposed rules on fracking. It said that it would issue a revised proposal by March 31. I do not think we have got that. I believe that the deadline has passed. What is the status of that proposed rule? And maybe you can just give little insight into how it is going to balance protection of the environment with its economic growth objectives.

Secretary SALAZAR. Congressman Moran, it is a matter we are taking very seriously and have been working very hard. We have a proposed rule that would address disclosure of chemicals used in fracking. It would address wellbore integrity to make sure that water quality is protected and would address flow back of water into the hydraulic fracking process. We believe hydraulic fracking can be done safely but we believe the rules we have been working on will allow us to make sure we are fully developing the oil and natural gas potential of our public lands. The rule is imminent and I expect my successor will be announcing it in the very near future.

## OIL AND GAS REFORMS

Mr. MORAN. Very good. You have got a number of legislative proposals for the Federal Oil and Gas Program. Can you just very briefly elaborate on those a little bit to see what we might be able to reflect in the Interior?

Secretary SALAZAR. There are a number of them.

Mr. MORAN. Just the principle.

Secretary SALAZAR. The principle essentially that we are working on, and is included in the budget, is making sure what we are doing is achieving the goal of getting a fair return to the taxpayers and doing it in a cost-efficient way. For example, one of the components you will find in the budget is royalty simplification. We believe that through royalty simplification we can go ahead and find significant additional dollars that would get a better return back to the taxpayers. The principle that is driving the legislative proposals relating to oil and gas here are the efforts to try to get a fair return to the American taxpayer.

Mr. MORAN. Okay. Mr. Chairman, I know we have got a vote, so I do not want to take any longer. We will try to get in as many questions as you can. So that will be up to Mr. Calvert.

Mr. CALVERT. Okay. Thank you, Mr. Salazar. And I thank you for your service. I appreciate the sacrifice you have gone through the last few years. I am sure you are looking forward to getting back to Colorado.

## WILDLAND FIRE

We mentioned wildfire, and of course, from California we have had our share of fires, too. And the hazardous fuel program has been, in my opinion, very successful and it is cost-effective because for every dollar in reducing these hazardous fuels is I think at the end of the game it costs a lot less to not have a fire than to have a fire. And we saw that in the San Bernardino National Forest in California and other places.

And I see the budget is cutting it by \$87 million, which is a substantial cut, almost to half of that account. And I know the budget

is under a lot of stress, but saying that these fires cost a lot of money once they start, we have got a fuel that has been built up over the years that is all over the West, and I hope you take another look at that as we move through this process that we can work together on some kind of modification on that.

#### NATURAL GAS PRODUCTION

The other issue, of course, is one of the great things that has happened, as you mentioned in your testimony, is natural gas production in the United States. And most of that increase, as you know, is on private lands. We are still having difficulties getting into public lands for natural gas production. There are a lot of companies in Europe and Asia that quite frankly want to go back to the United States and to hire people again because our natural gas prices are now significantly lower both in Europe and Asia, chemical companies, other types of industries that are dependent on natural gas. So I would hope that we could work towards streamlining the permit process for natural gas production on some of these public properties.

And with that, I will leave this for your comment.

Secretary SALAZAR. If I can I will be very, very quick. One of the areas, Congressman Calvert, that we are most proud of is the fact we have implemented truly an all-of-the-above energy strategy. Even having lived through the oil spill, which you lived through with me day by day, our production is up. We have more rigs. I think it is 10 more rigs working in the Gulf of Mexico today than before the oil spill. We are continuing to lease significant acreage on the onshore for both oil and gas production. We have the stats here that there are millions and millions of acres that are under lease already to oil and gas companies. There are about 7,000 permits that oil and gas companies have today in hand ready to move forward. We are finding ways to streamline the process even further.

So some of the proposals, and partly in response to Congressman Moran's question as well, one of the things we have been trying to do is to move to electronic permitting because much of the delay is caused in receiving the permit, for both offshore as well as onshore, has to do with the paperwork that goes back and forth. In today's world of electronic communications, we can significantly shorten the amount of time it will take to process permits. We hope to be able to implement that program under this budget.

#### HYDRAULIC FRACTURING

Mr. CALVERT. And just one last comment—I know you probably know  $\frac{2}{3}$  of the frackable oil in the United States is located in the State of California. It has been there a long time. It is heavy crude, expensive to extract. California, you may have read, had some financial difficulties and we are hoping that we can work with the Department of Interior and others to obtain that resource to help the State of California and the country forward. So that is the last comment. I thought I would point that out.

Secretary SALAZAR. Thank you.

Mr. SIMPSON. Mrs. Lowey.

## HERITAGE AREAS

Mrs. LOWEY. Thank you. Mr. Secretary, as you know, the National Heritage areas will be funded at \$9 million in the request, a 50 percent reduction. Earlier this year, the National Park Service released a report stating that the 49 heritage areas contribute \$12.9 billion annually to the national economy, contribute to 148,000 jobs generating \$1.2 billion in federal tax receipts. In my region, the Hudson River Valley heritage area contributes \$538 million to the State's economy, supports 6,530 jobs, generates \$66.6 million in tax revenue. Frankly, I was very surprised when I saw that cut. Considering the budget's emphasis on supporting another great program, the Great Outdoor Initiative, and we are all trying to focus on jobs, economic opportunity, if you can explain to us why the proposed cut to the program is so drastic, and are you as concerned as some of us are about that?

Secretary SALAZAR. This is a tough choices budget, and one of the things that I did not go into detail on are the hundreds of millions of dollars of cuts that we have made to the Department of Interior. It includes everything from travel to conferences to a whole host of efficiencies that we have been able to find. Having said that, when you look at specific programs, Congresswoman Lowey, I can tell you that this one for me is a very difficult and painful and indeed even a tearful one because I have been a champion of National Heritage Areas. I was a promoter and successfully completed some when I was a U.S. Senator. I do strongly believe the economic statistics which you use are absolutely correct.

Is \$9 million enough for what I think are 49 heritage areas that we have around the country? The answer to that is absolutely not. It is my hope that somehow we can get to a broad fiscal agreement that allows us to invest in these kinds of economic creators because I have visited many of them and I know the impact they have on job creation and local communities, as you explained it in your area.

Mrs. LOWEY. Well, I will repeat your statement over and over again, so hopefully, we can adjust that because it is a real concern to many of us.

## HURRICANE SANDY RECOVERY

Another point I just wanted to bring up I have been so grateful for all the work that has been done with the Army Corps and local communities rebuilding beaches and dunes in protected areas. I just wonder if there are any issues or disputes over how to proceed. Are you satisfied with the speed of recovery? Is there something else we can do? And do you have enough money in there to complete the job?

Secretary SALAZAR. The answer is yes, we do because of the action that you all took to provide the recovery monies for Hurricane Sandy. You will be very pleased that the work that will happen in New York and along the Atlantic Coast will address the kind of improvements that need to be made there.

I will note only in passing for the entire committee that I believe that often in front of this committee I have spoken about the Everglades as one of the most significant conservation efforts we have

going on in America. What we will see in the years ahead will be the entire conservation effort that is now underway in Jamaica Bay and New York and all along the Atlantic Coast.

In addition to that, Congressman Simpson and members of the committee, what will happen in the Gulf of Mexico and the restoration of the Gulf and the Mississippi River Delta will probably become the most significant conservation restoration effort in the history of humankind, and that is because of the penalties that will be flowing into conservation as a result of the oil spill. The Fish and Wildlife Foundation is now in charge, working closely with the States and already have about \$2.6 billion in the restoration effort. We have another billion dollars on early restoration from BP. My expectation is that there is a lot more to come.

Mrs. LOWEY. Well, thank you so very much. And thank you again, Mr. Chairman and Mr. Ranking, for all your good work.

Mr. SIMPSON. Yes, thank you. We have votes on. We have about 2 minutes left on the vote so we need to go over and do that. Some members have questions, you may want to stay around for a little bit.

Secretary SALAZAR. For you, Congressman, because it is my last hearing I will gladly do whatever you say.

Mr. SIMPSON. I do not know what it is but every time you come they call votes. We will go vote and be back as quickly as possible. Thank you.

Secretary SALAZAR. Thank you. Thank you very much.

[Recess.]

#### WILD HORSES AND BURROS

Mr. MORAN. The budget includes \$2 million I think for research on wild horses and burros for the National Academy of Science to do the study. I really am interested to know what the Department's long-term plan to humanely deal with wild horses and burros is so that we avoid all the fits and starts that have really plagued this program, Mr. Secretary.

Secretary SALAZAR. Ranking Member Moran, the work on wild horses and burros is something which we have taken very seriously from day one. The Bureau of Land Management has put out a plan that we continue to implement. We have two north stars to guide us with the wild horse and burro plan. The first is that horses are treated humanely and we try to do that in every way we can; number two, that we are also protecting the public range. We have a problem. The problem is the number of horses we have in many of the areas of the West are simply too many for the amount of forage available. The State of Nevada, for example, has about 17,000 more wild horses and burros than can be carried in that range. So it is a problem which we have been working on for a long time.

We have implemented programs to put birth-control measures in place. Some of them have been effective and what we are doing now is also looking at the National Academy of Sciences as we have brought them in to help us figure out what the solutions are for the long-term. The request in the budget for \$2 million is to help us with the National Academy of Sciences to address the problem for the long-term.

Mr. MORAN. I support that. I sometimes wonder the extent of the commitment that BLM shares with that objective, but, you know, I will not pursue it. And I am certainly not going to give you a hard time on your last day, Mr. Secretary. You have been fine but we have had some problems with BLM's commitment to that program. We will see what the \$2 million study yields and I hope it will do something we can all embrace. Some of the problem I think is we have severely diminished the rangeland that is available, but there is also a population control problem. I do not want to see a solution, one of slaughtering the young and healthy horses, particularly the wild Mustangs.

Secretary SALAZAR. Well, we have, if I may, Ranking Member Moran, have made progress. For example, just this last year BLM opened a wild horse sanctuary in the State of Wyoming where we have several hundred wild horses. We will continue to work very hard on it. It is an ongoing issue and one I am certain my successor will be dealing with for the next 4 years.

Mr. MORAN. And they will get a gut full of it.

Mr. SIMPSON. Do we do any of adoptions out of this program? Many?

Secretary SALAZAR. We do. Chairman Simpson, the adoption program of the BLM is a great program and there are many, many horses adopted over time. There has been an issue the last couple of years because horse adoptions are down in large part because the cost of feed has gone so sky high. When you are thinking about adopting a horse the requirements are you have to take care of the horse, you have to sign up and make sure you have the capacity to take care of the horse, and fewer people are signing up in part because of the cost of hay these days, as you know in Idaho.

#### SECURE RURAL SCHOOLS AND PILT

Mr. SIMPSON. One of the things I heard about this last week when I was out in Idaho the last couple weeks visiting with some county commissioners are two things that they are really concerned about with sequestration—Secure Rural Schools funding, which comes out of the Forest Service, and PILT payments and the reduction that is going to occur to the counties. What is the amount of the reduction going to be?

Secretary SALAZAR. Chairman Simpson, the amount is significant, and I personally communicated this to the governors who were here for the National Association meeting, as well as the Western Governors when they met in my office. Let me have Rhea or Pam give you the specifics on the numbers.

Ms. HAZE. We will make PILT payments in June. We notified the county folks and the governors that the reduction to PILT will be 5.1 percent, or about 20 million nationwide, and that will be spread across all 1,900 county payments. We are in the process of calculating the payments so we do not know precisely county by county yet.

Mr. SIMPSON. And it will be about 5.1 percent?

Ms. HAZE. Yes.

Mr. SIMPSON. And then you throw on top of that a lot of the school districts and counties that get Secure Rural Schools funding

from the Forest Service and that is another cut by point something percent or \$18 million, I think, nationwide.

Ms. HAZE. For Secure Rural Schools, which BLM pays, the total amount was 40 million, that was a reduction of 5.1 percent or 2 million. We made most of the payment.

Mr. SIMPSON. I had thought that BLM did Secure Rural Schools, too.

Ms. HAZE. They do. They do the 18 Oregon counties.

Mr. SIMPSON. I was thinking of BLM as that rangeland out there and Forest Service as that tree land out there but I forget that sometimes they intermix.

Ms. HAZE. Yes, we have got a little piece. The Forest Service has a much bigger piece.

Mr. SIMPSON. Yes. Ms. Pingree. We were just asking some questions while we were waiting for people to come back.

Ms. PINGREE. I was finding my way back.

Well, Secretary Salazar, thank you again. I know we had a chance to informally thank you and people have heaped on the praise this afternoon, as well they should, but I just wanted to once again thank you for your public service, the work you have done with us in Maine and the chance to get to know you a little bit in this line of work.

#### WILDLIFE REFUGES BUDGET

I will just ask a couple of questions because there are a lot of things I am still getting to know. In looking over the budget, one of the things I am interested in is the wildlife refuge budgets. We have I think 10 or 11 of them in the State of Maine and some of them like the Rachel Carson Refuge are spectacular and covering a great part of a fairly populated area of our State. So I am grateful that there is a slight actual increase in the budget but I know there is a deep level of need in there. I am just kind of encouraged but also concerned about how are we going to be able to accomplish all of our goals? I know we are talking about a lot of areas where there are deep cuts but can you give me a little bit of background on what we are doing with that and what we are going to be able to do with that amount of money?

Secretary SALAZAR. Congresswoman, the budget that we have put forward for 2014 would get the funding to levels that we can live with in the United States Fish and Wildlife Service refuge system. The funding cuts we are laboring with right now under both sequestration, as well as the Senate CR causes significant problems for us. We are having to determine what kind of visitation hours, cutbacks, and indeed potential closure of some of these wildlife refuges. But the President's budget itself as presented to the Congress yesterday will get us to a level where we feel comfortable operating the refuge system.

Ms. PINGREE. Great. So we will be able to eliminate some of the cutbacks in hours and then the security cuts and things that are in the sequester?

Secretary SALAZAR. Indeed.

## CLIMATE CHANGE

Ms. PINGREE. Great. Another area that I am interested in that you addressed a little bit but also of great concern to us in Maine and one of my concerns nationally is the work we are doing or not doing on climate change. And I am interested to see if you can get me a little background about some of the things that USGS is doing around climate change and how we are spending our money to work on this issue and some of the things I can tell people back home that we are actually trying to do to deal with the big challenges that we are already facing, particularly given that I represent so many coastal communities, and the impact on our fisheries and raising ocean levels already being felt.

Secretary SALAZAR. It is a great question. I am going to have Assistant Secretary Rhea Suh follow-up but let me introduce the response.

Our work at Interior is huge on climate change because we really are the ones who are at the front end of some of the impacts of climate change, whether it is a drought and dealing with the bark beetle issues in places like Idaho and Colorado, or whether it is the rising sea levels in places along the Atlantic or in the Gulf of Mexico to disappearance of the glaciers at Glacier National Park, which will be gone by 2020. What is happening to the arctic seas and in the North Slope of Alaska where I have spent a lot of time, you see the dramatic impacts of climate change on the lands, on wildlife, and on the people who live in those areas are being impacted by climate change.

We know, for example, the water supply issues which are so important to all of the States that share the Colorado River and the Rio Grande River shared by Colorado, New Mexico, and Texas that we will see declines in precipitation there that will be as high as 20 percent in the years ahead. In fact, in the Rio Grande basin today we are seeing the driest period of record in 1,000 years.

Ms. PINGREE. Amazing.

Secretary SALAZAR. It takes you back to the times when people wondered what happened to the Anasazis and what happened to those populations who lived at the time.

So our job at Interior really is to develop the science and we do that through our Climate Science Centers through USGS and then also working with our other agencies making sure that we are implementing the changes needed to be able to adapt to the changing climate. Rhea works on these issues so I want her to also respond to the question.

Ms. SUH. Thank you, Mr. Secretary.

Let me just point out a couple of pieces of the USGS budget in particular that are directly applicable to your question. The first piece that Secretary Salazar mentioned is a \$14.5 million increase to the WaterSMART program. This is the program that enables USGS to look at water availability and to make more accurate projections of availability certainly in the Western States with respect to climate change but throughout the United States in terms of both monitoring of current water and projections of fresh water availability moving forward. That is one key part of how we are looking at climate change.

The other, as the Secretary mentioned, is our work in the Climate Science Centers that are collaborative with universities across the country. These are long-term scientific efforts to really try to answer more of the specific questions associated with the climate change impacts to the United States. What I will say is in addition to the broader science and more basic science research that is undertaken by the Climate Science Centers, we have robust adaptive management efforts happening with all the land management agencies. Specifically with the Landscape Conservation Cooperatives, run primarily through the Fish and Wildlife Service, we are working hard and in a very collaborative manner to try to address the very real, very immediate consequences of climate change on the landscapes and be proactive about how we reorient our management systems around them.

Ms. PINGREE. Great. Well, thank you for that. I know that you do not have domain over the fisheries but I just want to say quickly I had a group of fishermen and fish scientists in my office last week and I represent a lot of coastal communities. Lobster fishing is an \$80 million business. It is a huge impact to our communities and to our fisheries business. Given the fact that there has been about 2 or 3 degrees rise in the ocean, which I think does not sound like a lot, especially since the water in Maine is only about 60 degrees, you know, you think it is kind of a good thing, but our lobsters shed early last year. It was devastating to the industry because we could not process them or sell them.

This year, it looks like they are already starting to shed, which is 5 to 6 months early. People are throwing up their hands in confusion not knowing exactly what is going on and how could it happen so quickly. But it could potentially have a huge impact, as well as ocean acidification, which is already impacting our clams' abilities to make shells.

And, you know, all of these things that I think we keep thinking are way out in the future are already about to harm a lot of our communities. Some of the southern Maine communities are already losing their fisheries altogether because the species are moving north. So there are just so many impacts that I know some belong in one department, some belong in another, but it all has to do with something complicated going on with the weather where there is not enough water in some places, too much in others, and some of it is just too warm.

So anyway, I appreciate the work you are doing. Thank you for your thoughts and I look forward to continuing work with the Department.

Secretary SALAZAR. Thank you very much.

#### HAZARDOUS FUELS

Mr. SIMPSON. Before I go to Tom, I was just handed a note and I would like your response to this. OMB, my favorite agency—and you will never have to deal with them again—is that a wonderful—you know, this is a good day, is not it? OMB told the staff today that there is not enough evidence that hazardous fuels removal is effective. Do you agree with this?

Secretary SALAZAR. No.



Mr. SIMPSON. Okay. I do not know that they have ever been out and looked at hazardous fuels reduction on the ground. Where they would come up with that analysis is bizarre to me, which is why I do not want them managing public lands, which is why I do not want them doing anything with the budgets frankly. But Tom?

Mr. COLE. I just want to say for the record it is bipartisan. It does not matter who the administration is, it is always the same.

#### INDIAN COUNTRY

I have some questions but I do want in the record to echo some of the remarks the chairman and ranking member made. And I, Mr. Secretary, just really—I was thinking last night about this session and I thought of all the things that you have been part of just in Indian Country. I thought of Cobell and I thought of tribal law and order and, you know, surface leasing where you guys have done some really incredible things and the tribal provisions in VAWA and frankly the whole attitude of the administration in terms of the Tribal Nations Summit and how it reached Indian Country, and it is exceptional.

I cannot think of another Secretary of the Interior that has done more for Indian Country and has done more to empower individual Indians and tribal governments. This was never a paternalistic type of relationship. It was always about keeping the commitments from the federal side and what can we do to try and make you more self-sufficient, more self-governing, more able to look after your own citizens?

It has been an extraordinary effort on your part. You have had a great team around you—Pam, Rhea, and David are just exceptional. You have had two excellent assistant secretaries in Larry Echo Hawk and now in Kevin Washburn. And I just want to tell you just thanks for an extraordinary job. And I think that is a bipartisan sense on this committee, and boy, it is certainly felt and known widely in Indian Country. So just thank you for what you have done.

Last point on this, you know, because I always seem to focus obviously on the Native American stuff, but that is true across the board. Look, I am very aware of the mess you inherited, particularly in mineral leasings when you walked in the door and some of the shenanigans that had gone on there. You guys tackled that professionally and cleaned up a real mess for this country that had not happened on your watch for sure. And so I think across the board you have been exceptionally transparent. You have always been accountable.

You have worked with this committee, been very forthright with us and very professional and, you know, I just think of the things you done in Indian Country and then I start thinking of all of these other multiple responsibilities that you have. To manage 20 percent of the land surface of the United States with, as Pam said, that is pretty extraordinary. I will match your management record dollars per management achievement with anybody else in the Federal Government or anybody else that has come before you. So just thank you for an exceptional job.

Secretary SALAZAR. If I may, Mr. Chairman, Congressman Cole, in all humility, the reality is our progress in all those areas has

come about in large part because of your personal leadership, your attendance at the annual tribal conferences that we have had with the President, your leadership on each of those pieces of legislation. It frankly would not happen without you. And I do think that that whole area is one where we as Americans, Democrats and Republicans, can celebrate where you showed a tremendous amount of bipartisan cooperation, and I think it is a great template for so many other issues that the Congress works on all the time. So my hat is off to you. In fact, I am probably going to get one of my hats and give it to you on the range in Oklahoma.

Mr. COLE. I tell you what, cowboy hats on Indians is a pretty risky deal where I am from. But I would be honored to frame it.

#### SUBSURFACE LEASING

I do have two things and they are not directly budget-related. I have some more questions if we have more time, but there are two areas I would like to get your thoughts on the record both for the Congress and for your successor because these are areas where, when, I know you have been working on subsurface leasing rights for drives where, again, I think you have done groundbreaking work on the surface leasing rights. I would like sort of a review of that because I do think some of our poorest tribes are sitting on resources that, if they can develop them, are going to make an enormous difference in the lives of their citizens and make a great contribution to the country in energy independence and independence in other areas. So kind of where are we at on that?

#### CARCIERI

The second area—and I want to particularly commend Mr. Moran and Mr. Simpson on this. We were able because of both of them in this committee to deal with Carcieri. Now, we did it in a pretty unconventional way. Obviously, we were legislating on an appropriations bill. I remember when then-Chairman Moran was kind enough that we were over our Indian thing and he said if you will propose it, I will do it. I think we should do it but I better go call Simpson. And I did and I came back and I said, well, I would like to do this. And he said, well, we are legislating on an appropriations bill. We do not do that, unless we do. I am all for it. And we kind of got out of here with a 14-to-0 vote and got through and we got it over to the other side.

But this is an issue that continues to fester. And I know that this committee, if it were allowed to do it, would probably do exactly what it did before. But I would like your thoughts because I am beginning to hear more and more from tribes and it is exactly what everybody predicted was going to be happening. They are being harassed by state and local governments. They are facing incredible litigation. They have got property they thought was in trust for decades and people are raising issues about. You have got to somehow keep track of what are now effectively two different kinds of Indian tribes because you can do certain things for some that you cannot do—at least we have questions as whether you can do for others.

So your thoughts on not only what we should do—I think we would probably agree on that—but particularly for the record the

kinds of challenges you see for both tribal nations. I think it would be helpful for people to hear that.

Secretary SALAZAR. Thank you, Congressman Cole. On Carcieri it is high priority to get it fixed. The President is strongly behind getting it fixed. The Department has specified a supportive fix and we appreciate all the efforts you yourself personally have exercised along with members of this committee. It does create significant problems because you end up having to go through an analysis of the tribes. Are you a pre-Carcieri tribe or a post-Carcieri tribe and the complexity involved in terms of tribal trust lands and it just makes it even more difficult. It is something very important, something included actually in the 2014 budget. Hopefully, it is something the United States Congress will act on as soon as possible.

#### SUBSURFACE LEASING

On subsurface mineral rights and especially with respect to energy, you will find in the budget that there are some additional funds requested to be able to do more with energy on Indian lands. My own view is informed very much by my multiple visits to North Dakota to the Bakken and to the Three Affiliated Tribes at Fort Berthold. When I went there 4 years ago, it was a dead zone on the reservation because there was no development that had occurred. Today, if you go to the Three Affiliated Tribes, there is huge economic development that is lifting up the tribe to have a great economic future.

In addition to that, I was at Fort Berthold signing the documents that allowed the Three Affiliated Tribes to move forward with the first oil and gas refinery I believe in the last 40 years, on the mainland of the United States. My understanding is that they are getting ready to move forward to do groundbreaking on that here in the next several months.

Away from the Bakken and the Three Affiliated Tribes, I believe there is huge potential because of the 54 million acres held in trust by the United States on behalf of tribes and how we can develop a much more robust energy program for both conventional, as well as renewable, is something that is a very high priority for me and for Assistant Secretary Washburn. I am certain they will continue to be of high priority for my successor Sally Jewell. This is a presidential initiative which is a high priority to the President. I know it is a high priority personally to almost-Secretary Jewell, and I am sure she will look forward to working with you, Congressman Cole, to also get your ideas.

This is an area, frankly, where I think we need to do a lot more to make sure we are thinking about what is out there. I will give you just one example. I will give you lots of examples but this is one example. We have been permitting all of these renewable energy projects in Nevada, California, and Arizona for solar. There was a point about a year-and-a-half ago where I asked my staff, well, how come none of these renewable energy projects are creating lots of jobs but also lots of revenue? Why are they not located on Indian lands given the huge acreage of Indian lands and those solar-rich areas of the Southwest? We put together a strike team and worked with the Moapa Tribe in Nevada and now today we fi-

nally are seeing the first large-scale commercial utility solar power plant springing up out of the deserts on those tribal lands.

It is an area which will receive continuing attention and increased attention from the Department of Interior.

Mr. COLE. Well, I appreciate the progress that has been made. And I have had the opportunity to work with Mr. Price on this on a couple of occasions. And just for the record—and I just put this out here as a point to look at going forward because I actually ran this by tribes and there is tribal resistance to this, so it would have to be something that they decided to do. But one of the ideas that was put in front of me by a gentleman Harold Hamm who helped develop the Bakken shale, so he is heavily involved. It is a company called Continental Resources based in Oklahoma City, very successful. And he said, look, for years we developed right up to Indian land and it is just the permitting process which is so much easier on the other side. It was just there were a lot of regulations, a lot of problems. He said if you asked me, he said, I understand this would take a compacting arrangement between the tribe and the state but if it is good regulatory policies for the state, maybe they should compact and that should be extended in the regulatory function.

Now, there is, as you know, deep suspicion between tribal and state governments in these areas and there is a lot of resistance to that. But it might be something that we should at least give the tribe the option to do and sort of get the feds a little bit out of the regulatory area. In Oklahoma we have a regulatory regime that obviously covers the state because we have no reservations. We are pretty good at it. And I expected South Dakota they are probably pretty good at what they do, in North Dakota and in these areas. But at least I raise that as an idea worth thinking about looking about from a departmental standpoint.

Now, I would always leave the decision in tribal hands. I think it is up to them. If they want to maintain what they have got, if they want to develop the capacity, which is hard to do but some of them want to do that, that is fine by me. Or if they wanted to look at this as an option and it might even heal some of the historic divisions out there. I do not know. And again, I put that forward saying I know it is very controversial and that would need to be studied, but I will reserve my other questions. And again, thank you very much for your service.

Mr. SIMPSON. Ms. McCollum.

Ms. MCCOLLUM. Thank you. I too want to thank you for all the work that you have done with this committee and thank you for fighting a good battle with me that did not come up quite the way I had hoped it would and I think the Park Service hoped it would in Minnesota. But you were there protecting our natural resources all the way and I thank you for your service on that.

#### INDIAN COUNTRY

I want to follow up a little bit about what Mr. Cole said about Indian Country. I am so proud of your work, the administration's work, your staff's work. You know, I can speak easier with the relationship with my 11 tribes in Minnesota and I can with some of the tribes I have gotten to know and to work in partnership with

since being elected to Congress, but it is a breath of fresh air that they feel that they have a partner, someone that recognizes and appreciates their ability to make their own decisions, governing their own people, and, you know, really work nation to nation. And that credit goes to the person who sets the tone, the President of the United States, and then somebody who decided that they were going to also move in that direction with great, great clarity and great passion and you set the tone for that as well, so thank you for your work.

We are at a crossroads now, especially with sequestration with what happened. A lot of the gains had been wiped out, and I think part of the reason why sequestration in particular is that part of the budget that you oversee for Indian Country, and so when decisions are made in the Recovery Act for helping at schools and school children, we found the Bureau of Indian Affairs' schools not being included in that, because people just were not thinking big picture when it comes to Indian Country. The unfortunate decision, done with no malice of Indian health not being protected in sequestration, impacts aid for the children who attend schools, and that is because the budget is so spread out. I mean everybody comes to Interior and looks at Interior but you are in the Department of Agriculture with outreach to Indian Country there. It is in the Department of Education, it is in the Department of Health, it is in all these other areas.

And so one of the things that the chairman has been very supportive and our staff has been working on with OMB, I might add, is what they could do trying to come up with more of a unified Indian Country budget so that we are looking at all the big pieces at the same time. So any suggestions you might have for this committee in either working with other agencies would be helpful. So that is one reflection I would like from you.

#### ASIAN CARP

And the other reflection is, you know, air knows no boundaries, water knows no boundaries, and Asian carp does not stop to look at boundaries. And they are coming up the Mississippi River. There are the other river systems. We are worried about them even getting in a treasured natural resource between the Mille Lacs Band and the residents of Minnesota with walleye fish in Mille Lacs Lake as this moves and spreads forward.

So one of the things that I have been working on and it has been bipartisan and it has been a real treasure to get to meet people on the other side of the aisle on this is talking about Asian carp as an invasive species. If part of it is going to be climate change, it is not necessarily going to be an invasive species; it is going to be a species moving because of climate change. Some of it is going to be us doing better regulation, which, with budgets being as tight as they are, ideas that you might have for—and here again it is going to be an interagency cooperate, U.S. Fish and Wildlife and Army Corps and others, some ideas that you could give us on how we should be looking to work with you, with other agencies, and then we are going to have to work with other appropriations committees as well as policy committees to address this. And we have

not done a good job but both the chairman and ranking member here are very interested in how we work forward on that.

So if you could maybe give me a few reflections. And I would love to talk to you about water shortages but I am not going to have the opportunity to do this in this limited time. So I want to thank the USGS for the great job that they did in Minnesota.

#### INDIAN COUNTRY

Secretary SALAZAR. Congresswoman McCollum, I very much appreciate both questions. First, let me say that I think we can do a better job and should take a look at it both with OMB and with Departments across the government to see how we can come up with a more unified way of explaining the federal resources that ultimately go into support of Indian Country. I will take that as an assignment for Rhea and Pam—and we are working with OMB. Hopefully, we can do a better job.

One of the things that has come out of our annual tribal conferences now with the President is this sense of the whole government coming together to talk about tribal issues, so we will have the Department of Justice, Department of Health and Human Services, all the agencies coming together at the top level, and it would be cabinet officers speaking to these issues. I will take that as an assignment for what will hopefully be a next tribal conference, but that may be one of the things we can work on. Certainly, it is the kind of thing OMB—and yes, they do some things we might disagree with them. In fact, very often, Chairman Simpson, these are some of the areas that I know they are very interested in. I think with respect to a unified Indian Country budget, there are some things we ought to be able to work on there.

#### ASIAN CARP

On the Asian carp issue, obviously, it is a huge issue. It obviously unites the world in a bipartisan way on trying to deal with the Asian carp. Our role has been to develop the science and to help make sure we do not have a spread of this invasive species. According to Pam, we have \$5.9 million in the Fish and Wildlife Service budget for Asian carp and another \$3 million in USGS. It is a kind of challenge for us that really does require, again, the whole government be united in our approach to dealing with Asian carp.

Mr. SIMPSON. Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. I want to thank you, Mr. Chairman. I do not know anything about Asian carp but I know when I hear Asian carp I hear bad stuff is happening. So to your credit it is definitely a bipartisan issue. Those of us in Washington State who do not—obviously, we have other invasive species that I am familiar with but I have coastal properties as well. It is funny to me though. I know that there are invasive species called Asian carp. Totally off my subject. I do not have the same experience that most of the committee does, not having worked with you over the past several years and everybody has different things to say thank you for. I do thank you for your service.

## DECLINING BUDGETS

I am learning a bit since I came to Congress I think in just about every committee hearing I have been in and I have heard about the declining budget situation. It is the reality we live in. And one of the things you talked about since 2007, I will say I was a little confused because you talked about the growth that has taken place since 2007, and in my mind that was when everything went down or began. That was the foreshadowing of 2008, 2009, 2010, which in my neck of the woods meant that we had 10 percent, 20 percent unemployment in all of my counties. So all of the budgets in our area shrank significantly. And I would expect that the federal budget would be in step with that. Now, do I think we are going to balance the budget on the discretionary side? No. Do I think we should? No. So I agree with that.

But at this time we are here now we are dealing with what we are dealing with right now, and we all hope that we are going to generate more job growth in the private sector and there will be more tax revenue and so on and so forth and things will ease, but this is where we are. And one of the things that I think is important in a situation like this and every family that I know has had to do is prioritize within that budget. And each budget request reflects the priorities of the person putting it forward, and I recognize the one word I keep hearing from people who are talking about the President's budget from the administration is balance. Balance, balance. I heard it this morning from Mr. Tidwell. I suspect we will hear it from some of the other agency heads who are coming in to talk about it.

And I would say there are some areas that I have some concerns. We have any budget that you are putting forward for your successor—I do not know quite how to say that—will be defending, right?

Secretary SALAZAR. It is still my budget for the day.

Ms. HERRERA BEUTLER. It is still your budget for the rest of the day until five o'clock.

Secretary SALAZAR. It is actually the President's budget.

Ms. HERRERA BEUTLER. It is true that you are the one who is here to tell us about the positives and why we should fund it, right?

Secretary SALAZAR. Right.

Ms. HERRERA BEUTLER. You are the messenger.

Secretary SALAZAR. Yes, ma'am.

## NPS BUDGET

Ms. HERRERA BEUTLER. With that, there are increases in BLM and Fish and Wildlife and National Park Service, all good things, important things, but I would argue at a time when we have some real challenges—let me put it this way: Park Service. Let us talk about this. Now, would we have these huge maintenance backlogs if we were increasing some of these land purchases? It makes me say wait a minute. Should we be making sure that everything that we own right now is best maintained before we increase those acquisitions? I will give you an example sticking with the land purchase side. We have a national park in Fort Vancouver—Van-

couver, Washington, and southwest Washington around the Columbia River across from Portland.

Secretary SALAZAR. Um-hum.

Ms. HERRERA BEUTLER. Hudson's Bay Company. It was the beginning of our community. We are having some real challenges with this. And I will be meeting with Director Jarvis today and then again tomorrow when he comes in. The park itself has several areas that it owns that, because it does not have the budget, has boarded up these different historic buildings, completely boarded up. I mean you cannot go in them, you cannot use them. In partnership with the city, the city manages some of those historic officers' houses. Those houses are beautiful. Because of that partnership, they are able to manage things and bring in some additional outside revenue. They are open, they are used, they are bringing in revenue, and they are maintained. They are all historic buildings. We want to see them maintained for the community.

I guess I would say would the \$60-plus million Park Service budget, that increase might be better used, rather than buying more land, would it not be best used to maybe un-board those windows and utilize and open up that property to the public? And so in my mind it comes down to a question of priorities and I would like to hear your thoughts on increasing what the Federal Government owns versus well maintaining to the best of your ability with the dollars you have, recognizing they are limited, using that money to maintain.

Secretary SALAZAR. Congresswoman, I appreciate the question very much and let me first say that with respect to the 2006, 2007 timeframe, frankly, if you look at the budget of the Department of Interior from 2000 to 2006, 2007, it was atrophying for whatever reason. It just was a very anemic budget. So the progress, frankly, that this committee has made over the last several years until we got to sequestration and to the CR had been getting us back to the point where we could live up to the responsibilities that had been assigned to us by the history of the United States and the mission given to the Department.

Number two, our approach to the budget at the Department of Interior has been to do as much as we can with whatever it is we have. What that has meant is, first of all, looking at places where we can cut and looking at places where we can be more efficient. Right here in this area we have cut about \$600 million in programs that we have looked at where we have made determinations that things could be done much more effectively than they were in the past. Travel has been significantly cut; employees are doing a lot more videoconferencing than they ever did before. We have saved millions of dollars in information technology. We are leasing less space in order to save now I think it is over \$150 million. So a whole host of things where our approach to budgeting has been let's make sure that we are running as lean and mean a machine as we possibly can.

To your question on acquisitions versus maintenance, I would make two points. The first is that the maintenance backlog of the United States National Park Service is probably north of \$9 billion, maybe even north of \$10 billion at this point in time. The needs are there. They are huge needs. We recognize that maintenance is



something we need to work on. We also, in terms of looking at the reality of what we face, have also developed a whole host of public-private partnerships with friends groups all around the country. You see the scaffolding going up around the Washington Monument. That is the damage caused by the earthquake a year or so ago. Part of that cost, which is going to be in the neighborhood of \$14 million, at least this first part of it, is being put up by a private donor. So we do a lot of that all over the country.

New York, even as we implement Hurricane Sandy relief, we are doing it hand-in-hand with the City of New York as well as the private foundation that support Ellis Island and the Statue of Liberty.

#### LAND ACQUISITION

Now, with respect to land acquisition, I will say it is often Republican Members of Congress and the Senate who come to me and tell me there are places like the Grand Teton National Park where we have the land holdings that are about ready to be developed; they want to protect these crown jewels of America forever. So you start seeing then where it is that land acquisition does become important with respect to land holdings and buffer areas and a whole host of other things.

My own view—and you and I may frankly disagree on this—is we are in a position today in 2013 where we are getting ready to celebrate the Centennial of the National Park Service. And I would expect that this committee will play a key role in the celebration of the Centennial. Ken Burns and Dayton Duncan were putting together their documentary 2 years ago and called the National Parks: America's Best Idea. You have to think about the economics that come from tourism from all over the world as people come to the United States of America to visit the icons of Vancouver or Seattle or New York or Idaho, and we have the magnets, the assets of America. How we take care of them is important. I would hope that we continue to fund in an appropriate way the needs of our national——

Ms. HERRERA BEUTLER. Let me jump in on that last point because I agree 100 percent with you that these are treasures, and where we can pull in these public-private partnerships, it is a win-win. You know, we have declining budgets. We have got groups who are vested in these—community groups are vested in a certain area and say, yeah, we want to raise money into this and help keep it as a public resource that is open and available. I agree with you 100 percent.

I wish I could bottle that little piece that you are saying and I probably will take it into my meeting today and then tomorrow with Director Jarvis because our exact issue is we have a public-private partnership that is being for all intents and purposes shut down by the National Park Service over what I think has become—I do not know if it is a personality complex, but they have the law on their side and so my community, with this public-private partnership that has operated for almost—I want to say the best part of 30 years where they have raised money into it and the Park service has owned it and there has been a great collaboration, is completely shutting down and we now have closed buildings.

So exactly what you said, I am with you on. I think our challenge is there are different places where I am going to be perhaps quoting you a little bit later.

Secretary SALAZAR. The great part of this job is that it takes me from sea to shining sea and out into the ocean so often, and there are no doubt problems we have in some places that sometimes with some leadership we can figure out a way of resolving a private-public partnership, and I am certain that Director Jarvis would be more than happy to sit down with you and talk about the specifics of the park.

Ms. HERRERA BEUTLER. Thank you. Thank you.

Mr. SIMPSON. Before I go to Mr. Valadao, Tom is going to take over for me. I have to actually go over to the doctor so I have got to leave before you do today. I have got one of those doctor's appointments where he only comes once a month. But I just again wanted to thank you for your service. I look forward to seeing you out in Colorado when I come through there, and when you see John, tell him hi from all of us and we really miss him.

Secretary SALAZAR. Chairman Simpson, it has simply been an honor. Thank you.

Mr. SIMPSON. It is been an honor for me.

Secretary SALAZAR. Thank you.

Mr. SIMPSON. Thank you.

Mr. VALADAO. Thank you, Mr. Chair, Mr. Secretary.

#### SCIENCE IN DECISION-MAKING

The administration has been ardent about science leading decision-making but on many issues science has failed to deliver a clear answer and decision-making has been stymied. How would you propose to make decisions in the face of scientific uncertainty when maintaining the status quo is simply untenable such as in the California Bay Delta? And what do you see is the potential for problem-solving through scientific collaboration between federal agencies, state agencies, and other regional or local interests with the appropriate expertise?

Secretary SALAZAR. Congressman Valadao, first, let me thank you for the question and say that in my view the Department of Interior has upheld the principal and the goal of scientific integrity. During my time as Secretary of Interior, the decisions we make oftentimes are not popular. Sometimes, neither the left nor the right agree with us, they will disagree with us, but I will tell them what has guided us is the best science and the best information.

The California Bay-Delta and the water issues and the science issues you raise are very important issues. I would say that in my time as Secretary, there is no single water issue we have spent more time on trying to untie the Gordian Knot of the California Bay-Delta and the water issues which have been such a problem in California. Governor Schwarzenegger and now Governor Brown have worked very closely with my Deputy Secretary David Hayes along with Mike Connor, the head of the Bureau of Reclamation, to see how we can move forward on a plan that ultimately will bring about the equal goals that were articulated several years ago with the Bay-Delta. One is to provide a certainty for water supply,

and the second is to address the restoration and conservation needs of the San Francisco Bay-Delta.

As that process moves forward and the contractors who have been working with the State of California and with us as that whole process moves forward, they will be guided by the science in terms of what is probably one of the most important infrastructure decisions that will have to be made relative to the conveyance system that is being considered right now. It will be one of the greatest infrastructure projects, one of the most significant ones in the country if it is to pass. But the science will guide where ultimately that project will go.

Mr. VALADAO. If I may, one more?

Mr. COLE [presiding]. Yes.

#### LAND USE

Mr. VALADAO. While I understand the resource protection is a priority, Interior must strike a balance when determining land use in obviously areas of public claims that are suitable for use. What have you done to ensure that this important form of recreation retains appropriate access and what are you doing to advise your successor to promote access for the millions of Americans who wish to participate in motorized recreation?

Secretary SALAZAR. So motorized recreation is something that is very important. It is part of what we support in many of the places of the nearly 500 million acres which we manage. I myself visited the Imperial Sand Dunes in your State, not in your district but in Southern California, where I spent a lot of time with the off-road vehicle, four-wheel community. It is something we support and we believe it ought to be done in the right places, and there are a lot of jobs that actually come from the off-road vehicle industry and we very much appreciate the contribution and the opportunity that we provide.

Mr. COLE. The gentleman from Georgia, Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

#### OFF ROAD VEHICLES

Mr. Secretary, thank you. And just to follow up on Mr. Valadao, I also offer my support for the use of off-road or recreational vehicles in public lands. You are right. So many families enjoy the recreation opportunities, and oftentimes the only places they have to go are public lands, so I appreciate your good counsel to your successor in continuing that opportunity or even expanding those opportunities.

#### ATLANTIC SEISMIC ENVIRONMENTAL IMPACT STUDY

A couple of questions I had, one, there were a group of members including myself that sent a letter to you in regards to the Atlantic Seismic Environmental Impact Study, and I do not know if we have yet got the response, but I know that that study was long overdue and I just wanted to see if you had any update before your departure on a potential timeline of when we might know the results.

Secretary SALAZAR. Congressman Graves, I would be happy to get back to you with the specific timing. I do not have that with me.

[The information follows:]

#### ATLANTIC PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

The Bureau of Ocean Energy Management is evaluating the potential effects of seismic and other geological and geophysical activities in the Mid and South Atlantic, as well as mitigation and monitoring measures that will reduce or eliminate potential impacts. The final Programmatic Environmental Impact Statement is expected to be completed later this year.

Mr. GRAVES. Okay.

Secretary SALAZAR. I will articulate what I think is probably the more important thing what our policy objective is with the programmatic environmental impact statement on the Atlantic, and that is the President, as part of our all-of-the-above energy strategy, has felt that it is important for us to know what the resources are we have, including those resources on the Outer Continental Shelf. It is why even along the Atlantic we have been gathering this geologic information that will allow us to make informed decisions about the future of the OCS.

Mr. GRAVES. Okay. So you suspect that that may be evident, I guess, the outcome of that at some point, the report—

Secretary SALAZAR. It should be because I actually went somewhere I think in Virginia to announce that, and I think that was a year or so ago, so we will get back to you on the timing of it.

#### OIL AND GAS DEVELOPMENT

Mr. GRAVES. Okay. Thank you. And then one more, Mr. Chairman, if you do not mind. Just along the same lines, it seems like with all the new technology that has come about with exploration for new energy and then so much of it being in the private sector on private lands, it seems to be that Georgia is one of the States that folks are looking at for opportunities in the energy field, whether it be shale oil gas, whatever the component might be. From a permitting perspective or from a forecasting perspective, how do you see it? And being from Georgia that is why I have the interest. How do you see it impacting—and previously, maybe were not even considered or there were no exploration opportunities, but currently in looking forward do you see more opportunities in states that maybe had not been paid attention to previously?

Secretary SALAZAR. I do. I think one of the things you will see is that even in the eastern states where the Bureau of Land Management controls the mineral estate, in some places, the surface estate, we are holding oil and gas lease auctions. I think what will happen is the technology unfolds as we continue to learn more as we have in the last 4 or 5 years that you will see many of these lands coming into availability for oil and gas production. We did it 3 years ago. People did not think too much about the Bakken and what would happen in the Dakotas and Montana, and yet today, you see what is happening there. One of the things I am very proud of and I think the United States should be very proud of is the fact we are now importing less than 45 percent—in fact, the last figure I saw was about 41 percent of our oil from foreign coun-

tries. When I came to the Senate in 2005 I remember giving a speech on the floor of the U.S. Senate. At that time we were north of 60 and on our way to 70 percent.

We have come a long way, and in large part, it has happened because of the technological innovations pushed by industry, which have included horizontal drilling, which is doing some incredible things in the country today that are good for the environment as well as good as a tax resource. Second, the process of hydraulic fracturing is making a significant amount of the resource available today that was not available even 5, 6 years ago.

Mr. GRAVES. So in the State of Georgia do you see opportunity there? Have you seen some new developments on or offshore?

Secretary SALAZAR. Frankly, I would have to get back to you on that with respect specifically to the State of Georgia. I do not know your State on this issue frankly as well as I know most of the other States.

[The information follows:]

#### OIL AND GAS POTENTIAL IN THE STATE OF GEORGIA

The Bureau of Land Management is not able to provide to a forecast of oil and gas development potential in Georgia. There are little or no federal minerals in Georgia and there is no federal oil and gas development there. The Bureau of Land Management does not develop or monitor forecasts for oil and gas resource development on fee or State lands or mineral estate.

Mr. GRAVES. Sure. Thank you very much. Thank you, Mr. Chairman.

Mr. COLE. I am going to get everybody one quick round. You have been very generous with your time and waited on us. I have been so nice. I have to quit being nice here. I do have a question I would like you to address or a couple actually. One, I was looking at the administration budget and I noticed we have an overall 5 percent request for increase. Of course, I immediately go down to the BIA and it is 1.2. So I would like to get some of the thinking behind that because I always argue that this part of the budget where we are really actually directly impacting people's lives in a very direct way.

#### INDIAN SCHOOLS

The second one is one that I know causes the chairman agree deal of concern and this committee a great deal of concern, and we have had some great off-the-record discussions about the challenges here, so I am not trying to put you on a hard spot, but I think probably in a bipartisan sense we are disappointed at the construction budget that is being proposed for Indian schools. We are in the middle of a very large expansion and modernization of schools for military kids, another place where the Federal Government has a direct responsibility for the facilities. I know our former chairman of this committee, Norm Dicks, was a major player. Now, I was, too. I have military schools being built in my area. I think those kids are a special responsibility of the Federal Government.

I feel the same way, and I know you do too, about Native American children, and yet there seems to be two different approaches by the administration. We have a significant investment in schools infrastructure for the children of military families. Last 3 years in

a row, you know, the Department of Interior has not proposed much in the way of additional construction. Now, we may have this, as we have talked before, in the wrong area of the budget. There is a lot to talk about here so I am again not trying to be critical, but we do seem to have a disparity of interest and I would like your thoughts on that.

Secretary SALAZAR. Well, first, I am going to ask the Assistant Secretary to comment a little bit specifically on the schools in the overall BIA budget. I will say this: we have done everything we can, Congressman Cole, to protect the budgets for the impact on Native Americans in Interior, and frankly, I think if you look at a composite of the last 4 years, the hits have been taken by other parts of the Interior budget because this is an area which, frankly, effects the most impoverished and the most in need people in our entire Nation.

This budget, in particular the 1.2 percent increase you talk about with BIA, you know, it is a tough, tough fiscal climate that we are navigating. It is not what I would like to have in the budget in an ideal world, and if I had the purse strings with respect to schools, I can tell you that we would do a lot more in terms of construction. We did, because of the Recovery program, put significant investments in the schools in Indian Country, but I know there is additional work to do and I would like the Assistant Secretary to comment on it.

Mr. COLE. Absolutely.

Ms. SUH. Thank you, Mr. Secretary. So maybe just start off with the BIE schools issue. You are correct. The 2014 budget does not include any new funding for construction, but as you know, over the last 10 years, particularly as it relates to the Recovery Act, BIA was able to spend over \$2 billion on construction, specifically school construction for construction improvement and repair. There was quite a big opportunity. That certainly does not mean there is not existing need and existing opportunity, and we very much appreciate the reminder of the importance of this.

#### INDIAN AFFAIRS BUDGET

If I could just remark more generally on both the Department of Interior's perspective with respect to BIE and BIA budgets. There probably has not been a greater emphasis on any other bureau than those two bureaus, at least during my tenure, in ensuring that the basic services that we provide Indian Country are upheld and are strengthened. While we may not have been able to increase the budget as significantly as we may have hoped, the 2014 budget still represents an increase. I think it is about a \$32 million increase overall, and again, just to underscore, I think you have all of our very strong personal commitments and I believe the commitment of the incoming Secretary of the Interior around these issues and fundamentally around adequate budgets for all of these issues.

Mr. COLE. Well, again, I do not want any questions I have raised to leave any doubt about my appreciation for what you have done because I think it has been exceptional and it has been a great bipartisan partnership in this committee and then a partnership between this committee and the administration. I am sure when Mr. Moran headed this committee and it is true when Mr. Simpson had

that we fight about a lot of other stuff; we do not fight about Indians very much except we both usually fight for a little bit more. And we appreciate again all that you have done, Mr. Secretary.

Mr. Moran.

#### OIL AND GAS PRODUCTION

Mr. MORAN. Thank you, Mr. Chairman. I do not have a question but I do have a fact that I want to put on the record thanks to Rick Healy, and that is that we are producing more oil and gas on public lands now than we were during the last years of the Bush Administration. But what is really interesting is that as production has gone up, litigation has gone down because the Interior Department is making better and smarter decisions on leasing and issuing drilling permits. So that is a real feather in your cap and it should be more acknowledged than I suspect that it is. So thank you for that. Well done.

Secretary SALAZAR. Thank you.

Mr. MORAN. That is all I have to say, Mr. Chair.

Mr. COLE. Thank you, Ranking Member. Mr. Graves, do you have any further questions?

Mr. GRAVES. No.

Mr. COLE. Ms. Pingree.

Ms. PINGREE. No, thank you very much.

Mr. COLE. Well, I am glad I got to be in the chair in your very last grilling here, and again, I think I have expressed the sentiments and you certainly know that from the comments here today of all concerned. Just thank you for your superb tenure as Secretary of the Interior on a bipartisan basis. You have been terrific to work with. You have got a lot to be proud of and what was then an already extraordinarily distinguished public career before this. But I hope it is not a capstone. I hope you go do something else and I suspect you will. But regardless, this will always be something in your professional life that I hope you look back with as much pride and satisfaction for your performance as all of us have and having had the opportunity to work with you. So thank you, Mr. Secretary.

Secretary SALAZAR. Chairman Cole and Congressman Moran, Congresswoman Pingree, and Congressman Graves and to all the members, I want to say if I may, just two final things because this will be my last official act and my last official statement as Secretary of the Interior. The first, I want to say to your staff on both sides that they are terrific. David does a wonderful job for this Committee. And right at his side with Rick and all the rest of the team, Darren and Erica and Missy and everybody who was part of this team, we have very much enjoyed the relationship, the work you do with Assistant Secretary Rhea Suh and with Pam Haze and our entire budget staff from the Department of Interior, thank you to your staff.

And second, to all of you. I do think that somehow all the rest of the Congress should watch this Committee in action because you do it right and you do it together. You stand up for first Americans in a way as you have described, in a way that does not happen as often as it should here. So thank you very much for your service

and I hope to be able to continue to see you never as a lobbyist but always as a friend. Thank you.

Mr. COLE. With that, we are adjourned.



U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Budget Hearing: U.S. Department of the Interior  
April 11, 2013  
B-308 Rayburn HOB

Questions for the Record -- Secretary of the Interior

Questions from Mr. Cole

**Hydraulic Fracturing/Energy**

The BLM is currently in the process of re-proposing the regulation of hydraulic fracturing on public lands. The BLM's stated intent of the proposed rule is to require the public disclosure of the chemicals used in hydraulic fracturing operations, to ensure well-bore integrity and ensure safe water management practices.

Currently, the states regulate hydraulic fracturing operations within their state borders.

**Cole Q1:** Are you aware of any gaps currently in the state regulation of hydraulic fracturing that the BLM needs to address to assure adequate regulation on federal lands? If so, have you or will you work with the states where the BLM has identified gaps in state regulation?

**Answer:** In accordance with its stewardship mandate from the Federal Land Policy and Management Act of 1976, the BLM is promulgating regulations in order to protect and manage hydraulic fracturing activity on Federal and Indian lands. The BLM recognizes the work of State regulatory agencies with respect to hydraulic fracturing and seeks to avoid duplicative regulatory requirements. However, it is important to recognize that a major impetus for a separate BLM rule is that States are not legally required to meet the stewardship standards applying to public lands and do not have trust responsibilities for Indian lands under Federal laws. Thus, the rule may expand on or set different standards from those of States that regulate hydraulic fracturing operations, but do not need to adhere to the same resource management and public involvement standards appropriate on Federal lands under Federal law.

The BLM has held public and private listening sessions which included State officials, where the BLM has worked cooperatively to improve the regulatory environment for hydraulic fracturing. For example, the revised proposed rule announced on May 16<sup>th</sup> encourages efficiency in the collection of data and the reporting of information by proposing to allow operators in States that require disclosure of chemical constituents of fracturing fluids on FracFocus to meet both the State and the BLM requirements through a single submission to FracFocus.

**Cole Q2:** Are you aware of a specific concern that has happened that has compelled the Department to move forward with a new layer of regulation on top of what the states already require?

**Answer:** The BLM is promulgating hydraulic fracturing rules primarily to address concerns regarding protecting the usable water zones, confirming good cement bonding, adequate wellbore integrity, and disclosing the chemical content of the hydraulic fracturing fluids. The BLM is not promulgating its rules in response to a specific occurrence; rather the significant increase in the number of wells using hydraulic fracturing activity on Federal and Indian lands caused the need to develop the hydraulic fracture regulation by the BLM as a part of our stewardship mandate to ensure proper balance between human health, energy development, and the environment.

BLM's own numbers show that leasing on federal lands for oil and natural gas are down at a time when energy production overall is booming.

**Cole Q3:** Because duplicative regulations could further drive investment away from public lands, should the BLM rule look to streamline the permitting process rather than create additional delays and increase costs?

**Answer:** The BLM's regulatory framework regarding well stimulation/Hydraulic Fracturing (HF) has not been updated for over 30 years. In addition, the existing regulations do not reflect industry's technological advancements that have occurred during that time frame. The BLM estimates that about 90 percent of wells currently drilled on public and tribal lands are stimulated by hydraulic fracturing techniques and there is a need for a consistent regulation all across these lands for proper protection of the usable water and other valuable resources during the drilling and completion of these unconventional wells using HF operations. Over the past few years Wyoming and a few other States have substantially revised their State regulations related to hydraulic fracturing. BLM's key goal in updating its regulations on HF is to complement State efforts by providing a consistent standard across all public and Indian lands Nationwide.

The BLM has taken the suggestions and inputs from a number of States in developing and revising the HF regulation. The BLM has considered public comments on the proposed rule released on September 10, 2012, noted the valuable issues raised in those comments, and made necessary changes to come up with the revised rule that was announced on May 16<sup>th</sup>. As part of the public comment process prior to finalization of the rule, BLM will seek new and improved ways to reduce administrative burdens and to increase efficiency, while fulfilling the Secretary's statutorily mandated responsibilities as steward for the public lands and trustee for Indian lands.

**Cole Q4:** Should the BLM examine the potential effects of the BLM rule on the costs of drilling operations and if those costs discourage new investment on public lands and if the re-proposed rule will increase or decrease production on federal lands prior to the re-proposed rule being officially proposed?

**Answer:** The BLM has examined the potential impacts of the revised rule. We received extensive public comments suggesting that the initial proposal would significantly increase the costs of drilling operations. We considered those comments and made changes to the requirements, which are now reflected in the revised rule. We believe that the new approach provides greater flexibility to operators and reduces the potential additional cost burden. We have determined that the rule is not economically significant as defined by Executive Order 12866, in that it will not have an estimated annual impact of over \$100 million. Further, we do not believe that the revised rule will reduce future investment on public lands. We will make the economic analysis available on [www.regulations.gov](http://www.regulations.gov) when we publish the revised rule in the Federal Register.

**Cole Q5:** In the budget the Administration says they're looking into increasing the onshore oil & gas royalty rate. Is the Department, in fact, already working on raising the royalty rate?

**Answer:** The BLM is currently drafting an Advance Notice of Proposed Rulemaking that will request comments from the public related to royalty rate reforms. Among other questions, the ANPR will seek public comment about increasing the standard onshore oil and gas royalty rate and introducing an adjustable royalty rate system. Any royalty changes made administratively are expected to apply only to new Federal leases obtained through our competitive leasing process.

#### **BIA/BIE Construction**

The FY 2013 Budget request does not include BIE construction funding for new school replacement.

**Cole Q6:** When will we start replacing schools that quite frankly are not currently safe for students.

**Answer:** While the 2014 budget request does not include funding to fully replace existing schools, the construction budget includes \$48.5 million for major facilities improvement and repair projects at education facilities. Projects are prioritized to address the most critical health and safety issues. In addition, the budget requests \$110 million for facility operations and maintenance of the current schools. The Assistant Secretary – Indian Affairs has discussed this matter with me and he will be taking a fresh look at how we can address this issue. I would welcome working with you on the issue.

#### **Contracting for Tribal Services**

Under Self-governance contracts, tribes have been extremely successful providing services that BIA, BIE and IHS traditionally provided. As you know tribes have been great stewards and managers of the land well before the creation of this country.

**Cole Q7:** Is there any thought at DOI about engaging tribes to contract for services beyond the scope of BIA and BIE such as managing land, water and wildlife programs.

**Answer:** I agree with your assessment that tribes have been extremely successful at managing programs traditionally provided by the Federal Government. In 1975, the Congress enacted the Indian Self-Determination and Education Assistance Act (the Act), P.L. 93-638, as amended. The Act allows tribes to have greater autonomy and the opportunity to assume the responsibility for programs and services through contractual agreements. The Act assures that tribes have involvement in the direction of services provided by the Federal Government in an attempt to target the delivery of such services to the needs and desires of their communities. The Department of the Interior is fully supportive of self-determination and self-governance and believes it is critical to optimizing services to Tribes. Tribes already manage numerous programs within Indian Affairs, which include BIA water and wildlife programs. Specifically, the Water Resources Program and the Wildlife and Parks programs are considered Tribal Priority Allocation Programs (TPA) and tribes may assume operation of these programs.

In addition, self-determination contracts and self-governance funding agreements have been arranged between tribes and other DOI bureaus based on the authorities in the Indian Self-Determination and Education Assistance Act. These bureaus include the Bureau of Reclamation (BOR) and the Bureau of Land Management (BLM), and the Department is open to exploring other self-determination contracting possibilities permitted under current law. These expansions would potentially increase the amount of contract support costs that BIA would pay to the Tribes.

Questions from Mr. Valadao**The Bay Delta Conservation Plan**

**Valadao Q1:** The Bay Delta Conservation Plan (BDCP) addresses problems that are vitally important to the State and nation. With the change in leadership at Interior, do you see the Administration maintaining it as a high value, high priority initiative? If not, why?

**Answer:** The Sacramento-San Joaquin Bay-Delta (Bay-Delta) is an ecosystem of national significance and the Department of Interior will continue to support its partnership with the State of California in the effort to find acceptable long-term solutions to appropriately balance the need to restore the ecosystem and the many water supply needs of the Sacramento-San Joaquin Basin.

**Valadao Q2:** The Administration has been ardent about science leading decision making but, on many issues, science has failed to deliver a clear answer and decision making has been stymied. How would you propose to make decisions in the face of scientific uncertainty when maintaining the status quo is simply untenable, such as in the California Bay Delta? And what do you see is the potential for problem solving through scientific collaboration between federal agencies, state agencies, and other regional or local interests with appropriate expertise?

**Answer:** Due to the complexity of the Bay-Delta ecosystem and the number of species of concern there is some level of scientific uncertainty as to how the ecosystem will respond to the conservation measures included in the BDCP (Plan) despite substantial scientific work and analysis to date. This uncertainty must be addressed between partners through a rigorous and collaborative science-based adaptive management program that will consistently evaluate, on an ongoing basis, the system's response to implementation of the conservation measures included in the Plan. While more work remains, efforts will continue to be guided by sound and credible science as the Plan moves forward.

**Valadao Q3:** Interior has been examining the potential public interest and CVP cost allocation of BDCP for at least a year now. When do you think a recommendation will be forthcoming? The allocation's findings are essential information in finalizing the Public Draft document, which needs to be issued in July if federal commitments are to be upheld

**Answer:** Though the issue of financing has been an area of considerable discussion throughout the BDCP process, more work remains to be completed on a workable financing plan that is supported by the affected parties. This additional work includes determining methods for financing and repayment of investments and associated assignment and recovery of project costs. The State of California has secured consulting services to complete a comprehensive cost-benefit analysis that will identify potential costs and benefits of the BDCP for various water users and the public at large. The proposal is expected to consider a statewide perspective and analyze impacts to various groups whose welfare may be affected by the Plan. Cost and benefit components that will be quantified are divided into three broad categories: (1) construction and operating costs of proposed projects, (2) impacts to Delta-dependent economic activities, and (3) non-

market environmental impacts. This State of California analysis will inform financing discussions between the Federal and State agencies. Documents for public release will be developed in parallel with these discussions.

#### **Off-highway Vehicle Recreation**

**Valadao Q4:** While, I understand that resource protection is a priority, Interior must strike a balance when determining land use and obviously areas of public lands that are suitable for OHV use. What have you done to ensure that this important form of recreation retains appropriate access, and, what are you going to advise your successor do to promote access for the millions of Americans who wish to participate in motorized recreation?

**Answer:** The BLM considers the recreational use of motorized vehicles a legitimate use of public lands. Each BLM field office develops a Resource Management Plan that strikes a balance between conserving and protecting sensitive resources while providing for the long-term, sustainable use of the public lands. This includes the sustainable and responsible recreational use of motorized vehicles on public lands. One part of the land use planning process that directly impacts recreational users of motorized vehicles is the development of travel management plans. Travel Management Plans build on the Resource Management Plan and lead to specific decisions about where and how motorized vehicles can be used on public lands for recreational purposes. It is also important to note that travel management plans are developed collaboratively with the local communities and public land users concerned with the planning outcomes - including recreational motor vehicle users.

The goal of travel management plans is to ensure that the public lands involved provide the highest quality recreational opportunities possible while minimizing user conflicts and any impacts to sensitive resources. Though the BLM is still in the relatively early phases of completing travel management plans for all field offices, the public lands are still available for recreational motorized vehicle use on an interim basis. Currently, there are estimated to be over half a million miles of motorized vehicle travel routes available for recreational motorized vehicle use on BLM managed public lands.

Off-highway vehicle recreation is very popular with many of my constituents and the powersports industry is principally located in California, including the many small businesses that make their livelihoods from selling off-highway motorcycles, all-terrain vehicles and recreational off-highway vehicles. The Motorcycle Industry Council recently found that the estimated economic impact of just the off-highway motorcycle/all-terrain vehicle (ATV) retail marketplace in California is \$1.26 billion annually. Obviously, this is an important part of California's economy and decisions by agencies under the Department of the Interior to reduce the availability of federal lands to OHV use have a significant impact on this industry.

**Valadao Q5:** Does the Department of the Interior take in account these sorts of economic impacts when making land use decisions?

**Answer:** The land use planning process for the BLM relies heavily on the input of local communities and organized groups representing recreational users, including recreational motor vehicle users of the public lands. Public input often stresses the economic benefits to local and regional economies from recreational uses of the public lands involved in a land use planning process.

The BLM encourages active participation in the management of public lands from interested communities of public land users such as recreational motor vehicle users. Taking advantage of volunteers can require a significant commitment of time on the part of agency staff to ensure that work projects can be completed safely using appropriate techniques that improve the sustainability of the public lands. The BLM is working with national motorized recreation organizations such as the National Off-Highway Vehicle Conservation Council to find ways to help strengthen local user organizations to be better equipped to support field offices with on-going operation and maintenance work.

With declining budgets for land management agencies, it is clear that managers need to find outside sources of funding and manpower to achieve agency goals. Many recreation enthusiasts want to help. OHV clubs for example often wish to partner with industry and others to provide trail maintenance, yet I have heard from some that they are stymied by what they view as unnecessary red tape when attempting to work with federal land managers.

**Valadao Q6:** What can your successor do to ensure that eager volunteers and other voluntary private resources are better utilized as part of the federal land management strategy moving forward?

**Answer:** The BLM is working collaboratively with national recreational motorized vehicle organizations such as the Motorcycle Industry Council and the National Off-Highway Vehicle Conservation Council to find ways to help local recreational motor vehicle user groups interested in assisting with the management of public lands learn the state-of-the-art best management practices that lead to high-quality motorized recreation opportunities while improving and sustaining the health of the land. Pilot projects have shown that we can successfully work with national and local groups to cooperatively manage motorized recreational opportunities on public lands. The challenge, as always, is to find efficient ways to expand these types of efforts to communities all across the West and Alaska.

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