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S. HRG. 108–584

DEPARTMENT OF THE INTERIOR AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TRIBAL SELF-GOVERNANCE ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 1715
S. 1696

TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO PROVIDE FURTHER SELF-GOVERNANCE BY INDIAN TRIBES

MAY 12, 19, 2004
WASHINGTON, DC

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DEPARTMENT OF INTERIOR TRIBAL SELF-GOVERNANCE ACT

WEDNESDAY, MAY 12, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will be in order.

This morning the committee will receive testimony on S. 1715, a bill I introduced along with Senator Inouye to continue the steady expansion of tribal self-governance by broadening the programs within the Department of the Interior for which Indian tribes and tribal consortia can contract and compact. There is no more successful Federal policy than tribal self-governance.

Today's hearing will be the second of three hearings on tribal self-governance the committee has held within a single month. Two weeks ago this committee held a hearing on S. 2172, a bill to address the chronic underfunding of contract support costs. Next week, we will be holding a hearing on S. 1696, a bill I introduced, again along with Senator Inouye, to expand tribal self-governance in the Department of Health and Human Services.

There are good and simple reasons for the successes and importance of tribal self-governance. Since President Nixon's time, tribes have shown that they are much better than the Federal Government at providing services and programs to tribal members. Over one-half of the budgets of the BIA and the IHS are now administered by tribes, and the success of self-governance cannot be questioned.

It is time to take the next step and broaden self-governance to include the non-BIA programs within the Department of the Interior. Today, we will hear from Dave Anderson, Welcome, Mr. Assistant Secretary; from tribal witnesses and experts in self-governance.

We will proceed with hearing from Dave Anderson. By the way, all your written testimony will be included in the record if you would like to abbreviate.

[Text of S. 1715 follows:]

II

108TH CONGRESS
1ST SESSION

S. 1715

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2003

Mr. CAMPBELL (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of the Interior Tribal Self-Governance Act of 2003''.

SEC. 2. AMENDMENT.

The Indian Self-Determination and Education Assistance Act is amended by striking title IV (25 U.S.C. 458aa et seq.) and inserting the following:

"TITLE IV—TRIBAL SELF-GOVERNANCE

"SEC. 401. DEFINITIONS.

"In this title:

"(1) COMPACT.—The term 'compact' means a compact under section 404.

"(2) CONSTRUCTION PROGRAM.—The term 'construction program' means a tribal undertaking to complete any or all included programs relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community health, irrigation, agriculture, conservation, flood control, transportation, or port facilities or for other tribal purposes.

"(3) CONSTRUCTION PROJECT.—The term 'construction project' means a tribal undertaking that constructs 1 or more roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community health, irrigation, agriculture, conservation, flood

control, transportation, or port facilities or for other tribal purposes.

"(4) DEPARTMENT.—The term 'Department' means the Department of the Interior.

"(5) FUNDING AGREEMENT.—The term 'funding agreement' means a funding agreement under section 405(b).

"(6) GROSS MISMANAGEMENT.—The term 'gross mismanagement' means a significant violation, shown by clear and convincing evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds being made available for the included programs assumed by an Indian tribe.

"(7) INCLUDED PROGRAM.—The term 'included program' means a program that is eligible for inclusion under a funding agreement (including any portion of such a program and any function, service, or activity performed under such a program).

"(8) INDIAN TRIBE.—The term 'Indian tribe', in a case in which an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an in-

cluded program on its behalf in accordance with section 403(a)(3), includes the other authorized Indian tribe, inter-tribal consortium, or tribal organization.

"(9) INHERENT FEDERAL FUNCTION.—The term 'inherent Federal function' means a Federal function that cannot legally be delegated to an Indian tribe.

"(10) INTER-TRIBAL CONSORTIUM.—

"(A) IN GENERAL.—The term 'inter-tribal consortium' means a coalition of 2 more separate Indian tribes that join together for the purpose of participating in self-governance.

"(B) INCLUSION.—The term 'inter-tribal organization' includes a tribal organization.

"(11) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(12) SELF-GOVERNANCE.—The term 'self-governance' means the program of self-governance established under section 402.

"(13) TRIBAL SHARE.—The term 'tribal share' means an Indian tribe's portion of all funds and resources that support secretarial included programs that are not required by the Secretary for the performance of inherent Federal functions.

"SEC. 402. ESTABLISHMENT.

"The Secretary shall carry out a program within the Department to be known as the 'Tribal Self-Governance Program'.

"SEC. 403. SELECTION OF PARTICIPATING INDIAN TRIBES.

"(a) IN GENERAL.—

"(1) CONTINUING PARTICIPATION.—An Indian tribe that was participating in the Tribal Self-Governance Demonstration Project at the Department under title III on October 25, 1994, may elect to participate in self-governance under this title.

"(2) ADDITIONAL PARTICIPANTS.—

"(A) IN GENERAL.—In addition to Indian tribes participating in self-governance under paragraph (1), an Indian tribe that meets the eligibility criteria specified in subsection (b) shall be entitled to participate in self-governance.

"(B) NO LIMITATION.—The Secretary shall not limit the number of additional Indian tribes to be selected each year from among Indian tribes that are eligible under subsection (b).

"(3) OTHER AUTHORIZED INDIAN TRIBE, INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERNMENT.—If an Indian tribe authorizes another Indian

tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).

"(4) JOINT PARTICIPATION.—Two or more Indian tribes that are not otherwise eligible under subsection (b) may be treated as a single Indian tribe for the purpose of participating in self-governance as a consortium if—

"(A) if each Indian tribe so requests; and

"(B) the consortium itself is eligible under subsection (b).

"(5) TRIBAL WITHDRAWAL FROM A CONSORTIUM.—

"(A) IN GENERAL.—An Indian tribe that withdraws from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance if the Indian tribe is eligible under subsection (b).

"(B) EFFECT OF WITHDRAWAL.—If an Indian tribe withdraws from participation in an

inter-tribal consortium or tribal organization, the Indian tribe shall be entitled to its tribal share of funds and resources supporting the included programs that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

"(C) PARTICIPATION IN SELF-GOVERNANCE.—The withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization shall not affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance on behalf of 1 or more other Indian tribes.

"(D) WITHDRAWAL PROCESS.—

"(i) IN GENERAL.—An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its tribal share of any included program that is included in a compact or funding agreement.

"(ii) EFFECTIVE DATE.—

"(I) IN GENERAL.—A withdrawal under clause (i) shall become effective on the date specified in the resolution that authorizes transfer to the partici-

pating tribal organization or inter-tribal consortium.

"(II) NO SPECIFIED DATE.—In the absence of a date specified in the resolution, the withdrawal shall become effective on—

"(aa) the earlier of—

"(AA) 1 year after the date of submission of the request; or

"(BB) the date on which the funding agreement expires; or

"(bb) such date as may be agreed on by the Secretary, the withdrawing Indian tribe, and the tribal organization or inter-tribal consortium that signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

"(E) DISTRIBUTION OF FUNDS.—If an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I

or a compact or funding agreement under this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization, the withdrawing Indian tribe—

"(i) may elect to enter into a self-determination contract or compact, in which case—

"(I) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds and resources supporting the included programs that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated to the funding agreement of the inter-tribal consortium or tribal organization); and

"(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the inter-tribal consortium or tribal organization and transferred to the withdrawing Indian tribe, on the

condition that sections 102 and 105(i), as appropriate, shall apply to the withdrawing Indian tribe; or

"(ii) may elect not to enter into a self-determination contract or compact, in which case all funds not obligated by the inter-tribal consortium associated with the withdrawing Indian tribe's returned included programs, less closeout costs, shall be returned by the inter-tribal consortium to the Secretary for operation of the included programs included in the withdrawal.

"(F) RETURN TO MATURE CONTRACT STATUS.—If an Indian tribe elects to operate all or some included programs carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

"(b) ELIGIBILITY.—To be eligible to participate in self-governance, an Indian tribe shall—

"(1) complete the planning phase described in subsection (c);

"(2) request participation in self-governance by resolution or other official action by the tribal governing body; and

"(3) demonstrate, for the 3 fiscal years preceding the date on which the Indian tribe requests participation, financial stability and financial management capability as evidenced by the Indian tribe's having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

"(c) PLANNING PHASE.—

"(1) IN GENERAL.—An Indian tribe seeking to participate in self-governance shall complete a planning phase in accordance with this subsection.

"(2) ACTIVITIES.—The planning phase—

"(A) shall be conducted to the satisfaction of the Indian tribe; and

"(B) shall include—

"(i) legal and budgetary research; and

"(ii) internal tribal government planning and organizational preparation.

"(d) GRANTS.—

"(1) IN GENERAL.—Subject to the availability of appropriations, an Indian tribe that meets the re-

quirements of paragraphs (2) and (3) of subsection (b) shall be eligible for grants—

"(A) to plan for participation in self-governance; and

"(B) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

"(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) shall not be a requirement of participation in self-governance.

"SEC. 404. COMPACTS.

"(a) IN GENERAL.—The Secretary shall negotiate and enter into a written compact with as Indian tribe participating in self-governance in a manner that is consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

"(b) CONTENTS.—A compact under subsection (a) shall—

"(1) specify the general terms of the government-to-government relationship between the Indian tribe and the Secretary; and

"(2) include such terms as the parties intend shall control year after year.

1 "(c) AMENDMENT.—A compact under subsection (a)
2 may be amended only by agreement of the parties.
3 "(d) EFFECTIVE DATE.—The effective date of a com-
4 pact under subsection (a) shall be—
5 "(1) the date of the execution of the compact
6 by the Indian tribe; or
7 "(2) another date agreed to by the parties.
8 "(e) DURATION.—A compact under subsection (a)
9 shall remain in effect for so long as permitted by Federal
10 law or until terminated by written agreement, retroces-
11 sion, or reassumption.
12 "(f) EXISTING COMPACTS.—An Indian tribe partici-
13 pating in self-governance under this title, as in effect on
14 the date of enactment of the Department of the Interior
15 Tribal Self-Governance Act of 2003, shall have the option
16 at any time after that date—
17 "(1) to retain its negotiated compact (in whole
18 or in part) to the extent that the provisions of the
19 compact are not directly contrary to any express
20 provision of this title; or
21 "(2) to negotiate a new compact in a manner
22 consistent with this title.
23 **"SEC. 405. FUNDING AGREEMENTS.**
24 "(a) IN GENERAL.—The Secretary shall negotiate
25 and enter into a written funding agreement with the gov-

erning body of an Indian tribe in a manner that is consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

"(b) INCLUDED PROGRAMS.—

"(1) BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE.—

"(A) IN GENERAL.—A funding agreement shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for all programs carried out by the Bureau of Indian Affairs and the Office of Special Trustee, without regard to the agency or office within which the program is performed (including funding for agency, area, and central office functions in accordance with section 409(c)), that—

"(i) are provided for in the Act of April 16, 1934 (25 U.S.C. 452 et seq.);

"(ii) the Secretary administers for the benefit of Indians under the Act of November 2, 1921 (25 U.S.C. 13), or any subsequent Act;

"(iii) the Secretary administers for the benefit of Indians with appropriations made to agencies other than the Department of the Interior; or

"(iv) are provided for the benefit of Indians because of their status as Indians.

"(B) INCLUSIONS.—Programs described in subparagraph (A) shall include all programs with respect to which Indian tribes or Indians are primary or significant beneficiaries.

"(2) OTHER AGENCIES.—A funding agreement under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for all programs carried out by the Secretary outside the Bureau of Indian Affairs, without regard to the agency or office within which the program is performed, including funding for agency, area, and central office functions in accordance with subsection 409(c), to the extent that the included programs are within the scope of paragraph (1).

"(3) DISCRETIONARY PROGRAMS.—A funding agreement under subsection (a) may, in accordance with such additional terms as the parties consider to

be appropriate, include programs administered by the Secretary, in addition to programs described in paragraphs (1) and (2), that are of special geographical, historical, or cultural significance to the Indian tribe.

"(4) COMPETITIVE BIDDING.—Nothing in this section—

"(A) supersedes any express statutory requirement for competitive bidding; or

"(B) prohibits the inclusion in a funding agreement of a program in which non-Indians have an incidental or legally identifiable interest.

"(5) EXCLUDED FUNDING.—A funding agreement shall not authorize an Indian tribe to plan, conduct, administer, or receive tribal share funding under any program that—

"(A) is provided under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

"(B) is provided for elementary and secondary schools under the formula developed under section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

"(C) is provided for the Flathead Agency Irrigation Division or the Flathead Agency Power Division (except that nothing in this section affects the contract authority of the Flathead Agency Irrigation Division or the Flathead Agency Power Division under section 102).

"(6) SERVICES, FUNCTIONS, AND RESPONSIBILITIES.—A funding agreement shall specify—

"(A) the services to be provided under the funding agreement;

"(B) the functions to be performed under the funding agreement; and

"(C) the responsibilities of the Indian tribe and the Secretary under the funding agreement.

"(7) BASE BUDGET.—A funding agreement shall, at the option of the Indian tribe, provide for a stable base budget specifying the recurring funds (including funds available under section 106(a)) to be transferred to the Indian tribe, for such period as the Indian tribe specifies in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations.

"(8) NO WAIVER OF TRUST RESPONSIBILITY.—A funding agreement shall prohibit the Secretary from waiving, modifying, or diminishing in any way

the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, court decisions, and other laws.

"(c) AMENDMENT.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe.

"(d) EFFECTIVE DATE.—A funding agreement shall become effective on the date specified in the funding agreement.

"(e) EXISTING AND SUBSEQUENT FUNDING AGREEMENTS.—

"(1) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian tribe that is withdrawing or retroceding the operation of 1 or more included programs identified in a funding agreement, or unless otherwise agreed to by the parties to the funding agreement—

"(A) a funding agreement shall remain in effect until a subsequent funding agreement is executed; and

"(B) the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

"(2) EXISTING FUNDING AGREEMENTS.—An Indian tribe that was participating in self-governance under this title on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2003 shall have the option at any time after that date—

"(A) to retain its existing funding agreement (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

"(B) to negotiate a new funding agreement in a manner consistent with this title.

"(3) MULTIYEAR FUNDING AGREEMENTS.—An Indian tribe may, at the discretion of the Indian tribe, negotiate with the Secretary for a funding agreement with a term that exceeds 1 year.

"SEC. 406. GENERAL PROVISIONS.

"(a) APPLICABILITY.—An Indian tribe may include in any compact or funding agreement provisions that reflect the requirements of this title.

"(b) CONFLICTS OF INTEREST.—An Indian tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to tribal law

and procedures, conflicts of interest in the administration of included programs.

"(c) AUDITS.—

"(1) SINGLE AGENCY AUDIT ACT.—Chapter 75 of title 31, United States Code, shall apply to a funding agreement under this title.

"(2) COST PRINCIPLES.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

"(A) section 106 of this Act or any other provision of law; or

"(B) any exemptions to applicable Office of Management and Budget circulars granted by the Office of Management and Budget.

"(3) FEDERAL CLAIMS.—Any claim by the Federal Government against an Indian tribe relating to funds received under a funding agreement based on an audit under this subsection shall be subject to section 106(f).

"(d) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate included programs or reallocate funds for included programs in any manner that the Indian tribe determines to be in the best interest of the Indian community being served, so long as the rede-

sign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.

"(e) RETROCESSION.—

"(1) IN GENERAL.—An Indian tribe may fully or partially retrocede to the Secretary any included program under a compact or funding agreement.

"(2) EFFECTIVE DATE.—

"(A) AGREEMENT.—Unless the Indian tribe rescinds a request for retrocession, the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

"(B) NO AGREEMENT.—In the absence of such a specification, the retrocession shall become effective on—

"(i) the earlier of—

"(I) the date that is 1 year after the date of submission of the request; or

"(II) the date on which the funding agreement expires; or

"(ii) such date as may be agreed on by the Secretary and the Indian tribe.

"(f) NONDUPLICATION.—A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian tribe under this title, the Indian tribe—

"(1) shall not be entitled to enter into a contract with the Secretary for funds under section 102, except that the Indian tribe shall be eligible for new included programs on the same basis as other Indian tribes; and

"(2) shall be responsible for the administration of included programs in accordance with the compact or funding agreement.

"(g) RECORDS.—

"(1) IN GENERAL.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of an Indian tribe shall not be treated as agency records for purposes of chapter 5 of title 5, United States Code.

"(2) RECORDKEEPING SYSTEM.—An Indian tribe shall—

"(A) maintain a recordkeeping system; and

"(B) on 30 days' notice, provide the Secretary with reasonable access to the records to enable the Department to meet the require-

ments of sections 3101 through 3106 of title 44, United States Code.

"SEC. 407. PROVISIONS RELATING TO THE SECRETARY.

"(a) TRUST EVALUATIONS.—A funding agreement shall include a provision to monitor the performance of trust functions by the Indian tribe through the annual trust evaluation.

"(b) REASSUMPTION.—

"(1) IN GENERAL.—A compact or funding agreement shall include provisions for the Secretary to reassume an included program and associated funding if there is a specific finding relating to that included program of—

"(A) imminent jeopardy to a physical trust asset, natural resource, or public health and safety that—

"(i) is caused by an act or omission of the Indian tribe; and

"(ii) arises out of a failure to carry out the compact or funding agreement; or

"(B) gross mismanagement with respect to funds transferred to an Indian tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

"(2) PROHIBITION.—The Secretary shall not reassume operation of an included program unless—

"(A) the Secretary first provides written notice and a hearing on the record to the Indian tribe; and

"(B) the Indian tribe does not take corrective action to remedy gross mismanagement or the imminent jeopardy to a physical trust asset, natural resource, or public health and safety.

"(3) EXCEPTION.—

"(A) IN GENERAL.— Notwithstanding subparagraph (2), the Secretary may, on written notice to the Indian tribe, immediately reassume operation of an included program if—

"(i) the Secretary makes a finding of both imminent and substantial jeopardy and irreparable harm to a physical trust asset, a natural resource, or the public health and safety caused by an act or omission of the Indian tribe; and

"(ii) the imminent and substantial jeopardy and irreparable harm to the physical trust asset, natural resource, or public health and safety arises out of a failure by

the Indian tribe to carry out its compact or funding agreement.

"(B) REASSUMPTION.—If the Secretary reassumes operation of an included program under subparagraph (A), the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after the date of reassumption.

"(c) INABILITY TO AGREE ON COMPACT OR FUNDING AGREEMENT.—

"(1) FINAL OFFER.—If the Secretary and a participating Indian tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary.

"(2) DETERMINATION.—Not more than 45 days after the date of submission of a final offer, or as otherwise agreed to by the Indian tribe, the Secretary shall review and make a determination with respect to the final offer.

"(3) NO TIMELY DETERMINATION.—If the Secretary fails to make a determination with respect to a final offer within the time specified in paragraph (2), the Secretary shall be deemed to have agreed to the offer.

"(4) REJECTION OF FINAL OFFER.—

"(A) IN GENERAL.—If the Secretary rejects a final offer (or 1 or more provisions or funding levels in a final offer), the Secretary shall—

"(i) provide timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

"(I) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title;

"(II) the included program that is the subject of the final offer is an inherent Federal function;

"(III) the Indian tribe cannot carry out the included program in a manner that would not result in significant danger or risk to the public health; or

"(IV) the Indian tribe is not eligible to participate in self-governance under section 403(b);

"(ii) provide technical assistance to overcome the objections stated in the notification required by clause (i);

"(iii) provide the Indian tribe a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised (except that the Indian tribe may, in lieu of filing an appeal, directly proceed to bring a civil action in United States district court under section 110(a)); and

"(iv) provide the Indian tribe the option of entering into the severable portions of a final proposed compact or funding agreement (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

"(B) EFFECT OF EXERCISING CERTAIN OPTION.—If an Indian tribe exercises the option specified in subparagraph (A)(iv)—

"(i) the Indian tribe shall retain the right to appeal the rejection by the Secretary under this section; and

"(ii) clauses (i), (ii), and (iii) of that subparagraph shall apply only to the portion of the proposed final compact or funding agreement that was rejected by the Secretary.

"(d) BURDEN OF PROOF.—In any administrative hearing or appeal or civil action brought under this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting a final offer made under subsection (c) or the grounds for a reassumption under subsection (b).

"(e) GOOD FAITH.—

"(1) IN GENERAL.—In the negotiation of compacts and funding agreements, the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy.

"(2) POLICY.—The Secretary shall carry out this Act in a manner that maximizes the policy of tribal self-governance.

"(f) SAVINGS.—To the extent that included programs carried out by Indian tribes under this title reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 409(c), the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and included programs.

"(g) TRUST RESPONSIBILITY.—The Secretary may not waive, modify, or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

"(h) DECISIONMAKER.—A decision that constitutes final agency action and relates to an appeal within the Department brought under subsection (c)(4) may be made—

"(1) by an official of the Department who holds a position at a higher organizational level within the

Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

"(2) by an administrative law judge.

"(i) RULE OF CONSTRUCTION.—Each provision of this title and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance, and any ambiguity shall be resolved in favor of the Indian tribe.

"SEC. 408. CONSTRUCTION PROGRAMS AND CONSTRUCTION PROJECTS.

"(a) IN GENERAL.—An Indian tribe participating in self-governance may carry out a construction program or construction project under this title in the same manner as the Indian tribe carries out other included programs under this title, consistent with the provisions of all applicable Federal laws.

"(b) FEDERAL FUNCTIONS.—An Indian tribe participating in self-governance may, in carrying out construction projects under this title, elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were

to carry out a construction project, by adopting a resolution—

"(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under those laws; and

"(2) accepting the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the responsible Federal official under applicable environmental law.

"(c) NEGOTIATIONS.—

"(1) IN GENERAL.—In accordance with all applicable Federal laws, a construction program or construction project shall be treated in the same manner and be subject to all provisions of this Act as are all other tribal assumptions of included programs under this Act.

"(2) CONSTRUCTION PROJECTS.—A provision shall be included in the funding agreement that, for each construction project—

"(A) states the approximate start and completion dates of the construction project, which may extend for 1 or more years;

"(B) provides a general description of the construction project;

"(C) states the responsibilities of the Indian tribe and the Secretary with respect to the construction project;

"(D) describes—

"(i) the ways in which the Indian tribe will address project-related environmental considerations; and

"(ii) the standards by which the Indian tribe will accomplish the construction project; and

"(E) the amount of funds provided for the construction project.

"(d) CODES AND STANDARDS; TRIBAL ASSURANCES.—A funding agreement shall contain a certification by the Indian tribe that the Indian tribe will establish and enforce procedures designed to ensure that all construction-related included programs carried out through the funding agreement adhere to building codes and other codes and architectural and engineering standards (including public health and safety standards) identified by the Indian tribe in the funding agreement, which codes and standards shall be in conformity with nationally recognized standards for comparable projects in comparable locations.

"(e) RESPONSIBILITY FOR COMPLETION.—The Indian tribe shall assume responsibility for the successful completion of a construction project in accordance with the funding agreement.

"(f) FUNDING.—

"(1) IN GENERAL.—At the option of an Indian tribe, full funding for a construction program or construction project carried out under this title shall be included in a funding agreement as an annual advance payment.

"(2) ENTITLEMENT.—Notwithstanding the annual advance payment provisions or any other provision of law, an Indian tribe shall be entitled to receive in its initial funding agreement all funds made available to the Secretary for multiyear construction programs and projects carried out under this title.

"(3) CONTINGENCY FUNDS.—The Secretary shall include associated project contingency funds in an advance payment described in paragraph (1), and the Indian tribe shall be responsible for the management of the contingency funds included in the funding agreement.

"(4) REALLOCATION OF SAVINGS.—

"(A) IN GENERAL.—Notwithstanding any other provision of an annual Act of appropria-

tion or other Federal law, an Indian tribe may reallocate any financial savings realized by the Indian tribe arising from efficiencies in the design, construction, or any other aspect of a construction program or construction project.

"(B) PURPOSES.—A reallocation under subparagraph (A) shall be for construction-related activity purposes generally similar to those for which the funds were appropriated and distributed to the Indian tribe under the funding agreement.

"(g) APPROVAL.—

"(1) IN GENERAL.—If the planning and design documents for a construction project are prepared by an Indian tribe in a manner that is consistent with the certification given by the Indian tribe as required under subsection (d), approval by the Secretary of a funding agreement providing for the assumption of the construction project shall be deemed to be an approval by the Secretary of the construction project planning and design documents.

"(2) REPORTS.—The Indian tribe shall provide the Secretary with construction project progress and financial reports not less than semiannually.

"(3) INSPECTIONS.—The Secretary may conduct onsite project inspections at a construction project semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

"(h) WAGES.—

"(1) IN GENERAL.—All laborers and mechanics employed by a contractor or subcontractor in the construction, alteration, or repair (including painting and decorating) of a building or other facility in connection with a construction project funded by the United States under this title shall be paid wages at not less than the amounts of wages prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

"(2) AUTHORITY.—With respect to construction, alteration, or repair work to which that subchapter is applicable under this subsection, the Secretary of Labor shall have the authority and functions specified in the Reorganization Plan numbered 14, of 1950.

"(3) APPLICABILITY OF SUBSECTION.—Notwithstanding any other provision of law, this sub-

section does not apply to any portion of a construction project carried out under this Act—

"(A) that is funded from a non-Federal source, regardless of whether the non-Federal funds are included with Federal funds for administrative convenience; or

"(B) that is performed by a laborer or mechanic employed directly by an Indian tribe or tribal organization.

"(4) APPLICABILITY OF TRIBAL LAW.—This subsection does not apply to a compact or funding agreement if the compact, self-determination contract, or funding agreement is otherwise covered by a law (including a regulation) adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

"(i) APPLICABILITY OF OTHER LAW.—Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project conducted under this title.

"SEC. 409. PAYMENT.

"(a) IN GENERAL.—At the request of the governing body of the Indian tribe and under the terms of a funding agreement, the Secretary shall provide funding to the Indian tribe to carry out the funding agreement.

"(b) ADVANCE ANNUAL PAYMENT.—At the option of the Indian tribe, a funding agreement shall provide for an advance annual payment to an Indian tribe.

"(c) AMOUNT.—Subject to subsection (e) and sections 405 and 406 of this title, the Secretary shall provide funds to the Indian tribe under a funding agreement for included programs in the amount that is equal to the amount that the Indian tribe would have been entitled to receive under contracts and grants under this Act (including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members) without regard to the organization level within the Federal agency in which the included programs are carried out.

"(d) TIMING.—Unless the funding agreement provides otherwise, the transfer of funds shall be made not later than 10 days after the apportionment of funds by the Office of Management and Budget to the Department.

"(e) AVAILABILITY.—Funds for trust services to individual Indians shall be available under a funding agree-

ment only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian tribe.

"(f) MULTIYEAR FUNDING.—A funding agreement may provide for multiyear funding.

"(g) LIMITATION ON AUTHORITY OF THE SECRETARY.—The Secretary shall not—

"(1) fail to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this Act, except as required by Federal law;

"(2) withhold any portion of such funds for transfer over a period of years; or

"(3) reduce the amount of funds required under this Act—

"(A) to make funding available for self-governance monitoring or administration by the Secretary;

"(B) in subsequent years, except as necessary as a result of—

"(i) a reduction in appropriations from the previous fiscal year for the program to be included in a compact or funding agreement;

"(ii) a congressional directive in legislation or an accompanying report;

"(iii) a tribal authorization;

"(iv) a change in the amount of pass-through funds subject to the terms of the funding agreement; or

"(v) completion of an activity under an included program for which the funds were provided;

"(C) to pay for Federal functions, including—

"(i) Federal pay costs;

"(ii) Federal employee retirement benefits;

"(iii) automated data processing;

"(iv) technical assistance; and

"(v) monitoring of activities under this Act; or

"(D) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or self-governance.

"(h) FEDERAL RESOURCES.—If an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Fed-

eral supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Indian tribe.

"(i) PROMPT PAYMENT ACT.—Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this Act.

"(j) INTEREST OR OTHER INCOME.—

"(1) IN GENERAL.—An Indian tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

"(2) NO EFFECT ON OTHER AMOUNTS.—The retention of interest or income under paragraph (1) shall not diminish the amount of funds that an Indian tribe is entitled to receive under a funding agreement in the year in which the interest or income is earned or in any subsequent fiscal year.

"(3) INVESTMENT STANDARD.—Funds transferred under this title shall be managed using the prudent investment standard.

"(k) CARRYOVER OF FUNDS.—

"(1) IN GENERAL.—Notwithstanding any provision of an Act of appropriation, all funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended.

"(2) EFFECT OF CARRYOVER.—If an Indian tribe elects to carry over funding from 1 year to the next, the carryover shall not diminish the amount of funds that the Indian tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

"(l) LIMITATION OF COSTS.—

"(1) IN GENERAL.—An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

"(2) NOTICE OF INSUFFICIENCY.—If at any time an Indian tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the In-

dian tribe shall provide reasonable notice of the insufficiency to the Secretary.

"(3) SUSPENSION OF PERFORMANCE.—If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

"SEC. 410. CIVIL ACTIONS.

"(a) INCLUSION AS CONTRACT.—Except as provided in subsection (b), for the purposes of section 110, the term 'contract' shall include a funding agreement.

"(b) CONTRACTS WITH PROFESSIONALS.—For the period during which a funding agreement is in effect, section 2103 of the Revised Statutes (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476) shall not apply to a contract between an attorney or other professional and an Indian tribe.

"SEC. 411. FACILITATION.

"(a) IN GENERAL.—Except as otherwise provided by law, the Secretary shall interpret each Federal law (including a regulation) in a manner that facilitates—

"(1) the inclusion of included programs in funding agreements; and

"(2) the implementation of funding agreements.

"(b) REGULATION WAIVER.—

"(1) REQUEST.—An Indian tribe may submit a written request for a waiver to the Secretary identifying the specific text in regulation sought to be waived and the basis for the request.

"(2) DETERMINATION BY THE SECRETARY.—Not later than 60 days after the date of receipt by the Secretary of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian tribe.

"(3) GROUND FOR DENIAL.—The Secretary may deny a request for a waiver only on a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

"(4) FAILURE TO MAKE DETERMINATION.—If the Secretary fails to approve or deny a waiver request within the time required under paragraph (2), the Secretary shall be deemed to have approved the request.

"(5) FINALITY.—The Secretary's decision shall be final for the Department.

"SEC. 412. DISCLAIMERS.

"Nothing in this title expands or alters any statutory authority of the Secretary so as to authorize the Secretary

to enter into any funding agreement under section 405(b)(2) or 415(c)(1)—

"(1) with respect to an inherent Federal function;

"(2) in a case in which the statute establishing a program does not authorize the type of participation sought by the Indian tribe (without regard to whether 1 or more Indian tribes are identified in the authorizing statute); or

"(3) limits or reduces in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

"SEC. 413. APPLICABILITY OF OTHER PROVISIONS.

"(a) MANDATORY APPLICATION.—Sections 5(d), 6, 102(c), 104, 105(f), 110, and 111 apply to compacts and funding agreements under this title.

"(b) DISCRETIONARY APPLICATION.—

"(1) IN GENERAL.—At the option of a participating Indian tribe, any or all of the provisions of title I or title V shall be incorporated in a compact or funding agreement.

"(2) EFFECT.—Each incorporated provision—

"(A) shall have the same effect as if the provision were set out in full in this title; and

"(B) shall be deemed to supplement or replace any related provision in this title and to apply to any agency otherwise governed by this title.

"(3) EFFECTIVE DATE.—If an Indian tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation—

"(A) shall be effective immediately; and

"(B) shall control the negotiation and resulting compact and funding agreement.

"SEC. 414. BUDGET REQUEST.

"(a) REQUIREMENT OF ANNUAL BUDGET REQUEST.—

"(1) IN GENERAL.—The President shall identify in the annual budget request submitted to Congress under section 1105 of title 31, United States Code, all funds necessary to fully fund all funding agreements authorized under this title.

"(2) DUTY OF SECRETARY.—The Secretary shall ensure that there are included, in each budget request, requests for funds in amounts that are sufficient for planning and negotiation grants and sufficient to cover any shortfall in funding identified under subsection (b).

"(3) TIMING.—All funds included within funding agreements shall be provided to the Office of Self-Governance not later than 15 days after the date on which funds are apportioned to the Department.

"(4) DISTRIBUTION OF FUNDS.—The Office of Self-Governance shall be responsible for distribution of all funds provided under this title.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection authorizes the Secretary to reduce the amount of funds that an Indian tribe is otherwise entitled to receive under a funding agreement or other applicable law.

"(b) PRESENT FUNDING; SHORTFALLS.—In all budget requests, the President shall identify the level of need presently funded and any shortfall in funding (including direct program costs, tribal shares and contract support costs) for each Indian tribe, either directly by the Secretary of Interior, under self-determination contracts, or under compacts and funding agreements.

"SEC. 415. REPORTS.

"(a) IN GENERAL.—

"(1) REQUIREMENT.—On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this title.

"(2) ANALYSIS.—A report under paragraph (1) shall include a detailed analysis of tribal unmet need for each Indian tribe, either directly by the Secretary, under self-determination contracts under title I, or under compacts and funding agreements authorized under this subchapter.

"(3) NO ADDITIONAL REPORTING REQUIREMENTS.—In preparing reports under paragraph (1), the Secretary may not impose any reporting requirement on participating Indian tribes not otherwise provided for by this Act.

"(b) CONTENTS.—A report under subsection (a) shall—

"(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds;

"(2) identify—

"(A) the relative costs and benefits of self-governance;

"(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and members of Indian tribes;

"(C) the funds transferred to each Indian tribe and the corresponding reduction in the Federal bureaucracy;

"(D) the funding formula for individual tribal shares of all Central Office funds, with the comments of affected Indian tribes, developed under subsection (d); and

"(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of inherent Federal functions by type and location;

"(3) contain a description of the methods used to determine the individual tribal share of funds controlled by all components of the Department (including funds assessed by any other Federal agency) for inclusion in compacts or funding agreements;

"(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of not less than 30 days); and

"(5) include the separate views and comments of each Indian tribe or tribal organization.

"(c) REPORT ON NON-BIA PROGRAMS.—

"(1) IN GENERAL.—In order to optimize opportunities for including non-Bureau of Indian Affairs included programs in agreements with Indian tribes

participating in self-governance under this title, the Secretary shall—

"(A) review all included programs administered by the Department, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned;

"(B) not later than January 1, 2004, submit to Congress—

"(i) a list of all such included programs that the Secretary determines, with the concurrence of Indian tribes participating in self-governance, are eligible to be included in a funding agreement at the request of a participating Indian tribe; and

"(ii) a list of all such included programs for which Indian tribes have requested to include in a funding agreement under section 405(b)(3) due to the special geographic, historical, or cultural significance to the Indian tribe, indicating whether each request was granted or denied and stating the grounds for any denial.

"(2) PROGRAMMATIC TARGETS.—The Secretary shall establish programmatic targets, after consultation with Indian tribes participating in self-govern-

ance, to encourage bureaus of the Department to ensure that a significant portion of those included programs are included in funding agreements.

"(3) PUBLICATION.—The lists and targets under paragraphs (1) and (2) shall be published in the Federal Register and be made available to any Indian tribe participating in self-governance.

"(4) ANNUAL REVIEW.—

"(A) IN GENERAL.—The Secretary shall annually review and publish in the Federal Register, after consultation with Indian tribes participating in self-governance, revised lists and programmatic targets.

"(B) CONTENTS.—The revised lists and programmatic targets shall include all included programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for included programs specifically determined not to be contractible as a matter of law.

"(d) REPORT ON CENTRAL OFFICE FUNDS.—Not later than January 1, 2004, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal share of funds controlled

by the Central Office of the Bureau of Indian Affairs for inclusion in the self-governance compacts.

"SEC. 416. REGULATIONS.

"(a) IN GENERAL.—

"(1) PROMULGATION.—Not later than 90 days after the date of the enactment of the Department of the Interior Tribal Self-Governance Act of 2003, the Secretary shall initiate procedures under subchapter III of chapter 5, of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out the amendments made by that Act.

"(2) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement the amendments shall be published in the Federal Register not later than 1 year after the date of enactment of that Act.

"(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under paragraph (1) shall expire on the date that is 18 months after the date of enactment of that Act.

"(b) COMMITTEE.—

"(1) MEMEBERSHIP.—A negotiated rulemaking committee established under section 565 of title 5, United States Code, to carry out this section shall

have as its members only Federal and tribal government representatives.

"(2) LEAD AGENCY.— Among the Federal representatives, the Office of Self-Governance shall be the lead agency for the Department of the Interior.

"(c) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

"(d) EFFECT.—

"(1) REPEAL.—All regulatory provisions under part 1000 of title 25, Code of Federal Regulations, are repealed on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2003.

"(2) EFFECTIVENESS WITHOUT REGARD TO REGULATIONS.—The lack of promulgated regulations shall not limit the effect of this Act.

"(3) INTERIM PROVISION.—Notwithstanding this subsection, any regulation under part 1000 of title 25, Code of Federal Regulations, shall remain in effect, at an Indian tribe's option, in implementing compacts until regulations are promulgated.

"SEC. 417. EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.

"Unless expressly agreed to by a participating Indian tribe in a compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

"(1) the eligibility provisions of section 105(g); and

"(2) regulations promulgated under section 416.

"SEC. 418. APPEALS.

"In any administrative appeal or civil action for judicial review of any decision made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

"(1) the validity of the grounds for the decision; and

"(2) the consistency of the decision with the provisions and policies of this title.

"SEC. 419. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary to carry out this title.".

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STATEMENT OF DAVE ANDERSON, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WILLIAM A. SINCLAIR, DIRECTOR, OFFICE OF SELF-GOVERNANCE AND SELF-DETERMINATION

Mr. ANDERSON. Good morning, Mr. Chairman and members of the committee. Also, I would like to recognize our tribal leaders that are here in the room this morning.

I am pleased to be here to provide the Administration's position on S. 1715, a bill to amend title IV of the Indian Self-Determination and Education Assistance Act. I just would like to say that even though I am new on the job, in my briefings I have come to understand that we have had in the past a pretty good working relationship regarding the development of this bill. I think we have come a long way over the last few years. I just wanted everyone to know that we are committed to working with the tribes.

There are still a few difficulties that I think that we need to resolve, but I think overall we have come a long way on the things that we do agree on.

In 1988, Congress amended the Indian Self-Determination and Education Assistance Act by adding Title III, which authorized the Self-Governance Demonstration Project. In 1994, Congress again amended the act by adding title IV, establishing a program within the Department of the Interior to be known as Tribal Self-Governance. The addition of title IV made self-governance a permanent option for the tribes.

These amendments authorized federally recognized tribes to negotiate funding agreements with the Department of the Interior for programs, services, functions or activities administered by the Bureau of Indian Affairs [BIA] and, within certain parameters, authorized such funding agreements with other bureaus. In the year 2000, the act was amended again to include titles V and VI, making self-governance a permanent option for tribes to negotiate compacts with Indian Health Services.

In 1990, the first seven funding agreements were negotiated for about $27 million in total funding. For fiscal year 2004, there are 83 agreements that include 227 federally recognized tribes and about $300 million in total funding. So we have come a long way over these years.

Some of these agreements are with tribal consortia which account for the number of such tribes exceeding the number of agreements. These funding agreements allow federally recognized tribes to provide a wide range of programs and services to their members, such as law enforcement, scholarship, welfare assistance and housing repairs, just to mention a few.

Many of the funding agreements include trust-related programs such as real estate services, appraisals, probates and natural resource programs such as forestry, fisheries and agriculture. What makes these funding agreements unique is that the title IV allows tribal governments to redesign programs and set their own priorities, consistent with federal laws and regulations. This authority allows tribal leaders the ability to respond to the unique needs of their tribal members without seeking approval by departmental officials.

In fact, in the last two weeks under this Administration, Secretary Norton signed the first-ever self-governance funding agreement between a tribe and the Fish and Wildlife Service. Title IV authorizes funding agreement throughout all bureaus within the Department of the Interior.

On April 30, we also signed the agreement between, and this is what I just referenced, signed the agreement between the Council of the Athabascan Tribal Governments and the Fish and Wildlife Service that will enable the Council to perform certain functions previously provided by the Service on Yukon Flats National Wildlife Refuge in Alaska during fiscal year 2004 to 2005. This agreement was the first of its kind between the Service and a federally recognized organization.

In addition, in fiscal year 2004 and 2005, there will be four tribal-funded agreements with the Bureau of Reclamation and four tribal-funded agreements with the National Park Service. So we are making progress.

The Department has concerns with this bill, S. 1715, which we would like to work with this committee to ensure that this legislation does not adversely impact our ability to meet our trust responsibilities. In particular, the Department is concerned with subsection 409(L) which would permit a tribe to cease performance if it appears the expenditure of funds is in excess of the amount transferred under a compact or funding agreement. If the Secretary does not increase the amount of funds transferred under the funding agreement, a tribe would be permitted to suspend performance of the activity until such time as additional funds are transferred. We have concerns about the impact this provision may have, especially on fiduciary trust functions.

Under this provision, if a tribe contracts with the Department to administer IIM accounts and then decides there is not enough money to administer these accounts, the tribe could simply stop making IIM distributions to IIM accountholders. It is imperative that a tribe perform any fiduciary function it contracts or compacts for regardless of the level of funding. The tribe should return the function to the Department to administer if they believe that the funding level is inadequate, rather than to have their members suffer if the tribe decides not to perform.

In addition, section 405(B)(1)(b) also broadens application of the funding agreements to authorize tribes to contract for all programs to which Indian tribes or Indians are primary or significant beneficiaries. Current law allows federally recognized tribes to assume programs administered by the Department's bureaus and offices other than the BIA, subject to negotiations and as long as the programs are available to Indian tribes or Indians. We would recommend that section 405(B)(1)(b) be made discretionary and subject to the terms of the agreement for programs in which Indian tribes or Indians are the primary or significant beneficiaries.

Finally, the Department is concerned with the reassumption provision contained in section 407. The provision would require that imminent jeopardy, substantial jeopardy and irreparable harm be met simultaneously in order for the Secretary to resume a program. This is a very high standard to achieve. Having to prove all three conditions practically eliminates the ability of the Secretary

to quickly reassume a program in those rare instances where such an immediate assumption would be necessary, such as instances where serious injury or harm may occur. The Department would recommend that the reassumption standard contained in the current title IV be retained.

While we believe that S. 1715 is moving in the right direction to expand self-governance, we cannot support the legislation at this time, especially given the current high priority for trust reform and the impact this legislation would potentially have to that critical program.

We look forward to working with this committee and the tribes in developing alternative language to address our concerns.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions.

[Prepared statement of Mr. Anderson appears in appendix.]

The CHAIRMAN. Okay, thank you. I appreciate that, Mr. Assistant Secretary.

I have several questions. Before I do, though, I want to take just a moment of personal privilege because I saw a number of our young Indian people come in and sit in the back of the room. I would like to introduce a couple of personal friends that are in the audience that are also in the back, particularly to those youngsters. One is Gene Keluche who is the head of the American Indian Sports Council that is here today. Gene, why don't you stand up for just 1 moment if you would. He is accompanied there with an old dear friend of mine and former teammate, Billy Mills, Oglala Sioux. Billy was the first American in the history of Olympic competition to win the 10,000 meter, if you know anything about international sports. He has been just a wonderful role model for our kids.

I want to introduce them so the youngsters over there who had never had a chance to meet either of these very, very well-known gentlemen in Indian sports could see them.

Thank you for being here.

[Applause.]

The CHAIRMAN. Now, Mr. Assistant Secretary, before I get into some of the questions on the bill, you mentioned to me before we started that you had been on the road quite a bit visiting tribes. How many tribes have you been out there to talk to?

Mr. ANDERSON. I have visited 20 to 25 tribes.

The CHAIRMAN. At least 20. And in talking to them, has anything come through that is sort of a main concern across the board of tribes?

Mr. ANDERSON. Yes, sir; there is. One of the major concerns that they have is law enforcement. It seems like this is an important priority with all of the tribes, especially the rampant increased use of methamphetamines, the finding of methamphetamine labs on a reservation, and not having the ability to adequately police those activities. Increasingly, we are seeing a rise in alcohol and drug use among our teens. So I think that is a very important concern.

But then overall, one of the things that I have come to recognize is that we need to have a vision for where Indian country is going. I think all of the things that we deal with on a day-to-day basis are pretty much dealing or reacting to some of the brushfires that

are happening out there. I think overall what is important for our Indian families is to know that in this great country that we live in, that our children growing up can have dreams and know that if they pursue those dreams and follow their passion, that they can live successful and rewarding lives. I believe that is possible.

The CHAIRMAN. Before we finish this year, I am going to try to frame up a hearing to deal with just a general overview about where we ought to go, particularly from the standpoint of youngsters.

Of those tribes you visited when you were talking about law enforcement, do you happen to know the number of them or the percent of those who do their own contracting for law enforcement?

Mr. ANDERSON. Senator, I would have to get back to you on that.

The CHAIRMAN. Okay. One of the really important things that we have tried to do, both Senator Inouye and I, is improve tribal self-governance, as you may know. The BIA, as I understand it, worries that the tribes will stop performing contracts if they do not receive enough funding. Funding is always a problem. But over the years, we have had dozens of tribes appear before this committee complaining that they have been forced to perform 638 contracts with inadequate funding, particularly when it comes to contract support costs.

If a tribe stops performing under a 638 contract, doesn't the Department have the authority to step in and take over the services or the program?

Mr. ANDERSON. Yes; they could. Senator, I would like to introduce Mr. Sinclair. He is not on the list, but he is the Director for the Office of Self-Governance at the Bureau.

The CHAIRMAN. Okay. So whenever you think you have an answer, Mr. Sinclair, we would appreciate your thoughts on it, too.

Isn't it part of the negotiating process for a tribe and the agency to determine what is sufficient funding when dealing with a 638 contract? Mr. Sinclair, go ahead.

Mr. SINCLAIR. Yes, sir; when we negotiate a self-governance agreement or a 638 contract, we base it upon either the President's budget, which is modified then by congressional appropriations. So the constraint is to determine what the tribe's share is of that particular programmatic amount and then determine it. That would also include contract support as well.

The CHAIRMAN. Do you know off-hand how many times has a tribal contractor stopped performing its responsibilities, and particularly if they have done it without giving sufficient warning to the Bureau that they were going to have to stop?

Mr. SINCLAIR. To my knowledge, I do not know of any tribe that has actually done that. Basically, tribes take over the responsibility for programs, services or functional activities, many times knowing that the funding they will be receiving is inadequate, but they believe that because of the flexibility of the self-governance that they can do a better job of serving their people. Many times because they have ownership of those programs, as you well know, sir, they augment that with tribal resources. So while tribes do feel the pain of inadequate funding, along with the Department itself and the Bureau itself in providing services, they do a lot with what they receive.

The CHAIRMAN. You mentioned that the re-assumption standard in section 407 is too high. Is the Department's view that raising the standard might interfere with the Department's trust responsibility? So the Department cannot support the bill because of the high priority for trust reform and the concern about trust reform?

Mr. ANDERSON. Right. But I would also like to preface this. We also believe that one, we are not that far away. We have come a long way from my understanding of where we started out a couple of years ago. There are a number of things that still need to be resolved, but one of the things I would like to say is that in our briefings, we are committed to seeing this thing through. It is something we would like to see happen.

So when I said that at this time we were not in support of it does not mean that we are fighting it, but it means that there are just some things, there are a few difficult things that need to be resolved that we feel can be worked out.

The CHAIRMAN. I appreciate that, because that is what the committee wants to do too. Maybe the Department sees the bill a little differently than we do, but it seems to me that self-governance is certainly part of the answer to trust reform. In the language of the bill, what specific language could you point to that causes problems in trust reform efforts? I want to try to make some changes to make this thing work, too, before I leave, if I can. I think with the Department's help we can get something that is going to go a long way to help tribal governments.

Mr. ANDERSON. I think one of the main ones is this inherent in Federal function.

The CHAIRMAN. Okay. Mr. Sinclair, maybe you could answer, what does "inherent function" mean to you?

Mr. SINCLAIR. The definitions of tribal shares and inherently Federal functions is a concern to us. While it is consistent with what is in title V, we are fearful that the standard presents us with, well, the definition as defined is that if something needs to be statutorily defined, and there are many functions that in providing trust services as we are defining it through the trust reform that are not in statutes. Yet, as the Secretary is a trustee, she feels that these are things that only she can delegate to a Federal official, but it is not codified in law. We feel like with this definition we would be in a tension between tribes who are asking to have those services or functions delegated to them through a contract or compact, and we would be refusing them based upon the trustee. It would set up an unnecessarily adversary relationship that could go into the courts and all that stuff.

The CHAIRMAN. Okay. I have no further questions, but I look forward to working with you to try to make this resolvable.

I might tell you, Mr. Assistant Secretary, you have just come on board in the last year. I have not been here nearly as long as some of my colleagues, but I have been here 12 years. As I just go over in my own mind about all the bills that we have dealt with to try to help Indian people, you were not here, but I want to tell you I cannot remember a single one, frankly, that the Administration, anybody's Administration in the last 12 years I have been here, has put forth.

Most of the good bills that have come up and gone through the committee have come from Indian people. In some cases, we had to sort of drag part of the Administration along kicking and screaming, when I thought we were all supposed to be in this together, whether it was the Interior Department or the Indian Health Service or this committee or tribes, and that was to try to make Indian people more self-sufficient, make them have a lifestyle that certainly they deserve, and a little more independence from being tethered to the Federal Government. An awful lot of the times when these bills are put forward by tribes or by somebody in the committee, we run into a buzz saw of opposition from the Administration.

So we are always continually trying to negotiate about where we can fix the thing to move something forward. So much of what has happened, at least in the 12 years that I have been here, maybe I am wrong, but I viewed an awful lot of it from the standpoint of the opposition being from turf protection more than trying to do the right thing to help Indian people.

When I helped you with your confirmation, I was very, very impressed with what I thought was a real belief in trying to make sure that Indian people get a fair shake out of this government. I would hope after I am gone and you are still here, that that is going to be a driving force with you in the years of your tenure.

Mr. ANDERSON. Senator Campbell, I cannot tell you how much I appreciate your sentiments. I am a firm believer, as evidenced in my own life of being self-determined. When I came on board, I came on board with the spirit of heart that I could make a difference. I will tell you that this has been a real awakening for me. But I also believe that we cannot give up. When we are out there, like a lot of tribal leaders, we often think that, God, if I could just get in there, I would do this a whole lot differently. And then when you get into it, you find that the bureaucracy is greater than anybody could imagine.

I have a goal to be able to try and cut redtape wherever we can. I have a goal to see our Indian people self-determined, economically self-sufficient and self-governed. I believe that as sovereign people that we can accomplish that. Somehow, some way, I believe that we will see this happen.

The CHAIRMAN. Mr. Assistant Secretary, welcome to Washington. [Laughter.]

Thank you very much for your testimony.

Mr. ANDERSON. Thank you.

The CHAIRMAN. We will now hear from, and by the way, there may be some followup questions. Senator Inouye had a conflict this morning. He and several other members were not here. We may submit some to you to be answered in writing.

Mr. ANDERSON. I would also say that I have always tried in every meeting to be the last person out of the room. Today, I have some scheduling conflicts that I cannot get out of, and this is the first time I have ever left before the end of a meeting.

The CHAIRMAN. I would appreciate it if you would read the testimony of the next panel when you have the time.

Mr. ANDERSON. Thank you for your time.

The CHAIRMAN. We will now go to panel II. That will be the Fred Matt, chairman of the Confederated Salish and Kootenai Tribes of Flathead Reservation in Pablo, MT; Geoffrey Strommer, Hobbs, Strauss, Dean, and Walker from Portland; and Phil Baker-Shenk from Holland and Knight, the former committee staffmember. Welcome to the committee this morning.

Mr. Matt, how are things up in Flathead country?

Mr. MATT. It was cold when I left.

The CHAIRMAN. It was cold when you left. How is my friend Allard and their family?

Mr. MATT. Doug Allard is an amazing man. I just love your friend. He just recently went through bypass surgery. He had a valve in his heart that was not functioning properly, so he is recovering now from that heart surgery.

The CHAIRMAN. He is a friend of mine for 30, 35 years. Please give him my best and well wishes.

Mr. MATT. I always do.

The CHAIRMAN. Good. Tell him to stop eating the fry bread. That will hurt your heart. [Laughter.]

Okay, we will go ahead with you, Chairman Matt.

STATEMENT OF D. FRED MATT, CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES, FLATHEAD RESERVATION

Mr. MATT. Chairman Campbell and committee members, my name is Fred Matt. I serve as chairman of the Tribal Council for the Confederated Salish and Kootenai Tribes. With me today from our legal staff is Brian Upton and George Waters, our lobbyist here in town.

The CHAIRMAN. We know Mr. Waters.

Mr. MATT. I have provided written testimony for the record. I will limit my remarks to just a few highlights, although it is going to be hard to try to condense it in the time I know that I have allowed, because we have done so much at Flathead that we are proud of and we want to share our successes.

I understand also that this may be the last time that I testify before this committee with you as Chairman. And although Senator Inouye is not here today, on behalf of the Salish and Kootenai people please accept our appreciation for the great work you have both done for Indian country, and staff like Pat Zell and Paul Moorhead. It is difficult to imagine what Indian country would look like today, if over the course of the last century, every member of Congress had simply spent a fraction of the time that you have spent fighting for Indian people.

Senator Campbell, during your 18 years in the House and Senate, you have become a hero, literally, and a role model for Native Americans. We wish you the best of luck in life after the Senate.

The CHAIRMAN. Thank you. Would you send a copy of that statement to my wife? [Laughter.]

Mr. MATT. Definitely.

The CHAIRMAN. Thank you.

Mr. MATT. In gold, bold letters. [Laughter.]

And as well pass on our appreciation to Senator Inouye. Again, and for the last 45 years that he has been in Congress, the Indian people have simply never had a better friend or advocate. We look

forward to working with him as Ranking Member of the Commerce Committee.

Again, I am honored to be asked to provide testimony on tribal self-governance, as our tribes are proud of our successes in managing the programs of the Federal Government. Our success began when the self-determination law was passed, and after President Nixon proposed this landmark policy. CSKT was one of the first tribes to exercise the opportunity of Public Law 93–638. Since 1975, we have begun management of BIA education programs. We have not looked back. I have said that many times before.

Today, I am proud to report that the tribes I represent manage under self-determination more Federal programs than any other tribe in this Nation. We do so with excellent evaluations, clean financial audits, and with few if any complaints from those who receive those services.

For example, we are the only tribe operating the BIA's title plant and individual Indian money account program, and all of the natural resources programs that generate the revenue deposited in those accounts. Since 1989, we have operated a safety of dams program responsible for rehabilitation of 17 dams located on our reservation. We have had extremely good success. We have repaired dams quicker and cheaper than has the Bureau of Reclamation. One example is the Black Lake Dam was completed at a savings of approximately $1.3 million below the Bureau of Reclamation's estimates.

Again, I have said this before, but my personal favorite success story in self-determination is the Mission Valley Power. We manage the power utility that provides electricity to nearly 22,000 Indian and non-Indian consumers on our Flathead Reservation. Today, I am proud to report that Mission Valley Power offers some of the lowest cost and most stable electric rates throughout the Northwest. We have an independent utility board and we have an active consumer council. Mission Valley Power's conservation programs have won several awards, and our safety record is outstanding.

We have succeeded because local government is the best government and this includes Indian tribes. Our tribal council is the best suited to address the needs of our tribal members, and we understand their needs as we talk with them in our grocery stores, at basketball games, and our weekly council meetings. We do not operate one-size-fits-all programs created through bureaucracies. With the self-governance flexibility, we tailor the program to fit the needs, while complying with federal laws and regulations.

My written testimony describes the tribe's compacting experience in more detail. While self-governance has been a quantum leap in Federal policy, the act itself could be improved and strengthened to better meet its objectives. My written testimony examines some of the proposed changes and lays out rationales as to why such changes are needed.

We are particularly pleased to see the bill define "inherent Federal function," and include OST funding as mandatory for inclusion in annual funding agreements. As this committee is aware, the CSKT is currently negotiating with the U.S. Fish and Wildlife Service for an annual funding agreement covering various activities

at the National Bison Range Complex. It has been 10 long years since we first initiated this effort. It has been an expensive, frustrating and resource-intensive effort, to say the least. Our efforts to assume management of this Complex began when Congress authorized the management of Department of the Interior programs to tribes that have a significant historic, geographic or cultural tie.

CSKT meets all of these criteria with the National Bison Range. The Range is located in the heart of our reservation, entirely on land reserved for us through the Hell Gate Treaty of 1855. The bison at the Range are descended from a herd raised by tribal members Charles Allard and Michel Pablo.

Finally, a study conducted by the Service documents a number of cultural sites. After nearly a decade, we are close to reaching an agreement. The recent agreement by Secretary Norton with the Council of Athabascan Tribal Governments for the Yukon Flats National Wildlife Refuge should help finalize our agreement. We congratulate the Athabascan leaders and the Fish and Wildlife Service in Alaska for reaching this agreement.

One of our primary concerns with the process has been the creation of a moving target to finalize negotiations. The Fish and Wildlife Service continually creates new issues which has delayed reaching an agreement. For example, at one point in January of this year, we thought we had narrowed down our outstanding issues to a very short list, and then the Fish and Wildlife Service unilaterally rewrote the draft AFA in February so that it included some unacceptable new issues, further delaying our process.

Despite our concerns, we are hopeful that we can finalize an AFA with Fish and Wildlife Service in the very near future. It will be submitted to this committee for a 90-day period before it becomes effective. At that time, we will need the support of our friends in Congress who share our vision and goals. We are aware that there is some opposition, but we are confident that the Federal decision-makers here in Washington will see the opposition's arguments for what they are. We believe that most people agree with the New York Times when it said in a September 3, 2003 editorial that, quote:

> The National Bison Range is an unusual case. It offers a rare convergence of public and tribal interests. If the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public; something will be added to it.

Unquote.

Mr. Chairman, my written testimony includes specific comments on provisions in S. 1715. A number of those comments reflect CSKT's current experience with the Fish and Wildlife Service in negotiating an agreement on the National Bison Range Complex, as well as 15 years of self-governance experience with other Interior agencies, principally the BIA. Overall, I believe that S. 1715 would help place Indian tribes on a stronger footing when negotiating with the Department of the Interior and its agencies, and that it should be enacted into law.

Mr. Chairman, thank you for the opportunity to provide my views to this committee.

[Prepared statement of Mr. Matt appears in appendix.]

The CHAIRMAN. Thank you, Mr. Chairman.

Now we will go to Mr. Strommer.

STATEMENT OF GEOFFREY STROMMER, HOBBS, STRAUSS, DEAN AND WALKER, ON BEHALF OF THE COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS

Mr. STROMMER. Good morning, Mr. Chairman. It is an honor and a privilege to be here today to offer testimony on behalf of the Council of Athabascan Tribal Governments. Ben Stevens, the Council's Self-Governance Coordinator, was scheduled to be here today, but unfortunately his trip canceled at the last minute, so I am really just substituting for him.

My name is Geoff Strommer. I am a partner at Hobbs, Strauss, Dean, Walker, a large national law firm that specializes in representing Indian tribes throughout the country. For over 10 years, a large part of my practice has focused on working with tribes and tribal organizations seeking to exercise rights under the Indian Self-Determination Act, both self-determination contracting as well as self-governance compacting with the Department of the Interior as well as the Department of Health and Human Services.

In my comments today, I would like to focus on three areas. I would like to talk a little bit about CATG's experience in self-governance, particularly as it relates to its most recent achievement of negotiating a self-governance agreement with the Fish and Wildlife Service; some of the benefits that CATG has been able to achieve through the self-governance program; and then I want to talk about a couple of key provisions in the title IV amendments that CATG has a particular interest in seeing enacted, and give you the justification for that interest.

Let me start by telling you a little bit about CATG itself. It is a tribal organization that was created in 1985 by 10 tribes to provide essential services to tribal members. The services range from natural resources management, economic development, and a wide array of health services. The geographic area in which CATG provides these services is quite large. It encompasses the entire Yukon Flats National Wildlife Refuge and part or the Arctic National Wildlife Refuge. I have heard some people say that it is close to the size of Wyoming, to give you a sense of the size of the territory that we are talking about.

CATG's villages have been located in this large region since time immemorial. Today, many tribal members live subsistence lifestyles that are very closely tied to the land, and that are dependent upon a healthy and vibrant ecosystem.

For many years, CATG has had a compact of self-governance with the BIA, as well as a compact of self-governance with the Department of Health and Human Services. It provides comprehensive health care services, for example, throughout the region, and operates a health center in Fort Yukon, which is the main hub city in the region.

Two weeks ago, after a long and difficult effort, CATG became the first tribal organization in the country to enter into a self-governance funding agreement with the Fish and Wildlife Service. CATG sought to assume specific programs from Fish and Wildlife that relate to the Yukon Flats National Wildlife Refuge, because of its tribal members' unique historical, geographic and cultural rela-

tionship to the programs carried out by Fish and Wildlife on the Flats.

Under the agreement, the Fish and Wildlife Service will transfer close to $60,000 to CATG. CATG will perform specific responsibilities in exchange for those funds. Those responsibilities include locating public easements under the Alaska Native Claims Settlement Act, some environmental outreach, educational outreach, wildlife harvest data collection, survey of the moose population, and some logistical functions such as maintenance of vehicles and facilities that the Fish and Wildlife Service has in Fort Yukon.

The agreement describes operational standards and performance measures that CATG has agreed to meet. The United States retains complete oversight and ultimate control over the lands and resources within the Yukon Flats. The agreement is to last one year and is renewable by the parties in future years.

CATG is very proud of the agreement. I wish Ben were here himself because he would express in his own words just how proud they are. They are committed to making it work in partnership with the Fish and Wildlife Service. The agreement is viewed as a first step in a relationship between Fish and Wildlife Service and CATG that tribal leaders hope will grow and last long into the future.

The agreement provides many tangible benefits to the Refuge and its resources. CATG brings to the partnership a wealth of traditional and ecological knowledge. It has experience working with local residents to gather accurate data. It has demonstrated its efficiency and effectiveness in fisheries and wildlife research projects, habitat management activities, harvest data collection, aerial surveys, subsistence use surveys, and traditional knowledge interviews.

While the agreement is an example of a successful partnership between the tribes and the United States, it is a success that was not easily achieved. Beginning in 1998, when CATG first submitted a proposal to assume certain functions from the Fish and Wildlife Service, CATG had to work hard to educate Fish and Wildlife Service representatives and people in the region of the benefits of the self-governance program.

I will not describe all the steps that CATG had to go through to ultimately conclude an agreement with Fish and Wildlife Service. I will say that the process for arriving to the point where the parties could sign an agreement was long, challenging, and very frustrating at times for CATG. It is only because CATG was completely committed to its goal of forging a new relationship with the Fish and Wildlife Service under title IV and was willing to bear great expense to do so in commitment of financial resources, time and energy that it succeeded in accomplishing what it sought by negotiating the agreement.

A key element in the process was that under title IV, Fish and Wildlife Service retained complete discretion over whether to transfer any of the programs over to CATG, and the exercise of that discretion was subject to the individual discretion of Fish and Wildlife representatives sitting across the table. Ultimately, it took a commitment from top political leadership at the Department of the Interior for the Fish and Wildlife Service employees sitting across the

table to have the same level of commitment to reach an agreement with CATG as CATG brought to the table.

I do not think that Congress intended the process to be as difficult as it has proven to be. I also doubt that Congress could have foreseen that it would take 10 years from the date it enacted title IV for a tribe to be able to assume the kinds of programs that are included in CATG's agreement.

Unfortunately, the difficulties CATG encountered in the process were not unique. A number of other tribes and tribal organizations that tried to assume similar programs from non-BIA agencies after title IV was enacted in 1994 simply gave up after running into bureaucratic resistance to the full implementation of what Congress intended through that act.

Several of the proposed amendments in S. 1715 are intended to help clarify the scope of programs that tribes can assume as a matter of right in a funding agreement, and provide tribes with more leverage during the negotiation process.

Let me talk a little bit about the title IV amendments. The amendments advance several very important purposes. First, over 95 percent of the bill's provisions are intended to ensure consistency between title IV and title V, the permanent self-governance authority within the Department of Health and Human Services enacted in 2000. Enactment of those provisions are critical to ensure that tribes participating in both self-governance programs have access to the same advantages and rights as they manage programs and funds that govern tribes' rights to assume non-BIA programs. The existing title IV provisions delegate to the Secretary almost complete discretion to negotiate non-BIA programs into self-governance agreements, and provides little by way of process or substantive rights that a tribe can utilize if it does not agree with the exercise of discretion.

S. 1715 contains several important provisions that will help address some of the problems CATG encountered as it sought to assume functions from Fish and Wildlife Service. For example, a provision that Assistant Secretary Anderson discussed, Section 405(B)(1)(b), amends title IV to make clear that tribes have the right to administer any program from non-BIA agencies in which Indian tribes are the primary or significant beneficiaries.

This language is important. It is language that will ensure that non-BIA agencies will not decline to include a particular program in a funding agreement simply because non-Indians might incidentally benefit from the program. If tribes are the primary beneficiaries of a particular program, CATG believes that it should as a matter of right have a right to take over that program within the confines of the self-governance legislation and manage that program.

This provision, coupled with the new section 407 of the bill that creates important and needed procedures that must be followed whenever a tribe and the Secretary cannot agree on terms included in an agreement, will go a long way toward clarifying tribes' rights to assume non-BIA programs and give tribes more leverage in the negotiation process over these programs.

Finally, the bill includes several provisions that seek to address BIA's specific problems such as construction programs and projects,

reassumption standards and trust-related functions, some of which we discussed earlier in the context of Mr. Anderson's testimony. Many of these provisions are very similar to comparable provisions in title V, but were redrafted and included in S. 1715 to focus on BIA-specific issues. I agree that we still have some room to negotiate over many of those provisions with the Department and I am hopeful, as Mr. Anderson indicated, that we will be able to achieve some kind of a resolution over most of the areas of disagreement at some time over the upcoming months.

In conclusion, CATG very much supports the enactment of all the provision in S. 1715 as it is presently drafted. Self-governance has given tribes the flexibility to achieve goals in a way that is most meaningful for the people most affected. Further, improvement in the self-governance program within the Department of the Interior can provide not only benefits for the land, its resources and the people who use and enjoy them, as envisioned by Congress when it first enacted title IV, but most particularly give more opportunities to tribes in the future to continue improving the service delivery to the local people.

Thank you for the opportunity to testify today. I will be pleased to answer any questions that you may have.

[Prepared statement of Ben Stevens, as presented by Mr. Strommer, appears in appendix.]

The CHAIRMAN. Thank you. I have several before I go on to Mr. Baker-Shenk. You brought up a very important point, I think. We pass legislation here and it is signed into law, but that is not the end of it. Then it has to be implemented by agencies. That is done through the rulemaking authority, as you know. Unfortunately, sometimes agencies by the time they get done with the rules, it just flies in the face of the intent of the darn bill when we passed it.

We have seen tribes come in after rules have been implemented for laws we passed, and said that it does exactly different; something else from what the had wanted or what we had wanted. That is the unfortunate thing that sometimes tribes simply give up, as you mentioned, or sometimes there is not enough communication between the agencies and the tribes, so the tribes know what they can avail themselves to in the first place. So there are a lot of weaknesses when you have a government as clumsy and big as we have. The intent of the bills when they get out of this committee, I can tell you, is to try to help Indian people.

Now we go to Mr. Baker-Shenk.

STATEMENT OF PHIL BAKER-SHENK, ESQUIRE, HOLLAND AND KNIGHT LLP, WASHINGTON, DC

Mr. BAKER-SHENK. Thank you, Mr. Chairman. I am with the law firm of Holland and Knight. We also represent a number of tribes and tribal organizations around the country.

I am pleased and honored today to testify in support of S. 1715. Geoff, I and others have been working a long time with some tribal leaders to get this bill to the shape it is in.

I plan today to give a brief overview of the basis for self-governance as a matter of policy and philosophy, and the rationale for the amendments in this bill. At the end of my written testimony, there

is a brief section-by-section on the bill, all of which I would appreciate being included in the record.

The CHAIRMAN. It will be in the record.

Mr. BAKER-SHENK. As well, if I may, a letter from the chairman of the Jamestown-S'Klallam Tribe, Ron Allen who is seated here, to the Assistant Secretary Aurene Martin which supplements and seeks on behalf of the tribes an additional provision be added.

The CHAIRMAN. Okay, Mr. Allen's letter will also be included in the record.

[Referenced document appears in appendix.]

Mr. BAKER-SHENK. Thank you.

Mr. Chairman, a few words first on my personal experience with this issue of tribal self-governance. For the past quarter century, I have had the personal privilege to be working with tribal and Federal officials on these and related issues. I have served several tours of duty here on this committee staff and worked as a legal advocate for tribal governments. In all those years that have been given to me, the most important and personally rewarding issue has been this issue of tribal self-governance; that of shaping and expanding the authority that tribes are given back by the United States to run their own affairs.

The mission of this movement, if you will, of self-governance is to transform a dependency-ridden and a services delivery system run by the federal government, into a government-to-government relationship that returns power, accountability, responsibility and flexibility, along with funding, to tribal governments.

In leading these efforts to authorize and expand tribal self-governance, you, Mr. Chairman, and some of your colleagues on this committee and others have believed that if given the chance, tribal governments would indeed administer the programs for their people in a competent, accountable and efficient manner. You put some of your reputation on the line in that belief, and I dare say that none of the self-governance tribes have disappointed you.

I have had first-hand experience advising tribes during negotiations like those mentioned earlier and the implementation of dozens of compacts and funding agreements. But the bill would permit the many other tribes who are waiting to join this an opportunity to be involved. It is also providing much, much more funding and authority that still exists at the Interior Department in making that available for transfer to tribes under self-governance.

This is precisely why early enactment of this bill is an imperative. It would remove obstacles that have been identified in the negotiations and in the implementations, differences over what was the true intent of the Congress the last time you approached this in 1994, informed by the work that Congress did in 2000. It would remove obstacles that have emerged in these negotiations that have blocked further expansion of self-governance. Thereby, it would create and encourage greater tribal participation.

The roots of tribal self-governance do run deep in American legal and political history, but summed up, perhaps President Nixon said it best when he said, "the goal is to remove Federal control, while preserving federal concern and federal support." That rejected the previous policies and practices of persecution, termination and paternalism.

This act has been amended many times by Congress, as you stated, and the intent has always been debated after enactment. But overall, the intention has been very clear, and that is to provide special and expanded authority to tribal governments. In most instances, this has also meant curbing the power and the ability of the Federal bureaucracies, the power that they have to interfere with tribal program authority.

In making these amendments, none of us should forget that this self-governance notion was born as a result of federal failure. Back in the late 1980's, investigation reports in the Phoenix newspapers showed a Federal service delivery system that had earned for itself great distrust. Congress then and Congress today had a better solution: Trust the tribes themselves to manage their own affairs.

When it comes down to it, no matter how good are the people at the top of any Department, any Administration, you will not hear this message from a departmental bureaucracy. Rather, the Department's interests will always caution against further transfer of further control to tribes. That is natural. But look at the record. Who is better worth the risk? Who is better worth it? The Federal bureaucracy or the tribes themselves?

This bill before the committee answers that question. As history has proven out in the last 12 years, the tribes are a better risk to manage their own affairs.

The rationale has always been that the best government is the government closest to the governed, and the best service delivery is done by those closest to those who are served. Tribal self-governance funds, once the money gets to the tribal government, are always spent and churned right there in the targeted Indian community, rather than in some distant urban bureaucracy or some distant research park.

When a tribal government serves its own members, there are never cross-cultural or language barriers. There is always commonsense responsiveness to changing needs. There is greater potential for maximum flexibility and efficiency right on the ground. And perhaps most important, there is direct accountability to those who are served.

Unfortunately, these lessons of tribal self-governance have, I fear, gone largely unheeded in the recent debates over trust reform. The most effective and accountable service delivery, and that includes trust services, is at the local level. The self-governance answer to all these questions is delegate the power down; delegate the authority down the ladder, not up; authority to make trust decisions and the money to do it right.

If trust is ever to be truly reformed, and you have been here watching various proposals over the years to do just that, if it will ever be accomplished, it will be because tribal trust service capacities are first rebuilt at the reservation and Native community level. That is where the decisions are made most efficiently, and it is for a simple reason, because all of the interested parties are there at the ground level.

This bill is the product of a several-year effort of tribal leaders to improve the statutory basis. The language has been reviewed and revised after countless meetings of tribal leaders, some with representatives of the Department. Much of the bill is informed by

the experience and insight gained a couple of years ago with the amendments mentioned earlier in title V applying to the Indian Health Service.

In addition to providing very necessary updates to this 1994-era title IV, the bill addresses problems with sections of the statute that govern non-BIA programs in construction. Among the key features of this bill are provisions that would facilitate more tribal participation in self-governance; that would clarify the inclusion of both BIA and Office of Special Trustee programs as they are moved about; and it would provide, as in title V, for ways for a tribe to break and impasse in negotiations so that we do not have the experience you just heard of six years bargaining with an agency for, in the end, modest in finances agreements.

It would also allow for greater inclusion of construction activities and it would streamline payment procedures. There is more detail in my written testimony. I will not bore you here with that.

I would add that there was one reference made when Assistant Secretary Anderson was here to the problems the Department has with the provision dealing with inherent federal functions. I would urge the committee to look at that in the backdrop of the larger context of departmental interests versus tribal interests in these questions.

Also, to submit for the record that from experience, there is no uniform decision within the BIA as to what is and is not an inherent Federal function. It varies from region to region. In one region, which will go unnamed, it is nearly 100 percent of everything they do, as if "inherent" means important or, if you do not respect us, it is not an inherent Federal function. "Inherent Federal function" in your bill is defined as something that cannot be legally delegated. That is a narrow subset. It is not, as mentioned earlier, what is not authorized in statute to be delegated; simply what cannot legally be delegated. There are certain things a trustee does that cannot be legally delegated. This definition says no more than that. We wanted something much more stringent. This is a backup trying to reach toward the Department.

Finally, the tribes who have actively participated in self-governance guided and shaped this, along with leaders like you, Mr. Chairman, and have urged this Congress to enact this bill in various forms for the last couple of years. They thank you for your energy and the focus that you and your able staff have given to bringing this to this near-final stage, and they urge that you do bring it to enactment as soon as possible.

I thank you for the opportunity to testify here today, and of course would be pleased to answer any questions now or later that the committee may have.

[Prepared statement of Mr. Baker-Shenk appears in appendix.]

The CHAIRMAN. Thank you, Phil. I have several questions of each of you. Thanks for talking a little bit about dependency. I do not know of an Indian person or a tribe, very frankly, that wants to be dependent on anybody. I think most of us recognize that dependency on the Federal Government hurts the work ethic, kills productivity, flies in the face of human dignity when you have to be dependent on the Federal Government.

It might be a bad analogy, but I am thinking myself of all the problems we are involved in Iraq now. Since 1945, we rebuilt at a lot of American expense three nations, Japan, South Korea, and Germany, that are totally independent; make all their own decisions; and become leading democracies themselves. We have done that since 1945. And yet, three times that long we still cannot seem to give tribal governments the kind of independence they have a right to expect. It is just amazing to me that we sort of still after all these years, the Federal Government has kept tribes tethered, if that word will fit.

Let me start with you, Phil, since you were the last to speak. Outsourcing is a relatively recent initiative. It is encouraged throughout the Federal Government by President Bush. We have heard him speak of it a number of times. Tribes have been doing that for roughly 30 years through self-governance. As we move forward expanding self-governance to include non-BIA programs, questions are raised about whether the tribes have the capacity to handle the programs. Perhaps I should have asked Assistant Secretary Anderson, but what do you think the Department of the Interior means when they talk about whether the tribe has the capacity to operate a program? Is it infrastructure or educational experience or what?

Mr. BAKER-SHENK. I think it is likely both. It is largely staff-driven. These are federal officials asking whether tribes can truly hire people who can do as good or better a job as existing federal staff have done. As I point out in written testimony, often these debates boil down to job protection or turf protection.

The CHAIRMAN. Maybe they can do a better job and may be they cannot, but the way I understand the 638 contract, if they cannot, they go back under the purview of the Bureau.

Mr. BAKER-SHENK. That is right.

The CHAIRMAN. But if we are not going to give them a chance in the first place, how are we ever going to know?

Mr. BAKER-SHENK. That is a position that many tribes have taken in negotiations and sometimes it has been persuasive. The additional point is the accountability. Even if someone is not perhaps at 100 percent performance, the incentive to get there is very strong at the local level, when you compare it to the incentive that a Federal official does in the bureaucracy to improve performance. We are still searching for ways Federal Government-wide to get performance measures and get the Federal force to produce to measures that we set.

So here moving it to an accountability structure right by the governed and served is, I think, the better course for getting higher performance levels and building capacity more quickly.

The CHAIRMAN. Do outside groups have a legitimate role in the 638 process? And should their non-Indian interests be involved in the 638 process?

Mr. BAKER-SHENK. Those outside interests in the case of more non-BIA programs that have been mentioned earlier certainly have a stake. These are federally supported programs. But if you look narrowly at the bill before the committee or if they would look at the bill before the committee, they will see that it is very narrowly

drawn, to only those programs that are of primary or significant benefit to Indians.

If there is a more incidental benefit to non-tribal interests, those certainly can be taken into account. The Federal Government will be taking those into account. But the examples, Mr. Chairman, we have come so little way for so long that we are still dealing with battlegrounds over bison ranges within a reservation. We are still dealing with interests well within the homelands of tribes where very few other people have much interface, and we still cannot get significant agreements even in those areas.

The CHAIRMAN. Let me ask you this, when the Federal Government enters the equivalent of a 638 contract with a state, let's say, do you know how often the states take into consideration Indian concerns before they implement it?

Mr. BAKER-SHENK. I like the premise behind the question. The States will be concerned if there are voices raised within their borders, just like tribes as good governments are always concerned about their neighborly relations. If they have neighbors living within their lands or without but nearby, more and more tribes are opening up a hearing, information and resource mechanisms. Those are part of many of the tribes, particularly the self-governance tribes who have made so much of this existing authority. It is just good government, self-interested good government.

The CHAIRMAN. And that dialogue is working, too, and tribes do that of their own volition, too, generally.

Mr. BAKER-SHENK. I would add, Mr. Chairman, my guess is that if you asked those interested parties whether they feel that they have a voice with the Federal Government today under the status quo, they may feel they have a better voice and better hearing before their local governments like tribal governments than they do with the distant Federal Government.

The CHAIRMAN. We have heard from two witnesses now, and I will get back to them in 1 minute, that experienced a great deal of difficulty in reaching agreement on contracts with a non-BIA program. In fact, it appears that both had several proposals rejected or had to trim down their proposals considerably before they were approved. This bill somewhat limits the grounds for rejection and requires the Secretary to show validity of a rejection. Can you just briefly describe the current process of denial for a non-BIA contract proposal by the Secretary?

Mr. BAKER-SHENK. Yes; it is different between contract proposals now, given some reforms in title I, and what is the law in title IV unamended by this bill. That is why this amendment is so necessary. It would have permitted the tribes represented earlier to at some point much earlier in the 6-year process or even longer with respect to Flathead, I believe, to have said, enough is enough; this is our final offer; and any declination needs to fit the narrow statutory reasons that are really mirrored on what a contracting tribe can impose under title I. It would provide an end point, a fair appealable end point to otherwise protracted negotiations.

Let me say one thing. I do not represent the Council of Athabascan, but I am led to believe that the wonderful, far-reaching, forward-moving agreement that was recently signed, at the end of the day really amounted to just about $60,000 in value.

While money is not the only way to value agreements between governments, it is one way to measure it. Six years for $60,000, you know, some would say, well, it is very important to get a foot in the door, and I would be the first to say the first has to get in the door; you have to start somewhere; a long journey begins with a small step. But I tell you, that foot is the foot of a centipede, not big foot. That is a very small foot in the door, and we need this kind of statute to permit tribes to reasonably advance self-governance authorities to other bureaus than the BIA.

The CHAIRMAN. And maybe the last question or two. Chairman Matt told us in his testimony that his tribe had been negotiating with a regional office of the Fish and Wildlife Service. Is that the normal process, or do they normally talk to a central office when they are negotiating a contract or a compact?

Mr. BAKER-SHENK. The departments in various administrations have delegated that authority to the regional administrators of the various bureaus. In the end, I believe it comes to headquarters, to central, but much of the negotiation, and so Mr. Chairman, with all due respect, you do have a non-uniform command and control problem. Some areas or regions are resistant completely; others are willing to talk and strike a negotiation stance that is reasonable.

The CHAIRMAN. Thank you.

Mr. Strommer, if I could go to you. You said the Council of Athabascan Tribal Governments has 10 tribes. Did I understand that?

Mr. STROMMER. That is correct.

The CHAIRMAN. How many villages does that represent?

Mr. STROMMER. Ten villages.

The CHAIRMAN. Ten villages.

Mr. STROMMER. Each village is a tribe.

The CHAIRMAN. Okay. And you also testified that your client had two 638 contract proposals denied by Fish and Wildlife before finally reaching an agreement. As I understand, you just said about two weeks ago they reached an agreement?

Mr. STROMMER. That is correct.

The CHAIRMAN. What were the reasons given for the denials in all this time you have been negotiating with them?

Mr. STROMMER. Really, the scope of what the Council of Athabascan Tribal Governments was proposing to take over. One of the first proposals was submitted under title I of the act, so not under the self-governance authorities. That proposal was rejected outright by the Department on the basis that none of the programs that the Department operated within the Yukon Flats Wildlife National Refuge were programs that benefitted Indian exclusively. They took a very narrow reading of the scope of contractibility.

The CHAIRMAN. They were afraid you would take over. "We cannot let you do that; you might determine your own future," that sort of thing.

Mr. STROMMER. The Council then resubmitted proposals that were subsequently tailored down several times. Up until the breakthrough that came about 6 months ago, the Department, frankly, was very resistant in sitting down across the table to have a meaningful discussion over the scope of the programs that the Department was willing to transfer over.

The CHAIRMAN. The differences between the original proposals and the final agreement with the Service, did it diminish what your tribal governments had planned?

Mr. STROMMER. Rather dramatically.

The CHAIRMAN. Quite dramatically.

Mr. STROMMER. Rather dramatically.

The CHAIRMAN. As I understand it, the contract agreed to on April 30 does not involve a significant amount of funding. This gets a little bit to what Mr. Baker-Shenk said. Is that true?

Mr. STROMMER. Close to $60,000.

The CHAIRMAN. $60,000.

Mr. STROMMER. And it is not money that is actually coming out of the refuge budget. It is coming out of other pots of money that the Department has. So the Department has not actually transferred over any funds directly out of the refuge budget. That budget is going to remain intact.

The CHAIRMAN. I wonder how much it cost them to go through 6 years of negotiating, as opposed to the $60,000. Talk about efficient use of Federal money. How much program funding did the Service retain for administrative purposes or overhead or whatever?

Mr. STROMMER. I cannot quote a figure as I sit here, but I certainly can provide the information.

The CHAIRMAN. Would you provide that? I would be interested if know if that was more than the $60,000.

Mr. STROMMER. It is significantly more.

The CHAIRMAN. Significantly more.

Mr. STROMMER. I will provide it to you.

The CHAIRMAN. Please do.

Did the Council have any opposition from outside groups in its efforts to reach an agreement with the Service.

Mr. STROMMER. It did. In the last 6 months, the notice of the agreement that was negotiated between the Fish and Wildlife Service and the Council was published in two newspapers, one in Fairbanks and one in Anchorage. Public hearings were held. At the end of the comment period, approximately 170 comments were submitted.

The CHAIRMAN. What were some of the objections?

Mr. STROMMER. Transferring anything to Indian tribes.

The CHAIRMAN. "Oh, we cannot let them do that." Right.

Mr. STROMMER. It was one large category. There were people who had genuine concerns associated with environmental issues and questioned the scope of the agreement, the scope of the Council's authority, what role the United States would continue to play in the management of the Refuge.

But there were also some very supportive comments submitted by conservation and environmental organizations, as well as other tribes and tribal organizations. But by far the bulk of the comments that were submitted were in opposition to the agreement.

The CHAIRMAN. Thank you.

Mr. STROMMER. I should say, if I can add one comment.

The CHAIRMAN. Yes.

Mr. STROMMER. After all the comments came in, the Council sat down with Fish and Wildlife Service and negotiated amendments

to the agreement that reflected some of the more important issues that Fish and Wildlife felt that it needed to address as a result of the comments. So the end agreement did take into account the comments that were submitted, and there were a number of changes that were made to try to address them and address the issues adequately.

The CHAIRMAN. Thank you for your testimony and your answers.

Chairman Matt, you have indicated that your tribe was one of the original 10 self-governance tribes. You have been operating the programs for a good number of years, and as I understand it you have the reputation for operating those programs very successfully. What do you attribute that success to in operating the programs? Why are some tribes still hesitant to embrace the Self-Determination Act of contracting and self-governance compacting? Just a fear of eroding the trust responsibility?

Mr. MATT. I am not really sure, but in our case the flexibility of self-governance that allows the tribes to operate a program is one of the reasons that makes us successful. Another thing that I can think of is having a stable tribal government, and then something that was touched on a little bit, having the professional and adequate staff to manage these programs that we take over.

But thinking about why other tribes are reluctant to take over and manage some of these programs, I simply do not understand it. I try to think about Indian country overall, some of the tribes I know not only in Montana, but throughout the Midwest, and I was trying to think about why would they be reluctant. Maybe it is the fear of the unknown and the fact that maybe their tribal governments feel they are not as stable, and maybe they do not have the capabilities or the professional staff like we do to manage the programs.

The CHAIRMAN. After 10 years of negotiating with the Fish and Wildlife Service for the National Bison Range, you are close to an agreement. First of all, how close are you to getting the agreement? Where do the negotiations stand now?

Mr. MATT. We are far away, and we are really close. This afternoon we have some meetings lined up and we will know a little more.

The CHAIRMAN. Do you think in your experience that there might be some kind of a model in there that we can improve Title IV to make sure other tribes do not have to also engage in a 10-year process to assume management of eligible non- bureau programs located in Interior?

Mr. MATT. I would hope that we would be able to develop a model of some sort to lessen the frustration and the time frame that we went through. But it is really interesting to sit here and listen to what the Athabascan Tribal Government went through because the similarities are the same.

The CHAIRMAN. After 10 years, were you inclined to give up a couple of times?

Mr. MATT. You know, it has been a frustrating process. I think that one of the things that became apparent to me is it is not that we can't do it; I think there is a fear that we can.

The CHAIRMAN. Yes; I am sure you experienced some opposition as Indians do with anything when they try to move ahead. What

was some of the flavor of the opposition when you were talking about a National Bison Range?

Mr. MATT. I have said it in the past, when it comes to Flathead, Salish-Kootenai and our reservation, it seems like there is a vocal minority almost at every juncture that the tribe has taken to be more self-determined, take over programs such as Mission Valley Power; when we negotiated with the state on a hunting and fishing agreement so that non-Indians would be able to hunt and fish on the reservation, this minority of folks will come out of the woodwork and they are very effective at coming back here and then through the local media generate some opposition that was maybe similar in Alaska, too.

The CHAIRMAN. But you run the Mission Valley Power facility now. Doesn't everybody benefit from that, Indian and non–Indian alike?

Mr. MATT. Yes; as I mentioned in my testimony, there are over 22,000 customers and it is one of the better run utilities in northwestern Montana.

The CHAIRMAN. And many of them are non-Indian.

Mr. MATT. It has gotten many recognitions for how the tribe has managed that utility.

The CHAIRMAN. When you were negotiating the National Bison Range, did you get any opposition from rancher groups worried about brucellosis, as an example?

Mr. MATT. I cannot think of too many specifically, but I am sure that would be an obvious concern throughout Montana because it does get rancher folks worried about it. It is a totally different environment on the National Bison Range. They are totally confined within 25,000 acres and they are managed very well.

The CHAIRMAN. I appreciate it. I will follow up with a few written questions, as I am sure some of the members may do too. I am hoping that perhaps we can bring this bill back before we adjourn for consideration. We only have about 58 more working days this Congress before they adjourn in October. Frankly, we are not sure what we are going to be able to get through from this committee, but this is a really high priority for me and I know it is for Senator Inouye, too.

With your help and with some ongoing dialog with Interior, hopefully we will be able to get something out that will be of lasting benefit to tribal groups.

Thank you very much for appearing here today. We will keep the record open for 2 weeks for any additional comments that you would like to make, or anybody that is in the hearing room today.

Thank you, and this hearing is adjourned.

[Whereupon, at 11:15 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DAVID W. ANDERSON, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Good morning, Mr. Chairman, Mr. Vice Chairman, and members of the committee. I am pleased to be here today to provide the Administration's position on S. 1715, a bill to amend Title IV of the Indian Self-Determination and Education Assistance Act.

In 1988, Congress amended the Indian Self-Determination and Education Assistance Act [the act] by adding title III, which authorized the Self-Governance demonstration project. in 1994, Congress again amended the act by adding title IV, establishing a program within the Department of the Interior to be known as Tribal Self-Governance. The addition of title IV made Self-Governance a permanent option for tribes. These amendments authorized federally recognized tribes to negotiate funding agreements with the Department of the Interior [Department] for programs, services, functions or activities administered by the Bureau of Indian Affairs [BIA] and, within certain parameters, authorized such funding agreements with other bureaus of the Department. In the year 2000, the act was amended again to include titles V and VI, making Self-Governance a permanent option for tribes to negotiate compacts with the Indian Health Service [IHS] within the Department of Health and Human Services and providing for a now-completed study to determine the feasibility of conducting a Self-Governance Demonstration Project in other programs of that Department.

In 1990, the first seven funding agreements were negotiated for about $27 million in total funding. For fiscal year 2004, there are 83 agreements that include 227 federally recognized tribes and about $300 million in total funding. Some of these agreements are with tribal consortia, which account for the number of such tribes exceeding the number of agreements. These funding agreements allow federally recognized tribes to provide a wide range of programs and services to their members such as law enforcement, scholarships, welfare assistance, and housing repairs just to mention a few. Many of the funding agreements include trust related programs such as real estate services, appraisals, probates and natural resource programs such as forestry, fisheries, and agriculture. What makes these funding agreements unique is that title IV allows tribal governments to re-design programs and set their own priorities consistent with Federal laws and regulations. This authority allows tribal leaders the ability to respond to the unique needs of their tribal members without seeking approval by Departmental officials.

Many tribes have been successful implementing Self-governance programs to meet their tribal needs. For example, the Salt River Pima-Maricopa Indian Community was able to accomplish the following in 2002: 1) delivered welfare assistance and child welfare services to 676 cases including placing 19 children in Indian homes, 29 children into non-Indian homes and reunifying 12 families, 2) provided scholarships and educational counseling to 42 tribal members, 3) responded to 772 Part I offenses including 3 homicides and 97 burglaries and 187 motor vehicle thefts and 3,395 other offenses including assaults, DUI's, runaways and domestic violence, 4)

maintained 131 miles of roads, processed, and 5) prepared 5 probate cases; and submitting 30 conveyances to the BIA to be approved and recorded. This example is just one of many where tribes have been successful in directly administering Federal programs.

In addition, title IV authorizes funding agreements throughout all bureaus within the Department of the Interior. On April 30, 2004, the Secretary signed an agreement between the Council of Athabascan Tribal Governments [Council] and the Fish and Wildlife Service [Service] that will enable the Council to perform certain functions previously provided by the Service on the Yukon Flats National Wildlife Refuge in Alaska during fiscal year 2004–05. This agreement was the first of its kind between the Service and a federally recognized Indian organization. In addition, in fiscal year 2004–05 there will be four tribal funding agreements with the Bureau of Reclamation and four tribal funding agreements with the National Park Service.

The Department has concerns with this bill, S. 1715, and we would like to work with the committee to ensure that this legislation does not adversely impact our ability to meet our trust responsibilities. In particular, the Department is concerned with subsection 409(l), which would permit a tribe to cease performance if it appears the expenditure of funds is in excess of the amount of funds transferred under a compact or funding agreement. If the Secretary does not increase the amount of funds transferred under the funding agreement, a tribe would be permitted to suspend performance of the activity until such time as additional funds are transferred. We have concerns about the impact this provision may have, especially on fiduciary trust functions. Under this provision, if a tribe contracts with the Department to administer IIM accounts and then decides there is not enough money to administer the accounts, the tribe could simply stop making IIM distributions to IIM account holders. It is imperative that a tribe perform any fiduciary function it contracts or compacts for regardless of the level of funding. The tribe should return the function to the Department to administer if they believe that the funding level is inadequate rather than have their members suffer if the tribe decides not to perform.

In addition, Section 405(b)(1)(B) also broadens application of funding agreements to authorize tribes to contract for all programs to which Indian tribes or Indians are primary or significant beneficiaries. Current law allows federally recognized tribes to assume programs administered by the Department's bureaus and offices other than the BIA subject to negotiations and as long as the programs are available to Indian tribes or Indians. We would recommend that section 405(b)(1)(B) be made discretionary and subject to the terms of the agreement for programs which Indian tribes or Indians are the primary or significant beneficiaries.

Finally, the Department is concerned with the reassumption provision contained in section 407. The provision would require that imminent jeopardy, substantial jeopardy, and irreparable harm be met simultaneously in order for the Secretary to reassume a program. This is a very high standard to achieve. Having to prove all three conditions practically eliminates the ability of the Secretary to quickly reassume a program in those rare instances where such an immediate reassumption may be necessary, such as instances where serious injury or harm may occur. The Department would recommend that the reassumption standard contained in the current title IV be retained.

While we believe that S. 1715 is moving in the right direction to expand Self-Governance, we cannot support the legislation at this time, especially given the current high priority for trust reform and the impact this legislation would potentially have to that critical program. We would like to work with the committee and the tribes in developing alternative language to address our concerns.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions you may have.

U.S. DEPARTMENT OF THE INTERIOR OFFICE OF THE SECRETARY
Washington, DC.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairmam, Committee on Indian Affairs
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide the responses to the questions submitted following the May 12, 2004 hearing held by your committee on S. 1715, the "Department of the Interior Tribal Self-Governance Act of 2003."

Sincerely,

JANE LYDER, *Legislative Counsel, Office of Congressional and Legislative Affairs.*

1. The Administration's testimony indicates that it fears Self-Governance tribes will stop performing contracts if they don't receive "enough" funding under the agreements they negotiate with the Department. I must say that I find somewhat curious these concerns about tribes refusing to perform contracts because of insufficient funding.

Over the years we have had dozens of tribes appear before this committee complaining that they have been forced to perform 638 contracts with inadequate funding—particularly when it comes to Contract Support Costs.

Question 1A: If a tribe ceases to perform under a 638 contract, doesn't the Department have the authority to step in and take over the program or services?

Answer: Yes; the Department does have the authority to reassume a tribal contract under section 109 of the Indian Self-Determination and Education Assistance Act of 1975, as amended. However, under S. 1715, subsection 409(l), a tribe would be permitted to suspend performance of the activity they have compacted or contracted until such time additional funds are transferred. It is imperative that a tribe perform any fiduciary function it contracts or compacts for. The tribe, should return the function to the Department to administer if they believe that the funding level is inadequate rather than have their members receive inadequate service if the tribe decides not to perform.

Currently, the Department has two recourses for reassuming a tribal contract: Emergency and non-emergency reassumption. An emergency reassumption occurs if a tribe fails to fulfill the requirements of the contract and this failure poses an immediate threat or imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.

A non-emergency reassumption occurs if there has been a violation of rights or endangerment of health, safety, or welfare of any person or gross mismanagement in the handling of contract funds, trust funds, or interest in trust lands under the contract. Tribes have the right to appeal the emergency or non-emergency reassumption.

Question 1B: Isn't it part of the negotiation process for a tribe and the agency to negotiate and arrive at some agreement on what constitutes "sufficient" funding under any given contract, compact, or funding agreement?

Answer: "Sufficient funding" is not the criterion used in determining the amount included in a Public Law 93–638 contract or Self-Governance funding agreement. The criteria used for determining the amount in a funding agreement is contained in section 106(a)(1) of the act which states, in part "...the amount of funds provided under the terms of a self-determination contract entered into pursuant to this act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract,..."

Question 1C: How many times has a tribal contractor ceased performing its responsibilities without warning to the Department?

Answer: To our knowledge, no tribe has ceased performing its responsibilities under a Self-Determination Contract without warning. Contracting tribes do have the right to retrocede a program, service, function or activity as provided by Subpart

P, Section 900.241 of the Code of Federal Regulations, but must inform the Department to do so.

2. In its comments on S. 1715, the BIA indicates that it wants non-BIA program contracting to be "discretionary" and you also note a concern with broadening the application of Self-Governance to include non-BIA programs unless the contracts are "discretionary"' for the Secretary.

Question 2A: If that change were made, wouldn't we actually be narrowing, rather than expanding, Self-Governance?

Answer: No; self-governance would not be narrowed. Non-BIA Bureaus will continue to have the same existing authority to enter into agreements with tribes. We believe that it is better to negotiate non-BIA Bureau programs that are not for the benefit of Indians because of their status as Indians on a case-by-case basis where both parties, the tribe and the non-BIA Bureaus, have the ability to consider all interests.

Question 2B: Under the current law, it has taken several tribes years to obtain agreements on contracting non-BIA programs. If it became discretionary, can we really expect that it would become easier for tribes to obtain those contracts?

Answer: While the timeframes for some non-BIA Self-Governance negotiations have been long, one of the reasons is the difficulty in accommodating the interests of other affected parties. The Department believes that such agreements should remain discretionary so that all affected interests can be accommodated.

3. The BIA is also concerned that the reassumption standards that the Department must meet before reassuming responsibility for a contract or compact are too high. You also mention that the reassumption standard in section 407 of S. 1715 is too high.

Question 3: How would the standard for reassumption contained in S. 1715 interfere with or prevent the execution of the Department's trust responsibility?

Answer: The immediate reassumption by the Secretary, as contemplated by the preamended version of S. 1715, would have set too high a standard. Section 407(b)(3) would have required that three conditions (1) imminent jeopardy, (2) substantial jeopardy, and (3) irreparable harm be met simultaneously. This standard practically eliminated the ability of the Secretary to quickly reassume a program, in those rare instances, where such an immediate reassumption may be necessary. This section also stated that imminent jeopardy would arise out of the failure to carry out the compact agreement. Since funding agreements are not specific in terms of scope of work, this would be difficult, if not impossible, to argue, We are pleased S. 1715 was amended to retain the reassumption standard contained in the current title IV.

4. The Department evidently cannot support S. 1715 because of what your testimony says is the "high priority" for trust reform. Trust reform is a top priority for the Department, the tribes, and this committee, but If I understand your testimony, the Department cannot support this bill because it will somehow interfere with trust reform.

Question 4A: What specifically, either in S. 1715 or in a general trust modest expansion of Self-Governance within the Department will cause problems for the trust reform efforts now underway?

Answer: We believe by including the definitions of "tribal share" and "inherently Federal function" in the bill, that trust reform will significantly be impeded. The bill defines a tribal share as ". . an Indian tribe's portion of all funds and resources that support secretarial included programs that are not required by the Secretary for the performance of inherent Federal functions." "Inherent Federal function" is defined as ". . a Federal function that cannot legally be delegated to an Indian tribe." This is of particular concern since Section 405(b)(1), of S. 1715, treats the Office of the Special Trustee the same as the Bureau of Indian Affairs.

These definitions offer no statutory parameters to support the Secretary's identification of functions that the Federal trustee must retain. We are concerned that the broad definitions pave the way for challenges to the Secretary's authority to reserve trustee functions and to retain funds to meet her trust responsibility.

Resolving such challenges would require time-consuming negotiation, litigation, or legislation that could hinder the pace of trust reform. For, with every challenge, the Secretary would be required to show that a trustee function cannot "legally be delegated to an Indian Tribe." In today's trust reform environment, such delays would be untenable.

Question 4B: I believe Self-Governance—and the negotiating process between the tribes and the Department in terms of standards of performance, resources management and the like—is part and parcel "trust reform" because it is changing the face of the Department and what the Department is called on to do in Indian communities. Do you agree that Self-Governance holds the key to large-scale reform of the Department in the years to come?

Answer: A goal and objective of the Department's Comprehensive Trust Management Plan is to promote "Self-Governance and Self-Determination." The Department is committed to providing trust services to Indian country more efficiently and effectively than in the past. Some, of these trust services will be provided by tribes or tribal consortia under compacts and Public Law 93–638 contracts, and other trust services will be provided by the Bureau of Indian Affairs and by the Office of the Special Trustee. Tribal governments have been and will continue to be an integral part of the Department's plans for the delivery of trust services.

5. Your testimony notes that in 2004–05 there will be 8 new Annual Funding Agreements signed: Four with the Bureau of Reclamation, and four with the National Park Service.

Question 5: Can you give more details about these agreements in terms of the activities to be covered by the agreements, the amount of the agreements, how long they took to negotiate, and when in 2004–05 they will be finalized?

Answer: In fiscal year 2004, four agreements were negotiated by the, National Park Service [NPS] as follows:

- An annual funding agreement was negotiated and entered into with the Grand Portage Band of Chippewa Indians [Band]. NPS provided $219,000 for the Band to perform the entire maintenance program at Grand Portage National Monument. The agreement also includes $88,000 for additional projects including fire suppression system excavation, fire hydrant replacement, and a handicap accessible pathway project.
- An annual funding agreement was negotiated and entered into with the Yurok Tribe. NPS provided $120,000 for the tribe to perform an archaeological investigation and a historic resources study for the relocation of the park maintenance facility from Requa to Aubell; $5,000 for the tribe to produce an ethnographic overview; and $7,000 for the tribe to perform an archaeological investigation of Alder Camp Road in Redwood National and State Parks.
- An annual funding agreement was negotiated and entered into with the Lower Elwha Tribal Community. NPS provided $218,977 for the Lower Elwha Tribal Community to perform activities in relation to the restoration with the Elwha River Ecosystem and Fisheries Restoration Act of 1992 [Pub. L. 102–495].
- An annual funding agreement was negotiated and entered into with the Tanana Chiefs Conference, Inc. The NPS provided $2,177,300 to the Conference for the design and construction of the Morris Thompson Cultural Center.

While it is difficult to estimate or generalize the amount of time needed to negotiate an annual funding agreement, NPS has found that once an initial agreement has been negotiated and entered into, it is substantially less time consuming to amend or to extend it for another year. For example, the initial agreement between the Grand Portage National Monument and the Grand Portage Band took months to negotiate, but once it was in place, subsequent negotiations took only weeks. At Olympic National Park, the agreement that began in fiscal year 2002 took approximately 150 person hours by the NPS and Solicitor's Office to negotiate. However, by fiscal year 2004, an annual funding agreement took only about 30 person hours to negotiate. Once the initial agreement was in place at Redwood National and State Parks, negotiating the next two agreements took approximately 80 person hours each.

In fiscal year 2004, the Bureau of Reclamation had or will have the following four Self-Governance annual funding agreements signed:

- The Gila River Indian Community received $12,814,000 to plan, conduct, consolidate, and administer Reclamation's Gila River Indian Community—Indian Distribution System and to perform all functions and activities associated with the Operation and Maintenance of the Central Arizona Project Repository Project and curation of the Phoenix Area Office Archaeological Collection. The annual funding agreement took approximately 6 weeks to negotiate and became effective on October 8, 2003.
- The Karuk Tribe will receive $51,000 to continue to conduct data collection and analysis needed to assist in the restoration of fish and wildlife population with the Klamath River basin. The annual funding agreement took approximately 2 weeks to negotiate and is currently before Congress for the required 90 day review. It will become effective on August 10, 2004.
- The Yurok Tribe will receive $741,153 to continue to conduct data collection and analysis needed for the purpose of assisting in the achievement of long-term fish and wildlife restoration goals in the Trinity and Klamath basins. The annual funding agreement took approximately 1 month to negotiate and is currently before Congress for the required 90-day review. It will become effective on August 10, 2004.
- The Duckwater Shoshone Tribe of Nevada will receive $50,000 to conduct data collection and analysis needed to assess the water resources of the tribe and their 3,800-acre reservation located in central Nevada. The AFA took approximately 2 weeks to negotiate and is in the process of being sent to the Congress for the required 90 day review. It is anticipated that the AFA will become effective in September, 2004.

6. We heard testimony from the Council of Athabascan Tribal Governments [CATG] and the Confederated Salish and Kootenai Tribes regarding the lengthy negotiations—6 and 10 years, respectively—before the agreements were consummated. Not only are these extremely long periods of negotiation but for the CATG agreement, for example, which is for $60,000, I am curious what amount of staff hours and costs were involved in the negotiations.

Question 6A: Please provide the committee with figures for the total cost of negotiation to the Department in dollar and man-hour terms.

Answer: The Department received the formal proposal that led to the U.S. Fish and Wildlife Service's [Service] annual funding agreement with the Council of Athabascan Tribal Governments [CATG] on June 16, 2003, approximately 10 months before the agreement was signed. We estimate the direct costs [travel, newspaper advertisements, transcription costs, et cetera] to be about $10,000.

In terms of staff time devoted to the agreement, the development of the tentative annual funding agreement required approximately 30 percent of the Refuge Manager's time over the 10-month negotiation period, 30 percent of the Refuge Supervisor's time, and much smaller percentages of several other employees' time. There was also a considerable amount of effort put into this project by the Department's Solicitor's Office. We would expect these costs and time commitments to go down significantly for any successor agreements with CATO.

Regarding the length of time for the negotiations, as stated above, this agreement took approximately 10 months to negotiate and sign. The Service had received two previous proposals from CATG to perform some or all of the "programs, functions, services, and activities" at the Yukon Flats National Wildlife Refuge; the first on November 25, 1998, and the second on November 5, 2001. Both of these requests were declined. In the first instance, CATO proposed to take over programs, functions, services and activities under title I of the Indian Self-Determination and Education Assistance Act [ISDEAA], which does not apply to the programs of the National Wildlife Refuge System and CATO had not yet been qualified by the Office of Self-Governance as a self-governance tribe. The Service suggested CATO contact the Service when they were qualified. In 2002, we declined their second proposal under title IV within the 10 day period prescribed by regulation, following a July 2002 "pre-negotiation" meeting. The primary reason CATG's proposal was declined in the second instance was because CATG had proposed to take over most programs, functions, services, and activities at the refuge. CATG appealed to the Director, saying they would scale back their request. The Director upheld the Regional Director's decision, which was [and had to be] based on the CATG's position in the pre-negotiation meeting, but urged them to proceed with a more limited request.

Question 6B:. Can you also provide for the committee from the CATG and the Salish and Kootenai Tribes agreements with the Fish and Wildlife Service breakdowns of what the tribes are to receive for funding, where that funding comes from, and what percentage of the budget that funding represents for the specific parks subject to the agreements?

Answer: The agreement with the Council of Athabascan Tribal Governments [CATG] does not involve National Parks.

At the Yukon Flats National Wildlife Refuge [NWR], managed by the Service, CATG will receive: (1) $13,000 to assist in educating local residents about Federal easements established by section 17(b) of the Alaska Native Claims Settlement Act and to help locate, map, and sign some of these easements; (2) $10,000 to assist with Refuge environmental education and outreach programs in the Yukon Flats villages; (3) $18,000 to collect subsistence harvest information on moose, bears, wolves, and furbearers, including the month of harvest and geographic location; (4) $13,000 to assist in inventorying the moose population in the eastern Yukon Flats, and (5) $5,000 to provide maintenance of Government facilities and equipment in Fort Yukon.

The Yukon Flats NWR budget for fiscal year 2004 is $1,770,000. The $59,000 that CATG will receive in the annual funding agreement is about 3.4 percent of the Refuge's budget.

A funding agreement between the Service and the Confederated Salish and Kootnai Tribes for functions and programs at the National Bison Range has been negotiated and is currently under public review.

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TESTIMONY OF PHILIP BAKER-SHENK

ON TRIBAL SELF-GOVERNANCE (INTERIOR) AND S. 1715

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

MAY 12, 2004 HEARING

I. HISTORY & BACKGROUND

Introduction. Good morning! My name is Philip Baker-Shenk. I am an attorney and partner in the Washington, D.C. offices of Holland & Knight LLP, a large law firm representing various Indian tribes and tribal organizations throughout Indian Country.

I thank you for the great personal honor it is to appear before you today in support of S. 1715. With this testimony I will attempt to address the philosophical and historical backdrop of tribal self-governance and discuss the rationale for the amendments proposed in S. 1715. At the end of this testimony is a brief section-by-section analysis of S. 1715.

Background. I have had the honor of working in the diverse field of federal Indian affairs since 1976, including several tours of duty on the staff of this Committee. In the late 1980s I, alongside Paul Alexander and the late Joe Tallakson, had the privilege of assisting many tribal leaders in giving shape to what became the federal Indian policy of tribal self-governance. Congressmen Mo Udall, Sid Yates and Ben Nighthorse Campbell, and Senators Dan Evans, John McCain, and Dan Inouye, among others, gave great leadership to this cause. The mission was to transform the historically dependency-ridden federal Indian services delivery system into a government-to-government relationship that would return power, authority, responsibility, accountability and funding to tribal governments at the local level.

Since then, I have had the good fortune to assist tribal clients in the negotiation of dozens of compacts and annual funding agreements from those first negotiated in 1991 to one negotiated just three weeks ago. Watching tribal leaders develop this initiative from the ground up has been one of my greatest professional joys. And the story remains unfinished -- I firmly believe the experience of tribal self-governance has much more to offer the field of federal-Indian relations.

Interior Self-Governance In a Nutshell. As of FY 2004, the Department of the Interior has entered into compacts with 227 tribes under 83 separate agreements covering an estimated $305 million. By all accounts, self-governance has been successful in improving both the quality and quantity of services provided at the tribal level and in assisting tribal governments in developing administrative and managerial skills and acumen that are transferable to other tribal efforts to create sustainable tribal economies.

Conceived in Idealism. The roots of Indian self-determination and tribal self-governance run deep and in different directions of American legal and political history. But its tap root was formed most dramatically by a somewhat unlikely American President, who said: "WE MUST MAKE CLEAR THAT INDIANS CAN BECOME INDEPENDENT OF FEDERAL CONTROL WITHOUT BEING CUT OFF FROM FEDERAL CONCERN AND FEDERAL SUPPORT." PRESIDENT RICHARD M. NIXON, JULY 8, 1970.

With these words some 34 years ago, President Nixon proclaimed a new era in Indian affairs, that of self-determination for Indian tribes and people. Self-determination was intended to reject the previous federal policy and practice of persecution, termination and paternalism.

Congress soon thereafter codified the principles of Indian self-determination, enacting the Indian Self-Determination and Education Assistance Act (Public Law 93-638) ("ISDEA") in 1975. In the years since then, "638" has guided federal Indian policy and shaped its strategic goals.

The "638" Act encourages the Secretaries of the Department of the Interior and the Department of Health and Human Services to "contract out" to tribes and tribal organizations the operation of federally-funded programs benefiting Indians.

The "638" Act has been amended numerous times, most significantly in 1988, 1991, 1994 and 2000. In each case, the stated intent of Congress in amending the Act was to support efforts by tribes to assume administrative responsibility for the delivery of federally-funded programs, functions, services, and activities. In some instances, this meant providing special authority to tribal governments. In most instances, it meant curbing the power and ability of federal agencies to interfere with tribal program authority.

Born in Federal Failure. Notably, Congress has always amended the Act in response to tribal requests, usually in the context of a specific failure by the federal agencies. In particular, the 1988 tribal self-governance amendments were a congressionally-imposed, tribally-driven set of authorities in reaction to a series of newspaper investigation reports that revealed rampant corruption, waste, inefficiency, and pointless regulatory burdens within the Bureau of Indian Affairs bureaucracy. When complaining tribal leaders were asked by congressional leaders what was an effective solution, the tribal leaders proposed a self-governance model by which tribes would have broad negotiation and operational authority to assume administrative responsibility for virtually all programs, functions, services and activities previously carried out for tribes by federal officials.

How Self-Governance Works. The self-governance provisions of the ISDEA authorize tribes to "compact" with the federal government, specifically the Departments of the Interior and the Department of Health and Human Services, to administer virtually all aspects of federal programs that are operated by those departments for the benefit of that tribe. The statute permits self-governance tribes to redesign the federal programs and, where necessary, redistribute funds among the different programs they operate. This flexibility, with authority transferred to the service-delivery level under the control of the beneficiaries themselves, is the hallmark of tribal self-governance.

The concept is similar to that of a block grant. Rather than the federal government micro-managing Indian tribes, it contracts with tribes to perform those functions. Like state governments, tribal governments tend to know best how federal programs and dollars can best serve their local communities and meet locally-determined priority needs.

Tribes are authorized in statute to plan, conduct, consolidate, and administer federally-funded programs, services, functions, and activities according to priorities established by tribal governments. Tribes have greater

control and flexibility in the use of these funds, streamlined reporting requirements, and authority to redesign or consolidate programs, services, functions, and activities. In addition, tribes receive lump sum funding and may reallocate funds during the year and carryover unspent funds to the next fiscal year. As a result, tribes are able to more efficiently and effectively use the funds to address unique tribal conditions and circumstances as they arise. Self-governance tribes are subject to annual trust evaluations to monitor the performance of trust functions they perform. They are also subject to annual audits pursuant to the Single Audit Act and OMB Circular A-133.

Underlying Philosophy of Tribal Self-Governance. The rationale for tribal self-governance has always been that the best government is the government closest to the governed, and the best service delivery is done by those closest to the served. Both rationales fit the situation of tribal governments.

It is a bitter irony that much of the federal funding appropriated each year does not reach the stark, socio-economic needs of many Native American Indian communities. One of the main reasons is that the lion share of those funds is spent far away from Indian communities. One thing can be sure, once a tribal government receives federal dollars under a self-governance agreement, those funds are spent and churned right there in the targeted Indian community rather than in some distant city bureaucracy or research park.

When a tribal government serves its own members –

- There are no cross-cultural or language barriers;
- There is common sense responsiveness to changing needs;
- There is greater potential for maximum flexibility and efficiency;
- There is direct accountability to those served.

Crippling Mis-Perceptions About Self-Governance. One of the biggest fictions that has dogged the expansion of tribal self-governance is that an expensive and time-consuming federal monitoring, reporting, and oversight bureaucracy is needed to ensure that a tribe does not squander the scarce federal dollars it administers. What this fails to acknowledge is the tribal logic that persuaded the Congress to birth tribal self-governance policy in the late 1980s – there is no greater accountability pressure than that of the tribal voters themselves. If tribal members are not satisfied with the services they receive, they are able to organize and vote out the tribal leaders who have failed them. Tribal elections are an ultimate and effective accountability tool. No such accountability exists when a federal government staffer fails to provide satisfactory service. Failing federal bureaucrats have the shelf-life of a nuclear fuel rod. They seemingly cannot be removed or disciplined. When the chain of

command is far from the reach of the Indian community served, the quality and quantity of the federal service often deteriorates to that of an afterthought.

Congress in enacting self-governance was convinced of the wisdom of a Russian dictum spotlighted in another context by former President Reagan – "trust, but verify". Self-governance tribes must annually report on their performance objectives and submit to a comprehensive Single Audit Act audit. This bare minimum reporting and audit oversight structure verifies that funds are applied appropriately. Anything more is a waste of federal dollars and diverts funds necessary for direct services.

Another fiction that has bedeviled the advance of tribal self-governance is that good ideas only come from the top down. This ivory tower approach to federal Indian service delivery has trapped Indian Country in a status quo that should be unacceptable. It has created federal careers. It has fueled a growth industry in consultants and study-makers. But, most critically, it has failed Indian Country. The answers must come from tribal leaders who answer to those on the front lines.

Still other crippling myths abound – most notably that a tribe's assumption of self-governance responsibilities must of necessity reduce the federal government's trust responsibilities. In the early days of self-governance, this notion was put forward by federal adversaries of tribal self-governance as a poison pill or as a shameless way to shirk a legal duty owed to tribes. Congress responded with a clear affirmation that nothing in the self-governance title "shall be construed to diminish the Federal trust responsibility to Indian tribes... ." 25 U.S.C. 458ff(b). This principle must be held inviolate in statute and in practice.

Relevance of Self-Governance to Trust Reform. Trust reform has been one of the hotter Federal-Indian policy debates in recent years. Left unheeded in this debate, however, are the lessons of more than a decade of tribal self-governance: the most effective and accountable service delivery is at the local level.

The trust reform plans of recent years seem to be driven more by adversarial litigation shadow boxing than by approaches that make sense at the service provider level in Indian communities. Federal plans lurch from magic bullet to bullet (remember TAAMS, the much-heralded now abandoned computerized BIA trust record system that crashed on startup and never recovered?), coming and going with greater frequency than Assistant Secretaries. Building a large, centralized superstructure to handle trust reform efforts has a certain appeal. But it reverses the direction proven to be so successful by self-governance tribes, which is to delegate down (not up) the

ladder enough authority to make trust decisions and enough money to do it right. It is far easier to grow a Central Office than it is to shrink it.

The experience of tribal self-governance would encourage the lion share of trust reform funding to focus first on building up capacities at the reservation and Native community levels. That level is where tribal governments most effectively administer programs. It is not the level where magic bullets are touted, powerful kingdoms are assembled and fancy acronyms are spawned. Instead, it is at the level where proper records are generated and kept. Squatters are ousted. Thieves are caught. Rightful owners are paid. Needy people are served. And decisions are made most efficiently because all of the interested parties are right there on the doorstep on a daily basis informing the action. In other words, the most effective trust reform, where the biggest bang for the federal trust reform dollar can be found, is in Indian Country in the hands of tribal governments whose record of successful self-governance on trust matters compares very favorably to the failures of the federal agencies.

Tensions In Negotiating a Transfer of Power. It should be no surprise that tensions arise when a tribe seeks to assume a program, function, service or activity previously carried out by a federal agency office. Federal officials are understandably reluctant to sit down at the table to negotiate away their own authority, sphere of influence, and at times, even their own jobs. Yet that is exactly how the negotiation of self-governance agreements typically plays out.

Tribes typically are faced with federal negotiating partners who act like their own jobs are at stake if the tribe succeeds in negotiating a self-governance agreement. Sometimes their jobs are at issue. This raises some very delicate challenges for both the tribes and the federal officials. The human dimensions of career paths, home mortgages, children's schools, and community ties overwhelm all thought of what is the most efficient and sound approach, which is tribal control of tribal service delivery systems. From personal experience with countless negotiations, I am convinced that this factor more than any other has contributed to federal intransigence in concluding agreements consistent with the letter and spirit of the Act. While federal workers' personal situations can and do engender great sympathy, change like this is a normal and expected part of life. The priority must be to get the job done in the best possible fashion. Federal job protection is not the priority. And like with trade adjustment assistance, the "638" Act has ample provision for protection federal workers who are right-sized out of their present positions because of tribal assumptions of programs under the Act.

II. S. 1715 – THE DEPARTMENT OF INTERIOR TRIBAL SELF-GOVERNANCE AMENDMENTS OF 2003

Like the "638" amendments codified in 1988, 1991, 1994, and 2000, S. 1715 is the product of a several year effort of tribal leaders and their staff to improve the statutory basis for tribal self-governance. A tribal leaders task force, led by the Honorable Ron Allen, Chairman, Jamestown S'Klallam Tribe, prepared version after version of the language that eventually was introduced as S. 1715.

The language of S. 1715 has been reviewed and revised after countless meetings of tribal representatives for the past three years. And it has been the subject of ongoing discussion and negotiation with representatives of the Department of the Interior.

Much of S. 1715 is informed by the experience and insight gained by tribal representatives in the development to enactment of the 2000 amendments that apply to the Department of Health and Human Services (Title V of the "638" Act, now codified at 25 U.S.C. 458aaa et seq.). In fact, over 90% of the actual text of S. 1715 is virtually identical to that found in Title V as enacted. Put another way, S. 1715 will amend Title IV in ways that will make it consistent with the provisions of Title V that were enacted in 2000.

S. 1715 amends Title IV of the "638" Act, the title that has dealt with the Department of the Interior since 1994. In addition to providing a very necessary update to Title IV, S. 1715 addresses problems with the sections of the statute governing non-BIA programs and construction. What follows is a brief overview of the provisions of the bill.

Section 403 would allow any tribe meeting the eligibility requirements to participate in self-governance.

Section 404 would require the Secretary to negotiate and enter into compacts with participating tribes.

Section 405 would facilitate tribes compacting for BIA and Office of the Special Trustee (OST) programs, functions, services and activities (PFSAs). Tribes would also, as in current law, be able, at the Secretary's discretion, to compact for non-Indian PFSAs in which the tribe has a special geographic, historical or cultural interest. The tribes have asked that an additional sub-paragraph (C) be added to Section 405(b)(1) after line 10 at page 15 of the printed bill introduced October 3, 2003, so as to read:

> Section 405(b)(1) (C) Programs described in subparagraph (A) shall include, at the option of a

> tribe, all programs (or portions thereof) that restore, maintain or preserve a resource (for example fisheries, wildlife, water, or minerals) in which a tribe has a federally reserved right: Provided, that the Secretary shall make available a proportional share of the funding of such a program (or portion thereof) that the Secretary would otherwise provide to restore, maintain or preserve such a resource in an amount equal to the proportional share of the resource that is associated with the tribe's federally reserved right.

After completing the work on S. 1715 in advance of introduction, the tribal drafting team realized that it did not adequately address some non-BIA programs that tribes should be entitled to include in funding agreements because those programs are related to treaty or federally reserved tribal rights. The foregoing language would resolve this issue.

Section 406 would require compacting tribes to have measures in place to avoid conflicts of interest, and would facilitate tribal consolidation and redesign of programs and reallocation of funds by eliminating the need for a joint agreement with the Secretary for such reconfiguration. These provisions track the authorities extended by Congress in Title V to the Indian Health Service (IHS).

Section 407 would 1) provide tribes with notice and an opportunity to correct problems before the Secretary may reassume PFSAs, 2) limit the grounds on which the Secretary can reject a tribe's final offer, 3) place the burden of proof on the Secretary to show the validity of rejecting an offer or reassuming a PFSA, and 4) require liberal interpretation of compacts and funding agreements for the benefit of tribes. Here again, these provisions track the authorities extended by Congress in Title V to IHS.

Section 408 would clarify the responsibilities and procedures for tribes undertaking construction projects under Title IV, including compliance with building codes, reporting requirements and prevailing wage laws. Here again, with some adaptation to the unique features of Interior responsibilities, these provisions track the authorities extended by Congress in Title V to IHS.

Section 409 would clarify a number of payment issues, authorizes multi-year funding agreements, and allows tribes to carry over unexpended funds without reducing their entitlement in the next year. Here again, these provisions track the authorities extended by Congress in Title V to IHS.

Sections 410, 411 and 412 track existing Title IV provisions.

Section 413 would provide tribes with the option of incorporating into Title IV compacts any provisions of Titles I or V.

Section 414 would revise the budget request process so that the President identifies all funds necessary to fully fund funding agreements authorized by Title IV, and the Secretary must ensure the request includes funds for planning and negotiation grants and identified shortfalls.

Section 415 would make more specific the required contents of the Secretary's annual Title IV report, including unmet needs and amount spent on inherent federal functions, and would require an annual report on non-BIA PSFAs eligible for compacting, including those PSFAs of special significance which tribes requested to assume under section 405(b)(3) .

Section 416 would repeal the current Title IV regulations at 25 CFR Part 1000 and authorize new negotiated rulemaking by a committee of federal and tribal representatives.

Section 417 would clarify that a tribe is not bound by any internal agency policy or guidance manuals, unless the tribe expressly agrees to be bound. Here again, these provisions track the authorities extended by Congress in Title V.

Section 418 would provide administrative and appeal procedures. Here again, these provisions track the authorities extended by Congress in Title V.

Section 419 provides an authorization of appropriations.

III. Conclusion

The Indian tribes actively participating in self-governance have urged the Congress to enact S. 1715. They have likewise thanked this Committee and its able leadership and staff for your longstanding commitment to making tribal self-governance an even greater reality.

This concludes my written testimony. I thank you for this opportunity to testify and I would be pleased to answer any questions the Committee may have.

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D. Fred Matt
Tribal Council Chairman
Confederated Salish & Kootenai Tribes

Testimony
before the Senate Committee on Indian Affairs
United States Senate

Hearing on S. 1715
"Department of the Interior Tribal Self-Governance Act of 2003"

May 12, 2004
Washington, D.C.

Greetings Chairman Campbell, Vice-Chairman Inouye and Committee members. My name is Fred Matt and I serve as the Chairman of the Tribal Council of the Confederated Salish & Kootenai Tribes ("CSKT" or "Tribes"). Thank you for the opportunity to provide my views to your Committee.

I am pleased to testify before this Committee on behalf of the Tribes on S. 1715, which would amend Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) with respect to the Interior Department's Tribal Self-Governance program. the issue. We intend to later submit a comprehensive position paper with respect to the various provisions contained in the bill.

CSKT's Self-Governance Background

The Confederated Salish and Kootenai Tribes have been very active in the area of Self-Governance and are one of the original ten Self-Governance Tribes. We have found the system of Self-Governance contracting, through compacts and annual funding agreements (AFA's), to be extremely effective in: 1) increasing the efficiency and integrity of federal services to Tribes and Tribal members; 2) increasing Tribal autonomy and self-sufficiency; 3) strengthening the government-to-government relationship between the United States and Tribal governments; and 4) developing the Tribal economy.[1] All of these are among the principal objectives of the Indian Self-Determination and Tribal Self-Governance Acts. As Congress stated as its policy rationale for ISDEAA:

> [T]he United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.
>
> 25 USC § 450a(b)

CSKT has fully embraced the Self-Governance system and now contracts or compacts every eligible Interior Department Indian program on our reservation, as well as programs of the Indian Health Service and other functions of the U.S. Health & Human Services Department. Not only have we taken over administration of these programs, but we have achieved results which we believe strongly vindicate Congress' establishment of the program. Our record of success also

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[1] Our administration of federal programs under ISDEAA and the Tribal Self-Governance Act has resulted in increased employment opportunities for our Tribal members (as well as non-Tribal members) that were not previously available. Today, CSKT is the largest employer in northwest Montana. We employ over one thousand (1,000) people in a variety of capacities, from lawyers, doctors and dentists to engineers, scientists and teachers.

However, for true context, it is important to remember that the Indian unemployment rate on our Reservation is 41%, compared to the overall Lake County unemployment rate of 7.5%. Obviously, we still have a long way to go in building our Tribal economy. To this end, the Tribal Self-Governance Act is a vital tool for us.

confirms the wisdom and vision of the late Michael ("Mickey") T. Pablo, former CSKT Tribal Chairman, who strongly advocated for Tribal Self-Governance legislation and policies. Our record in administering federal programs would continue to make Mickey proud.

For example, one of the Bureau of Indian Affairs (BIA) programs we assumed in 1989 was the Safety of Dams (SOD) program. A principal objective of this program is to eliminate or ameliorate structural and/or safety concerns at 17 locations on the Flathead Reservation as identified by the Department of Interior National Dams - Technical Priority Rating listing. Our SOD Program provides investigations, designs and SOD modifications to resolve the concerns of the dams on the list. The Tribes' SOD Program has been extremely successful and, under our administration, Reservation dams have been modified at a cost significantly lower than originally estimated by the Bureau of Reclamation. For example, the Black Lake Dam was completed in November 1992 at a savings of approximately $1.3 million. The Pablo Dam Modification Project was completed in February 1994 at a savings of nearly $140,000. The first phase of the McDonald Dam SOD program has been a "model" program which has been used by other tribes.

Our Forestry Program is another example of our Self-Governance efforts. In FY '96, we compacted all federal Forestry activities after a year-long Tribal study of the assumption of those programs. We also administer fire pre-suppression and suppression activities through other agreements.

In fiscal years '97 and '98 respectively, CSKT compacted for administration of both the Individual Indian Monies (IIM) program and the Northwest Regional Office title plant functions for the Flathead Reservation. Few tribes operate these programs. The fact that CSKT does so is a testament to our strong commitment to exercise our full authority under the Tribal Self-Governance Act.

In addition to the above examples, CSKT compacts for the panoply of other BIA programs, including: law enforcement; Tribal courts; education programs, etc. Our Tribal government infrastructure and staff is well-equipped to administer these programs and we are very experienced in federal contracting requirements. Our Natural Resources Department alone has well over 100 employees, including biologists, botanists, hydrologists, wildlife technicians, etc. The U.S. Fish & Wildlife Service (FWS) has a high degree of confidence in our Natural Resources staff since it not only awards grants to our Natural Resources Department, but the FWS-administered National Bison Range Complex also contracts with Tribal government staff for various project work.

The logical next step for us is a Self-Governance contract for operations at the National Bison Range Complex (NBRC). Title IV of ISDEAA, as amended, authorizes tribes to contract non-BIA programs within the Interior Department. The Act contains a special provision authorizing contracting when the program, services, functions or activities are of "special geographic, historical, or cultural significance" to a Self-Governance Tribe (25 USC § 458cc(c)).

CSKT Efforts Concerning National Bison Range Complex

As this Committee is aware, the Confederated Salish & Kootenai Tribes are currently in negotiations with the U.S. Fish & Wildlife Service (FWS) for an Annual Funding Agreement covering various activities at the NBRC. It has been ten years since we first initiated this effort and it has been an expensive, frustrating and resource-intensive effort to say the least. We continue our efforts because the National Bison Range Complex (which includes the ancillary Ninepipe/Pablo Refuges) occupies a unique place within our Reservation, our history and our culture.

The National Bison Range is wholly located within our Reservation (as are the Ninepipe/Pablo Refuges) on land reserved in the Hellgate Treaty of 1855. The Treaty was breached by the Act of May 23, 1908 when Congress removed, without Tribal consent, nearly 18,500 acres in the heart of our Reservation and created the National Bison Range. Although the Tribes received a minimal payment of $1.56 cents an acre and then another settlement through the Indian Claims Court, CSKT bitterly opposed opening the Reservation and we defended our Treaty rights. Most importantly, we never consented to sell the land. The bison that were initially brought onto the newly-created National Bison Range were descended from a herd originally raised by Tribal members Charles Allard and Michel Pablo.

In addition to this history, a study commissioned by the FWS confirmed a number of cultural sites that are located within the NBRC. There is no question that CSKT has strong cultural, historic and geographic connections to the National Bison Range Complex. In addition to those connections, the Tribes are the landowner of the Ninepipe and Pablo Refuges, since those refuges are federal easements on lands which remain held in trust for the Tribes.

Due to these circumstances, CSKT feels very strongly that we should be participating in the operation of the NBRC and we believe Congress has, through the Tribal Self-Governance Act, provided us the avenue for such participation.

Our latest effort to negotiate with FWS on the NBRC began early in 2003 and got off to a rocky start during our first negotiation meeting. Due to difficulties CSKT had had in earlier years while attempting to enter into an agreement for the NBRC, we requested in 2003 that our new negotiations include Interior decisionmakers from the Central (D.C.) Office in addition to regional FWS officials. However, Interior wanted the Denver Regional FWS office to handle the negotiations, so we have been meeting with FWS Regional staff almost monthly since last summer. Despite great resistance from FWS on a number of fronts, CSKT has stayed the course and, while the process has involved much compromise, we believe we have made real progress towards drafting an AFA which would be mutually acceptable to the FWS and CSKT. During our last meeting in March, we narrowed down the list of unresolved issues to several items.

We believe that several of these outstanding issues should now be resolved as a result of the U.S. Fish & Wildlife Service's recent agreement with the Council of Athabascan Tribal Governments (CATG) for the Yukon Flats National Wildlife Refuge, signed on April 30, 2004. Some of CSKT's proposed AFA provisions are identical to what is contained in the Yukon Flats AFA. Now that FWS has signed the Yukon Flats AFA, CSKT expects to be accorded equal treatment with respect to some of the boilerplate provisions found in these agreements.

One of our primary concerns at this point is the moving target we have been facing re: finalizing negotiations. Our experience with FWS finds the agency continually identifying or creating new issues which delay a final agreement. For example, at one point in January of this year, we thought we had narrowed down our outstanding issues to a very short list. Then FWS unilaterally rewrote the draft AFA in February so that it included some unacceptable new issues, further delaying our progress.

Despite our concerns, we are hopeful that we can finalize an AFA with FWS in the very near future so we can realize our goal of assisting with the operations of the National Bison Range Complex. We appreciate the support of our friends in Congress who share our vision and goals.

The voices of opposition to Tribal Self-Governance contracting at the National Bison Range Complex or the Yukon Flats National Wildlife Refuge generally fall into one of two categories: 1) opposition based in racism; and 2) opposition based in ignorance, although there is obviously overlap between the two categories. Contracting opposition has been almost exclusively from people who neither understand the government-to-government relationships between the United States and Indian Tribes, nor take the time to fully understand the federal laws and policies which authorize and encourage this type of contracting. Unfortunately, there are also many opponents whose opposition simply stems from racial and cultural prejudices. We have local opponents who have opposed every undertaking in which the Tribes have engaged. In each instance, their reasoning does not withstand scrutiny. With respect to our effort to contract operations at the NBRC, we had one local resident quoted in a September 2, 2003 Washington Post article as saying that we wanted to put a casino on the Bison Range!

We are confident that the federal decisionmakers in Washington will see the opposition's arguments for what they are. We believe that most people agree with the New York Times when it said in a September 3, 2003 editorial (*copy attached*) that "The National Bison Range is an unusual case. It offers a rare convergence of public and tribal interests. If the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it."

Comments on S. 1715

The Confederated Salish & Kootenai Tribes strongly support enactment of S. 1715, the "Department of the Interior Tribal Self-Governance Act of 2003". This legislation is the result of

many months of effort on the part of numerous Tribes and Tribal representatives. We believe that this legislation would increase the efficacy of the Act and decrease the ability of Interior agencies to circumvent the Act's intentions. Pending our submission of a more complete position paper for the hearing record, following are comments on selected provisions of S. 1715 as it currently reads:

S. 1715's inclusion, in § 401(9), of a definition for "inherent federal function", while still subject to conflicting interpretations, is a solid step in the right direction for eliminating considerable confusion as to what is deemed to be an inherent federal function. During our negotiations, FWS had initially taken the position that supervisors of the NBRC visitor center and maintenance staff were inherently federal functions and could not be contracted.

We support the explicit identification, in § 405(b)(1)(A), of Office of Special Trustee (OST) activities as mandatory for inclusion in an AFA (at a Tribe's option) reflects organizational changes within the Interior Department since the legislation was originally enacted and makes clear that the programs are still available for Tribal compacting despite any reorganization.

CSKT supports § 405(b)(3), which retains the existing authority for Self-Governance contracting of non-BIA programs which are of special geographical, historical or cultural significance to an Indian Tribe. As indicated above, CSKT is utilizing this authority to pursue an AFA with the U.S. Fish & Wildlife Service covering activities at the National Bison Range Complex. We would strongly oppose any effort to water down this existing authority.

The bill's standards for rejection of final offers, found in § 407(c)(4), would help constrain Interior officials from basing a rejection of a Tribe's final offer on subjective or invalid reasons. Along the same lines, the bill's provisions establishing a clear and convincing burden of proof on the Secretary (§§ 407(d) and 418) would be beneficial, as would § 407(e) which would codify a requirement to negotiate in good faith and maximize implementation of the Self-Governance policies, and § 407(i) which would codify a rule of statutory and contract construction that any ambiguity is to be resolved in favor of the Indian Tribe(s).

Another positive addition is the bill's provision directing that any savings realized by the Tribe shall be applied to that contracting Tribe in order to provide additional services to program beneficiaries (§ 407(f)). CSKT has faced problems with FWS in trying to include a similar provision in an AFA for the NBRC, so it would be helpful to have the Tribal Self-Governance Act more clearly require Tribal retention of such savings.

With respect to S. 1715's provision on contract support costs (indirect costs), it is important that § 409(c) of the bill would retain the existing statutory language mandating funding to tribes for such costs. Obviously, the real problem has been getting the federal government to fund tribes at a level which would meet the requirement of paying full contract support costs. To this end, we appreciate that Chairman Campbell has introduced S. 2172, the Tribal Contract Support Cost

Technical Amendments of 2004, and we are grateful for the Chairman's attention to this crucial issue. We continue to be mystified how every other government contractor except for Indian Tribes - including defense and university contractors, whose indirect cost rates often exceed 100% - always have their indirect cost rates honored and paid, while Tribal governments almost never receive the indirect costs which they are due. The Indian Self-Determination and Education Assistance Act was not intended to be a money-losing proposition for tribes. Presently, the reality of tribes having to absorb indirect costs associated with contracting federal programs serves as a significant disincentive for tribes to contract such programs as intended by Congress. Depending on how S. 2172 and S. 1715 progress through the legislative process, it may be useful to consider incorporating provisions or objectives of S. 2172 into S. 1715, as appropriate. We also recognize that the pending decision before the U.S. Supreme Court in *Cherokee Nation v. Thompson* will impact this issue.

CSKT supports the provision in § 409(j) for retention of interest or income earned on any funds paid under a compact or AFA. This is a good issue for the legislation to more explicitly clarify since we have been told by FWS that we would have to return to it any interest over $250 earned from funds paid under an AFA. Similarly, we support S. 1715's provision in § 409(k) specifically allowing carryover of funds into a succeeding fiscal year. FWS has told us it can not allow us to carry over funds because it would be illegal.

The language in § 412(2) states that programs are not eligible for inclusion in a compact or AFA if the statute establishing such program "does not authorize the type of participation sought by the Indian Tribe (without regard to whether 1 or more Indian tribes are identified in the authorizing statute)". The Committee and Tribes may want to look further at this language since it can be confusing. At a minimum, we should probably reinsert into this provision the existing statutory text in 25 USC 458cc(k) which clarifies that the program-authorizing statutes need not identify Indian Tribes in order for a requested program to be included in a compact or AFA.

Section 413(b)(1) of the bill, allowing tribes to apply any provision of Title I or Title V to their AFA, is very important. However, FWS interprets this provision as only applying to BIA programs. The Committee should clarify this by amending the provision to read "At the option of a participating Indian tribe, any or all of the provisions of title I or title V shall be incorporated in any <u>Interior</u> compact or funding agreement." [*emphasis added*]

Under § 415(c)(1)(B)(ii), the Interior Secretary would be required to annually provide Congress with a list of Tribal requests for AFA's with non-BIA agencies for programs of special geographic, historical or cultural significance (per § 405(b)(3) of the bill), and state the grounds for any denial by the Secretary of such requests. This, like the above-referenced provisions in §§ 407(c)(4), 407(d), 407(e), 407(i), and 418, would assist in holding the Interior Department accountable for its responses to Tribal requests for compacts or AFA's under the Tribal Self-Governance Act.

One problem which has arisen over the course of our NBRC negotiations is an agency belief that the various mandatory requirements of the Tribal Self-Governance Act, such as mandatory application of Title I provisions at a Tribe's option (as provided by 25 USC § 458cc(l)) do not supersede or otherwise bind the Interior Department's discretion to enter into an AFA as established by 25 USC § 458cc(c) [§ 405(b)(3) o f S. 1715]. S. 1715 could address this issue through language explicitly stating that all of the mandatory requirements of the Tribal Self-Governance Act also apply to any compact or AFA entered into under the provisions of § 405(b)(3).

Conclusion

Mr. Chairman, thank you for the opportunity to speak to this Committee on behalf of the Confederated Salish & Kootenai Tribes. We appreciate your, and the Committee's, interest in strengthening the Tribal Self-Governance Act and amending the Act to respond to the contemporary needs of Indian Tribes.

The New York Times
ON THE WEB

Editorials/Op-Ed

September 3, 2003

The National Bison Range

Later this week Native Americans representing the Salish and Kootenai tribes will meet in Denver with officials of the Interior Department and the federal Fish and Wildlife Service. They will be trying to negotiate an agreement to take over management of the National Bison Range, an 18,500-acre prairie reserve in northwestern Montana. If negotiations end successfully, this would be the first time a tribe has taken over the management of such a property since 1994, when the Tribal Self-Governance Act authorized such arrangements.

One purpose of the Tribal Self-Governance Act was to diminish the role of federal paternalism — often inefficient and sometimes corrupt — in the lives of Native Americans. The Confederated Salish and Kootenai Tribes have been among the first to seize the opportunity to run programs that were formerly administered by the government, and run them well. But the thought of Native Americans' managing the National Bison Range has some environmental groups and local residents worried. Even the Fish and Wildlife Service has seemed reluctant, if only because it has a high regard for its own management tradition. Yet virtually no one disputes the excellent management and conservation record of the Salish and Kootenai.

With one strong condition, we think this plan makes a lot of sense. The Salish and Kootenai have a deep historical connection with the particular bison herd on this refuge — quite apart from the conventional associations of Indians and buffalo — and a strong cultural or historical link is one of the legal conditions for enacting an agreement of this kind, which would basically employ the tribes to manage the federal program. The National Bison Range is wholly enclosed by the reservation the Salish and Kootenai live on, and the tribes would be obliged to manage the refuge according to plans established by the Fish and Wildlife Service.

But such an agreement, erected on the basis of unique historical and geographical circumstances, must not become the basis for the wholesale privatization of federal parks, monuments or reserves. The National Bison Range is an unusual case. It offers a rare convergence of public and tribal interests. If the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it.

Position Paper of the Confederated Salish & Kootenai Tribes on S. 1715, the "Department of the Interior Tribal Self-Governance Act of 2003"

Submitted to the Senate Indian Affairs Committee
for inclusion in the record for the May 12, 2004 hearing on S. 1715,
supplemental to Chairman D. Fred Matt's Testimony

The Confederated Salish & Kootenai Tribes (CSKT) have reviewed S. 1715 and provide the following input with respect to its various provisions. Overall, as Chairman Matt testified during the May 12th hearing, CSKT is very supportive of the bill. Following is a list of CSKT's positions and comments with respect to various sections of S. 1715:

§ 401(9) CSKT strongly supports this addition of a much-needed definition in Title IV for "inherent federal function". While still capable of conflicting interpretations, it would be a solid step in the right direction for eliminating considerable confusion as to what is deemed to be an inherent federal function. Since this definition has already been enacted into law in Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), its incorporation into Title IV makes sense from a consistency perspective as well. While some Interior officials have balked at adopting a definition for the term "inherent federal function", we believe such a definition must be added to Title IV. During CSKT's negotiations over a Title IV Annual Funding Agreement (AFA) for the National Bison Range Complex, the U.S. Fish & Wildlife Service (FWS) initially took the position that supervisors of the NBRC visitor center and maintenance staff were inherently federal functions and could not be contracted. FWS' expansive interpretation of "inherent federal function" was and is enabled by the lack of a definition for the term in Title IV.

§ 404(f) CSKT supports tribes having the option to either retain an existing compact or renegotiate a new one under the terms of this legislation.

§ 405(b)(1)(A) We support the explicit identification in this subsection of Office of Special Trustee (OST) activities as being mandatory for inclusion in an AFA (at a tribe's option). This subsection reflects organizational changes within the Interior Department since the legislation was originally enacted and makes clear that the programs are still available for Tribal compacting despite any reorganization. The continuing uncertainty of reorganization necessitated CSKT and other tribes to seek legislation, which was inserted into Section 139 of the FY '04 Interior appropriations bill, authorizing a

trust reform demonstration project. The intent of Section 139's demonstration project is to recognize the sophisticated trust management systems of these Self-Governance tribes and to preserve these systems during the Departmental reorganization. Section 139 requires that the tribes carry out our trust resource management responsibilities under the same standards as those to which the Secretary is held. As part of this increased responsibility, we must share in any increases in funding designated for trust reform.

Given the fluid state of reorganization at present, and the shared responsibilities between BIA and OST, CSKT believes S.1715's inclusion of OST activities is crucial to trust reform implementation as well as the implementation of the demonstration project. The success of Congress' intent for its legislative goals under the Tribal Self-Governance Act requires inclusion of OST programs and the tribal ability to compact those federal functions.

§ 405(b)(3) CSKT supports § 405(b)(3), which retains the existing authority for Self-Governance contracting of non-BIA programs which are of special geographical, historical or cultural significance to an Indian tribe. As indicated above, CSKT is utilizing this authority to pursue an AFA with the U.S. Fish & Wildlife Service covering activities at the National Bison Range Complex. We would strongly oppose any effort to water down this existing authority. CSKT would support an effort to require non-BIA agencies to contract activities which are of special geographical, historical or cultural significance to an Indian tribe - especially where in instances where all three criteria (geographical, historical and cultural) are applicable. Such mandatory language would prevent non-BIA agencies from abusing their discretion to enter into agreements with tribes.

§ 405(b)(5)(C) Being the only tribe who has reservation-specific federal activities excluded from the Tribal Self-Governance Act, CSKT would like to go on record as stating that this provision should not have been included in the original Tribal Self-Governance Act. The restriction with respect to the Flathead Agency Irrigation Division or the Flathead Agency Power Division should be deleted from the legislation and Act.

§ 405(e)(3) We support this statutory authorization for funding agreements containing a term in excess of one year. This would add statutory clarity to authority that now exists only in federal regulations (25 CFR §§ 1000.85 and 1000.146).

§ 406(d) This section's authorization for redesign and consolidation of programs or funds is an improvement over the existing language in 25 USC § 458cc(b)3).

§ 407(c)(4) This section's standards for rejection of final offers would benefit tribes by helping to constrain Interior officials from basing a rejection of a tribe's final offer on subjective or invalid reasons.

§ 407(d) CSKT supports this section, which would establish a clear and convincing burden of proof on the Secretary for defending any rejection of a tribe's final offer, or for defending a reassumption of contracted activities.

§ 407(e) This section would codify a requirement to negotiate in good faith and maximize implementation of the Self-Governance policies and could thereby assist tribes in the event they needed to appeal an agency action which is based, in whole or in part, upon a failure to negotiate in good faith.

§ 407(f) Another positive addition is the bill's provision directing that any savings realized by the tribe shall be applied to that contracting tribe in order to provide additional services to program beneficiaries. CSKT has faced problems with FWS in trying to include a similar provision in an AFA for the NBRC, so it would be helpful to have the Tribal Self-Governance Act more clearly require Tribal retention of such savings.

§ 407(i) Due to its potential to strengthen a tribe's position relevant to conflicts in interpretation, CSKT supports the addition of this subsection, which would codify a rule of statutory and contract construction that any ambiguity is to be resolved in favor of the Indian tribe(s).

§ 409(c) With respect to this section's provision for contract support costs, it is important that § 409(c) of the bill retain the existing statutory language mandating funding to tribes for such costs.

§ 409(h) CSKT supports inclusion in Title IV of authorization to access federal personnel, supplies, supply sources, etc., as is currently provided in Title I of ISDEAA (25 USC § 450j(k)).

§ 409(j) CSKT supports this provision for retention of interest or income earned on any funds paid under a compact or AFA. This is a good issue for the legislation to more explicitly clarify since, at one point during Self-Governance negotiations for the National Bison Range, we had been arbitrarily told by FWS that we would have to return to it any interest over $250 earned from funds paid under an AFA.

§ 409(k) CSKT supports this provision specifically allowing carryover of funds into a succeeding fiscal year. This issue has been the subject of differing interpretations

between CSKT and DOI, with DOI taking the position that carryover is not specifically allowed for AFA's with non-BIA agencies.

§ 411(b)(4) CSKT supports the provision deeming any waiver request approved if the Secretary fails to approve or deny a waiver within sixty days.

§ 412(2) This section states that programs are not eligible for inclusion in a compact or AFA if the statute establishing such program "does not authorize the type of participation sought by the Indian tribe (without regard to whether 1 or more Indian tribes are identified in the authorizing statute)". This language is confusing. At a minimum, we should probably reinsert into this provision the existing statutory text in 25 USC § 458cc(k) which clarifies that the program-authorizing statutes need not identify Indian tribes in order for a requested program to be included in a compact or AFA. However, since the text of § 458cc(k) can also be confusing, this provision may be able to benefit from redrafting.

§ 413(b)(1) This provision, which would allow tribes to apply any provision of Title I or Title V to their AFA, is very important since it can help make agreements under the various ISDEAA titles more consistent. However, since this language is similar to the existing 25 USC § 458cc(l), it has been our experience that a non-BIA agency may interpret this provision as only applying to BIA programs. The Committee should clarify this by amending the provision to read "At the option of a participating Indian tribe, any or all of the provisions of title I or title V shall be incorporated in any Interior compact or funding agreement." [*emphasis added*]

§ 415(c)(1)(B)(ii) CSKT supports this section, which would require the Secretary to annually provide Congress with a list of Tribal requests for AFA's with non-BIA agencies for programs of special geographic, historical or cultural significance (per § 405(b)(3) of the bill), and state the grounds for any denial by the Secretary of such requests. This, like the above-referenced provisions in §§ 407(c)(4), 407(d), 407(e), 407(i), and the below-referenced § 418, would assist in holding the Interior Department accountable for its responses to Tribal requests for compacts or AFA's under the Tribal Self-Governance Act.

§ 416(d)(3) CSKT supports the ability of tribes to maintain use of the existing regulations in Part 1000 of Title 25, Code of Federal Regulations, until the adoption of new regulations per the legislation.

§ 418 CSKT strongly supports this section's establishment of a clear and convincing burden of proof for the Secretary in any administrative appeal or civil action.

June 14, 2004

Mr. Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Responses to Supplemental Questions Following CSKT Testimony on S. 1715

Dear Chairman Campbell,

In response to your letter dated May 17, 2004, I am pleased to provide answers to the questions you had posed in the letter. Your questions are recited below, followed by my respective responses:

1. Chairman Matt, you have indicated that your tribe was one of the original 10 Self Governance Tribes, so clearly you've been operating programs under this system for years. You also have a reputation for operating these programs very successfully.

> **Q. To what do you attribute the success you have had in operating self governance programs and can you speculate as to why some tribes still appear to be hesitant to embrace Self Determination Act Contracting and Self Governance Compacting?**
>
> I believe that our success is, in part, attributable to: the flexibility Self Governance allows a tribe operating these programs; the stability of our tribal government; and the professional staff we have operating these programs.
>
> I am not really sure why tribes would not want to operate their own programs, but one possible reason could include a fear of the unknown with respect to assuming responsibility for federal programs. It is also possible that some tribes may feel that they do not have either the administrative infrastructure or the political stability needed to successfully assume federal programs under the Tribal Self-Governance framework.
>
> However, there are also reasons for which the federal government is responsible. For example, the BIA, the IHS and Congress continually under-fund tribal programs. It is easy to see why a tribal government would be reluctant to take over responsibility for operating a program that everyone knows simply can not be professionally operated at the

funding level that is made available. Furthermore, tribes are going to be understandably hesitant to operate a program when they don't know if, or to what extent, their indirect cost rates will be honored and paid. No other governmental contractor is faced with such a predicament. It is our hope that Congress will enact S. 2172, the Tribal Contract Support Cost Technical Amendments of 2004, which would require federal agencies to honor tribally negotiated indirect cost rates and to fully reimburse tribes at those levels. These are certainly matters Congress has some control over.

2. Your tribe is close to reaching an agreement with the U.S. Fish & Wildlife Service from management of certain functions at the National Bison Range Complex located entirely on your reservation. This has been an extremely long, difficult and expensive negotiation that began 10 years ago.

Q. Can you tell me where the negotiations currently stand and how this Committee can improve Title IV to make sure other Tribes do not have to engage in a 10 year process to assume management of eligible non-BIA programs located in DOI?

I believe we are close to an agreement. We are discussing the matter with DOI officials and hope to have an Annual Funding Agreement released for public review soon.

The Tribal Self-Governance Act could be amended so that once the Secretary determines a tribe has a historic, geographic or cultural connection to a program - and an eligible Self-Governance tribe requests the opportunity to contract the program under Self Governance - the Department must then enter into an agreement. As it currently stands, the language now granting discretion to the Secretary is being misapplied in the field to allow for very arbitrary decision-making.

Another alternative would be that, in situations where a tribe met all three criteria (historic, geographic and cultural connections) with respect to a DOI program, and not just one as currently is required, the Act would require DOI to enter into an agreement with such tribe for an AFA.

3. I understand from news articles, that the tribe's efforts to contract for the National Bison Range were opposed by local groups.

Q. Can you give the Committee a brief flavor of the opposition and what their objections were?

Opposition to CSKT contracting at the National Bison Range (NBR) is invariably based upon either a lack of correct information and/or misinformation. Leaving aside the

question of motive for opposition, I can report to you that, thus far, almost all of the expressed opposition traces back to a lack of understanding. For instance, a common complaint we hear is that the Tribes will restrict access to the NBR, or that the U.S. Fish & Wildlife Service (FWS) should not take the NBR out of the National Wildlife Refuge System. Both of these comments ignore the facts that: 1) the NBR will remain in U.S. ownership and under FWS' administration/oversight; and 2) the NBR will remain a part of the National Wildlife Refuge System administered by FWS. Such comments are therefore based upon faulty perceptions of the laws and regulations governing tribal contracting.

Similarly, we have opponents who insist that the Tribes are going to locate a casino at the National Bison Range (*see* quote from local resident in a September 2, 2003 Washington Post article titled "Groups Lock Horns Over Bison Range", p. A19). Aside from the fact that the comment is completely baseless, such a comment also demonstrates ignorance of multiple federal laws, including the Tribal Self-Governance Act and the Indian Gaming Regulatory Act, neither or which would allow such an action to take place.

In short, we have not heard any opposition that can not be directly traced to misunderstandings, misperceptions, or willful misrepresentations of CSKT's intentions.

4. I note with great interest that you also contract for the Individual Indian Money Account and land title functions.

Q. With trust reform occupying such a large part of the debate now, can you give me details on what specific activities you perform in these areas?

CSKT contracts all available federal trust services, with the exception of the Flathead Indian Irrigation Project and the BIA Superintendent. CSKT administers portions of the Individual Indian Money Account program and also operates: the land title and records plant for the Reservation's trust property; real estate services; forestry programs; and probate.

Q. When do [*sic*] you begin to contract these activities [Individual Indian Money Account and land title functions]?

We began contracting IIM activities in 2001 and we began contracting the land title functions in 1995.

Q. What were the negotiations with the Department like that led to your contracting for these activities?

The negotiations for the land title functions went well thanks to the support shown us by our Regional Director, Stan Speaks. With his assistance, we were able to compact those functions and we have been successfully operating them ever since.

The Individual Indian Money Accounts program proved more difficult as we had to deal with much resistance from the Office of Trust Funds Management (OTFM), as well as federal regulations which treated non-BIA programs as being discretionary for compacting. We did not feel that OTFM staff were treating the programs as Congress had intended under the Tribal Self-Governance Act. As a result, in response to current trust reform efforts the CSKT has sought protective legislation such as Section 139 to safeguard our ability to compact trust management functions.

I want to again thank you for the opportunity to provide my views to the Senate Indian Affairs Committee. Please contact me if I can provide any further information.

Sincerely,

The Confederated Salish & Kootenai Tribes

D. Fred Matt, Chairman
Tribal Council

BEN STEVENS, SELF-GOVERNANCE CORDINATOR
COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS

TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 1715, DEPARTMENT OF THE INTERIOR TRIBAL SELF-GOVERNANCE ACT OF 2003

MAY 12, 2004

I appreciate the opportunity to be here today to offer my testimony in support of S.1715, which strengthens self-governance for Indian tribes by amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) (P.L. 93-638, as amended).

My name is Ben Stevens, and I am the Self-Governance Coordinator of the Council of Athabascan Tribal Governments (CATG), which is an Alaska Native Tribal Organization created in 1985 by 10 tribal governments to provide essential services to the member villages, such as natural resource protection and enhancement, health care, and economic development opportunities. The region of the CATG encompasses a large amount of federal public lands including all of the Yukon Flats National Wildlife Refuge and portions of the Arctic National Wildlife Refuge.

The CATG has a compact of self-governance under Title IV of the ISDEAA with the Bureau of Indian Affairs (BIA) for natural resource and subsistence programs on behalf of the Birch Creek Tribal Council, as well as a self-governance compact with the Indian Health Service under Title V of the ISDEAA under which it operates the Yukon Flats Health Center and provides an array of health care programs in our geographic area. Most recently, CATG has recently entered into a self-governance funding agreement with the United States Fish & Wildlife Service (FWS) in which it has assumed certain responsibilities at the Yukon Flats National Wildlife Refuge.

CATG strongly supports S. 1715, not only because it ensures consistency between the Title IV program under the Department of the Interior (DOI) and the Title V self-governance program under the Department of Health and Human Services, but also because it resolves existing statutory hurdles governing tribal compacting for non-BIA programs within the DOI. In order to highlight the importance of these proposed amendments to Title IV, let me explain about CATG's Title IV agreement with the FWS.

CATG's Title IV Agreement with the United States Fish & Wildlife Service

The CATG signed a Title IV Annual Funding Agreement (AFA) with the FWS less than two weeks ago, on April 30, 2004. While there are some ISDEAA agreements

between tribes and non-BIA agencies (such as the National Park Service and the Bureau of Reclamation), our AFA is the first ever agreement with the FWS.

The AFA provides that the CATG will perform certain responsibilities at the Yukon Flats National Wildlife Refuge, including the following:

- Location of public easements under Section 17(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(b);
- Environmental and educational outreach;
- Wildlife harvest data collection;
- Survey of Eastern Yukon Flats Moose populations; and
- Logistical functions, such as Fort Yukon equipment and facility maintenance.

The AFA contains operational standards and performance measures that must be met, and the federal government retains oversight and ultimate control over the federal lands and resources within the Yukon Flats. Eventually, CATG envisions opening an educational visitor's center to highlight the Refuge and CATG tribes' traditional territory.

CATG expects the agreement to provide many tangible benefits to the Refuge and its resources. The Council brings to the partnership with the FWS a wealth of traditional and ecological knowledge. It has experience working with the local people to gather accurate data and has demonstrated its efficiency and effectiveness in fisheries and wildlife research projects, habitat management activities, harvest data collection, aerial surveys, subsistence use surveys, and traditional knowledge interviews. CATG is pleased to work in partnership with the FWS and looks forward to continue working with the FWS long into the future.

While CATG's agreement with the FWS is a successful example of partnerships between tribes and the United States the agreement was not easily developed. CATG worked hard to overcome initial reluctance of the FWS and to educate the agency and the people in the region of the benefits to the Title IV self-governance program.

CATG first submitted a proposal to the FWS for programs of the Yukon Flats Refuge under Title I of the ISDEAA five years ago, in 1998. In the Title I proposal, CATG sought to perform refuge operations and management, ecological services, and cultural resources and fisheries programs. After several meetings and appeals with the FWS, the FWS eventually issued a final denial of CATG's request to contract in August 1999.

CATG then submitted a self-governance proposal in May 2002 under Section 403(c) of Title IV, which currently provides that a Title IV annual funding agreement can

include programs, services, functions and activities of DOI agencies that are of "special geographic, historical or cultural significance to the participating Indian tribe requesting a compact." The programs CATG requested were based on the list published by the FWS each year in the Federal Register that identifies the types of programs that may be included in a Title IV agreement. Despite this, and the Regional Director's acknowledgement that the Refuge is of special geographic, historic and cultural significance to the CATG's member tribes, the Regional Director denied the self-governance proposal. While CATG appealed his decision, no final decision for the Department was ever issued.

The CATG resubmitted another Title IV proposal to the FWS in May 2003. The new proposal was smaller in scope and CATG worked closely with the FWS staff in Alaska to determine exactly what programs could be included. This effort is the one that ultimately resulted in the agreement CATG and the FWS signed on April 30, 2004.

The process for arriving at this point was thus a long and challenging one. While the Title IV self-governance program has had many beneficial results for tribes since Congress created it in 1994, implementation of Title IV in non-BIA Agencies has been difficult at best, and only in very few instances have tribes succeeded in assuming responsibilities related to non-BIA programs.

I don't think that when Congress enacted Title IV it intended for tribes to find it this difficult to take over programs of non-BIA agencies. For example, the House Committee on Natural Resources explained the intention behind Section 403(c) as follows:

> *[P]rovide additional authority to the Secretary to include any program of special importance to an Indian tribe as part of their self-governance compact . . . [and] include programs or portions of programs administered by the . . . U.S. Fish and Wildlife Service . . . which have special significance to the tribe. The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement.*

H.R. Rep. No. 103-653, at 10 (1994).

Title IV Amendments

Among many reasons, the amendments to Title IV contained in S. 1715 are needed to clearly articulate the ability of tribes to choose to enter into agreements with DOI agencies other than the BIA. This bill makes several important improvements that CATG believes would help with the implementation of the self-governance program and allow for tribes to build on the successes that the self-governance program has already provided. For example, the amendments would accomplish the following:

- Help tribes negotiate agreements for programs, functions, services and activities (PFSAs) of non-BIA agencies by explaining that tribes can manage those PFSAs which are important to them, even where non-Indians have an incidental interest in those PFSAs;

- Make it clear that tribes and non-BIA agencies within the DOI can negotiate a compact in addition to a funding agreement;

- Allow the Secretary, at a tribe's request, to enter into multi-year funding agreements;

- Allow tribes to invest funds to increase program funding using the prudent investor standard as currently provided under Title V of the ISDEAA; and

- Create important and needed procedures that must be followed whenever a tribe and the Secretary cannot agree on terms to be included in a compact or funding agreement.

Conclusion

In conclusion, I sincerely hope that Congress will enact S. 1715 so that CATG and other tribes around the country can continue to develop its programs consistent with the advantages of the Title IV self-governance program. Self-governance has given us the flexibility to achieve our goals in a way that is most meaningful for our people. Further improvement of the self-governance program within the DOI can provide benefits for the land, its resources, and the people who use and enjoy them, as envisioned by Congress when it first enacted Title IV.

Thank you.

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May 26, 2004

Via Telefax (202-224-5429) and Electronic Mail
Senator Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Re: Written Response to Questions Relative to Testimony of the Council of Athabascan Tribal Governments and S.1715.

Dear Chairman Campbell:

This letter responds to your request, dated May 17, 2004, for a written response to several questions posed by the Senate Committee on Indian Affairs (SCIA). I provided testimony on behalf of the Council of Athabascan Tribal Governments (CATG) on May 12, 2004 at the SCIA hearing on S. 1715, the Department of Interior Tribal Self-Governance Act of 2003. I answer each of the Committee's questions in turn below.

1. **You testified that the CATG, your client, had two 638 contract proposals denied by the Fish & Wildlife Service, before finally reaching the current agreement.**

Question: What were the reasons given for the denials of those proposals?

The CATG submitted a contract proposal under Title I of the Indian Self-Determination and Education Assistance Act (ISDEAA) to the United States Fish & Wildlife Service (FWS) in November 1998 to co-manage the Yukon Flats National Wildlife Refuge and transfer certain field and regional positions to CATG. The FWS declined the proposal on May 4, 1999 based on its interpretation of 25 U.S.C. § 450f(a)(1)(E), which provides that tribes can contract for programs that are "for the benefit of Indians because of their status as Indians." The FWS found that the programs of the Refuge are national conservation programs and not meant to solely benefit Indians, so could not be completed or maintained through the proposed contract and could not be lawfully carried out by CATG under the ISDEAA. See 25 U.S.C. § 450f(a)(2)(C), (E). The DOI instead offered to discuss alternative avenues for CATG's involvement in the operations of the Refuge other than the ISDEAA.

CATG then requested an informal conference with the Department of the Interior (DOI). Following the conference, DOI issued a recommended decision on August 2,

1999 that upheld the declination because CATG's proposal "did not include a program or portion of a program that was contractible under Title I of P.L. 93-638."

The CATG's second proposal was made under Title IV of the ISDEAA to the FWS on May 29, 2002. The proposal sought to perform programs, functions, services and activities (PFSAs) of the Yukon Flats National Wildlife Refuge.

The FWS issued a declination letter to the CATG on July 15, 2002 that covered all programs at the Refuge. While recognizing that the CATG considers the lands and natural resources of the Flats to be of geographic, cultural, and historical significance to the CATG member villages, the Regional Director based the declination on his view that CATG's Title IV proposal was inconsistent with the mission of the National Wildlife Refuge System, which is identified in the National Wildlife Refuge System Administration Act, and with the purposes of the Yukon Flats National Wildlife Refuge as established under the Alaska National Interest Lands Conservation Act. Even though the programs included in CATG's proposal were listed in the Federal Register by the DOI as eligible to be included in a Title IV agreement, the Director concluded that the programs were "not available for inclusion in an annual funding agreement under the ISDEAA."

CATG appealed the declination to Steven Williams, Director of FWS on August 12, 2002, explaining that CATG intended to initially take over only portions of the Refuge's programs rather than compact for the administration of the entire Refuge. Mr. Williams responded on October 11, 2002 by upholding the declination. He emphasized that CATG's proposal was too broad in that it sought to take over the entire operations of the refuge and that CATG had declined to discuss taking incremental portions of the PFSAs that were included in CATG's proposal.

During the pre-negotiation meeting with FWS, and in its appeal to Mr. Williams, CATG had explained that the list of PFSAs included in its proposal were the headings taken from the Federal Register notice on contractible programs, and that CATG was interested in exploring what PFSAs under those headings could be compacted. The proposal was meant to be general enough encompass the specific programs that would be the subject of the negotiations. There was a lot of concern about CATG taking over the law enforcement functions of the Refuge, so CATG made it clear during the appeal of the declination that it had no intention to take over the law enforcement functions and that it did not intend to take over every PFSA related to the Refuge.

CATG appealed Mr. William's decision to Craig Manson, Assistant Secretary of Fish, Wildlife and Parks, but no final decision for the DOI was ever made. Instead, CATG submitted a revised, scaled-back Title IV proposal to FWS on May 30, 2003, which is the one that eventually resulted in the signed agreement with the FWS.

Question: Did the Fish & Wildlife Service question the capacity of the CATG to perform the contract?

Yes. CATG's capacity was the subject of discussion and concern during several meetings with FWS. For example, at a pre-negotiation meeting held in July 2002, FWS staff stated their hesitancy to turn over certain PFSAs due to the agency's responsibility for ensuring competent performance of those PFSAs under the FWS' mission for the Refuge. In his denial of CATG's first Title IV proposal to the FWS, the Regional Director offered to negotiate a standard procurement contract or cooperative agreement in lieu of a self-governance agreement under the ISDEAA for programs that would be cost effective and could be accomplished in a "sound and competent manner." During the negotiation process CATG went out of its way to demonstrate its capacity to manage programs and assure the FWS that it has a proven track record of self-governance and would competently manage the PFSAs.

Question: Can you briefly explain the differences between the original proposals and the final agreement reached with the Service?

As discussed above, the initial proposals under Title I and Title IV were drafted to be general in scope so that they would be inclusive of whatever PFSAs were negotiated with the FWS. These proposals were interpreted by the FWS' as encompassing a desire of the CATG to take over all operations and management of the Yukon Flats National Wildlife Refuge at once, even thought CATG repeatedly made it clear to FWS that it intended the scope of work to be subject to negotiation.

The proposal that CATG submitted to the FWS in May 2003 had, by comparison to earlier proposals, a very condensed scope and focused on assuming discreet programs. CATG proposed contracting, in full or in part, for wildlife program planning, habitat restoration activities, education programs, and certain construction activities within the Refuge. CATG also once again made it clear to FWS that it intended the scope of work to be subject to negotiation.

The signed agreement with the FWS encompasses the following specific PFSAs:

- Locating Section 17(b) Easements
- Environmental Education/Outreach
- Wildlife Harvest Data Collection
- Eastern Yukon Flats Moose Population Estimation Survey
- Logistics (Ft. Yukon Equipment and Facility Maintenance)

2. **As I understand it, the contract agreed to on April 30 does not involve a significant amount of funding.**

   Question: Was there a question as to the availability of funding for the contract?

Yes. The FWS indicated throughout the negotiations that it had only very limited funding to transfer to CATG through a self-governance agreement. Ultimately, FWS told CATG representatives that the Agency had a total of $60,000 available and, after much discussion, CATG and FWS agreed to include a limited number of PFSAs to be performed at the Refuge in the initial agreement.

Question: How much program funding did the Service retain?

As far as we know the FWS did not use any of the funding that the Agency has budgeted for the Yukon Flats National Wildlife refuge to fund the parties' agreement. If that is the case the Agency likely retained all of the program funding available for the Refuge budget.

3. **Did the Council have any opposition from outside groups to its efforts to reach an agreement with the Service?**

Yes. The FWS conducted a 60 day public review process involving public meetings and opportunities to submit oral and written comment on the annual funding agreement with CATG. A number of comments submitted from individuals and organizations opposed the annual funding agreement for a variety of reasons. Several comments, from individuals as well as organizations, strongly supported the agreement, however.

4. **Evidently both the CATG and the Flathead ran into the same series of obstacles in negotiating with the Fish and Wildlife Service, but the CATG overcame those objections.**

   Question: Can you tell me more specifically what the objections were?

Based on the negotiation process and the declinations and appeals that preceded the CATG's successful conclusion of negotiating with the FWS, some of the obstacles or objections included the following:

- Concern over loss of jobs or displacement of FWS staff;
- Fear that the CATG would take over the Refuge and mismanage it, or manage it to CATG's sole benefit (rather than that of the public);
- Apprehension over tribal capacity to perform the PFSAs of the Refuge;
- Aversion to turning over law enforcement functions;

- Hesitancy for any of the provisions of Title I to apply to the agreement, particularly those provisions preventing reductions of funds in subsequent years unless those reductions meet statutory criteria; and
- Fear that regulation waivers intended to provide flexibility would result in substandard performance or management of PFSAs.

I hope that this written material responds to your questions and provides you with the information you are seeking. If the SCIA would like any further information about CATG's experiences, please do not hesitate to contact me.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

By: _____
Geoffrey Strommer

DEPARTMENT OF HEALTH AND HUMAN SERVICES TRIBAL SELF-GOVERNANCE ACT

WEDNESDAY, MAY 19, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 10:02 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. We will move straight to the hearing part of our meeting this morning. This morning, the committee will take up S. 1696, the Department of Health and Human Services Tribal Self-Governance Amendments of 2003. This is a bill that I introduced last October, along with our Vice Chairman, Senator Inouye. Unlike most other policies in courtrooms affecting Native people, we can say with a great deal of certainty that self-governance does work. Self-governance has resulted in tribal governments with enhanced capacities, better services for tribal members, and a greater degree of tribal decisionmaking and resource allocation that at any time in the past 150 years.

With over one-half of the budget of the Indian Health Service administered by Indian tribes, the trend is towards greater degrees of contracting and compacting. In 2000, I was very proud to sponsor the bill that made self-governance in the IHS permanent. It is now time to take the next logical measured step in expanding self-governance to include the non-IHS programs in the Department of Health and Human Services.

I will submit my complete statement for the record, as will other members who are not here.

[Prepared statement of Senator Campbell appears in appendix.]

[Text of S. 1696 follows:]

II

108TH CONGRESS
1ST SESSION

S. 1696

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2003

Mr. CAMPBELL (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003''.

SEC. 2. AMENDMENT.

The Indian Self-Determination and Education Assistance Act is amended by striking title VI (25 U.S.C. 450f note; Public Law 93–638) and inserting the following:

"TITLE VI—TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

"SEC. 601. DEFINITIONS.

"In this title:

"(1) COMPACT.—The term 'compact' means a compact under section 604.

"(2) CONSTRUCTION PROJECT.—The term 'construction project' has the meaning given the term in section 501.

"(3) DEMONSTRATION PROJECT.—The term 'demonstration project' means the demonstration project under this title.

"(4) FUNDING AGREEMENT.—The term 'funding agreement' means a funding agreement under section 604.

"(5) INCLUDED PROGRAM.—The term 'included program' means a program that is eligible for inclusion under a funding agreement under section 604(c) (including any portion of such a program and any function, service, or activity performed under such a program).

"(6) INDIAN TRIBE.—The term 'Indian tribe', in a case in which an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf in accordance with section 603(a)(3), includes the other authorized Indian tribe, inter-tribal consortium, or tribal organization.

"(7) INTER-TRIBAL CONSORTIUM.—The term 'inter-tribal consortium' has the meaning given the term in section 501.

"(8) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

"(9) SELF-GOVERNANCE.—The term 'self-governance' has the meaning given the term in section 501.

"(10) TRIBAL SHARE.—The term 'tribal share' has the meaning given the term in section 501.

"SEC. 602. ESTABLISHMENT OF DEMONSTRATION –PROJECT.

"(a) DEMONSTRATION.—For a period of not more than 5 years after the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, the Secretary shall carry out a project to demonstrate the effectiveness of tribal op-

eration of the included programs under self-governance principles and authorities.

"(b) ADMINISTRATION.—The management and administration of the demonstration project shall be in the Office of the Secretary.

"SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES.

"(a) IN GENERAL.—

"(1) CONTINUING PARTICIPATION.—Not more than 50 Indian tribes that meet the eligibility criteria specified in subsection (b) shall be entitled to participate in the demonstration project.

"(2) ADDITIONAL PARTICIPANTS.—If more than 50 eligible Indian tribes request participation, the Secretary may select additional Indian tribes to participate in the demonstration project.

"(3) OTHER AUTHORIZED INDIAN TRIBE, INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERNMENT.—If an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).

"(b) ELIGIBILITY.—An Indian tribe shall be eligible to participate in the demonstration project if the Indian tribe, as of the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, is a party to a compact or funding agreement under this Act.

"(c) SELECTION.—The Secretary shall select Indian tribes that request participation in the demonstration project by resolution or other official action by the governing body of each Indian tribe to be served.

"(d) PLANNING AND NEGOTIATION GRANTS.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall establish a program to allow Indian tribes that meet the eligibility requirements of this title to be awarded a planning grant or negotiation grant, or both.

"(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) by an Indian tribe is not a requirement for the Indian tribe to participate in the demonstration project.

"SEC. 604. COMPACTS AND FUNDING AGREEMENTS.

"(a) IN GENERAL.—

"(1) NEW COMPACT AND FUNDING AGREEMENT.—Not later than 60 days after the date of submission by an Indian tribe of a request to par-

ticipate in the demonstration project, the Secretary shall negotiate and enter into a written compact and funding agreement with the Indian tribe in a manner that is consistent with the trust responsibility of the Federal Government, treaty and statutory obligations, and the government-to-government relationship between Indian tribes and the United States.

"(2) EXISTING COMPACT.—Rather than enter into a new compact under paragraph (1), an Indian tribe may use an existing compact negotiated under title V for purposes of the demonstration project.

"(b) COMPACTS.—

"(1) CONTENTS.—A compact under subsection (a) shall designate—

"(A) congressional policies regarding tribal self-governance;

"(B) the intent of the demonstration project;

"(C) such terms as shall control from year to year; and

"(D) any provisions of this title that are requested by the Indian tribe.

"(2) EFFECTIVE DATE.—The effective date of a compact shall be the date of execution by the Indian

tribe and the Secretary or another date agreed on by the parties.

"(3) DURATION.—A compact shall remain in effect so long as permitted by Federal law or until terminated by agreement of the parties.

"(4) AMENDMENT.—A compact may be amended only by agreement of the parties.

"(c) FUNDING AGREEMENTS.—

"(1) SCOPE.—A funding agreement under subsection (a) shall, at the option of the Indian tribe, authorize the Indian tribe to plan, conduct, and administer included programs administered by the Secretary through an agency of the Department of Health and Human Services, set forth in paragraphs (2) through (4).

"(2) INITIAL INCLUDED PROGRAMS.—The following programs are eligible for inclusion in a funding agreement under this title:

"(A) ADMINISTRATION ON AGING.—Grants for Native Americans under title VI of the Older Americans Act of 1965 (42 U.S.C. 3057 et seq.).

"(B) ADMINISTRATION FOR CHILDREN AND FAMILIES.—

"(i) The tribal temporary assistance for needy families program under section 412(a)(1) of the Social Security Act (42 U.S.C. 612(a)(1) et seq.).

"(ii) The Low-Income Home Energy Assistance Program under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

"(iii) The Community Services Block Grant Program under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).

"(iv) The Child Care and Development Fund under the Child Care and Development Block Grant Act (42 U.S.C. 9858 et seq.).

"(v) The native employment works program under section 412(a)(2) of the Social Security Act (42 U.S.C. 612(a)(2)).

"(vi) The Head Start Program under the Head Start Act (42 U.S.C. 9831 et seq.).

"(vii) Child welfare services programs under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.).

1 "(viii) The promoting safe and stable
2 families program under part B of title IV
3 of the Social Security Act (42 U.S.C. 620
4 et seq.).
5 "(ix) Family violence prevention
6 grants for battered women's shelters under
7 the Family Violence Prevention and Serv-
8 ices Act (42 U.S.C. 10401 et seq.).
9 "(C) SUBSTANCE ABUSE AND MENTAL
10 HEALTH SERVICES ADMINISTRATION.—Tar-
11 geted capacity expansion program under title V
12 of the Public Health Service Act (42 U.S.C.
13 290aa et seq.).
14 "(D) BLOCK GRANTS REGARDING MENTAL
15 HEALTH AND SUBSTANCE ABUSE.—Mental
16 health and substance abuse block grant pro-
17 grams under title XIX of the Public Health
18 Services Act (42 U.S.C. 300x et seq.).
19 "(E) HEALTH RESOURCES AND SERVICES
20 ADMINISTRATION.—Community health center
21 grants under section 330 of the Public Health
22 Service Act (42 U.S.C. 254b).
23 "(3) ADDITIONAL INCLUDED PROGRAMS.—The
24 Secretary may identify not more than 6 additional

programs annually for inclusion in the demonstration project, including—

"(A) all other programs in which Indian tribes are eligible to participate;

"(B) all other programs for which Indians are eligible beneficiaries; and

"(C) competitive grants for which an Indian tribe receives an individual or cooperative award, on the condition that the Indian tribe agree in the funding agreement to restrictions regarding program redesign and budget reallocation for any competitive awards.

"(4) CONTENTS.—A funding agreement—

"(A) shall specify—

"(i) the services to be provided;

"(ii) the functions to be performed; and

"(iii) the responsibilities of the Indian tribe and the Secretary;

"(B) shall provide for payment by the Secretary to the Indian tribe of funds in accordance with section 605;

"(C) shall not allow the Secretary to waive, modify, or diminish in any way the trust responsibility of the United States with respect to

Indian tribes and individual Indians that exist under treaties, Executive orders, and Acts of Congress; and

"(D) shall allow for retrocession of included programs under section 105(e).

"SEC. 605. TRANSFER OF FUNDS.

"(a) TRANSFER.—

"(1) IN GENERAL.—Under any compact or funding agreement entered into under this title, the Secretary shall transfer to the Indian tribe all funds provided for in the funding agreement.

"(2) TIMING.—Unless the funding agreement provides otherwise, at the request of the Indian tribe—

"(A) funding shall be paid in 1 annual lump sum payment; and

"(B) the transfer shall be made not later than 10 days after the apportionment of funds by the Office of Management and Budget to the Department of Health and Human Services.

"(b) AMOUNT OF FUNDING.—

"(1) FUNDING FORMULAS.—

"(A) IN GENERAL.—Any statutory funding formula for an included program—

"(i) shall be waived for the demonstration project under this title; and

"(ii) shall be used to determine the amount of funding provided to an Indian tribe.

"(B) ADEQUACY.—Subject to the availability of appropriations—

"(i) the funding amount shall be adequate to permit the successful implementation of the demonstration project; and

"(ii) the Secretary and the participating Indian tribe shall determine the funding amount through negotiation.

"(2) MATCHING REQUIREMENT.—An Indian tribe may request a waiver of any matching requirement applicable to an included program, and the Secretary shall liberally grant such reasonable waiver requests.

"(3) CONTRACT SUPPORT COSTS.—There shall be added to the amount required by paragraph (1) contract support costs as specified in paragraphs (2), (3), (5), and (6) of section 106(a).

"(4) ADMINISTRATIVE FUND SHARES.—

"(A) IN GENERAL.—An Indian tribe may negotiate for a tribal share of administrative

funds without regard to the organizational level at which the included programs are carried out.

"(B) INCLUSION.—A tribal share under subparagraph (A) shall include a share for training and technical assistance services performed by a contractor.

"SEC. 606. GENERAL PROVISIONS.

"(a) REDESIGN, CONSOLIDATION, AND REALLOCATION.—

"(1) IN GENERAL.—To the extent allowed under the statutory provisions of the included programs included in the funding agreement, and subject to the terms of the funding agreement, an Indian tribe may—

"(A) redesign or consolidate the included programs under the funding agreement if the Indian tribe agrees to abide by the statutory purposes of the program; and

"(B) reallocate or redirect funds for the included programs, among the included programs under the funding agreement, so long as all demonstration project costs using those funds meet allowable cost standards as required by section 506(c).

"(2) WAIVERS.—

1 "(A) IN GENERAL.—At the request of an
2 Indian tribe, if the Secretary determines that a
3 waiver would further the purposes of this Act,
4 the Secretary shall grant a waiver of program
5 requirements for the duration of the demonstra-
6 tion project to facilitate the ability of an Indian
7 tribe to redesign included programs or reallo-
8 cate funds under paragraph (1).
9 "(B) DOCUMENTATION.—The Secretary
10 shall document all requests for a waiver under
11 subparagraph (A), including a description of—
12 "(i) the reasons for each request;
13 "(ii) the effect of the waiver on the
14 Indian tribe making the request; and
15 "(iii) the views of the Indian tribe re-
16 garding the requested waiver.
17 "(b) INABILITY TO AGREE ON COMPACT OR FUND-
18 ING AGREEMENT.—
19 "(1) FINAL OFFER.—If the Secretary and an
20 Indian tribe are unable to agree, in whole or in part,
21 on the terms of a compact or funding agreement (in-
22 cluding funding levels), the Indian tribe may submit
23 a final offer to the Secretary.
24 "(2) DETERMINATION.—Not later than 45 days
25 after the date of submission of a final offer, or as

otherwise agreed to by the Indian tribe, the Secretary shall review and make a determination with respect to the final offer.

"(3) NO TIMELY DETERMINATION.—If the Secretary fails to make a determination with respect to a final offer within the time specified in paragraph (2), the Secretary shall be deemed to have agreed to the final offer.

"(4) REJECTION OF FINAL OFFER.—

"(A) IN GENERAL.—If the Secretary rejects a final offer, the Secretary shall—

"(i) submit to the Indian tribe a written statement clearly setting forth the reasons for rejecting the final offer; and

"(ii) provide the Indian tribe with a hearing on the record (except that the Indian tribe may, in lieu of such a hearing, file an appeal of the rejection to the Intra-Departmental Council on Native American Affairs, the decision of which shall be final and not subject to judicial review).

"(B) BURDEN OF PROOF.—In a hearing or appeal under subparagraph (A)(ii), the Secretary shall have the burden of proving by clear

and convincing evidence the validity of the grounds for rejecting the final offer.

"(c) OTHER FUNDING.—Participation by an Indian tribe in the demonstration project under this title shall not affect the amount of funding that the Indian tribe would receive under the laws (including regulations) governing the included programs if the Indian tribe did not participate.

"(d) DUPLICATION OF ELIGIBILITY.—To the maximum extent practicable, an Indian tribe shall make efforts to coordinate with appropriate States to identify dually eligible individuals to address the potential for the provision of duplicate benefits.

"(e) APPEALS.—Except as provided in subsection (b)(2), a compact or funding agreement under this title shall be considered to be a contract for the purposes of section 110.

"(f) REGULATIONS; OTHER AGENCY STATEMENTS.—

"(1) REGULATIONS.—An Indian tribe shall comply with final regulations for the included programs in connection with the demonstration project.

"(2) OTHER AGENCY STATEMENTS.—Unless expressly agreed to by an Indian tribe in a compact or funding agreement, the Indian tribe shall not be

subject to any agency circular, policy, manual, guidance, or rule that is promulgated by regulation.

"(g) APPLICABILITY OF OTHER PROVISIONS.—The following provisions of this Act shall apply to a compact or funding agreements entered into under this title:

"(1) Section 102(d).

"(2) Section 506(b) (conflicts of interest).

"(3) Section 506(c)(1) (Single Agency Audit Act).

"(4) Section 506(c)(2) (cost principles).

"(5) Section 506(c) (records).

"(6) Section 507(c)(1)(A) (grounds for rejecting a final offers).

"(7) Section 508(g) (prompt payment).

"(8) Section 506(h) (nonduplication).

"(9) Section 508(h) (interest or other income on transfers).

"(10) Section 508(i) (carryover of funds).

"(11) Section 509 (construction projects).

"(12) Section 510 (Federal procurement laws).

"(13) Section 512(b) (regulation waivers).

"SEC. 607. REPORT.

"(a) IN GENERAL.—The Secretary shall annually submit to Congress a report on the relative costs and bene-

fits of the demonstration project using evaluation and reporting data provided by participating Indian tribes.

"(b) BASELINE MEASUREMENTS.—

"(1) IN GENERAL.—A report under subsection (a) shall be based on baseline measurements developed jointly by the Secretary and participating Indian tribes.

"(2) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to Indian tribes to assist Indian tribes in evaluating and reporting on the demonstration project.

"(c) CONTENTS.—A report under subsection (a) shall—

"(1) verify that the participating Indian tribes met the statutory purposes of the included programs;

"(2) confirm that key self-governance principles were carried out as Indian tribes operated the included programs; and

"(3) separately include Federal and tribal viewpoints regarding—

"(A) the merger of included programs operated under this title and self-governance principles; and

"(B) the impact on program beneficiaries.

1 **"SEC. 608. AUTHORIZATION OF APPROPRIATIONS.**

2 ''There are authorized to be appropriated such sums
3 as are necessary to carry out this title, to remain available
4 until expended.''.

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The CHAIRMAN. I do want to note the absence of any representative from the Department of Health and Human Services, which for reasons beyond my understanding have chosen not to send a witness to today's hearing. I have to say as a matter of record that I am not at all pleased with the response we have gotten from the Administration when we are taking up Indian issues that I believe are really measured to try to help Indian tribes become more independent of the Federal Government's tethering. Perhaps then not being here is an indication they support the bill and just do not want to tell us. Hopefully, that is the case.

So if there are no other opening statements, we will go ahead to our first and only panel today. That will be Don Kashevaroff, chairman of the Alaska Native Tribal Health Consortium; Alvin Windy Boy, nice to see you, Alvin. I have not seen you for a good amount of time, but hopefully I will see you at some of the pow-wows. I am coming to your Fourth of July big pow-wow. It is going to be a lot of fun, and homecoming for me.

Mr. WINDY BOY. I might come out of retirement. [Laughter.]

The CHAIRMAN. Okay. And Ron Allen, chairman of the Jamestown S'Klallam Tribal Council from Washington; Mickey Peercy, executive director of Management and Operations, Choctaw Nation of Oklahoma, from Durant, OK.

If you gentlemen would all sit down, we will go ahead and start with you, Don. For all of the people testifying today, if you would like to submit your complete written testimony, that will be included in the record. If you would like to abbreviate, that is fine.

STATEMENT OF DON KASHEVAROFF, PRESIDENT/CHAIRMAN, ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

Mr. KASHEVAROFF. Thank you, Mr. Chairman. Yes, please accept my written testimony. Good morning to you and committee members. I am pleased to testify today in strong support of S. 1696, the Department of Health and Human Services Tribal Self-Governance Amendment Act.

My name is Don Kashevaroff. I am the president of the Seldovia Village Tribe. I am also the chair and president of the Alaska Native Tribal Health Consortium.

In my written comments, I discuss some of the benefits of S. 1696 and similar to what the chairman started out with today, that it will increase efficiency, allow us to redesign and to really help our people. I was kind of going to really veer off the topic since I understand that no one from the Administration is going to be present, so for the next few minutes, let me go this way.

For the last 3 weeks, I have been doing nothing but budgets, budget meetings, budget meetings, budget meetings. HHS, we had a meeting with them last week, our consultation meeting. HHS has a $500 billion budget. I cannot count that high. I cannot imagine how much money that is, but it is a lot of money. Even around $68 billion of that is discretionary, meaning that they can spend it, or the Administration can request to spend it anywhere they want.

What I see out of them and I asked out of them, and maybe today is an indication, is, I asked them what priority are Indians. We have already showed over and over again that we are the lowest of the low when it comes to health disparities. We are always

on the bottom rung. We are never getting ahead. HHS is spending about $1 billion on us; excuse me, they are spending around $4 billion or $5 billion. They are spending 1 percent on us of their budget. It leads me to believe that if Indians were a priority, they would be spending a lot more.

One of the reasons I think S. 1696 is very important to us is that right now the government does not place a priority on the health care of Indians. They just have too many other things going on which I can understand. There are wars going on. There is terrorism. There is a huge economy that we have to keep running. But what S. 1696 would allow us to do, it would allow the tribes through self-governance to compact some of those services that we are already running through HHS. We are already getting them in grants and things, but it would allow us to run them and create more efficiencies and better service for our people.

The Government has been working for 50 or more years on Indian health care, and we are still the lowest of the low. Something is not working right. If something is not working right, you need to change something. What we need to change is the way we operate. Instead of the government providing the services, we need to let the tribes provide the services as we have shown over and over again.

The other day I was flying back to Alaska, and I watched that movie Titanic again, to segue here. The Titanic was going down. It had 2 hours to sink. About 1 hour after it was going down still, down below on the E-deck or something they had the gates locked. All the low immigrants were down there and they were shaking the bars. The guy was standing there with the key saying, "I cannot let you up." There were only lifeboats for half the people, and those immigrants were shaking the gates saying, "Give us the chance to save ourselves." S. 1696 would give us the chance to save ourselves, as the previous compacting laws that have been passed have done.

Let me go through two examples of what we can do when we start compacting. The Alaska Native Medical Center, which is operated by the Alaska Native Tribal Health Consortium and South Central Foundation since we took over has been aimed at innovation, aimed at excellence. We have been looking for customer service. We have been completely turning the culture of that government-run hospital around. We currently have achieved magnate status for nursing excellence. Only 71 hospitals in the whole country have done this. We are the first IHS one, and probably the first government one, if I go to the records. It is something that the private sector looks for the best. We have achieved that.

We have been hiring more doctors, providing more services, expanding the product line, and increased access. We now have same-day, you can walk in and get an appointment with your primary care provider the exact same day. We turned around our special clinics this year, and now you can go in and you can have surgery within 2 days in many of our special access clinics. It used to be a 3-month wait. When the Government was running it, it was even longer. We have been able to do that under the compacted mode. So we have been able to improve the services that we offer.

The second example is Seldovia, my tribe, we have been able to expand greatly. When Seldovia took over the program, it was a con-

tract health care program. IHS hired private doctors in the communities there, paid them money. When our folks went to them and got service, the money never lasted that long. That was fine. We took that over. We realized that with the doctors increasing their rate 10 to 15 percent a year because that is what medicine in this Nation is doing, 10 to 15 percent per year, and IHS just giving us 1 to 4 percent a year in CHS, something was wrong. We could not keep that up. We were going backwards every year.

We wanted a clinic. We asked IHS for a clinic. They turned down our application. But we are self-governing. We have a priority of our people, who are number one. The Government does not put Indian people number one. We do, because that is our sole priority. I am directly elected by my folks. If I do not do a good job, they get somebody else in there.

IHS said we cannot have a clinic. We went out and leased a clinic ourselves. We innovated, put moneys together, and now we have a leased clinic and we are also now building a clinic, a permanent clinic that we will own that is twice the size of what we currently lease.

That is what we can do with compacting. That is what we can do if we S. 1696 is approved and we are able to take the HHS funds, move them under tribal management. We will have a priority for our people unlike the Government currently has.

So Mr. Chairman, I really ask that you and the rest of the committee support and pass S. 1696 and give us a chance to save ourselves.

[Prepared statement of Mr. Kashevaroff appears in appendix.]

The CHAIRMAN. Okay, thank you. Ron, I have you second on the list. Would you like to proceed? You came in just a few minutes late, but I am sure you are not short of something to say on this issue, are you?

STATEMENT OF RON ALLEN, CHAIRMAN, JAMESTOWN S'KLALLAM TRIBAL COUNCIL

Mr. ALLEN. No; I am not, Senator. I really appreciate the opportunity. My apologies for getting late here. All the construction up here makes it a little longer to get up here on the Hill anymore.

Thank you, Senator. My name is Ron Allen, chairman for the Jamestown S'Klallam Tribe out in Washington State. You have my testimony sent to you with specifics.

Self-governance clearly is an agenda that has been important to my tribe and to myself and my colleagues here. It goes back in terms of the evolution of empowering tribal governments. As we have testified here before this committee, in 1975 when the Self-Determination Act was passed it was all about promoting empowerment of tribal governments and reducing bureaucracy and allowing the tribal governments to be able to control their own priorities with their own communities. Self-governance clearly throughout the 1990's has shown that as we transfer more and more of the Federal bureaucracy to the Indian tribes, that we are better able to use these precious few resources that the Federal Government makes available to us more efficiently and more effectively for our programs.

It provides us the flexibility to design programs with greater flexibility and appropriateness for our cultures and our communities that the Federal Government cannot do. It has to deal with over 560 Indian nations from Alaska to Florida, and the complexities of our communities are great and many. There is no way the Federal system could have ever created a system that is really going to be reflective of what the tribal governments really need and what the Indian communities need.

We have shown through the success of self-governance since you have empowered us back in 1994, and even earlier when we did the demonstration phase, that it is a success; that the tribal governments given these resources can use these resources more efficiently and effectively for our communities. We have redesigned them. We have taken these resources and matched them up with tribal resources and other resources, and created more tribally culturally appropriate resources.

Back when it started, when it came out of the Arizona Republic expose about the mismanagement of the Federal resources for Indian people, there was the notion that, well, let's just turn all the money over to the tribes, and they can divvy it up based on individual Indians and memberships of the tribe. We said back then, no, that is not the way to do this. The Federal Government has the fundamental moral and legal obligation to the tribes, and if we are going to transfer these responsibilities from the Federal Government over to the tribes, it will be based on our terms. We have been doing that over the course of this last 10 to 15 years.

Now, we are moving forward into HHS. As my colleagues have already been testifying, we moved first with BIA and started into the Interior programs. We have testified to you how we have had some struggles with the other non-BIA programs at Interior. We moved quickly over to IHS, and now we are moving into HHS.

So there are literally hundreds of programs over in HHS. We contract out for a couple of dozen different programs out there, so we really do not access all of the programs that HHS has available to us, but we did want to start moving in that direction very quickly. Already we realize that it is not as efficient by going after each of these programs individually. If we can go out there and negotiate for these programs and move them in and redesign them for our communities, relative to the existing resources that we get from the BIA, Interior and IHS, as well as HUD with the housing programs, we can use them more efficiently.

HHS has shown a willingness to do that. They were a little hesitant and wanted to go through the study process to examine the viability of conducting self-governance. We said okay, fine, and they persuaded the Congress to conduct the study. The study has revealed that it is effective, it is efficient, and it is a good way to empower tribal governments and allow us to move our governments forward constructively and effectively.

We have shown categorically, whether it is a small tribe like mine or a large tribe with a large land base, that it can move forward very effectively and we have been able to serve our tribe.

We have only had a few blemishes that I would argue we could look back and say, well, we made some mistakes here and it did

not quite work out the way we wanted it. As a general observation, if you look at the big picture, it has been an unequivocal success.

So we are arguing that not only does it affirm sovereignty of the tribe, not only does it affirm the commitment of the Congress and the Administrations of the past to empower the tribal governments. It has shown that the tribes, who are the lowest end of every economic and social category that we measure the welfare of our society, that we are starting to slowly build up that capacity and move forward.

So what we are looking for is this legislation that allows us to move forward from the study into the demonstration. Personally, we believe that we can move forward even faster, but that is the process that the Administration has shown a willingness to move forward. We would like to see the Congress pass this legislation so that we can now move into that phase and show to the other agencies of HHS, yes, it can work.

They have identified 11 programs. We have identified 13, and we argue that 13 are very relevant to what we are doing. We are contracting, like I said, a couple of dozen; 13 can be made available to us to contract out and to secure these programs, consistent with how we do it at the BIA and the IHS, and it is very reasonable; 13 against the backdrop of 300 programs that they have is reasonable. We think that it is a reasonable phase to move forward.

The Secretary has exhibited his commitment to the tribes and we take that commitment in earnest, and we want to move that agenda forward. We have been showing that we are more than willing to discuss the parameters of it. We do know that some of the agencies do not administer these programs the same way that we experience over on the BIA and IHS side, and specifically with the contract support issue, which is a matter that they administer a little differently with each of these programs.

The biggest issue I think that we are going to have to hurdle over is just the bureaucracy letting go of their precious programs, and the notion that if they let go of these programs, will they be administered to the benefit of the people and the constituency that they are intended for. We argue yes, that our experience and our history has shown that we will be successful; that we will make these programs work; and they will be working to the benefit of our community, from the children to the elders, programs we have, to the benefit of the communities as a whole, and to enhancing our families, which we think is really important for our communities and for our future.

So I certainly join my colleagues in urging the Congress to pass this legislation and to encourage your colleagues to get behind it, because it really is the way of the future with regard to our Indian communities. Even though we argue that there is a greater need than the resources that are being made available, we will take what we have and make it work better for the benefit of our people.

I am here to help in any way I possibly can, to answer any questions I possibly can, and work with you, your staff and the other Senators in any possible way to make this thing come to fruition.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Allen follows:]

The CHAIRMAN. Thank you.

Chairman Windy Boy?

STATEMENT OF ALVIN WINDY BOY, CHAIRMAN, CHIPPEWA CREE BUSINESS COMMITTEE

Mr. WINDY BOY. Thank you, Senator, members of the audience. Good morning. I greet you from the Cree and Chippewa people of Rocky Boy. I am here also in support, along with my colleagues, an initiative that I only dreamt about 16 years ago, being in tribal politics for 16 years. I always felt that there has got to be something different for my people. I happened to stumble across politics on a horse. I was moving my dad's cows one day and an elderly lady waved me down from the hill. I went down to her log house and she told me in Cree, what does this mean, this letter. It was an Indian Health Service letter, a letter of denial of payment for services she got. She was raising her grandkids. Apparently the kid got sick on a Friday and services were not available for the weekend, so she did the next best thing and took him to the hospital. Ultimately, the bill was denied, and that was several years before that it applied to her credit, which many bills end up in the credit bureau that my people have. I always felt that there has got to be something different.

In 1988 when I first got on Council and this demonstration was first talked about, I asked my colleague, is our tribe ready? We took the initiative back to Rocky Boy and the Council did not want to step into that arena. Up until 1994, we had some young Council come on board, and we are seeing that a lot of things that we were going without, particularly in the arena of health care. I was telling my colleagues that maybe compacting is not for everybody, but we have to look at a different way of providing better health care to my people.

We took a demonstration project midway through the year. My staff said we need to advance a compact which had done. The first year that we had our compact, it was the first time Rocky Boy had ever gotten a JCAHO 100 percent accreditation. From that point, we have not only looked at compacting outside of HHS, but also over in Interior. The Chippewa Cree Tribe is constructing a major dam with a compact with the Bureau of Reclamation. Also we have compacts with Minerals Management Service, the Bureau of Land Management.

So with HHS, we have a road map. My staff has a road map of what could be doable. I have been working with this Administration for the last 2 or 3 years and trying to look at the President's management plan. How could I make that work to benefit the Chippewa Cree? I see that it could, but as mentioned by one of my colleagues earlier, we have got to get that flexibility from this Administration, from HHS.

Certainly, there are issues that we may have differences with the State of Montana, certainly issues that we may differ with this Administration, but that is not to say that we should no be able to sit down.

In reference to the self-governance tribes, several statistics kind of jump out at me. One looks at the Indian Health Service since 1994, over 52 percent of the IHS's budget is already being administered by tribes. This year, we have 30 ways in the 2004 that are

being negotiated, which brings it up to a total of 319 of the 580 some-odd federally recognized tribes that are compacting. I understand that compacting may not be for everybody. I look at the delivery of tribal governmental services in three areas, those that choose to be direct service, those that choose to contract, and those that choose to compact. I equate that to the life of a child, when you are infant, when you are adolescent, to your adult. Right now, I am prepared. I am waiting to expand the health delivery of Rocky Boy to include other agencies within HHS.

I will be glad to answer any questions.

[Prepared statement of Mr. Windy Boy appears in appendix.]

The CHAIRMAN. Thank you. It is interesting how you were sort of herding cows and stumbled into public policy. That is kind of the way I got involved. Be careful you do not stumble around until you end up in the U.S. Senate. [Laughter.]

We will go ahead with our last witness. That will be Mr. Peercy.

STATEMENT OF MICKEY PEERCY, EXECUTIVE DIRECTOR OF MANAGEMENT AND OPERATIONS, CHOCTAW NATION OF OKLAHOMA

Mr. PEERCY. Yes, sir; good to see you again, Senator and staff.

I want to say good morning and greetings from Chief Gregory Pyle, chief of the Choctaw Nation of Oklahoma. Also, I want to add our testimony in the spirit of the late Merle Boyd, second chief of the Sac and Fox who we lost 1 year ago, who was certainly a warrior in the area of self-governance.

The Choctaw Nation is typical of many of the tribes in the Nation. We are strong. We are resilient. As was mentioned, I know there are 319 tribes looking to enter into self-governance.

I have submitted testimony I will refer to mine on some, just on the high points. We have demonstrated that in 1975 those legislators who initially endorsed Public Law 93–638 were right. We, along with many other tribes, have been successful. The Choctaw Nation, we are strong believers in the philosophy of self-determination.

In 1985, the Choctaw Nation was the first health care system to contract under Public Law 93–638 for the entire health system. This was done in a very sudden and dramatic way. It was done not because in those days we thought it was a good thing, but the health care delivery in the Talihina, Oklahoma Hospital and the four satellite clinics had gotten to a point where the tribe said, we are bound to be able to do a better job than the Indian Health Service.

I think we can prove that we have done it today. I think you are aware, Senator, we are in a new 144,000 square foot hospital in Talihina, OK. We are in the process of constructing a joint venture clinic in Idabel, OK; a small ambulatory grant clinic in Stigler, as well as a substance abuse recovery center in Talihina. These were done with a combination of IHS and tribal dollars.

Because of self-governance, we have been able to create efficiencies. I think that is the key in what we are talking about, to locate efficiencies and redesign programs to maximize for the good of the people.

We have been innovative and aggressive in our approach to providing services to our people. We have been diversified. One thing I want to point out, we provide $4 million to Choctaw Nation students each year across the Nation through that diversity, through our contracting, our manufacturing and our enterprises. To give you an example of manufacturing, in McAllister, OK, we build large industrial heaters that we send to Afghanistan. In McAllister, OK, we construct some of the tail sections for some of the bombs that have been dropped in Iraq. In Hugo, OK, we build the containers that ship those bombs to the Army. Through our Choctaw Management Services Enterprises, we staff all the emergency rooms in the armed forces overseas in all the Army hospitals. We also have the WIC contract, the Women, Infants and Children contract for the Army overseas. This diversifies.

All of this is accomplished through self-governance. One thing I highlighted and pointed out in my testimony, 4 years ago our Federal tribal income ratio was 80 percent Federal to 20 percent tribal. Today, it is 17 percent Federal and 83 percent tribal. So the dependence on the Federal dollar has been greatly reversed.

I made a comment. I said this is impressive. I do not care who you are. That is not disrespectful to this body. That is blue collar Southern Oklahoma humor, that looking at these statistics wherever you sit, that has got to be impressive. I wanted to point that out.

Choctaw Nation of Oklahoma was one of the supporters of the demonstration project in title V. We were involved in rulemaking. We were also involved in the feasibility study under title VI. The feasibility study shows that we were successful.

We also wanted to point out, and it is in the testimony, of the 13 programs that have been outlined by the tribes, or the 11 by DHHS, Choctaw Nation manages six of those programs to a tune of over $6 million. We do that well. We do that well. We are very pleased with it. However, there are issues with that. There are flags. Congress can edict tribal self-determination. Agency staff can verbalize self-determination and its support, but the spirit is lacking, and when the spirit is lacking, nothing is accomplished. Due to mistrust, control issues and fear, it makes self-governance and moving into self-governance very difficult.

Again, our programs have been successful, but just to point out one example. We have built a new Head Start Center, and we have built a new Child Development Center. They are fairly side by side. They are new. They are built with Government CDBG grants and tribal funds. We have two playgrounds in the back, one on each side. The issue is, they cost about $50,000 apiece to build the playgrounds, when one would have sufficed. However, due to the constraints of the programs being separate, the Head Start kids cannot play on the Child Development playground, and the Child Development kids cannot play on the Head Start, so you build two. To us, that is ridiculous, but it is the way the system works.

With that, I just want to tell you that we support wholeheartedly, Chief Pyle supports wholeheartedly the movement of this bill. As was mentioned by my colleagues here, anything that we can do to support in any way, please let us know.

We appreciate your time and we will be here for questions.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Peercy appears in appendix.]

The CHAIRMAN. Thank you.

I may start with you, Mr. Peercy, since you just finished. We will probably be submitting some questions in writing for all four of you, too. That timeframe, you mentioned that the total financial resources of the tribe at one time was 80 percent federal, 20 percent tribal, and now is 17 percent Federal and 83 percent tribal. What was the time frame between that change?

Mr. PEERCY. That is about a 4- to 5-year period.

The CHAIRMAN. Just in 4- to 5-years, that fast.

Mr. PEERCY. Yes, sir.

The CHAIRMAN. And the 144,000-foot hospital you mentioned that you are in the process of building, was the money you needed to do that, did you work with private lending institutions to finance that?

Mr. PEERCY. No, sir; we did our own through tribal revenues built that.

The CHAIRMAN. You did not have to borrow money to do it?

Mr. PEERCY. No, sir; it is a $28-million hospital that is debt-free.

The CHAIRMAN. Debt-free. Wonderful.

Your written testimony indicates the Nation operates 6 of the 13 programs identified in this bill that we are dealing with today.

Mr. PEERCY. Yes, sir.

The CHAIRMAN. Has the Choctaw Nation been prevented from operating all 13 programs because of current statutory restrictions or lack of compacting authority or something of that nature? What is the basis?

Mr. PEERCY. I would think most of those have been through tribal choice, such as the TANF program. That is something that our chief and the Council chose not to do.

The CHAIRMAN. Did they choose not to because they were worried about availability of resources from the Federal Government to implement it, or what?

Mr. PEERCY. Yes, sir; that is an issue with most of those programs. And again to point out, sir, to followup on that a little bit, we have had these programs for the most part for many, many years.

The CHAIRMAN. So you look at them and basically if the project is going to exceed the cost savings, it is a non-starter for you then.

Mr. PEERCY. Yes, sir.

The CHAIRMAN. Yes.

Don, let me ask you maybe the same question. You also spoke of the hospital that you are building in Alaska, your tribe is. Is that primarily being done with tribal money?

Mr. KASHEVAROFF. Yes; the clinic we are building is part tribal money, part money from HUD, and part money from the Denali Commission. Then we have also applied to a couple of private foundations for equipment. We basically have gone to the bank for a line of credit, which we do not actually need now that all the funding has come in, but the banks were more than willing, after reviewing the tribe and our economic successes to loan us money if we need it, but we do not.

The CHAIRMAN. The portion of the Federal money that you did get through IHS or HHS, you mentioned in the past they have been unilaterally determined standards and measures that were used to evaluate your programs. Did they affect the building of this hospital at all?

Mr. KASHEVAROFF. Yes; I guess they did. We are going to build this clinic with no IHS funds. We had to go through other sources. The IHS through their standards had basically turned down our contract to have a clinic based on lack of population as they said. So using their standards, we should not be able to have a clinic. By using their standards also, our contract health service dollars just keep getting less and less buying power, and eventually we will have no buying power.

So if we were to follow the IHS and the rules they live by, we would eventually just have no health care, basically. So by compacting and doing it ourselves and showing them that we can succeed, IHS is working with us quite well. We get along with HHS. We get along with IHS very well, and I think that we have been able to prove that we can make a better health system by doing it on our own, and we can rely on other folks besides IHS also.

The CHAIRMAN. Thank you.

Ron, you have testified a lot lately on self-governance bills. I think you were in here when I kind of blew up at the Administration because I thought they were dragging their feet on us and not really seriously interested in helping us. But thank you for attending and thank you for your testimony last time, and this time, too.

You were on the Title IV study team which included the Department of Health and Human Services representatives. Is that correct?

Mr. ALLEN. Yes.

The CHAIRMAN. Can you describe what is the level of participation by the Department of Health and Human Services?

Mr. ALLEN. Actually, it was fairly good. We received quite a bit of participation by the majority of the agencies that we were entertaining to put into this demonstration phase. They raised a number of issues, and of course the States raised some of their issues, because a lot of these funds will go through the state before it gets to the tribe. So we have to kind of filter it, or they filter it, before it gets to the tribe and our communities. We worked with them in terms of why we needed to have direct access, and then why the Administration should be supportive of it.

So they participated and identified what their concerns were. We think we alleviated the majority of them. We do know that they have still some anxieties over the notion of how do you negotiate. We had to persuade them that, look, we take this one step at a time to learn how we are going to negotiate, what is our fair share and how should it be administered, and why should you adjust your budget to accommodate this new way of doing business with Indian tribes.

So I think that we are making some good progress. The encouraging part was the Secretary's office was fairly active and very tuned into the process of the study, so they were very supportive of the study as well. We became a little concerned, and it took a little bit of a side-step or diversion if you will, because of the con-

tractor who conducted the study, who we had to educate. Consistently, when we would go through these processes, you would bring in a contractor and they would know nothing about tribal governments and the empowerment of tribal governments. So we had to spend a lot of energy.

The CHAIRMAN. Everytime new people come in, you have to reinvent the wheel, every time new people come on board.

Mr. ALLEN. Oh, consistently. It has been a problem that we have been struggling with for 15 years. But at least we made some good headway and we feel the report is fair and objective and supportive of what we are trying to achieve.

The CHAIRMAN. You identified streamlining programs as one of the key objectives of this bill, S. 1696. That is what I believe is the real goal, too. The duplication of grant applications is an example, or budgets reporting. It is all a big huge waste of resources. In my opinion, if it could be better directed, that money that we use in doing that could be directed to the programs.

Do you have any ballpark idea about maybe even including costs and man hours that a tribe such as yours could expect to save by not having to submit all those multiple applications, budgets reports and so on, and could administer programs yourself?

Mr. ALLEN. No, Senator; I do not off the top of my head. I can tell you just instinctively and through my experience, it is a phenomenal amount of energy. When you have to put together these grant or contracting applications, you go through the program directors and you go through the planners and grant writers themselves, and you make sure that it is working. You talk about how it is going to complement other programs. And then you have to go through the whole process of applying and interacting with the Department and the agency process, the whole process of review, and the interaction going back and forth.

So the amount of staff resources and energy that we have to put in is phenomenal. If we could convert those resources and energies into the programs, we would be much better off. But obviously, we need those resources. Those resources are important to our programs, whether it is the children or the elders or community service programs, domestic violence programs.

So yes, without having any specific data, we can tell you that unequivocally that the amount of resources we are saving, the Federal Government and the tribes, is going to be phenomenal in terms of the end results of how much more we can divert of those resources to more constructive at the grassroots-type of activities.

The CHAIRMAN. The reason I asked you is because I have heard for years and years, over and over from many people that testify, that if we could direct the money directly to the tribes, it would not be eaten up by administrative costs, overhead, all the other stuff as it sort of dribbles down. But I have never seen anything that is really authoritative to say how much more in percent a tribe would find usable if we gave direct funding through compacting or contracting, as opposed to the agencies doing all the administration. I, like you, think it could be considerable.

I have seen things saying 80 percent of all the money we appropriate for the BIA, for instance, does not actually get to the tribal members. It is eaten up somewhere in the bureaucracy. I hear that

and read that, but they are usually accusations or guesstimates or so on, but I have never seen anything definitive about how much better of we would be by sending the money directly to tribes.

Mr. ALLEN. Mr. Chairman, it would be easy for us to identify all the participants in the tribe who have to develop these grants and contract applications, and identify the actual processes and the interaction with the Federal agencies to show you the kind of energy that we have to spend, the kind of man hours we have to actually spend soliciting each of these grants. Some of these grants are little tiny grants. They are $2,000 grants or it may be $200,000 or $2 million grants. The irony of it is that the $2,000 grant can take up as much energy as a $2-million grant. You can't not go after them because we need every little dollar we can get into our community.

The CHAIRMAN. Yes; I would like you to do something for the committee, and that is just pick out any one of them that deals with your tribe, that goes to your tribe, and see if you can put together a comparative study for me, for the committee, about what percent of any *x* amount of money that you think would be better used going directly to the tribes, as opposed to how it is being used up in the process if we could do more direct funding. Any one of the programs you now deal with with the Federal Government, if you could do that so I could use it as an example for the committee and the members, I would appreciate it.

Mr. ALLEN. We would be delighted to do that, Mr. Chairman.

The CHAIRMAN. A small one of $2,000 or a big one, whichever one, but give me some information so I have something more definitive.

Mr. ALLEN. Okay.

The CHAIRMAN. Thank you.

Chairman Windy Boy, you have been long a champion of self-governance and the hard work that you have done is paying off for the improvements in health certainly for your tribal members on your reservation. I thank you for being here.

This bill requires annual reporting which must verify that tribes meet the statutory purposes of the bill. What is your view on that oversight? Is it too much? How would you compare that with other current compact oversight?

Mr. WINDY BOY. In order to provide in this case better health care delivery, we have jumped through a lot of hoops and reports. We have done that. Fiscal analysis, we have done that.

So if there are reports, whether it be additional or downsized reporting mechanism, we would do that.

The CHAIRMAN. The bottomline is we cannot get it passed unless there is some oversight. That is the way it works around here, or we cannot get it signed into law, I mean.

Mr. WINDY BOY. Yes; I want to mention an oversight on my part. In 1975, health care delivery was available to my people by the Indian Health Service. My late father, chairman for 20 years, took it upon himself to finance their own health facility, because at that time the enrollment was 3,200 people. The facility that the Indian Health Service was manning in Rocky Boy certainly was insufficient by way of space and personnel.

In 1975, they went from east coast to west coast attempting to get a loan to build a facility. It was not until he and several other Council members went to a small town in Malta, MT that financed the facility for them. They have since paid it off, which gets us into another era. Our last enrollment meeting several months ago showed that we were close to 6,300 people. The facility, and I thank my dad and them for what they have done for my people, but in this day and age we have increased enrollment. That is probably pertinent in Indian Country all over.

The CHAIRMAN. What percent of your enrollment lives on the reservation?

Mr. WINDY BOY. Of the 6,200 people, we have close to 4,000 that live on it, and we are seeing a lot more move back.

Incidentally, before I came here we had a groundbreaking for a facility that the tribe is going to build. We have collaborated with both the Indian Health Service, USDA, HUD and the BIA to create this from a 3,400-square-foot facility to a 10,000-square-foot facility, with an emphasis on wellness center within.

The CHAIRMAN. Good. This new center you are groundbreaking for, I note with interest some of the new Indian clinics and hospitals that are being built by tribes where they have a lot more input on determining what they want emphasized in there. They are not just hospitals. They are really, to use your words, wellness centers.

I live at Southern Ute in Colorado and they just built one. Included with the clinic, which is right next door, they have a nutrition program, as an example, where they teach cooking and how to improve diets to try to reduce diabetes. They have a gymnasium. They have exercise class. They have a lot of things that are related to health. I think that is really the future direction that Indian, if you want to use that word "hospital," that they take. They look at it in a holistic sense, rather than just trying to patch things up after they happen.

Mr. WINDY BOY. Actually, I was proud of my people at home. They persistently met with the two school boards in Rocky Boy and Box Elder and basically turned the feeding program of the Rocky Boy School for the students. Students have more nutritious food, and actually the wellness center we are creating does have a swimming pool and gymnasium, with that in mind. They did tell me that we will do something about my [native word].

The CHAIRMAN. Yes; you know, I like fried bread as well as the next guy, but it is probably the worst thing in the world to eat for your arteries. [Laughter.]

You talked some about duplicating services. The duplication of services provided by the tribes and the States is almost always an issue. Your testimony indicates that your health board contracts with the state for some programs. What steps have your tribe taken to avoid duplicating services?

Mr. WINDY BOY. Actually, the services that we do get from the State of Montana, as mentioned earlier, TANF, LIHEAP, in fact we have about 13 programs that we do contract through the State. What this bill is going to allow us to do is actually negotiate with the DHHS, rather than having to go through the State of Montana.

Knowing the State of Montana and tribes, particularly my tribe, the relationship is not really that well.

In reference to the earlier statements about ingesting tribal revenue, my tribe, maybe it is an anomaly, but we do not have the natural resources. We certainly do not have the gaming operations to ingest. So the money that we do have is basically money coming from our timber sales, grazing fees, because those services are needed. Those are the only revenues that we have to ingest.

The CHAIRMAN. Do you have a 2-year Indian community college there?

Mr. WINDY BOY. Stone Child College, yes.

The CHAIRMAN. What is it?

Mr. WINDY BOY. Stone Child College.

The CHAIRMAN. Oh, yes, Stone Child. Do they offer any classes dealing with health, nutrition, something along that line?

Mr. WINDY BOY. Yes; they do. I chair the National Tribal Leaders Diabetes Committee, and through the efforts of the National Institutes of Health, through Dr. Larry Agodoa and Dr. Sandy Garfield, we have collaborated with them and created six demonstration sites across Indian country. I am not very good at acronyms, but I know that the project that we are working with in six colleges is the DETS program, and that is teaching the students about diabetes, for them to later on become students. It is a 10-year project.

The CHAIRMAN. Very good.

I have no further questions of this panel, but I appreciate your being here. Senator Inouye may have some, which he will probably submit in writing, but I do thank you for being here. Your complete written testimony will be included in the record. We will keep the record open for 14 days for any additional comments by our panel or anyone in our audience.

Thank you for being here.

The committee is adjourned.

[Whereupon, at 11:07 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DON KASHEVAROFF, PRESIDENT, SELDOVIA VILLAGE TRIBE AND CHAIRMAN, ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

Good morning Mr. Chairman and committee members. I am pleased to testify today in strong support of S. 1696, the Department of Health and Human Services Tribal Self-Governance Amendments Act. My name is Don Kashevaroff and I am the president of Seldovia Village Tribe and the chairman of the Alaska Native Tribal Health Consortium.

The bill you sponsored will create a demonstration project for non-Indian Health Service programs in the Department of Health and Human Services. More importantly, the bill will further the central purpose of the Indian Self-Determination Act—to allow tribes to exercise their own governmental powers and sovereignty by managing Federal programs for their own benefit. And, as you know, Self-Governance has resulted in a reduction in the Federal bureaucracy and an improvement in the quality of services delivered to our members. Enactment of this bill into law will add yet another important chapter in tribal self-sufficiency.

I would like to describe for you how well Self-Governance is already working in Alaska and why it makes perfect sense to expand the scope of Self-Governance to other programs within the Department of Health and Human Services.

First, in Alaska, the permanent Self-Governance program under title V of the Indian Self-Determination has been an unqualified success. Tribes and tribal organizations, such as the ones that I represent here, have been able to run the system with more efficiency, effectiveness and creativity than the Indian Health Service ever could.

For many years Seldovia has been a co-signer of the Alaska Tribal Health Compact ["ATHC"]. Starting in 1994, a number of tribes and tribal organizations in Alaska negotiated and signed the ATHC and Annual Funding Agreements authorizing them to operate health programs. Today the ATHC has 18 co-signers under which a total of 213 federally recognized tribes in Alaska receive the great majority of the health care services provided to Alaska Native and American Indian beneficiaries residing in Alaska. Over 95 percent of the IHS programs in Alaska, including the Alaska Native Medical Center in Anchorage, are currently operated under tribal administration in accordance with the ATHC.

Under Seldovia's Funding Agreement negotiated under the ATHC, the Seldovia Tribe provides a full range of health care to our people, including clinical services, pharmaceutical services, family health care, health education, diabetes clinics, and domestic violence intervention services. Seldovia is very interested in broadening the scope of these programs to included non-IHS programs from within other agencies located in DHHS.

The bill would create a 5-year program to extend Tribal Self-Governance to programs within the Department of Health and Human Services [HHS] that are outside the Indian Health Service. The project would include up to 50 current self-governance tribes that would be eligible to negotiate new Self-Governance compacts and funding agreements for the additional HHS programs. There are 13 programs in-

cluded in the bill. These include key programs such as Tribal TANIT to Low Income Home Energy Assistance to Head Start and Family Violence Prevention Grants. In addition, the bill would allow the Secretary to choose an additional 6 programs to add to the existing 13. The bill makes it clear that the Secretary is under no obligation to do so, but can if he or she believes it would benefit the Department and the Tribes.

The new compacts and funding agreements set forth in the bill are substantially the same as those under the current title V program. The bill, in other words, is not a radical or large departure from what the Department and Indian country are used to. In fact, the bill would allow a tribe to simply expand its current compact to include any new programs, rather than draw up a new compact.

The bill continues the flexibility that is the hallmark of the Self-Governance program. The fact is that Indian tribes that are given the ability to tailor or modify Federal programs so that they best meet tribal and cultural needs can run better programs. The ability to redesign, consolidate and reallocate programs and funds, as tribes can already do under title I and title V, is a critical element of this bill. Further flexibility is provided through the waiver provision in the bill in section 606. The waiver provision would allow a tribe to ask the Secretary to waive certain Federal program requirements. The Secretary can do so, but only if he or she determines that the waiver would further the purposes of the act. The bill recognizes that tribes will comply with final regulations for the each of the 13 programs. At the same time, flexibility is ensured by also recognizing that tribes will not be bound, unless agreed to, by other agency policies, circulars, manuals or guidances.

The bill also recognizes that funding formulas should be the result of negotiation between the Federal Government and the Indian tribes. We express strong support for the funding provision in this bill which would provide for a lump sum annual payment made within 10 days after the apportionment of funds to HHS from OMB.

Another key benefit to tribes in this bill is the inclusion of negotiated baseline measures. Prior to Self-Governance, the IHS unilaterally determined what standards and measures would be used to annually evaluate Seldovia's programs. Often those standards and measures were burdensome and inapplicable to what we were doing. Under the ATHC, the IHS and Seldovia have jointly developed relevant and less burdensome baseline measurements, which are used for the annual evaluation of our programs.

Finally, I want to point out that the bill brings another key element of the Self-Governance program: Streamlining. Many tribes and tribal organizations in Alaska already receive substantial funding for the programs contemplated under the bill. For instance, tribes in Alaska already operate their own Head Start, Child Care Development Block Grant, Family Violence Prevention, and Child Welfare Services Program. Thus, expanding the scope of Self-Governance to include these programs as the bill would do is simply a natural extension of what we are already doing. In fact, bringing the efficiencies and tribal flexibility of Self-Governance to these programs will only make them better for us in Alaska.

In order to participate in non-IHS programs within the DHHS, tribes currently develop and submit multiple grant applications for related programs, which requires hundreds of pages of narratives, separate budgets and recordkeeping, and the submission of numerous time-consuming reports. Title VI allows tribes to combine funds from various sources and provides flexibility for tribes to use the funds to design and provide services that are appropriate for the tribes' communities. The title VI demonstration program thus promotes efficiency, which translates to better health care for native people.

On the other hand, all Indian tribes who are part of the Self-Governance program will tell you that the one missing element in the bill is the right to full contract support costs. The bill provides that contract support costs will be provided for each of the eligible programs. Nevertheless, our experience under Self-Governance has shown that tribes never receive the full amount of contract support costs from the IHS. This has to change if tribes are to ever fully realize the benefits of Self-Governance. We cannot afford to pay for the unmet costs out of our own pockets. For many of us, that means we have to take funding from other important programs. In a larger context, lack of full funding will serve to discourage other tribes from entering into the demonstration project. In simple terms, we want this program to succeed. We know that the committee wants this program to succeed. Therefore, we urge you to make the Department pay its full share of contract support costs.

Section 607 of the bill requires the Secretary to annually report back to Congress on the status of the demonstration project. We fully expect that the reports will demonstrate ability of tribes to carefully, and expertly, manage the additional HHS programs. In fact, we expect the reports to show that Native tribes will manage the programs better than the Department has. We urge this committee to carefully ex-

amine those reports and then work with us on making the demonstration project within HHS permanent. At the same time, we will work the Department on identifying additional HHS programs that should be eligible for inclusion in the Self-Governance program.

Tribal governments, under Self-Governance have become increasingly stronger governments. Passage of this bill will further this committee's and Mr. Chairman, your efforts to strengthen and promote tribal governance. Tribes have continuously demonstrated that when given the chance to manage Federal programs, they have succeeded at every turn. Self-Governance has given tribes more management capacity, better information networks, and, by bringing in more and more programs, a better capacity to operate as a true sovereign nations. It is fitting that we are here 70 years after the passage of the Indian Reorganization Act. The IRA was a well-intentioned, but simplistic and rigid attempt to further tribal self-governance. What we now know, is that the only laws that work to truly promote tribal self-governance are those place real management responsibility in the tribes themselves, and with arm the tribes with flexibility to tailor Federal programs to meet their own needs, and provide tribes with the funding to make those programs work.

The Seldovia Village Tribe and the Alaska Native Tribal Health Consortium strongly support S. 1696 because it accomplishes just that.

W. RON ALLEN, CHAIRMAN
JAMESTOWN S'KLALLAM TRIBE

TESTIMONY BEFORE THE U. S. SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S.1696, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TRIBAL SELF-GOVERNANCE AMENDMENTS ACT OF 2003

May 19, 2004

I am pleased to testify in support of S.1696, a bill to strengthen Indian tribes' opportunities for self-governance by creating a demonstration project under Title VI of the Indian Self-Determination and Education Assistance Act (P.L., 93-638 as amended) (ISDEAA). I appreciate the opportunity to be here today. My name is W. Ron Allen and I am the Chairman of the Jamestown S'Klallam Tribe located in Washington State. I also served as one of the Tribal Co-Chairs of the Title VI Study team.

The proposed Title VI demonstration project would establish a 5-year program to extend the effectiveness of tribal administration through self-governance to programs within the Department of Health and Human Services (DHHS) other than the Indian Health Service (IHS). It authorizes participation of up to 50 existing self-governance tribes to negotiate and enter into compacts and funding agreements for several DHHS programs.

The true import of the demonstration project can be best appreciated by understanding the unprecedented positive impact self-governance has had on Indian tribes over the past 15 years.

Background of the ISDEAA and Title VI

Prior to 1975, the federal government administered almost all programs serving American Indian and Alaska Native tribes. In 1975, the ISDEAA was enacted with three primary goals: (1) to place the federal government's Indian programs firmly in the hands of the local Indian people being served; (2) to enhance and empower local tribal governments and their governmental institutions; and (3) to correspondingly reduce the federal bureaucracy.

The original Title I of the Act, still in operation today, allows tribes to enter into contracts with the DHHS and the Department of the Interior (DOI) to assume the management of programs serving Indian tribes within these two agencies. Frustrated at the stifling bureaucratic oversight imposed by BIA and IHS, and the lack of flexibility and cost-effectiveness inherent in Title I contracting, a small group of tribal leaders helped win passage of the Tribal Self-Governance Demonstration Project. In 1988, Congress launched a demonstration program authorizing 10 tribes to enter into compacts with DOI . The Jamestown S'Klallam Tribe was one of the original ten tribes to successfully negotiate a compact and annual funding agreement with DOI. Unlike Title I

contracts, which subjected tribes to federal micromanagement of assumed programs and forced tribes to expend funds as prioritized by BIA and IHS officials, self-governance agreements allowed tribes to make their own determinations of how program funds should be allocated.

The Demonstration Project proved to be a tremendous success and, in 1994, Congress enacted Title IV of the ISDEAA, thereby implementing a permanent Tribal Self-Governance program within DOI. Congress then enacted Title V of the ISDEAA through the Tribal Self-Governance Act Amendments of 2000, P.L. 106-260, which made permanent the Tribal Self-Governance program within the DHHS for programs, functions, services and activities of the IHS.

The Tribal Self-Governance Act Amendments of 2000 also created Title VI of the ISDEAA, which required an assessment of the feasibility of expanding the DHHS self-governance program beyond the IHS. The Title VI Study Team, which consisted of representatives from tribes and the DHHS, then consulted with stakeholders and completed a feasibility study that was presented to Congress in 2002. The Study concluded that a self-governance project, in which tribes can assume programs, functions, services and activities and associated funds from agencies within the DHHS other than the IHS, is feasible. The Study identified a number of programs that could be included in self-governance agreements and recommended legislative changes to implement a demonstration program.

The Success of Self-Governance

The existing self-governance programs under the ISDEAA have greatly contributed to tribes' abilities to determine internal priorities to effectively meet the needs of their communities. The increasing number of tribes that have opted to participate in the self-governance programs on an annual basis reflects their success. In Fiscal Year 1994, the first year self-governance agreements were negotiated with tribes, 14 tribes entered into 14 agreements. At that time, the total dollar amount compacted by Indian tribes was $15 million. Today, in Fiscal Year 2004, 288 tribes and tribal consortia have entered into 83 annual funding agreements, operating over $873.2 million in programs, functions, services and activities.

The growth in tribal participation in self-governance revealed by these numbers is remarkable. The number of tribes and tribal consortia participating in self-governance today is *20 times greater* than in 1994. While only a tiny fraction of tribes participated in the program's first years, *today approximately 51.6% of all federally-recognized tribes are self-governance tribes and the interest by other tribes is continuing to grow.*

Under the Title V self-governance program with the IHS, tribes have assumed the management of a large number of IHS programs, including hospitals and clinics, dental programs, alcohol and drug treatment, mental health services, health promotion and disease prevention, and environmental health services, among others. I have seen the success of self-governance first hand in my own Tribe over the past 13 years, and have

heard over and over again from tribal leaders across the country, that self-governance accomplishes the following:

Promotes Efficiency. The transfer of federal administration from Washington, D.C. to Indian tribes across the United States has strengthened the efficient management and delivery of federal programs impacting Indian tribes. As this Committee well knows, prior to the self-governance programs, up to 90% of federal funds earmarked for Indian tribes were used by federal agencies for administrative purposes. Under self-governance, program responsibility and accountability have shifted from distant federal personnel to elected tribal leaders. In turn, program efficiency has increased as politically accountable tribal leaders leverage their knowledge of local resources, conditions and trends to make cost-saving management decisions.

Strengthens Tribal Planning and Management Capacities. By placing tribes in decision-making positions, self-governance vests tribes with ownership of the critical ingredient necessary to plan our own futures – information. At the same time, self-governance has provided a generation of tribal members with management experience beneficial for the continued effective stewardship of our resources.

Allows for Flexibility. Self-governance allows tribes great flexibility when making decisions concerning allocation of funds. Whether managing programs in a manner consistent with traditional values or allocating funds to meet changing priorities, self-governance tribes are developing in ways consistent with their own needs and priorities.

Affirms Sovereignty. By utilizing signed compacts, self-governance affirms the fundamental government-to-government relationship between Indian tribes and the United States government. It also advances a political agenda of both the Congress and the Administration by shifting federal functions to local governmental control.

In short, self-governance works because it places management responsibility in the hands of those who care most about seeing Indian programs succeed: Indian tribes.

Overview of Title VI Demonstration Project

The self-governance initiative has been important and successful for my Tribe and for so many others. I support, without hesitation, the extension of this initiative to other agencies within the DHHS, which the amendments to Title VI of the ISDEAA would create. Title VI, if amended and enacted as proposed under S.1696, would provide tribes with the ability to operate non-IHS programs of the DHHS through an efficient process involving negotiated compacts and funding agreements, and extension of self-governance rights and administrative flexibility.

Let me quickly summarize what I see as a few key points about S. 1696:

Streamlining. In order to participate in non-IHS programs within the DHHS, tribes currently develop and submit multiple grant applications for related programs, which requires hundreds of pages of narratives, separate budgets and record-keeping, and the submission of numerous time-consuming reports. Title VI allows tribes to combine funds from various sources and provides flexibility for tribes to use the funds to design and provide services that are appropriate for the tribes' communities. The Title VI demonstration program thus promotes efficiency, which translates to better health care for native people.

Expanded Programs. I support the inclusion of all 13 programs identified for the demonstration. These programs will enhance tribes' abilities to meet identified needs and increase access to critical health programs, such as community mental health services, for tribal communities. Importantly, the bill also provides for the Secretary to identify up to six additional programs annually for inclusion in the demonstration. By including a larger number of available programs, the demonstration will allow tribes to develop additional and stronger services to compliment those already being provided.

Funding Contract Support Costs. Through the Title VI demonstration project, contract support costs are to be added to the amount of funding tribes receive for the included programs. Historically, as the Committee well knows, the IHS has not fully funded tribes' contract costs needs. Full indirect costs should be made available to the tribes that will participate in the demonstration. Placing the financial burden on tribes to cover indirect costs would deplete the resources needed to support the direct programs and could discourage tribes from participating in the demonstration project. Without sufficient funding for administration, the success of a demonstration project would be challenged.

Redesign and consolidation. If a tribe agrees to follow the programs' statutory purposes and self-governance cost principles, S. 1696 provides that tribes may choose whether to redesign and consolidate the programs. Redesign and consolidation are principle tenets of self-governance, giving tribes the flexibility required to meet their own needs and priorities, while also preserving the integrity of the programs.

Inability to Agree on Compact or Funding Agreement. The bill includes vitally important procedures to be followed when a tribe and the Secretary cannot agree on terms of a compact or funding agreement.

Successes and Permanency of the Program in the Future. The bill requires the Secretary to issue a report to Congress on the relative benefits and costs of the demonstration program. The Secretary is required to work jointly with tribes to establish a baseline for measuring the program's successes. Through development of the report, the Secretary and participating tribes will measure the services provided to beneficiaries, verify that the participating tribes met the statutory purposes of the compacted programs, and confirm that tribes carried out key self-governance principles. These measurements should capture important benefits gained by the tribal governments and their communities served under the demonstration program in ways that are not otherwise

easily represented by mere quantitative data. I expect that the benefits that will be realized under the demonstration program will make the Title VI self-governance program worthy of permanent status in the ISDEAA in the future.

Conclusion

The Title VI demonstration project is a tremendous opportunity to continue to advance the self-governance initiative, including enhancement of the government-to-government relationship between tribes and federal representatives. I urge Congress to pass S. 1696 so that we can build on the successes of the past 15 years and further the development and self-determination of Indian tribes to achieve our mission and goals. I appreciate Congress' commitment through this legislation to work toward raising the status of health care for Indian people. The Jamestown S'Klallam Tribe looks forward to becoming a participant in the demonstration program.

Thank you.

Hearing on S. 1696, Department of Health and Human Services Self-Governance Amendments of 2004, Title VI
Response to Request for Information by
Chairman Ben Nighthorse Campbell

At the Senate Committee on Indian Affairs (SCIA) hearing on May 19, 2004, on S. 1696, HHS Tribal Self-Governance Amendments of 2003 (Demonstration Project), Chairman Ben Nighthorse Campbell commented that there have been many references to savings that are attributed to the redesign of reporting requirements by Self-Governance Tribes, *"... but I have yet to see any documentation that identified a cost analysis of the "savings".* The reporting requirements are detailed in P.L. 106-260, Title V, Sec. 514, Reports; in S. 1696, Sec. 607.

Chairman Campbell asked W. Ron Allen, Chairman, Jamestown S'Klallam Tribe if he would prepare an analysis of the savings for his Tribe and submit it to the Committee. Chairman Allen responded most favorably and thanked the Chairman for the opportunity to submit the information.

Upon completion of the hearing, Tribal technical staff and SCIA staff discussed having two Tribes do an analysis – one small and one large. Mickey Peercy, Executive Director of Management and Operations, Choctaw Nation of Oklahoma was asked if he would be willing to also prepare an analysis to submit to the SCIA. He was also favorable to be responsive to the Senator's request.

Staff agreed that the information would be submitted to Rhonda Harjo by Wednesday, May 26, 2004 and that a conference call to discuss the information would be scheduled for Thursday, May 27th, time to be determined.

JAMESTOWN S'KLALLAM TRIBE

Currently, the Jamestown S'Klallam Tribe receives funds from three of the grant programs identified to be included in a "demonstration project" in S. 1696,Title VI:

Administration on Aging – Title VI, Grant for Native Americans
$88,000 per year

Requirements:
Application Process:

- Develop and submit a plan every fifth year
  a. HHS Director coordinates w/HHS staff – average 20 hrs/year total staff time
- Twice per year program report – Elder Program Coordinator – 18 hrs per year
- Twice per year Financial Status Report - CFO – 4 hrs
- Quarterly cash transaction & reconciliation – online process – CFO – 3 hours per year.
- Drawdown funds as needed (monthly) – CFO – 3 hrs per year

Low Income Home Energy Assistance Program
$9,500 per year

Requirements:
Application Process:

- Develop and submit a plan every year
  a. HHS Director coordinates w/HHS staff – 18 hrs total staff time.
- Annual program report – HHS Admin Asst – 8 hrs per year
- Annual Financial Status Report - CFO – 1 hr
- Cash transaction & reconciliation – online process – CFO – 2 hours per year.
- Drawdown funds – once per year – CFO – ½ hr per year

Child Care & Development Fund
$150,000 per year

Requirements:
Application Process:

- Develop and submit a plan every year
  a. HHS Director coordinates w/HHS staff – 32 hrs total staff time.
- Annual program report – HHS Community Services Administrator & Children Program Coordinator – 24 hrs per year
- Annual per year Financial Status Report - CFO – 2hrs
- Cash transaction & reconciliation – online process – CFO – 2 hours per year.
- Drawdown funds as needed (monthly) – CFO – 3 hrs per year

Savings and Benefits of Consolidation to the Tribe

Fiscal Office
If funding is available immediately and can be drawn down in a lump sum under Self-Governance, the Fiscal Office time is reduced to annual reconciliation and reporting.

HHS Administration & Staff
Application and Annual Plan Submissions
If consolidation results in a process similar to the IHS and BIA, program planning would be entirely an internal function and eliminate submitting separate plans for each funding source. The internal program planning that we do now would continue but the translation of internal planning to the required federal plan formats would be eliminated. This would save at least 65 hours of staff time per year.

Reporting

Each of the above programs report internally through the existing quarterly report process that is sent to the Tribal Council. Consolidation would eliminate the semi-annual and annual reporting to the 3 funding sources saving about 50 hours of staff time each year.

TIME AND COST SAVINGS

Department	Hours Saved per Year	$ Savings
Fiscal	30	$1,500
HHS Admin	65	$3,250
HHS Program Staff	50	$1,500
Reduced federal oversight	10	$1,000
TOTAL	**132**	**$7,250**

OTHER POSSIBLE BENEFITS OF CONSOLIDATION

In the past two years, the Tribe has looked at applying for the Child Welfare and Promoting Safe and Stable Families funding under Title IV of the Social Security Act. A formula is used to allocate these funds to Tribes. However the amount available to Jamestown and other small tribes is minimal, our allocation would be less than **$8,000**. The application process, the development of annual plans, and the scope of services required by acceptance of funds are far beyond what can be accomplished with $8,000. If consolidation eliminated the current application and planning process and allowed the Tribe to decide how to use the $8,000 to support child welfare services, then we would take the funding.

Similarly, we could look at SAMHSA and Mental Health block grant funding if there is an allocation of funds available and if we do not have the administrative burdens of the current application processes. There are opportunities for smaller Tribes to have access to program funds that we can't access now because we do not have the administrative staff time to manage these grants.

Hearing on S. 1696
Department of Health and Human Services Self-Governance Amendments of 2004, Title VI
Response to Request for Information by
Chairman Ben Nighthorse Campbell

CHOCTAW NATION OF OKLAHOMA

The Choctaw Nation of Oklahoma manages 6 DHHS programs that are designated for inclusion in a "demonstration program" in S.1696. The hours listed with each program are those hours spent by staff directly associated with reporting and performing coordination with DHHS.

Head Start: Head Start program consists of 14 sites with 310 participants.
$2,044,112 per year *(Choctaw program and fiscal costs since 1978 dedicated to HHS related activities approximately $180,000*)*

Requirements

Program:
Develop and Maintain Plan
Provide Program Reports
Face-to-Face contact, phone and fax communications with DHHS

Director	120 hours
3 Program Coordinators	120 hours total

Fiscal:
Annual Financial Status Reports
Cash Transactions and Reconciliations
Draw Down Funds

Finance Staff	220 hours

Low Income Home Energy Assistance Program: This program assisted 1,402 families in FY2003.
$336,775 per year *(Choctaw program and fiscal costs since 1981 dedicated to HHS related activities approximately $80,000*)*

Requirements:

Program:
Develop and Maintain Plan each year
Annual Program Reports
Face-to-Face contact, phone and fax communications with DHHS

Director	80 hours

Fiscal:
Annual Financial Reports
Cash Transactions and Reconciliations
Annual Draw Down of funds

Finance Staff	60 hours

Administration On Aging-Nutrition Service: This program assists with elderly nutrition.

$187,530 per year *(Choctaw program and fiscal costs since 1980 dedicated to HHS related activities approximately $110,400*)*

Requirements:

Program:
Develop and Maintain Plan—submission every 3 years
Bi-annual Reports
Face-to-Face contact, telephone and fax communications with DHHS
Director 80 hours

Fiscal:
Bi-annual Financial Reports
Quarterly Cash Transactions and Reconciliations
Draw Down funds as needed (monthly)
Finance staff 120 hours

Community Services Block Grant: This program is small, but did provide assistance for 63 families in FY2003.

$20,964

Requirements:

Program:
Develop Grant and Process
Face-to-Face contact, telephone and fax communications with DHHS
Director 40 hours

Fiscal:
Annual Report
Annual Receipt of Funds
Cash Transactions and Reconciliations
Finance staff 80 hours

Child Care And Development Fund: This program assisted with child care for 1,550 children in FY2003.

$3,642,939 *(Choctaw program and fiscal costs since 1991 dedicated to HHS related activities approximately $140,000*)*

Requirements:

Program:
Develop and Maintain Plan
Prepare Reports
Face-to-Face contact, telephone and fax communications with DHHS
Director 120 hours
Coordinators 120 hours

Fiscal:
Annual Fiscal Status Report
Cash Transactions and Reconciliations
Draw Down funds and needed
Finance Staff 220 hours

Child Welfare Services Programs: This program provided services opened 529 cases and worked with 122 families in FY2003.
$847,000

Requirements:

Program:
Develop and Maintain Plan
Prepare Reports
Face-to-Face contact, phone and fax communications with DHHS
Director 160 hours
Coordinator 160 hours

Fiscal:
Annual Report
36 Financial Reports Annually
Cash Transactions and Reconciliations
Draw Down funds as needed
Finance staff 220 hours

Using the above information, we are able to estimate the following savings:

Program Total Hours dedicated to DHHS related activities: 1000	
Director/Coordinators Salary 1000 hours x $30/hour	$30,000
Estimated similar activity in "demonstration project" @ 10 %	(3,000)
Program Savings	**$27,000**

Fiscal Total Hours dedicated to DHHS related activities: 920	
Finance staff calculated on average 920 hours x $20/hour	$18,400
Estimated similar activity in "demonstration project" @ 10%	(1,840)
Fiscal Savings	**$16,560**

TOTAL SAVINGS PER YEAR: $43,560

The program and fiscal saving listed above are minor in comparison to program redesign and expansion that would be permitted under this demonstration program. The Choctaw Nation of Oklahoma, as well as many of the Tribes across the Nation that have compacted under Self-Governance, especially in the Indian Health Service, have structured their programs to meet the needs of their patients.

Reporting is an essential part of being accountable for a program. Tribes in Self-Governance have shown a willingness to participate in the Government Performance and Results Act (GPRA) and have recently been provided an overview and possible program benefits of the OMB sponsored Program Assessment Rating Tool (PART). However, providing reports for the sake of reporting to a Regional Program Director, who does nothing with the reports, is a disincentive. Self-Governance allows programs to report useful information that affects program outcomes.

The Choctaw Nation is proud of the DHHS programs we manage, but we could have the benefit of so many more choices and opportunities. Self-Governance Tribes will be able to access these choices and opportunities with S. 1696.

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* *The Choctaw costs for program and fiscal services, functions and activities should be compared to the Federal costs for these programs prior to being operated by the Tribe.*

Choctaw Nation of Oklahoma

Drawer 1210 • Durant, Oklahoma 74702-1210 • (580) 924-8280

Gregory E. Pyle
Chief

Mike Bailey
Assistant Chief

TESTIMONY PRESENTED BY THE CHOCTAW NATION OF OKLAHOMA ON S. 1696, DEPARTMENT OF HEALTH ADN HUMAN SERVICES TRIBAL SELF-GOVERNANCE AMENDMENTS OF 2003, TITLE VI

Before the
SENATE COMMITTEE ON INDIAN AFFAIRS
WEDNESDAY, MAY 19, 2004

"To give wisdom and strength to our children, help us to help you to a healthier and longer life."
The Merle Boyd Wellness Center
Merle Wayne Boyd (June 17, 1940 – May 26, 2003)
Second Chief, Sac & Fox Nation
1973-1975/1991-2003

GREETINGS

Good morning thank you Mr. Chairman and distinguished members of the Indian Affairs Committee for this opportunity to deliver testimony on behalf of the Nation. My name is Mickey Peercy and I am here today at the request of Chief Gregory E. Pyle. The Chief asked me to express his regrets for not being here today, but wanted me to assure you that the statement submitted by the Choctaw Nation is not diminished by his absence.

INTRODUCTION

"We pledged – not in provisions of a committee report or statements made on the Senate floor – but in the language of the statute – that Tribal Governments would be provided with the same level of resources that the Federal government had at its disposal in administering these programs."
Senator Daniel K. Inouye, Vice-Chairman, Committee on Indian Affairs, 1998

The Choctaw Nation is typical of many Tribal nations throughout Indian Country today. We have stable leadership and a continuity of vision and purpose. We are a Tribal government and a Tribal business. Our shareholders are our enrolled Tribal members who have the authority to remove the CEO (Chief) at each election. This adds emphasis to our purpose. We have demonstrated that in 1975 the legislators, who initially endorsed Public Law-638, the Indian

Self-Determination and Education Assistance Act (ISDEAA), and the Self-Governance amendments to the Act during the last 15 years, were right. Tribal governments can and are doing a better job of managing our own programs for our people.

While today it seems like eons ago since the passage of P.L. 93-638, many Tribes have continued the quest to expand upon our rights as sovereign nations that this historical legislation initiated. Through our collective efforts and advocacy, and with the help of allies on both sides of the Congressional aisles, we have been able to change the relationship between Tribes and the United States government. Tribal Sovereignty was our right and Self-Governance was the means by which we sought to amend the ISDEAA in 1988, P.L. 100-472, the Indian Self-Determination Act Amendments of 1988 – Title I & II. This was the beginning for those Tribes seeking to reassume the role of taking care of business on the reservation for the benefit of those who live on the reservation.

CHOCTAW NATION and SELF-GOVERNANCE

"The concept of Tribal Self-Governance is not new. Basically, Self-Governance principles recognize Tribal government powers we've always possessed before and after the treaties with the United States. The purpose of this paper is to generate dialogue among participating Self-Governance Tribes regarding how the underlying philosophies and principles of the Self-Government Demonstration Project can be incorporated permanently into all branches of the United States government."

Speech by Dale Risling, Former Chairman, Hoopa Valley Tribe
1992 Fall Self-Governance Conference
Seattle, Washington

The Choctaw Nation of Oklahoma covers 10 ½ counties in extreme Southeast Oklahoma. The Nation covers approximately 10,000 square miles and it is without a doubt one of the most beautiful areas in the country, but also one of the most rural and economically deprived areas.

The Choctaw Nation has the third largest enrolled Tribal membership in the Nation. There are over 150,000 tribal members. Approximately 40,000 reside within our tribal boundaries. Choctaw Indians are proud of their heritage and are striving to sustain their traditions, language and culture.

We are strong believers in the philosophy of Self-Determination. In 1985, we were the first tribe to assume management of an entire healthcare delivery system under Public Law 93-638. The transfer from Indian Health Service to the Nation was sudden and deliberate. It was necessitated by the lack of quality healthcare delivery by the Indian Health Service at the Talihina Hospital and the satellite clinics.

Today, we have a new 144,000 square foot hospital, four satellite clinics, a joint venture clinic under construction, a small ambulatory clinic under construction, and a substance abuse recovery center under construction. We have expanded health care services to try and meet the needs of our people. As you are aware, federal increases in funding have not kept pace with medical inflation. Because of Self-Governance, we have been able to create efficiencies and redesign our health care delivery system and maximize its potential.

We have been innovative and aggressive in our approach in providing services to our people. We have diversified. Our housing authority is as good as anywhere in the nation. We are proud of the educational opportunities we provide for our tribal members. Annually, we provide over $4,000,000 to Choctaw Nation members for educational scholarships. Our enterprise, contracting and manufacturing ventures have allowed us, in four years, to reverse our dependence on federal dollars.

Four years ago, our federal/tribal income ratio was 80% (Federal) – 20% (Tribal). Today, it is 17% (Federal) – 83% (Tribal). This is impressive; I don't care who you are.

In 1993 we entered into a Compact and Funding Agreement with the Department of the Interior – Bureau of Indian Affairs to assume full control of our programs and we continue to manage these in a more effective and productive manner. Bureau programs are limited in their flexibility to redesign, however, we are in the process of incorporating Bureau of Indian Affairs and Department of Labor (WIA) programs to 477 under P.L. 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992. This will broaden the scope of these programs and improve their reporting capabilities.

CHOCTAW NATION SELF-GOVERNANCE, 1992 – Current

In the FY 1992 Interior Appropriations Conference report language, the Indian Health Service (IHS) was directed to develop evaluation and transfer methodologies to initiate internal planning prior to consideration of Tribal planning grants for Self-Governance. The Choctaw Nation of Oklahoma was one of the initial Tribes that received resources to participate in the IHS planning process. A meeting was held with the Indian Health Service Director to outline the research tasks and budget information needed during the first year, followed by several months of discussions on negotiations, tribal shares and residuals.

Again, in 1998, the Choctaw Nation of Oklahoma was one of Tribes that drafted Tribal language, submitted to this Committee and to the House Resources Committee, requesting permanent authority for Self-Governance in the Indian Health Service. This legislation, P.L. 106-260 was enacted on August 18, 2000. The Nation served on the Negotiated-Rulemaking Committee for a period of 18 months and final regulations were published on May 16, 2002 and became effective on June 17, 2002.

Under Title VI of P.L., 106-260, the Choctaw Nation also participated on the Tribal Team that served as technical advisors to the Department of Health and Human Services during the "conduct of a feasibility study to determine the feasibility of a Tribal Self-Governance demonstration project for appropriate programs, services, functions and activities (or portions thereof) of the agency". The Study findings did determine that a Self-Governance demonstration project was feasible, but there were flags identified; flags that we have encountered before in advancing Self-Governance. We have been good partners in our efforts and are reasonable and willing to work through differences with the federal government as they arise.

S. 1696, Title VI, Department of Health and Human Services Tribal Self-Governance Amendments of 2003

"The litany of statistics showing the poor state of health care in Indian country is well known: diabetes, cancer, alcoholism and drug abuse is rampant in American's native communities."
Senator Ben Nighthorse Campbell, Chairman, Committee on Indian Affairs, October 7, 1998

The Choctaw Nation has been integral in the growth of Self-Governance and we will continue to be diligent to advance S. 1696, the Department of Health and Human Services Tribal Self-Governance Amendments Of 2003, Title VI.

The Nation has been operating six of the thirteen programs identified in this bill and supports the feasibility of a Tribal Self-Governance demonstration program under Title VI. We currently operate:

Low-Income Home Energy Assistance Program (1981)	1,402 families	$ 336,775
Community Services Block Grant Program	63 families	20, 964
Child Care and Development Fund (1991)	1,550 children	3,642,939**
Head Start Program (1978)	310 Contracted	2,044,112
Elderly Nutrition Program (1980)	35,039 participants	187,530
Indian Child Welfare Services Program	529 Cases	440,257 (4B Pt. 1)
	122 families	407,371 (4B Pt. 2)

(** Less $750,000 deducted for the Idabel Child Development Center)

In addition, the Nation has constructed 4 new childcare centers, 10 additional head start centers, and we now have 16 nutrition centers.

These programs provide an excellent service for participants. Including them under the umbrella of Self- Governance under Title VI can only enhance the quality and scope of service for these programs and for the beneficiaries.

S. 1696, will allow Tribes to access funding within the Department that has not been available to us or accessible in the past. In addition, it will enable Tribes, such as Choctaw, to expand existing program operations and service delivery under a compact of Self-Governance.

A NATIONAL DISGRACE: INDIAN HEALTHCARE

"If funded sufficiently, IHS could provide more money to needs such as contract care, urban health programs, health facility construction and renovation, and sanitation."

U.S. Commission on Civil Rights Report
"A Quiet Crisis: Federal Funding and unmet Needs in Indian Country"
July 2003

Recent studies have documented that funding for Tribal programs are disproportionate relative to funding for other beneficiaries of federally funded programs. The federal outlook of healthcare and service delivery to Indian people is bleak and disenchanting. Our population is characterized by high incidents of certain chronic diseases including diabetes, obesity, hypertension, cancer, heart disease, aids and substance abuse. But for American Indians and Alaskan Natives, this is business as usual because of the continued lack of funding available to address the identified levels of need.

Self-Governance is not the answer to the lack of funding, but it is one of the few options we have to leverage what we receive and do not receive from Congress. When this legislation is passed, there will still be a disparity in the funding for all Tribes and the transition will be challenging. It will be better than it was before Self-Governance, for all of Indian Country.

The Choctaw Nation of Oklahoma is very proud of our accomplishments under Self-Governance with the level of healthcare that we are able to provide our Tribal members... better programs and better services. And, we stand ready for the challenge to advance Self-Governance for the future of our Tribal members, especially our children.

S. 1696 is where we need to go from here. Again, on behalf of the Choctaw Nation of Oklahoma, I would like to thank Senators Campbell and Inouye for introducing S. 1696 and for holding this hearing.

TESTIMONY PRESENTED BY
ALVIN WINDY BOY, SR., CHAIRMAN
THE CHIPPEWA CREE TRIBE OF ROCKY BOY'S RESERVATION

BEFORE
THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 1696, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TRIBAL SELF-GOVERNANCE AMENDMENTS ACT OF 2003

May 19, 2004

Good morning Mr. Chairman and distinguished members of the committee, my name is Alvin Windy Boy, Sr. and I am the Chairman of The Chippewa Cree Tribe of the Rocky Boy's Reservation. I also serve as the Vice Chairman of the Indian Health Service's Tribal Self-Governance Advisory Committee, a committee comprised of Tribal Leadership throughout Indian Country that advises the Director of the Indian Health Service on issues relating to self-governance and self-determination. I would like to thank the Honorable Chairman Ben Nighthorse Campbell and the members of the Senate Committee on Indian Affairs for scheduling this hearing. I would also like to thank my Montana Senators, Conrad Burns and Max Baucus, for their continuing support for this piece of legislation.

As a Self-Governance Tribe, the Chippewa Cree Tribe strongly supports S .1696, a bill t hat w ill strengthen Tribal self-governance through a demonstration project under Title VI of the Indian Self Determination and Education Assistance Act (P.L., 93-638 as amended). Strengthening our ability to determine our own future and our ability to govern our people is critical at both the local level where we are providing the direct services to our people and at the national level where we build and strengthen our government-to-government relationship as American Indian and Alaska Native (AI/AN) Tribes with the United States Government.

It has now been almost thirty (30) years old since the passage of the Indian Self-Determination and Education Assistance Act of 1975. The policy Indian Self Determination and law authorizing it have proven to be successful in Indian Country as evidenced by the many tribes that are now successfully operating their own programs. A number of positive amendments were made to the original Act in 1988, 1994 and 2000 that focused on strengthening the ability of Tribes to exercise self-determination rights. Despite these affirmations of the policy and law, many challenges still remain. I want to speak to you on how my Tribe, in a state designated as a rural, has met those challenges.

"RURAL" CHALLENGES IN HEALTH AND HUMAN SERVICES FOR CHIPPEWA CREE TRIBE

Besides being challenged with limited and decreasing levels of Indian healthcare funding (IHS funding is the primary source of healthcare funding, resources and opportunity for our Tribe), the Chippewa Cree

Tribe is challenged with the "rural" nature of our state. Montana has less than 1 million people within the entire state. Because of our relative isolation our Tribe is challenged with a low state economic base, increasing medical and pharmaceutical costs, large distances to travel to access specialty care, and problems with the recruitment and retention of medical providers. We also are dealing with rapid population growth with a larger, younger, fast growing population, increasing levels of chronic disease i.e. diabetes, cardiovascular disease, and alcohol/substance abuse, and a healthcare infrastructure that is challenged to support an appropriate level of care to name a few.

This is what we know:

- The Rural Health Institute has designated Montana, as a "frontier" state meaning that there is less that 7 people per square mile. Many Tribes in Montana must travel 4 –8 plus hours (one way) for specialty care that cannot be provided in their ambulatory care clinics. The travel cost is not figured into the Indian healthcare budget thus is often provided for by the Tribe. Often a Tribal member who is seeking specialty care (i.e. chemotherapy, major surgery, dialysis) is accompanied by family members. This is recognized by the Tribe as critical for that individual to find health and those costs are also picked up by the Tribe.

- The costs of pharmaceuticals in the U.S. rose 15% per year over the last 2 years while the entire FY 2002 IHS budget rose 2%, and the portion designated to hospitals and clinics actually decreased.

- Regarding chronic disease, diabetes for example, we know from the IHS National Diabetes Program that there is an alarming rise of type 2 diabetes in AI/AN children and youth.
  - From 1991 to 2001, diabetes prevalence rose 70% in AI/AN under age 35.
  - Age specific prevalence rose 79% in the 25-34 year olds, 68% in the 20-24 year olds, **106% in the 15-19 year olds**, and 25% in the 25 year olds.

- Chronic disease and its complications is costly to address and compounding that cost with a fast growing, larger, younger population. Costs are becoming unmanageable. The American Diabetes Association recently showed that the costs for caring 1 person with diabetes can range from **$5,000- $9,000 per year**. The IHS receives an average of **$1,575 per person per year** for all healthcare needs.

The Chippewa Cree Tribe, as many Tribes and communities in rural America, are challenged with providing healthcare but the Chippewa Cree Tribe has been able to show successes in leveraging our limited resources through our self-governance compact.

TRIBAL SELF-GOVERNANCE AND THE CHIPPEWA CREE TRIBE

The Rocky Boy's Reservation, located in north central Montana, consists of more than 120,000 acres, which are home to approximately 4,500 Tribal members who reside on the reservation. We have a young, rapidly growing population with an annual growth rate that exceeds 4%. Unemployment on the Rocky Boy's Reservation is extraordinarily high and approximately 39% of our population lives below the poverty level. Yet Rocky Boy continues to enjoy a strong and vital traditional Cree culture. We have taken great measures to insure the growth of our Tribal culture, maintain our traditions and spirituality and continue our Cree language.

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Our self-governance compact encompasses management of the entire out-patient clinic on the Rocky Boy's Reservation. The Chippewa Cree Health Center employs two full time physicians, four clinical nurses, a clinical psychologist, clinical social worker, an optometrist, has three fully equipped dental chairs with two full time dentists, a dental hygienist, and three dental assistants. There are three full-time pharmacists, certified x-ray and lab technicians, a fully equipped emergency room with twenty four hour response from certified EMT's, community health nursing, WIC Program, AIDS Education, Health Education, Community Health Representatives, a comprehensive referral and fully accredited outpatient chemical dependency center, and management of all facilities and quarters utilized by the Rocky Boy Health Board. Currently, the Rocky Boy Health Board contracts with the State of Montana for the WIC Program, the CHIPS Program and manages numerous other state contracts for healthcare. Current IHS grants include a Health Professions Recruitment Program, IHS Scholarship Program, Injury Prevention Program, and a Special Diabetes Program for Indians. In addition to the historical Tribal programs previously administered by contract under Public Law 93-638 such as Community Health Representatives, Health Education, Public Health Nursing, Emergency Medical Services, and a small administrative component, the Chippewa Cree Tribe/Rocky Boy Health Board now consolidates health care delivery under one umbrella administration and sets priorities for delivering health care at the local level. The staffing breakdown for the Rocky Boy Health Board consists of approximately 35 percent professional staff and approximately 65 percent ancillary staff. These are all Tribal employees.

A few days ago, the Chippewa Cree Tribe held the groundbreaking for our new Natoose Health and Wellness Center. The building of our facility is collaboration with the Chippewa Cree Tribe and our partners from IHS, USDA, HUD and BIA. This opportunity (as well as others) was made possible because of the strong and aggressive self-determination/self-governance vision and values, based upon policy and law, which our Tribe operates upon.

S.1696, TITLE VI, DEPARTMENT OF HEALTH AND HUMAN SERVICES TRIBAL SELF-GOVERNANCE AMENDMENTS OF 2003

The Chippewa Cree Tribe has made important strides in health services over the past ten years in the areas of diabetes care, emergency services, alcohol/substance abuse, and behavioral health. Self-governance has been our Tribe's community driven source for developing a high quality of health services. Nonetheless, our internal studies have demonstrated that the Tribe will be challenged to sustain its current rate of growth, including provision for health and human services growth, without additional resources and/or opportunities.

The Chippewa Cree Tribe currently operates the following programs that are identified within the bill.

AOA	
Title VI Nutrition & Supportive Services for Native Americans	98,000
Nutrition Services Incentive Program	23,380
Title VI Part C Caregivers Program	23,360
Title III Montana's Older Americans Act	34,585
AFC	
Low Income Home Energy Assistance	177,173
LIHEAP "Leveraging"	33,585

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LIHEAP "Reach"	2 year 150,000
CSBG	24,958
Head Start	1,400,000
Child Care and Development Fund	361,895
SAMHSA	166,000

The ability to compact DHHS health and human services programs outside of IHS through Title VI is a cornerstone of health and human services development for my Tribe. The assurance of Tribal fiscal and programmatic management and control of those programs that have a significant impact on the health and well being of our Tribal members will enable the Tribe to provide the best level of care needed for current and future health and human services development. The ability to compact these programs will enable the Tribe to enjoy a higher quality of life through improved health conditions, more employment opportunities, and an overall increased level of Tribal community driven health and human services development.

Again, I would like to thank Chairman Ben Nighthorse Campbell and the members of the committee for their support and for this opportunity to testify in support of this important and necessary bill. I would be pleased to answer any questions.

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