

March 3, 2004

The Hon. Don Nickles
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Hon. Kent Conrad
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Nickles and Senator Conrad:

This letter is in response to your request that this Committee's Views and Estimates on the President's Fiscal Year 2005 budget request for Indian programs be submitted to the Committee on the Budget.

On February 2, 2004, the President submitted his budget request which totals \$2.23 trillion, includes \$782.2 billion in discretionary spending, and provides an overview of the President's spending priorities for the next fiscal year.

I. Profile of Indian Country

In General. There are 562 Federally-recognized tribes in the United States, with 40% of tribes located in the State of Alaska.

The 2000 census data indicate there are 2.5 million Natives in the United States, with over 57% living in urban areas and the remainder residing on Indian reservations or in rural areas, sometimes hundreds of

miles from the nearest urban area. Approximately 4.1 million census respondents identified themselves in the American Indian / Alaskan Native racial category or ancestry and also claimed other races or ancestries.

Many of these individuals are or could be eligible for Federal services. The United States has a unique historical and legal relationship with Native people, which serves as the basis for the Federal trust obligations.

The government-to-government relationship is a well-settled principle of Federal Indian law and is reflected in the Constitution and treaties, executive orders, statutes, Federal court decisions, and course of dealing.

There are also moral components to the relationship which has been described as a "mutuality of obligations" grounded in the cession of millions of acres of land by tribes to the United States in return for peace, protection of tribal sovereignty, and promises to provide a variety of programs and services.

Native people in the United States continue to rank at or near the bottom of nearly every social, health, and economic indicator, as compared to all other citizens. Natives continue to suffer the highest rates of unemployment and poverty, live in substandard housing, have poor health, receive an inadequate education, and contend with disintegrating social systems, all of which erode both the quality and dignity of life in Native communities.

The budget request continues the implementation of the President's Management Agenda by evaluating an agency's performance and targeting Federal funding to those programs and services with a demonstrated record of effectiveness.

The Committee agrees that improving effectiveness in the Indian agencies is important but also recognizes that these agencies have witnessed a pattern of under-funding for decades and that, in part at least, increased resources are needed to alleviate the dire conditions in Native America and address the basic human needs of Native people.

Education. The educational attainment for Native youth is deficient compared with other groups in the United States. For example, Native youth receive fewer high school and college degrees. An aggravating factor in educational achievement is the continued inability of the Federal government to ensure adequate, safe and clean educational facilities conducive to learning.

Despite a vigorous multi-year effort to reduce the queue of Indian school facilities in need of replacement, as of calendar year 2004, there remains a massive backlog in school facilities needs.

The Committee believes that Federal and tribal funds can be leveraged to construct additional facilities through the use of innovative financing mechanisms. The Committee views both the ongoing School Construction Demonstration Program and recent legislative proposals to authorize the issuance of tribal school construction bonds as innovative and meritorious.

Energy. Indian tribal lands contain significant energy resources and have an important role to play in the development of Indian economies as well as a sound national energy policy. Notwithstanding this potential, the vast majority of Native economies are moribund and lack the basic physical infrastructure necessary to provide the basic amenities to their citizens or to provide the building blocks of business and economic development.

There is also unmet demand for electricity in Native communities: a recent Department of Energy report estimated that 14.2% of all Native homes on reservations have no access to electricity compared to just 1.4% of all United States households. With unemployment averaging 43% and poverty rampant, Native communities are particularly sensitive to high energy prices.

Indian tribal energy potential — including oil, gas, coal, geothermal, wind and other resources — is significant and with the appropriate amount of financial, technical, and legal changes could be maximized for the benefit of tribal producers and their members. Legislation designed to provide such assistance is pending and the Committee anticipates further action on the bill later in 2004.

Employment and Income. Given the near-complete absence of a private sector in Native communities, 31% of Natives live in poverty. In the United States today, the unemployment rate is 5.5%, whereas the rate for Natives averages 43% — twice that of the national unemployment rate in the Great Depression.

The earning capacity of Natives also lags behind that of other Americans: for every \$100 earned by the average American family, an Indian family earns \$62. The per capita income for Indians averages \$8,284.

Health Status. Most striking are the health statistics involving Native people: diabetes, tuberculosis, alcoholism, Fetal Alcohol Syndrome (FAS) and increasingly, AIDS, plague Native communities at rates far above those of other Americans.

Housing. Census data shows that 18% of all Native households are "severely crowded" as compared with 2% for non-natives, with 90,000 Indian families homeless or under-housed. One of every five Indian houses lacks

complete plumbing facilities. Because trust land is not available to secure mortgage financing, Natives rely to a greater degree on Federal housing financing.

II. Funding Priorities

Historically this Committee has supported the overall budget requests for Indian programs and in many instances urged that they be increased. In no instance has the Committee suggested that the budget request for Indian programs and services be reduced.

Far too often, increases in Federal funds for the benefit of Natives have resulted in an expanded and unresponsive Federal bureaucracy rather than direct benefits to Native people. In response, Congress has implemented tribal recommendations regarding the need for greater local autonomy and flexibility in spending decisions as more fully set out below.

The Tribal Priority Allocations (TPA) mechanism has proven highly successful in authorizing the tribes to set spending priorities for governmental services so that, when faced with changing needs, they can reallocate TPA funds accordingly.

The TPA mechanism continues to enable Indian tribal governments to flexibly respond to local concerns and to provide governmental services such as child welfare and elder care programs, forestry, agriculture and range management, fire protection, adult vocational education training, and a host of other programs and services to those residing on Indian lands.

By focusing the bulk of BIA resources on TPA, the budget request continues the trend of directing greater amounts of resources to priorities identified by tribal governments for the provision of services. Tribal governments, closest to those they serve, are aware of their needs and how best to address them.

Similarly, beginning with the enactment of the Indian Self-Determination and Education Assistance Act of 1975, as amended, (the "1975 Act") there has been a gradual shift away from the Federal dominance in the administration of Indian programs to one in which tribal governments assume the responsibilities of the United States for the provision of services and programs to reservation residents.

Through self-determination contracts and self-governance compacts, Indian tribal governments and tribal consortia have developed greater levels of administrative acumen and delivered higher quality services than were previously made available.

The Committee strongly supports the continued funding and expansion of tribal contracting and compacting under the 1975 Act and urges that sufficient funds be provided to ensure its continued success including full funding of contract support costs.

IV. Committee Recommendations

(Note: comparisons to the FY2004 Budget reflect *enacted levels* of funding.)

A. Department of Interior - In General. The request includes \$10.8 billion in funding for the Department of Interior, which is \$200 million (1.9%) higher than the FY2004 enacted level.

1. Bureau of Indian Affairs (BIA)

For the Bureau of Indian Affairs, the request is \$2.3 billion, a decrease of \$52 million under the FY2004 enacted level. The BIA budget request is allocated as follows:

Tribal Priority Allocations 40%

Indian Education	30%
Other Reservation Programs	19%
BIA Administration	11%

a. Operation of Indian Programs (OIP).

Of the total amount, \$1.93 billion is slated for the Operation of Indian Programs (OIP), a \$37 million increase over FY2004.

Within OIP, Tribal Priority Allocations (TPA) are proposed to receive \$776 million, an increase of \$5 million over FY2004. The OIP account provides funding for core governmental functions including contract support costs to carry out contracts and compacts under the 1975 Act; housing repair funds for the Housing Improvement Program (HIP); road maintenance; BIA Trust Management Improvements; funds for Indian tribal courts; and funds for adult care facilities.

The contract support costs account is to receive \$133 million, an decrease of \$2 million from FY2004. This funding acts as a critical incentive to encourage expansion of tribal contracting and compacting under the 1975 Act, and the Committee strongly recommends that this account be kept at least at level funding, if not increased.

b. Law Enforcement Activity. Safe and crime-free environments are critical to improving the quality of life in Native communities and are central to any effort to attract capital and employment opportunities to strengthen Native economies. For the past 6 fiscal years, funding has been provided to the ongoing joint *Department of Justice - Department of Interior Law Enforcement Initiative*. The Committee encourages the President to continue funding this successful initiative.

The budget request proposes \$182.6 million for law enforcement, an *increase* of \$10.1 million over FY2004.

Because of greater demands placed on tribal law enforcement the Committee encourages substantial increases for FY2005 with new funding increases targeted to additional law enforcement personnel, police vehicles, communications equipment, and staff detention services. The Committee encourages the increased inter-agency coordination for law enforcement evidenced by the Law Enforcement Initiative.

The Department of Justice (DOJ) budget request proposes \$5.9 million for Tribal Courts, a *decrease* of \$2.1 million from FY2004 - and down 61% from the FY2003 enacted level. In FY2001, in partnership with Indian tribes, the BIA collected Tribal court caseload information. Of the 176 Indian tribes who responded, they reported a backlog in excess of 61,345 cases. Because of the additional burdens placed on tribal courts, the Committee is very concerned about the precipitous decline in funding for Tribal Courts in recent budget cycles.

c. Education Activity.

Funds for Indian school construction are proposed at \$229.1 million, \$63.5 million under the amount requested in FY2004. School construction represents approximately 80% of the total Construction account. The Committee is concerned by this decrease and recommends funding remain at the FY2004 level.

The FY2005 request provides \$68.5 million to construct the remaining five replacement schools on the Education Facilities Construction Priority-ranking List. Funding will provide replacement schools and dormitories for: Bread Springs Day School, Ojo Encino Day School, and Beclabito Day School in New Mexico;

Leupp Boarding School in Arizona; and Chemawa Indian School Dormitory in Oregon. The BIA is currently developing a new priority list for replacement schools containing a sufficient number of schools to continue the replacement school program through 2007.

The BIA school operations account is slated to receive \$522.4 million, a very slight *increase* from FY2004. The Education request includes an *increase* of \$500,000 to expand the FOCUS program to five additional schools.

The Committee notes with grave concern that the United Tribes Technical College (UTTC) has been zeroed out in the FY2005 budget request. Because UTTC and the Crownpoint Institute of Technology have demonstrated high levels of success in educating Native people, the Committee strongly recommends, at minimum, that funding for these schools be restored to FY2003 levels plus the cost of inflation.

The FY2005 request for Tribal Colleges and Universities funding is \$43.4 million, a *decrease* of \$5.8 million. The Committee recommends this funding be restored to the FY2004 level.

For the Indian School Equalization Program (formula funds) the request seeks an *increase* of \$3.06 million for a total of \$352.98 million. The Committee is concerned by the \$58,000 *decrease* for student transportation and urges additional funding. The Dollars per Student Mile figure is now down to only \$2.13. In FY2002, the BIA estimated that student transportation was underfunded by \$11 million. The Committee recommends full funding for student transportation, an additional \$10 million over the President's request.

The Committee notes that Administrative Cost Grants are being cut by \$265,000, to a level that meets only

72% of need. The Committee recommends Administrative Cost Grant funding at \$63 million to meet 100% of need.

d. Energy. Energy resource development on Indian lands can provide tribes with substantial opportunities for economic development and job creation, as well as assist the nation as a whole by lessening our dependence on foreign energy.

While the Committee is concerned by the minimal increase in TPA funds for Resources Management, the Committee strongly supports the additional \$1 million requested for more forest management plans. Less than 50% of BIA forest land is covered by current management plans, and this new money will help address that critical deficiency.

Because there are significant opportunities with regard to renewable resources, the Committee recommends that funds be used for the assessment of renewable energy sources such as wind and solar energy in addition to non-renewable resources to facilitate tribal participation in the Secretary's initiative on renewable energy.

Under Special Programs and Pooled Overhead, the Committee would like to see the Indian Arts and Crafts Board (IACB) funding level *increased* to \$4.7 million. The illegal business of producing counterfeit Indian art is out of control, and is costing tribes and individual Indian artists tens of millions of dollars. There is a need for more prosecutions under the IAC Enforcement Act of 2000, especially in light of disturbing allegations of money laundering and other illegal activities involving the counterfeit arts and crafts network in the southwest region of the United States.

The Committee is very encouraged by the proposal to formalize the consultation process through the creation

of the Office of Tribal Consultation (OTC), but prior to supporting the \$1 million request, wants to assure itself that the OTC will provide the kind of sustained engagement needed for a successful consultation policy.

2. Office of Special Trustee for American Indians (OST)

In 1994, Congress enacted the *American Indian Trust Fund Management Reform Act*, 25 U.S.C. § 4001, *et seq.*, to bring required reforms to Indian trust assets, accounts, and resources managed by the United States. Little or no progress in implementing the Act was made in the years immediately following enactment.

The FY2005 request for OST totals \$322.7 million, an increase of \$113.6 million. The request includes \$109.4 million for historical accounting activities, an increase of \$65 million, to accelerate efforts in trust records administration.

Note: An additional \$291.7 million of trust management activities is funded through BIA, for a "Unified Trust Budget" total of \$614.4 million. The activities are allocated with the Unified Trust Budget as follows:

Activity	FY2005 Request	Change from FY2004
Beneficiary Services	\$15.2 million	+ \$5.5 million
Ownership Information	\$166.3 million	+ \$66.9 million
Land and Resources	\$123.9 million	- \$3.7 million
Trust Fund Assets	\$43 million	+ \$8.8 million
Trust Organization	\$32.9 million	+ \$3.9 million

Historical Accounting	\$109.4 million	+ \$65 million
Information Technology	\$89.9 million	+ \$13.1 million
Records Management	\$21.7 million	+ \$1.6 million

In the short-run, the Committee looks forward to working with the Department and Indian tribes on reorganization matters.

With regard to the *Cobell v. Norton* individual Indian money account lawsuit, after months of negotiations, the Committee is encouraged by steps taken by the Plaintiffs and the United States to mediate the case. The Committee recommends that an amount not to exceed \$1 million be appropriated to retain the services of mediators in the *Cobell* case, and that this funding be funneled through an entity other than the DoI to avoid conflicts of interest given the Department's role in the lawsuit and potential mediation discussions.

The Committee strongly believes that the substantial increases proposed in FY2005 funding for internal trust management reforms should not be viewed as justification for corresponding reductions in funding for *other* programs intended to fulfill the United States' responsibilities to Native people.

The Committee urges the Budget Committee and the Appropriations Committee to view funding for trust management reforms as separate and apart from funding made necessary by the need of the Federal government to defend the United States in the *Cobell* litigation. These costs include litigation and related costs accruing to the Departments of Interior, Justice and Treasury.

The costs of the litigation include actual dollar costs incurred but also include significant and negative effects to the Department of Interior and Bureau of Indian Affairs; significant and negative effects on the administration of tribal programs at the local level; and significant opportunity costs to the tribes, the Department and Congress.

Regarding *Cobell*, in the long-run the Committee strongly believes that alternatives to litigation ought to be pursued that will not result in the continued spending of hundreds of millions for accountants, lawyers, consultants and others with little if any relief provided to the IIM beneficiaries.

In FY2005 and beyond, the Committee would prefer that funding priorities be targeted to those areas of trust reform that would most benefit from an intense Federal spending effort: land consolidation, probating Indian estates, and crafting a sterling Indian trust management system that brings the Department into compliance with the highest fiduciary standards.

With this in mind, the Committee is very encouraged by the budget request of \$75 million for Indian Land Consolidation, a \$53.3 million *increase* from FY2004.

B. Department of Health and Human Services - In General.

The request includes \$66.8 billion in discretionary budget authority for the Department of Health and Human Services (DHHS), a \$819 million *decrease* from the FY2004 enacted level.

The DHHS budget requests total program spending authority by the Indian Health Service (IHS) of \$3.7 billion, an *increase* of \$45 million over FY2004 levels.

Included within that program authority is \$150 million for Diabetes Prevention and Treatment, level with FY2004 funding.

In addition, the DHHS includes other programs for Native Americans including the Administration for Native Americans, the Substance Abuse and Mental Health Services Administration, and the Administration on Aging. These programs have been highly successful in addressing problems in Native communities. The Committee strongly supports the continued funding and support of these programs.

Several DHHS agencies have developed cooperative and joint-venture initiatives with the IHS, including the National Institutes of Health (NIH) and the Centers for Medicare and Medicaid Services (CMS). These initiatives have provided significant benefits, such as the joint research projects on Diabetes between NIH and IHS, and the training programs provided by CMS to tribes and IHS facilities which increase their capacity to access third party billing sources.

The Committee strongly supports the maintenance and development of inter-departmental initiatives that increase the efficiency and effectiveness of programs and services to Native people.

1. Indian Health Service (IHS)

The request proposes \$3.7 billion for the Indian Health Service, an *increase* of \$45 million over the FY2004 level. Of that amount, \$3.4 billion is proposed for Health Services, an *increase* of \$82 million over the FY2004 level, and \$387 million is proposed for Health Facilities, a *decrease* of \$52 million under the FY2004 level.

a. Health Services. The Clinical Services account is proposed to be funded at \$2.1 billion, an *increase*

of \$75.3 million over the FY2004 level. Within Clinical Services, the request for Hospitals and Health Clinics is \$1.3 billion, an *increase* of \$45.6 million from the FY2004 level.

The request proposes \$497 million for Contract Health Services, an *increase* of \$18 million over the FY2004 level. The request proposes an *increase* in pay costs of \$36 million, which covers an additional 106 FTEs proposed for IHS. The Committee recommends instead a \$51 million *increase* for Pay Costs, plus another \$51 million for Program Increase (inflation).

The Committee is aware that pharmaceutical costs continue to rise dramatically with the IHS reporting that pharmacy costs are the single greatest cost increase faced by the agency. The Committee recommends an *increase* of \$25 million above the FY2005 request to address this need.

The Preventive Health account is proposed to be funded at \$112.2 million for FY2005, an *increase* of \$5.3 million. The request also provides: \$35.4 million for Health Professions, a minimal *increase* of \$29,000; \$32.4 million for Urban Indian Health, and *increase* of \$791,000 from FY2004; \$56.6 million for Direct Operations, an *increase* of \$1.1 million from FY2004 appropriations; and \$267 million for Contract Support Costs, level with FY2004.

The Urban Indian Health program has not received a significant funding increase since the program was initiated. It is proposed to be funded in FY2005 at \$32.4 million, essentially level funding with FY2004. The fastest growing IHS service population areas are in urban areas, yet the proposed funding amounts to 1.5% of the IHS budget request.

Urban Indian organizations have demonstrated their ability to provide high quality health services on

limited budgets. Without additional funding support it is unlikely that they will continue to be able to provide the same quality of services to their expanding service populations. Therefore, the Committee recommends that the Urban Indian Health program be *increased* to \$48.6 million, a 50% increase.

The availability of contract support funding is the threshold financial question in a tribe's decision to assume management and control of Federal health programs under the 1975 Act. The "tribalization" of health care services has proceeded apace since 1975 and now more than one-half of all IHS funding and programs are contracted or compacted by Indian tribes or tribal consortia. The Contract Support Costs (CSC) account is proposed to be funded at \$267.4 million, level with FY2004 appropriations. The justification that the CSC account received "significant" increases in FY2001 and FY2002 (a net increase of 17%) ignores how woefully inadequate the funding level was to begin with, and remains even after those increases. The Committee strongly recommends that contract support costs be fully funded at \$357.4 million, a \$90 million *increase*.

In the Hospitals and Health Clinics account, while pleased by the \$2 million proposed *increase* for Community Health Aides / Practitioners (CHA/P AK), the Committee would like to see this funding *increased* by \$5 million. CHA/Ps are the primary healthcare providers in most Alaskan villages, and given the remoteness of many of these villages from any other source of medical care, it is crucial that this program be funded as fully as possible.

b. Health Facilities. The Budget Request includes \$354.5 million for Health Facilities, a *substantial decrease* of \$36.9 million from FY2004 levels (- 9.4%). The request includes \$41.7 million to continue ongoing construction, a decrease of \$52.8 million from FY2004; \$48.9 million for maintenance and improvements, level

with FY2004; \$103.2 million for sanitation facilities construction, an *increase* of \$10.1 million over FY2004.

The Committee supports the increase of \$10.1 million for Sanitation Facilities Construction, but would like to see an increase of \$20.1 million. The Committee cannot support the proposed decrease in Health Care Facilities Construction. The Committee is advised that the IHS 5 Year Priority Construction List contains \$1.3 billion in badly needed projects awaiting construction in Indian communities. With many facilities nearing the 100-year old mark, the Maintenance and Improvement account should contain funding to keep these facilities operational.

Therefore, the Committee recommends that, at a minimum, the \$52.8 million cut be restored to the Health Care Facilities Construction account. Further, the Committee recommends an additional \$61 million, which will provide \$40 million for planning and initial construction of the next projects on the 5 Year Priority Construction List, \$10 million for small ambulatory projects, \$1 million for dental units, and \$10 million to continue the very successful joint venture initiative.

2. Other DHHS Programs.

a. Administration on Aging. The request includes \$27 million to fund Title VI of the Older Americans Act (Grants to Native Americans), level with FY2004. To date this program has not received sufficient funding to meet its mandate of providing services "comparable to those provided under Title III." The Committee recommends that funding for Title VI be increased by \$30 million.

b. Administration for Native Americans. Universally acknowledged as a successful tool in assisting tribes and native communities develop and implement economic,

environmental and cultural initiatives, the Administration for Native Americans (ANA) program is slated to receive \$45 million in FY2005, funding level with FY2004. The ANA awards funds through grants to American Indians, Native Americans, Native Alaskans, Native Hawaiians and Pacific Islanders. These grants are awarded to individual organizations that successfully apply for discretionary funds. Because of its success, the Committee urges the request attempt to boost funding to \$48 million in FY2005.

The FY2005 budget request for DHHS also reflects health and safety concerns relating to Homeland Security, anticipating future threats to America's public health care, health infrastructure and human services systems. It is important to note both that IHS occupies a unique position within the Federal government as a direct health care provider, and that many tribes are located close to either the Canadian or Mexican border. The Committee recommends funding be added in FY2005 to help the IHS and Tribal governments prepare for possible terrorist attacks.

C. Agriculture and Natural Resource Related Activities.

a. Bureau of Indian Affairs. The BIA supports Natives in developing conservation and management plans to protect and preserve natural resources on trust land, which includes over 46 million acres used for farming and grazing by livestock and game animals. The BIA provides technical assistance in Inventory and Research, Farm and Range Planning, Farmland Improvements, Rangeland Improvements, Rangeland Protection, Leasing and Permitting Services, Contract Monitoring, and Agriculture Extension.

The FY2005 request proposes \$22.5 million for agriculture services under TPA, a nominal increase of \$188,000.

The BIA's forestry program manages or assists Indian tribes with the management of their forests consistent with tribal goals and objectives identified in forest management plans or integrated resource management plans. Indian forests cover over 17 million acres and are located on 260 Indian reservations in 26 states. Forest management activities consist of forest inventory and management planning including the development of Integrated Resource Management Plans, forest products marketing, timber sale management, forest protection, woodland management, forest productivity enhancement, and intensive forest development procedures, to ensure the sustainable management of Indian forests.

The request proposes \$24.1 million for forestry services, a decrease of almost \$500,000 from FY2004. The Committee is pleased by the \$1 million increase in non-recurring programs for additional forest management plans, but would like to see the TPA reduction restored to at least the FY2004 level.

b. Department of Agriculture (USDA). With agriculture as the second largest employer in Indian communities, the USDA plays a fundamental role in aiding Indian economic and community development.

The Committee is therefore pleased by the \$1.7 million increase in the overall request for the Farm Service Agency (FSA), but would like to see this increased by an additional \$3.2 million to bring the program back up to the FY2003 funding level.

The Committee also supports continued funding of the various Rural Development Programs (RD), Water and Waste Disposal Direct Loans and Grants at the FY2002 levels for Native Americans and Alaska Natives and encourages funding for Indian Country while the USDA reviews the need for electric and telecommunications services. The Committee is concerned by the overall \$3.9 billion reduction in the request for RD programs,

and would like to see some of this funding request restored.

Comment: Earmark

The Budget Request proposes to improve water quality and wetland protection through voluntary measures by targeting technical and financial assistance to farmers and ranchers who operate in the watersheds with the greatest needs. The Committee encourages the USDA to also work with Indian tribes to ensure that Indian tribes and tribal farmers and ranchers also have access to technical and financial assistance.

The Committee encourages full funding for the Food Stamp Program; the Child Nutrition Program; the Women, Infants and Children Program; and the Food Distribution Program on Indian Reservations (FDPIR). The Committee also strongly encourages retaining the limitation language for Native American bison producers within the FDPIR program.

The Committee is very pleased by the \$4 million increase in the Native American Endowment Fund, to \$15 million in FY2005.

D. Department of Education (DoEd)- In General. The FY2005 budget request proposes a 3% increase, to \$57.4 billion in total discretionary budget authority, for the Department of Education. Indian program funding remains at the roughly the same level as FY2004 at \$120.9 million. These programs include formula grants to school districts, competitive programs and national activities. The request for Alaska Native Education and Native Hawaiians is kept at \$33.3 million for each group, the FY2004 level.

The DoEd is also responsible for administering the Impact Aid program which ameliorates the impact of non-taxable lands on local communities and local

education agencies (LEAs). These lands include Federal lands and Indian lands.

1. Elementary and Secondary Education. In January 2002, the No Child Left Behind Act (the "Act") was signed into law by President Bush. The Act includes increased accountability for student performance, increased state, tribal and local flexibility, and enhanced parental choice.

a. DoEd - Indian Education Programs. The request for basic Indian Education Programs is \$120.9 million. The request includes \$95.9 million for Indian Education formula Grants to Local Education Agencies (LEAs).

The request continues the Special Programs for Indian Children, which provides \$10 million for demonstration grants that promote school readiness for Indian preschool children, and \$9.7 million to continue the American Indian Teacher Corps initiative.

The request also proposes to continue the National Activities initiative at \$5.2 million. This initiative is a comprehensive research agenda that provides information on the educational status and needs of Indian children, and a scientifically-based research plan to identify the most effective proposals for meeting the special needs of these children. The Committee strongly supports these spending requests for Indian Education Programs.

2. Impact Aid. The Basic Support Payments account provides assistance for general operating expenses to many state funded LEAs that educate Indian children. The overall request of \$1.1 billion provides \$502.7 million for the impacts of Indian lands, the same funding level provided in the FY2004 appropriation. The Committee supports the Basic Support Payments FY2005 request.

The Impact Aid request would also provide \$21.6 million for Payments for Children with Disabilities to assist Federally affected school districts. The request maintains the same level of funding as provided in the FY2004 appropriation. The Committee supports the Payments for Children with Disabilities FY2005 request.

School districts impacted by Indian lands will also be eligible for Impact Aid Construction grants. Under the FY2005 request, about \$9.2 million in formula grants would go to districts on behalf of students residing on Indian lands. Also, districts with high concentrations of students residing on Indian lands would be eligible for \$27.6 million in competitive construction grants. The Committee strongly supports the Impact Aid Construction FY2005 request.

3. Higher Education and Vocational Institutions. The FY2005 budget request proposes \$23.8 million for the Strengthening Tribally Controlled Colleges and Universities program, an increase of \$500,000 from the FY2004 level. While the Committee is pleased with this increase, we recommend an additional \$3.2 million be added, raising the funding level to \$27 million, the same as provided in FY2003.

The request recommends a decrease of \$4.8 million for the Strengthening Alaska Native and Native Hawaiian-Serving Institutions program, bringing the funding level down to \$6.1 million. The Committee recommends this cut be restored.

Under authority of the *Perkins Vocational and Technical Education Act of 1998*, the DoEd requests \$7.2 million to provide grants to Tribally Controlled Post-Secondary Vocational and Technical Institutions. The Committee recommends that this program be funded at \$8 million, an increase of \$800,000 over FY2004.

4. Other programs. The request proposes \$2.7 billion for the Vocational Rehabilitation (VR) program. Current law requires that between 1% and 1.5 % of the funds appropriated for the VR State grants program be set aside for Grants for Indians (between \$27 million and \$40.5 million). The Committee strongly supports this funding request.

The FY2005 budget request of \$440.9 million for State Grants for the Safe and Drug-Free Schools and Communities program also contains set-asides for BIA-operated or BIA-supported schools, and Native Hawaiian school programs.

E. Law Enforcement and Public Safety - Department of Justice

The overall budget request for the Department of Justice (DOJ) is \$18.7 billion, a \$600 million decrease from the FY2004 enacted level.

Within the Office of Justice Programs (OJP), \$5.9 million is requested for Tribal Courts, a decrease of \$2.1 million from FY2004. Tribal court funds are used to develop, enhance, and operate judicial systems, to enhance civil and criminal justice administration on Indian lands and to encourage implementation of the Indian Civil Rights Act of 1968. *Additional funding* is needed to address the increased caseload on tribal court dockets resulting from increased arrests and rising crime, to encourage development of and investment in Indian lands by Indians and non-Indians, and to assist Federal courts in lessening the ever increasing Federal district court caseload. The Committee urges a *substantial increase* in funding for tribal courts.

The Tribal Community Oriented Policing Services(COPS) is proposed for \$20 million, a \$5 million decrease - this follows a similar reduction of

\$5 million in FY2004. The Committee encourages additional funding for this essential program. Today, there are 1.3 law enforcement officers per 1,000 citizens in Indian Country, compared to 2.9 law enforcement officers per 1,000 citizens in non-Indian communities. The Committee anticipates that greater burdens will be placed on Indian Country law enforcement as tribal governments play an integral role in securing America's borders, her citizens, and physical infrastructure.

Tribal Prison Construction is proposed for zero funding in FY2005, a *decrease* of \$2 million from FY2004. Indian Country will be negatively impacted by the proposed elimination of funding for tribal detention facilities. Many of the 80 or so tribal detention facilities are at the end of their useful life, and a number have been condemned by Federal or tribal courts. The total estimated backlog is approximately \$400 million. The Committee strongly recommends that \$30 million be provided for construction of tribal detention facilities.

The Committee continues to support existing programs and funding for victim / witness coordinators within the Federal Bureau of Investigation and evidence and forensic examinations; funding for U.S. Attorney positions to investigate and prosecute crimes in Indian Country; funding for drug testing, treatment, and diversion programs; funding for Youth Mental Health and Behavior Problems; funding for sexual assault nurse examiner units; and funding for training, technical assistance and civil and criminal legal assistance to Native Americans. The Committee strongly encourages that FY2005 levels be *increased* for law enforcement activities sufficient to address these problems.

The Committee also urges that Indian Country continue to be considered and included in the President's Counter-Terrorism Enhancements and Border

Security initiatives. According to the BIA, there are 35 tribes with jurisdiction over lands adjacent to the Canadian or Mexican borders and jurisdiction over waters directly accessible by boat from the Canadian or Mexican borders.

The lands comprise over 260 miles of a total 7,400 miles of international borders patrolled by the United States. In addition, many tribes have strategic assets such as dams and impoundments, oil, gas, and electrical facilities, and other vulnerable infrastructure located on or near tribal lands. The tribes have law enforcement jurisdiction over their own lands.

F. Housing and Community Development - Department of Housing and Urban Development

The overall request for FY2005 proposes a \$31.3 billion budget for the Department of Housing and Urban Development (HUD), a \$900 million increase over FY2004 levels.

Studies have documented that housing conditions in Native America are the worst in the nation, with 32.5% of Native Americans living in overcrowded or physically inadequate housing conditions, and 26% of Native Americans are considered very-low income. The current level of demonstrated need for housing stock in Native communities is \$1.0 billion, up \$972 million from just a few years ago. This translates into an immediate need of at least 225,000 units, which does not include the estimated 52,000 units currently in need of renovation and 19,000 needing replacement.¹

¹Based on the Coalition for Indian Housing and Development, Submission to the Millennial Housing Commission, June 29, 2001.

The rural nature of most Native communities translates into higher than average housing costs. Many reservations lack basic infrastructure, with tribal governments being obliged to make large investments in water lines, sewage and sanitation facilities, and paved roads.²

Furthermore, the remote and isolated nature of these communities means more costly supplies, labor and shipping expenses.

Access to financing — private sector capital and mortgage lending — is another barrier. Because trust land cannot be used as collateral, Native Americans have difficulty obtaining home mortgages.

Even Native Americans with financial wherewithal have to rely upon Federal housing programs because of the lack of alternative financing in Indian Country or because a limited private housing market makes housing prohibitively expensive.

²The Indian Health Care Improvement Act Amendments (P.L. 94-437) stated that the Indian Health Service has the primary responsibility and authority to provide safe and adequate water supply systems and sanitary sewage waste disposal systems in Indian homes.

1. The Native American Housing Assistance and Self-Determination Act (NAHASDA).

The request for the Native American Housing Block Grant is \$647 million, a decrease of \$4.4 million from FY2004.

NAHASDA authorizes direct block grants to tribal governments or tribally-designated housing entities to develop, maintain, and administer safe and affordable housing for low-income Native Americans. NAHASDA also encourages creative financial options that allow tribes to leverage public and private funds. Tribal housing needs remain disproportionately high compared with their housing block grant. As a result, tribal housing entities are barely able to maintain their housing status quo and have had difficulty making headway in addressing their members' overall need. The Committee recommends that the Native American Housing Block Grant account be funded at \$713 million, a level which would at least keep pace with the inflation of construction costs.

2. Native Hawaiian Housing.

The Hawaiian Homelands Homeownership Act of 2000 (P.L. 106-568) amended NAHASDA by adding Title VIII, which authorized the Native Hawaiian Housing Block Grant program. This program provides an allocation of funds to assist and promote affordable housing activities to develop, maintain and operate affordable housing for eligible low-income Native Hawaiian families. It authorizes annual grants to the Department of Hawaiian Home Lands (DHHL) for housing and housing-related assistance, pursuant to an annual housing plan. The FY2005 budget request includes \$9.5 million for the Native Hawaiian Housing Block grant program.

3. Community Development Block Grants (CDBG).

The overall budget request for the CDBG program is \$4.6 billion, a decrease of \$300 million. By law, the Indian set-aside for the CDBG Program is 1.5%, which would result in a \$69 million funding level for FY2005. Tribes use these grants for reservation infrastructure and economic development. The Committee recommends that the set-aside percentage for Indian tribes be doubled to 3%.

4. Proposed Emergency Fund.

Unlike HUD's public housing programs, there is no emergency fund for Native American housing. Two years ago, the Committee learned that toxic black mold had infested homes on at least 17 Indian reservations which forced emergency evacuations of many homes. At that time, three North Dakota tribes estimated a cost of \$20 million to address just their own mold problems.

In 2002, the Committee authorized a comprehensive black mold study. That recently released report, *Mold and Moisture Problems in Native American Housing on Tribal Lands*, concluded that black mold can be found in 15% of tribal homes. The report further stated that approximately \$91 million would be needed for remediation of mold and moisture problems. The Committee strongly supports the creation of an Emergency Fund for Indian housing to address problems, like black mold, that are an immediate health danger. This Emergency Fund should be funded at a level of at least \$50 million.

5. Eliminated Programs.

The FY2005 budget request again includes no funding for the Rural Housing and Economic Development program, which was targeted for elimination in FY2004, but was eventually funded at \$25 million. This program is well-suited for Indian communities given all of the problems of rural America and the difficulty with economic development on reservations. The Committee urges that this program be preserved.

G. Housing Loans-Department of Veterans Affairs

In 1992, Congress established the Native American Veterans Housing Loan Program to provide direct loans to American Indians, Alaska Natives, and Natives Hawaiians living on Federal trust lands. These loans are available to purchase, construct, or improve homes to be occupied as a veteran's residence. The request includes \$571,000, a slight increase from the FY2004 level.

There is also new suggested appropriations language in the request:

"Provided further, That no new Native American housing loans in excess of \$30,000,000 may be made in 2005, including interest rate refinancing..."

H. Commercial Activities - Department of Commerce

The Department of Commerce includes specific programs which benefit Native communities. One such program is the Economic Development Administration (EDA). The Budget Request proposes an \$11 million increase in funding for EDA for a total of \$321 million.

The request provides \$34 million for the Minority Business Development Agency (MBDA), an increase of \$5

million. The MBDA works to facilitate access to resources for the minority business community in order to help minority businesses. Native American Business Development Centers are eligible for these funds.

The request again proposes to eliminate the Technology Opportunities Program (TOP), which provides grants for rural and under-served communities for advanced telecommunications technologies. In FY2001, TOP funding was \$45.4 million, which included \$4.2 million for Indian Country. In FY2002, TOP funding was \$15.5 million. In FY2004 the program was targeted for elimination, but was kept alive with only \$1 million of funding.

Telecommunications needs in Indian Country are different from those in the rest of the nation due to the poor state of existing infrastructure in most Native communities. In 1995, it was estimated that 53% of Indian homes on reservations did not have telephones, compared to only 5% of all other homes in the United States. Even in other rural locations, only 9% of homes lacked telephones. In a 1999 survey conducted by the EDA, 13 of 48 tribes reported that they lacked "911" service and only 8 had a technology infrastructure or telecommunications plan.

For the fourth straight year, the Committee strongly recommends that the request be increased to include funding for the *Native American Business Development, Trade Promotion and Tourism Act*, Pub.L. 106-464, and the *Indian Tribal Regulatory Reform and Business Development Act*, Pub.L. 106-447.

I. Labor Activities - Department of Labor

Unemployment rates in Native communities continue to hover in the 43% range compared to the national rate of 5.5%. Federal job training programs administered by the Department of Labor are, therefore, crucial for economic development in Indian Country.

American Indians, Alaska Natives and Native Hawaiian youth and adults are eligible to participate in the Training and Employment Services program of the Workforce Investment Act (WIA). In FY2005, this program is proposed to receive \$54 million, an increase of \$2 million from FY2004.

J. Transportation Activities - Department of Transportation (DOT)

The overall DOT FY2005 budget totals \$57.4 billion in discretionary budgetary resources, roughly level with FY2004. Pending re-authorization of the *Transportation Equity Act for the 21st Century* (TEA-21), the Department is expected to request \$333 million for the Indian Reservation Roads (IRR) program, an increase of \$58 million over FY2004.

The IRR program's purpose is to provide safe and adequate transportation and access to public roads near and within Indian reservations, Indian trust land, restricted Indian land, and Alaska Native villages. Funding may be used to construct and improve roads, bridges, and transit facilities leading to, and within, Indian reservations or other Indian lands.

The IRR program consists of the BIA road system (25,000 miles) and State and local roads (25,000 miles) that provide access to or within Indian lands, the majority of which were rated to be in "poor condition." There are approximately 4,250 miles which are under the

jurisdiction of the Fish and Wildlife Service. Refuge Roads consist of public roads that provide access to or within the National Wildlife Refuge System.

Although the IRR system comprises 2.63% of the roads in the Federal Aid Highway program, Indian roads receive less than 1% of Federal road aid. As a result, these roads remain in poor and unsafe condition, leading to a fatality rate that is more than 4 times the national average.

Inadequate transportation infrastructure has a negative impact on emergency and medical services, law enforcement response time and capabilities, and economic development efforts.

K. Environmental Activities - Environmental Protection Agency (EPA)

The FY2005 budget request proposes \$3.97 billion in total discretionary budget authority, a \$597 million decrease from the FY2004 enacted level.

The Committee is concerned about the recent cuts in environmental grants to tribes and states for the clean air and clean water programs. In particular, the Committee is concerned about the level funding for the Clean Water State Revolving Fund (CWSRF), which helps tribes and states meet their significant infrastructure needs by providing funds to construct drinking water and wastewater treatment facilities. These funds are an important tool to both tribes and states in assisting communities to provide clean drinking water. The CWSRF has decreased from \$1.4 billion in FY2002 to only \$850 million in FY2004, and the FY2005 request retains this level.

From the CWSRF, tribes only receive 1.5% of the funds, which amounts to \$12.8 million. The level of need in Indian Country, however, is far greater than

this amount. The EPA and the Indian Health Service estimate that it will cost more than \$650 million to correct inadequate wastewater treatment systems or to construct systems where none currently exist.

The Committee is also concerned that the request does not include an increase in the amount available in the Drinking Water State Revolving Fund (DWSRF) which is used to help tribes upgrade and modernize drinking water systems.

As for Alaska Native water programs, the Committee is concerned that there has not been a request for an increase even though the EPA estimates that more than 20,000 homes in Native villages lack basic sanitation facilities. The Committee would also like to see increases in following: Indian Environmental General Assistance Program, level-funded at \$62.5 million; Tribal Air Quality Management, level-funded at \$11.1 million.

The Committee strongly supports the \$23 million request for creating the new State and Tribal Performance Fund (STFP), a performance grants program that will be available to states and tribes on a competitive basis. The STFP will encourage development of projects with tangible, performance-based environmental and health outcomes that can be models for implementation across the nation.

L. Energy Sources - Department of Energy

The Committee supports the FY2005 request of \$5.5 million for the Tribal Energy Program (TEP), a \$600,000 increase from FY2004. TEP promotes tribal energy self-sufficiency and fosters economic development in Indian Country through the use of renewable energy.

The Committee strongly encourages the Department also to assist tribes in developing their ample non-

renewable energy resources, and to coordinate with other Federal agencies in this effort.

M. Energy Sources - Department of the Defense

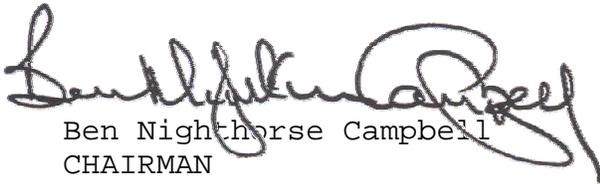
The Committee is working on a tribal energy initiative to encourage energy development on Indian lands. This includes developing tribal partnerships with Federal agencies, including the Department of Defense.

Since the Department of Defense is the largest consumer of energy in the United States government, the Committee believes there is an excellent opportunity for tribes to provide power to Department of Defense facilities, installations, and ranges to assist the Department in meeting government agency's obligations to purchase renewable energy and to contribute to the energy security needs of the Department. Accordingly, the Committee may request funding to implement tribal/DOD energy partnerships.

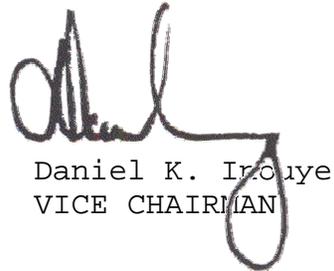
V. COMMITTEE CONCLUSIONS

On March 3, 2004, the members of the Committee on Indian Affairs favorably adopted this letter of recommendations on the budget views and estimates. In approving this letter, however, the members of the Committee want to make clear that the Committee reserves the right to supplement this letter with further material as it becomes available. The Committee appreciates the opportunity to provide this information on the President's FY2005 Budget request for Indian-related programs to the Committee on the Budget and very much looks forward to working with the Budget Committee in the coming year.

Sincerely,



Ben Nighthorse Campbell
CHAIRMAN



Daniel K. Inouye
VICE CHAIRMAN