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**TESTIMONY OF THE HONORABLE EDWARD K. THOMAS, PRESIDENT
CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
ON THE FISCAL YEAR 2013 BUDGET REQUEST
HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE
March 27-28, 2012**

GREETINGS FROM ALASKA! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit Haida), a federally recognized Indian tribe of 27,000 tribal citizens. I am honored to provide this testimony on the very important matter of the FY 2013 federal appropriations legislation. I commend Congress, and especially this Committee, for holding this hearing and giving me, and other tribal leaders, an opportunity to provide you our perspective on the FY 2013 federal budgets on Native American programs. One of the most important legal principles in defining the relationship between the federal government and the Indian and Alaska Native Tribes is that of the fiduciary responsibility the United States has to Tribal governments. This hearing is very important in strengthening the federal government's Trust relationship to Tribal governments.

FUNDING NOT BASED ON NEEDS, WHICH ARE MUCH GREATER IN RURAL AREAS

I have been involved in managing federal programs since 1976 and find that the method of formulating federal budgets for the benefit of needy Native Americans is deficient and ineffective. Each year federal budgets are put together mostly based upon the previous year's funding,; totally disregarding the level of unmet needs in Indian Country. This leads to becomes a much bigger problem when it becomes necessary to reduce total federal funding.

Our nation's poverty level is at the highest level since 1993. 22 million or 1 in every 6 Americans lives in poverty; 22% of all American children live in poverty. The poverty levels are much higher in rural tribal communities. In rural Alaska, hHigher energy costs have compounded an already depressed economy in rural Alaska. The cost of living in certain parts of rural Alaska is nearly twice that of the average cost of living elsewhere in the United States. Electricity costs are often 4 to 5 times higher. Over the past decade funding for Native American programs has not even kept pace with national inflation rates let alone the dramatic inflationary costs in rural Alaska.

NON-BIA AGENCIES HAVE RECEIVED FUNDING PRIORITY IN INTERIOR DEPARTMENT

Between FY 2004 and 2012 the Bureau of Indian Affairs (BIA) budget grew 8%. Over that same period of time funding for non-BIA programs grew at a much greater rate: Fish & Wildlife by

30%; Park Services by 27%; Geodetic Surveys by 18%; and Bureau of Land Management by 13%. It stands to reason that funding to needy tribal communities could be increased if these non-BIA agencies were reduced to the 2004 funding levels plus 8%.

The single biggest factor that financially undermines Tribal Self-Determination and Self-Governance is the federal practice of underfunding or putting caps on indirect costs or Contract Support Cost (CSC). For the period between 2006 through 2009, the CSC shortfalls and underfunding have cost my Tribe a total of \$2,651,088; or an average of \$662,772 per year. While our people are grateful for the programs designed to help our needy Tribal citizens, we simply cannot afford to continue to pay this amount of money to manage these important contracts. My Tribal government provided \$84,689,247 (an average of \$21,172,300 per year) in contractual services to our needy Tribal citizens over that period of time. Simply put, the difference between the way indirect costs are calculated and the way they are paid by the United States creates an ever-tightening chokehold on my Tribe's ability to administer programs. If we follow the law and spend the administrative costs we are required to spend, federal law provides us less and less money to meet these federally-required expenditures. The more we spend, the less we get. The less we spend, the less we get. Both Congress and the federal agencies have caused this crisis. Together we can solve it.

TLINGIT HAIDA TRIBAL TRUST FUNDS PAY FOR FEDERAL RESPONSIBILITY

Federal law specifically states that a tribe who contracts for the management of a federal contract is entitled to the same administrative support as the federal government itself would have were it to retain the management of that contract. Appropriations legislation that underfunds contract support costs violates this provision of federal law and severely undermines the concept of tribal Self-determination.

Tlingit Haida diligently tries to abide by federal laws that set our indirect cost rates and to live within other federal appropriations laws that provide us much less than the federal government's own audits say we should collect from each agency to manage contracts for them. We were forced to pull the \$2,651,088 shortfall in contract support costs over the past four years out of our modest Trust Fund earnings in order to meet the costs we were stuck with by the United States. We cannot continue to afford to pay for these federal responsibility costs going into the future. There are no gaming tribes in Alaska; the economy in rural Alaska is weak to non-existent; and unemployment rates in some of our villages often exceed 50%.

Our Tribal Trust Fund is what remains of a judgment fund provided to us in exchange for land taken by the United States from our Tribe. Our Tlingit Haida tribal government has a fiduciary responsibility to preserve the principal of this Tribal Trust Fund for future generations and the earnings of this fund that are so critical to maintaining essential governmental functions for our Tribe. It is not the purpose of our Tribal Trust Fund to use the interest it has earned to make up for sudden losses created by the United States. The choice we face each and every year is to either shutdown all of the vital services we provide our membership, shutter our offices, layoff employees, and pay for early termination of contracts, or dip deeper and deeper into our Tribal Trust Fund earnings to maintain operations. We have chosen to continue but we need your help in order for us to continue in providing essential services to our needy tribal citizens.

In addition to the diversion and diminishment of our Tribal Trust Fund earnings, the shortfall in BIA contract support funding has been felt throughout Tlingit Haida. As an immediate result of this shortfall which the CSC caps place on so many programs our Tribe is eligible to apply for, we have had to abstain from applying for some very important federally-funded programs that could be of tremendous help to mitigate the serious economic challenges facing our tribal communities. While businesses, other governments and government agencies saw benefit from the American Recovery and Reinvestment Act (ARRA), Tlingit Haida had to abstain from fully participating in available programs because of the 15% cap of administrative costs placed on those programs. We did accept one \$1.5 million award for childcare assistance to supplement our “welfare to work” initiatives but this cost Tlingit Haida \$330,000 of our own money, again, depleting our meager Tribal Trust Fund, to manage that federally-funded program.

INDIRECT COSTS ARE FIXED COST REQUIREMENTS

If indirect costs were not primarily “fixed” costs, the recurring problem of a shortfall in BIA contract support cost funding would, perhaps, be survivable. But most of our actual indirect costs are “fixed”. For example, typically the most cost-effective way to acquire facility space or equipment is through a long-term lease with locked-in costs. Similarly, package deals for telephone and some forms of transportation offer significant cost savings over time. And obviously, the salary and benefit costs of accounting, administrative, and management staff must be treated as “fixed” or else we cannot hire or keep employees. When federal agencies do not send us 100% of the funds required by our federally-set indirect cost rate, we have a shortfall associated with our operation of BIA programs and something has to give.

We refer to tribal indirect cost funding as a “requirement” -- not a “need”. They are requirements because they are derived from audits conducted by the National Business Center (NBC) on behalf of the federal government who sets rates that are used uniformly by all federal agencies with whom Tlingit Haida manages a contract or grant. The rates use actual expenditures from prior years to project costs in the future year. Once our federally-established indirect cost rate is set, federal law requires that our Tribe apply that federal rate uniformly to all the programs we administer. In other words, federal law requires us to spend money on administrative costs but will not let us charge all of that spending to the federal grants and contracts.

Another problem is that the Single Audit Act requires a tribal contractor's cognizant agency (e.g., Department of the Interior) to audit the indirect costs of the tribal contractor and establish an indirect cost rate that must be applied to all programs the tribal contractor administers. If that rate is 25%, and a program like Head Start caps administrative cost recovery from its funding at 15%, the law requires the tribal contractor to pay the difference from non-federal funds or through a rate increase the following year that will obtain a higher recovery from BIA's contract support cost fund in future years.

Let me be clear. We would spiral into complete financial disaster as a Tribe if we chose to not spend at the budgeted amounts. Failing to pay certain fixed costs would actually increase our costs (breaking leases, terminating employees, breaching contracts). Deferring certain costs to the following year aggravates the hardship of the shortfalls that cripple that year. The P.L. 93-638 language which supposedly protects Tribal contractors against theoretical under-recovery does work with respect to BIA funds, but historical underfunding of CSC has caused our Tribe

very serious difficulties in dealing with shortfalls in non-BIA programs for which we must, by law, use the same indirect cost rate. If in year one we don't spend uniformly on all programs, BIA and non-BIA alike, this will increase the approved rate for the following year because the amounts not collected from the agencies are available to add on to the CSC for the subsequent year. Higher indirect cost rates are no answer, given the uncertainty of future funding levels. Tlingit Haida, in our efforts to keep our CSC indirect cost rates lower has chosen not to carry all of those costs forward and so has had to pay the shortfalls out of non-federal sources. But Tlingit Haida, and many other tribes, have very few non-federal sources of funding. For these reasons, I ask your consideration of including the following bill language in the FY 2013 Interior appropriations law. It would provide flexibility to Tlingit Haida and other tribes caught by a crushing, unfunded federal mandate.

PROPOSED NEW FY 2013 BILL LANGUAGE

"Notwithstanding any other provision of law, including any otherwise applicable administrative cost limitations, any federal funds made available under this or any other appropriations act for fiscal year 2013 to an Indian tribe may, at the option of the Indian tribe, be applied to pay for up to 100% of the approved indirect costs associated with the administration by the Indian tribe of those funds, provided that such costs are calculated in conformity with the federally-determined indirect cost rate agreement of that Indian tribe and the relevant OMB circulars."

INTENT AND EFFECT OF BILL LANGUAGE

The proposed amendment is intended to apply a tribal contractor's uniform indirect cost rate established under the Single Audit Act to recover costs required by that uniform indirect cost rate from each federally-funded award or agreement without regard to any otherwise applicable administrative cost cap limitations otherwise governing those awards or agreements.

The proposed amendment would expand existing authority to permit a tribal contractor an additional tribal option -- it would provide tribal authority to use any federally-funded award to meet up to all of a tribe's approved indirect costs that are calculated in conformity with its federally-established indirect cost rate agreement and the relevant OMB circulars without regard to any otherwise applicable administrative cost cap limitations. This would not require any increase in overall federal funding. The funding level of each award would not be affected. It would simply extend flexibility to a tribal contractor to apply its federally-awarded funds to meet federally-required administrative costs. This would be a huge benefit to tribal contractors, like Tlingit Haida, who are providing services in high-cost areas with few or no financial resources other than federal awards and grants.

CONCLUSION

I very much understand the serious financial challenges facing the federal government. It is vitally important that there be a balanced approach in addressing federal budget deficits. Balancing our nation's budget on the backs of the programs serving the needy will not work. I thank you for the opportunity to share my views with you. I wish you well in your deliberations and I trust you will make the right decisions on the issues of grave concern to our people.

GUNALCHEESH! HOWA! THANK YOU!