

**H.R. 3994, DEPARTMENT OF
THE INTERIOR TRIBAL SELF-
GOVERNANCE ACT OF 2007**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

Thursday, November 8, 2007

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**LEGISLATIVE HEARING ON H.R. 3994, TO
AMEND THE INDIAN SELF-DETERMINATION
AND EDUCATION ASSISTANCE ACT TO
PROVIDE FURTHER SELF-GOVERNANCE BY
INDIAN TRIBES, AND FOR OTHER PUR-
POSES. "DEPARTMENT OF THE INTERIOR
TRIBAL SELF-GOVERNANCE ACT OF 2007"**

**Thursday, November 8, 2007
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 10:15 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Sali, Inslee, Baca and Fallin.

**STATEMENT OF THE HONORABLE NICK J. RAHALL, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST
VIRGINIA**

Mr. RAHALL. The Committee will come to order. This meeting on H.R. 3994 is a legislative hearing to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes. Throughout the years, tribal self-governance has been held as one of the most successful Federal programs for Indian tribes. Under self-governance, Indian tribes assume the duties of the Federal government for certain programs at the Department of the Interior.

Self-governance affords tribal governments the right to operate programs to best serve the needs of their members while at the same time preserving the Federal government's treaty and trust responsibility toward Native Americans. In 2000, Congress made changes to Title V of the Indian Self-Determination and Education Assistance Act which controls the program at the Indian Health Service.

Indian tribes have reported those changes have immensely improved the administration of self-governance within the Indian Health Service. The legislation before us today would extend similar changes to Title IV of the Indian Self-Determination Act which controls the program at the Department of the Interior.

It would allow Indian tribes to assume the administration of programs at the Department of the Interior using rules and procedures similar to those used at the Indian Health Service. I look forward to hearing today's testimony and learning how the bill can be improved.

[The prepared statement of Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, Chairman,
Committee on Natural Resources**

The Committee will come to order. Today's hearing is on H.R. 3994, the "Department of the Interior Tribal Self-Governance Act of 2007." I commend my colleague, Mr. Boren, for introducing this measure.

Throughout the years, tribal self-governance has been hailed as one of the most successful federal programs for Indian tribes. Under self-governance, Indian tribes assume the duties of the Federal government for certain programs at the Department of the Interior. Self-governance affords tribal governments the right to operate programs to best serve the needs of their members, while at the same time, preserving the Federal government's treaty and trust responsibility towards Native Americans.

In 2000, Congress made changes to Title V of the Indian Self-Determination and Education Assistance Act which controls the program at the Indian Health Service. Indian tribes have reported that those changes have immensely improved the administration of self-governance within the Indian Health Service.

The legislation before us today would extend similar changes to Title IV of the Indian Self-Determination and Education Assistance Act, which controls the program at the Department of the Interior. It will allow Indian tribes to assume the administration of programs at the Department of the Interior using rules and procedures similar to those used at the Indian Health Service.

I look forward to hearing testimony today to learn how the bill can be improved.

Mr. RAHALL. Do any other members wish to make an opening statement?

[No response.]

Mr. RAHALL. OK. If not, we will proceed our hearing. Our first witness is Mr. James Cason, the Assistant Deputy Secretary, the Department of the Interior.

Mr. Secretary, we welcome you once again to our committee, and you may proceed as you desire.

**STATEMENT OF JAMES CASON, ASSOCIATE DEPUTY
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CASON. Thank you, Mr. Chairman. I appreciate that.

Mr. RAHALL. We do have your prepared testimony, by the way, as for all witnesses, which will be made part of the record as if it actually were read, and witnesses may proceed as they desire.

Mr. CASON. Great. Thank you so much, Mr. Chairman. Good morning, Mr. Chairman. I am pleased to be here to provide the administration's position on H.R. 3994, the proposed Department of the Interior Tribal Self-Governance Act of 2007. Self-governance tribes have been good managers of the programs they have undertaken.

More often than not tribes add their own resources to the programs or are able to fashion programs to meet the particular needs of their beneficiaries. They are also well-suited to address changing needs. Tribes have said that our current compacts with them reflect true government-to-government relationships that indicate they are not viewed by the Federal government as just another Federal contractor, and they are not.

The premise behind much of H.R. 3994, however, is that it is prudent to extend the provisions of Title V of the Indian Self-Determination and Education Assistance Act which governs the programs of the Indian Health Service to the programs of the Department of Interior.

There are functions and responsibilities of Interior that do not lend themselves to compacting or funding agreements under provisions like those in Title V. The legislation before the Committee today goes well beyond the principles of self-determination and self-governance.

It poses problems with regard to appropriate management of Federal funding and programs, could ultimately end up costing taxpayers more to fund programs, and potentially increase as a liability on the part of the Federal government. The Department expressed concerns in 2004 when a similar bill was introduced and considered by the 108th Congress, and as a result the Department opposes enactment of this bill which is fairly similar.

Our first concern is with the provisions of H.R. 3994 that affect non-BIA bureaus of Interior. H.R. 3994 amends Title IV to provide in new Section 405(b)(2) that 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 Secretary outside the Bureau of Indian Affairs better for the benefit of Indians because of their status as Indians or that are programs with respect to which Indian tribes are primary or significant beneficiaries.

Under this provision the non-BIA bureaus of Interior have no negotiating rights with regard to what is authorized by these agreements. Non-BIA bureau programs that have both Indian and non-Indian significant beneficiaries would be the subjects of funding agreements at the tribe's discretion. The bill provides no authority for the Secretary to require terms to ensure protection of non-Indian interest.

This is particularly troubling combined with the bill's other requirements that the Secretary may not revise subsequent funding agreements without tribal consent, funding agreements at the discretion of the tribe may be for more than one year, tribes may redesign or consolidate programs or reallocate funds for programs in any manner that the Indian tribe deems to be in the best interest of the Indian community being served as long as it does not have the effect of denying services to population groups eligible to be served, if a tribe compacts to carry out a service and then finds the funding is insufficient, the tribe can suspend services until additional funds are provided and unless the Secretary can show irreparable harm, a program may only be reassumed if there is a hearing on the record that finds clear and convincing evidence that there is imminent jeopardy to physical trust asset natural resource or public health and safety or if there is gross mismanagement on the part of the tribe.

As I stated in the beginning of the testimony, P.L. 93-638, the underlying bill as amended, has in a large part been a success story. Our interest is in making sure that it stays that way. A prudent preliminary analysis of this legislation leads us to raise the aforementioned areas of concern.

We are opposed to the bill's enactment also given the relatively short timeframe in which we have had to analyze H.R. 3994. We are continuing to review the impacts of the bill on both BIA and non-BIA programs in the Department.

Mr. Chairman, that concludes my opening statement, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Cason follows:]

**Statement of James Cason, Associate Deputy Secretary,
U.S. Department of the Interior**

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 H.R. 3994, the proposed "Department of the Interior Tribal Self-Governance Act of 2007."

Self-governance Tribes have been good managers of the programs they have undertaken. More often than not, Tribes add their own resources to the programs and are able to fashion programs to meet the particular needs of their beneficiaries. They are also well suited to address changing needs. Tribes have said that our current compacts with them reflect a true government-to-government relationship that indicates they are not viewed by the Federal government as just another federal contractor.

The premise behind much of H.R. 3994, however, is that it is prudent to extend the provisions of title V of the Indian Self-Determination and Education Assistance Act, which governs the programs of the Indian Health Service, to the programs of the Department of the Interior. There are functions and responsibilities of Interior that do not lend themselves to compacting or funding agreements under provisions like those in title V.

The legislation before the Committee today goes well beyond the principles of self-determination and self-governance. It poses problems with regard to appropriate management of federal funding and programs, could ultimately end up costing taxpayers more to fund programs, and potentially increases liability on the part of the Federal government. The Department expressed concerns in 2004 when a similar bill was introduced and considered by the 108th Congress. As a result, the Department opposes the enactment of this bill.

The policy of Indian self-determination is one that has endured for almost forty years. In a message to Congress on March 6, 1968, President Lyndon Johnson said:

"I propose a new goal for our Indian programs: A goal that ends the old debate about 'termination' of Indian programs and stresses self-determination... The greatest hope for Indian progress lies in the emergence of Indian leadership and initiative in solving Indian problems. Indians must have a voice in making the plans and decisions in programs which are important to their daily life..."

In July 1970, President Nixon gave his famous Special message to Congress which stated:

"It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. ... The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions..."

"Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered..."

And more recently, on October 30, 2006, President Bush declared:

"My Administration will continue to work on a government-to-government basis with tribal governments, honor the principles of tribal sovereignty and the right to self-determination, and help ensure America remains a land of promise for American Indians, Alaska Natives, and all our citizens."

Background

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, in section 403(b) authorize 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 FY 2007, there are 94 agreements that include 234 federally recognized tribes and approximately \$380 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 Department funding agreements allow federally recognized tribes to provide a wide range of programs and services to their members such as law enforcement, education, 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 for their members 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 Chickasaw Nation accomplishments in 2006 included providing education services to 7,209 students. 945 students participated in remedial education and tutoring and 82% of the students receiving tutoring gained one grade level or more. Scholarships were provided to 181 undergraduate students and 43 graduate students. The Tribe's tribal district court heard 1,118 cases. It collected almost \$50,000 in court fees and over \$32,000 for restitution and child support. In January 2006, the Tribe's supreme court and district court were audited by a team from the BIA central office and received excellent ratings. The Tribe also provided career counseling, skills assessment, aptitude testing, and other employment readying services to 1,320 clients. The Tribe coordinated a job fair that attracted 53 vendors and over 500 job seekers. The Tribe's police department implemented a new computer system which has aided in multiple dispatching methods and improved data collection, investigation, and crime analysis and reporting. This example is just one of many where Tribes have been successful in directly administering federal programs.

Section 403(b)(2) of title IV authorizes other bureaus within the Department of the Interior to enter into funding agreements with Tribes subject to such terms as may be negotiated between the parties. The Council of Athabascan Tribal Governments (CATG) has successfully implemented annual funding agreements (AFAs) since 2004 to perform activities in the Yukon Flats National Wildlife Refuge in Interior Alaska. The CATG is a consortium representing the Tribal governments of Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Gwichyaa Zhee Gwich'in Tribal Government of Fort Yukon, Rampart, Stevens Village, and Venetie. Members of these Tribes live near or within the Yukon Flats National Wildlife Refuge, the third largest of the more than 540 conservation units in the National Wildlife Refuge System. The Refuge was established in 1980, and includes more than 8.5 million acres of wetland and boreal forest habitat along 300 miles of the Yukon River, north of Fairbanks, Alaska. It is internationally noted for its abundance of migratory birds.

The activities subject to the AFAs have included 1) locating and marking public easements across private lands within the Refuge boundary; 2) assisting with environmental education and outreach in local villages; 3) monitoring wildlife harvest; 4) surveying moose populations (in cooperation with the Alaska Department of Fish and Game); and 5) maintaining Federal property in and around Fort Yukon. Public use (including sport and subsistence hunting, fishing, and trapping) is not affected by these agreements. Management authority remains with the Service as required by the National Wildlife Refuge System Administration Act.

The Bureau of Land Management also has an annual funding agreement with the CATG. Under the agreement, CATG performs pre-season refresher training and testing services for Emergency Firefighters within Alaska's Upper Yukon Zone.

In FY 2007, Redwood National and State Parks had three agreements under the Indian Self-Governance Act with the Yurok Tribe for watershed restoration in the South Fork Basin of Lost Man Creek (a boundary area between the Park and the Yurok reservation); the conduct of archeological site condition assessments; and natural resource maintenance. Since 2002, the Lower Elwha Klallam Tribe has been assisting the National Park Service as a Self-Governance tribe in the planning, design, and implementation of mitigation measures for the Elwha River Restoration Project. At Grand Portage National Monument, there have been annual funding agreements for the past nine years. The agreement, re-negotiated, amended and agreed upon by the National Park Service and the Grand Portage Band of Minnesota Chippewa, touches most park operations. The Band and the Park dedicated a new Grand Portage Heritage Center in August 2007. Over nine years, \$3.3 million has been transferred to the Band and 34 special projects have been completed in addition to routine maintenance.

The Bureau of Reclamation has also been successful under the current law. In FY 2007, Reclamation had seven annual agreements with six Tribes, totaling more than \$18.6 million.

Department of the Interior Non-BIA Program Concerns with H.R. 3994

Our first concern is with the provisions of H.R. 3994 that affect non-BIA bureaus of Interior. H.R. 3994 amends title IV to provide in the new section 405(b)(2) that “[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 Secretary outside the Bureau of Indian Affairs” that are for the benefit of Indians because of their status as Indians or that are programs with respect to which Indian Tribes are “primary or significant beneficiaries.” Under this provision, the non-BIA bureaus of Interior have no negotiating rights with regard to what is authorized by these agreements. Non-BIA bureau programs that have both Indian and non-Indian significant beneficiaries would be the subjects of funding agreements at the Tribes’ discretion. The bill provides no authority for the Secretary to require terms to ensure protection of non-Indian interests. This is particularly troubling combined with the bill’s other requirements that “

- the Secretary may not revise subsequent funding agreements without tribal consent;
- funding agreements, at the discretion of the Tribe, may be for more than one year;
- Tribes may “redesign or consolidate programs or reallocate funds for programs in any manner that the Indian Tribe deems to be in the best interest of the Indian community being served” as long as it does not have the effect of denying services to population groups eligible to be served;
- if a Tribe compacts to carry out a service and then finds the funding is insufficient, the Tribe can suspend services until additional funds are provided; and
- unless the Secretary can show “irreparable harm,” a program may only be re-assumed if there is a hearing on the record that finds “clear and convincing evidence” that there is “imminent jeopardy to a physical trust asset, natural resources or public health and safety;” or if there is “gross mismanagement” on the part of the Tribe.

Take for example Interior’s fuels management program related to wildfire management. Interior is part of a multi-agency collaborative effort with or focused on a common purpose of reducing risks to communities, including Indian communities, while improving and maintaining ecosystem health. Indian Tribes are significant beneficiaries of this program and have a significant stake in it, as evidenced by the recent fires in Southern California. Because of the proximity of federal, State, Indian, and private lands, fuel management activities must be closely coordinated and managed so as to keep the entire ecosystem in mind when funding and planning activities. It would be unwise to require the Bureau of Land Management (BLM) to provide its fuel management monies to Tribes receiving a significant benefit from BLM’s program without any negotiations or choice on the part of BLM when so many non-Indian interests receive benefits as well, particularly given the requirements listed above.

We understand some of the impetus for this legislation at this time stems from the agreement between the U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation regarding the National Bison Range Complex in Montana. While there has been considerable controversy over the 2006 annual funding agreement between the Service and the CSKT, through this process we are gaining a better understanding of what each party needs to make a successful agreement with a non-BIA bureau work well. We believe that ultimately the process will grow stronger as a result of our efforts. We are op-

posed to simply providing the receiving party unilateral power to determine the terms and length of the agreement as well as the disposition of the funds. This is particularly true where non-BIA bureaus have other statutory mandates with which they must comply.

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. Current law also authorizes the Secretary to include other programs administered by the Secretary which are of special geographic, historical, or cultural significance to the participating Tribe requesting a compact. We believe this authority is sufficient to protect the interests of Indian Tribes in non-BIA programs.

Finally, H.R. 3994 would require non-BIA agencies to commit funds to Tribes for construction projects on a multi-year basis. The Secretary is then required to provide the funding amount in the funding agreement. Most agencies' programs and projects are funded on an annual basis and commitment of funds in future years is illegal. The Secretary should not be required to commit funds that are not yet appropriated.

Other Concerns with H.R. 3994

We also have other concerns with the provisions of H.R. 3994, including serious concerns about Federal liability that could arise under the bill. H.R. 3994 clearly states in the new section 405(b)(8) that 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. Yet, as mentioned above, unless the Secretary can show "irreparable harm," a program may only be reassumed if there is a hearing on the record that finds "clear and convincing evidence" that there is "imminent jeopardy to a physical trust asset, natural resources or public health and safety;" or if there is "gross mismanagement" on the part of the Tribe.

This standard for reassumption in H.R. 3994 is very different than the standard for management of fiduciary trust functions. H.R. 3994 requires clear and convincing evidence of gross mismanagement or imminent jeopardy before a program can be reassumed by the Secretary. What is the expectation of the Congress if trust assets, managed under a compact or funding agreement, are managed in a way that causes jeopardy to them, but not imminent jeopardy, or are negligently mismanaged, but not grossly mismanaged? Under either of those scenarios, the Secretary has no right to reassume management. Yet, the Secretary might be sued for failure to protect these assets.

The Department is also opposed to section 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 on numerous DOI programs. Under this provision, if a Tribe contracts with the Department and then runs out of money to carry out the responsibilities under the agreement, the Tribe could simply stop performance. The Tribe should return the function to the Department to administer if it believes the funding level is inadequate rather than have its members suffer if the Tribe decides not to perform.

As mentioned above, the Department is opposed to the reassumption provision contained in section 407. The provision would require that there be a finding, with a standard of clear and convincing evidence, of imminent jeopardy or gross mismanagement before the Secretary can reassume management. Such a finding with a preponderance of the evidence bars the Secretary from reassumption. Even with a finding based on clear and convincing evidence, the Secretary must provide a hearing on the record and provide time for corrective action. The Secretary may only reassume operations without a hearing if the Secretary finds imminent and substantial jeopardy and irreparable harm caused by an act or omission of the Tribe and the jeopardy and harm must arise out of a failure to carry out the funding agreement or compact. Having to meet these latter conditions practically eliminates the ability of the Secretary to quickly reassume a program in those rare instances where immediate resumption may be necessary, such as instances where serious injury or harm may occur. We recommend that the reassumption standard contained in the current Title IV be retained.

H.R. 3994 also raises constitutional problems. In the new section 413, the bill requires the Secretary to request certain sums of money in the President's annual budget request. It also requires the President to 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..." The Recommendations Clause of the Constitution vests in the President discretion to recommend to Congress "such Measures as he shall judge necessary and expedient." To the extent that this section requires the Secretary to recommend measures to Congress, it violates the Recommendations Clause.

Finally, we raise the following other issues:

- Section 405(b)(2)(B) entitled "Federally Reserved Rights." This section does not define what a federally reserved right is. We presume this is intended to cover rights such as water rights which the Federal government reserves for carrying out projects that provide services to both Indians and non-Indians. It is unclear what will happen to those projects if the Federal government is required to provide to an Indian Tribe an amount equal to the proportional share of the resource that is associated with the Tribe's federally reserved right.
- Section 408(a) regarding Construction Projects entitled "Option to Assume Certain Responsibilities." This section allows Indian Tribes to assume all Federal responsibilities with respect to National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). This section needs to make clear that Acts like NEPA and NHPA apply to a construction project. We believe decisionmaking for construction projects under those Acts should remain an inherently federal function.
- Section 408(d) regarding Construction Projects entitled "Codes and Standards; Tribal Assurances." This section should ensure that construction projects meet or exceed federal standards. In addition, the bill provides in section 408(g)(2) that, if an Indian Tribe prepares planning and design documents for a construction project "consistent with the certification by a licensed and qualified architect/engineer" this shall be deemed to be an approval by the Secretary of the construction project planning and design documents. Deeming approval based on a certification from a non-federal party does not provide the Federal government with any protection from tort liability in the event there is deficiency in that party's work. The Secretary needs an approval role in construction projects funded by federal dollars which may have costs in the tens or hundreds of million dollars.
- Section 409(j)(3) entitled "Investment Standard." This paragraph allows Indian Tribes to invest funds transferred to them for programs or projects using the prudent investment standard. This means a Tribe could invest these funds in stocks that could later lose a significant part of their value. Under the bill, the Tribe would then be able either to stop providing services and request more funding or return the program to Interior. The Federal government would then, in essence, pay twice for the program or project. Current law requires that these funds be invested in obligations or securities of the United States or securities that are guaranteed or insured by the United States. We are opposed to changing this standard.
- Section 412 (b) entitled "Discretionary Application." This provision allows Indian Tribes to opt to include any provisions of titles I or V of the Act in an Interior compact or funding agreement. Many of the provisions of H.R. 3994 are derived from title V. We are unclear as to the need for this provision and believe it could result in confusion during development of compacts and funding agreements.
- Time deadlines throughout the bill are too short. For example, it has been our experience that completing a negotiated rulemaking on a complex matter such as this within 18 months has never been successful. The requirement that monies reach Tribes within ten days of apportionment by OMB is unrealistic.

As I stated at the beginning of my testimony, P.L. 93-638, as amended, has, in large part, been a success story. Our interest is in making sure it stays that way. A prudent preliminary analysis of this legislation leads us to raise the aforementioned areas of concern. We are opposed to the bill's enactment. Also, given the relatively short timeframe in which we have had to analyze H.R. 3994, we are continuing to review the impacts of H.R. 3994 on both BIA and non-BIA programs of the Department.

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

Mr. RAHALL. Thank you very much, Mr. Cason. We appreciate your testimony, and understand your position and of course do hope that doesn't prevent us from working together to improve the legislation. My question would be what provisions in the proposed

legislation are problematic and if you could provide us with a detailed list of specifically what these problems are for the BIA.

Mr. CASON. Mr. Chairman, the Department would be happy to do that. In the extended version of my opening statement there is a number of things that are pointed to there which I didn't cover in my oral opening statement. In addition, there are other parts of the bill that we did not address in our statement to the Committee.

So there are a number of challenges within this bill that we think need to be addressed before the bill makes progress, and we would be happy to work with the Indian tribes involved, the self-governance group and the Committee on trying to address those.

Mr. RAHALL. I appreciate that response. We are going to hear from them of course in the second panel, and we are very much wanting to work with them and have their involvement at every step of the way. Assuming that these problematic provisions can be addressed to the satisfaction of the tribes and the BIA would the Department support this legislation to the extent that it applies to programs that are at the BIA?

Mr. CASON. Well, Mr. Chairman, the Department already supports very aggressively self-governance within the Bureau of Indian Affairs. We have had great success over time with programs, and functions and services that used to be provided by BIA being assumed by Indian tribes under the self-governance program.

It is my estimation that has worked very well over time and that many Indian tribes have shown that they have the perfect capability of undertaking the programs and services made available by BIA. So we have a track record already of that happening, and we have a very demonstrable track record that many Indian tribes are capable of managing programs.

Mr. RAHALL. If the Indian tribes have complained that there is no incentive for the Department to negotiate a compact or funding agreement with the tribes. H.R. 3994 proposes to make Title IV consistent with Title V and allow tribes to submit a final order to which the Department must respond within 45 days or the offer is deemed approved.

So my question is my understanding is that the Department opposes this, "final offer", provision in the bill. Would you have any suggestions on how to provide an incentive to encourage the Department to negotiate and enter into compact and funding agreements?

Mr. CASON. Well, Mr. Chairman, it is my understanding that the principal concern is not so much related to the programs associated with the Bureau of Indian Affairs which was the central focus of the underlying bill. The concern more focuses upon the programs of non-BIA bureaus.

I think the track record in fairness has been that there has not been a lot of interest over time in the Department of Interior for non-BIA programs to be compacted by nearby Indian tribes. It is an issue that we have been working on during this administration. I would say that we haven't made a lot of progress on it because of conflicts that occur.

We have certain examples right now that we are attempting to incorporate Indian and Indian tribe into managing a departmental program, and it has been a difficult process because as a public

matter we have as many public criticisms from the individuals in the public who support the base program in another agency and that is something that we have to manage as well.

It is something we are interested in, it is something that we are trying to make progress on, but the progress has been slow.

Mr. RAHALL. Thank you. Thank you, Mr. Cason.

Mary, do you wish to be recognized?

Ms. FALLIN. Sure.

Mr. RAHALL. Ms. Fallin.

Ms. FALLIN. Thank you, Mr. Chairman, and thank you so much for your testimony. Sorry I missed a little bit of it, but I appreciate you being here today to visit about a very important topic. I had a couple of things I wanted to ask you, Mr. Cason. How would extending the provisions of Title X of the Indian Self-Determination Act impact Interior's management of its Federal funds and its current programs?

Mr. CASON. The program we have now is very complicated. Excuse me. The reason I say that is in a normal Federal program, and I will use other agencies within the Department of the Interior, for example, like the Bureau of Reclamation, Fish and Wildlife Service, Park Service, or Bureau of Land Management. Within those organizations, you have very clear lines of authority and responsibility. The agency is responsible for managing its own assets and its own affairs.

Within the Indian affairs concept with the introduction of self-governance, self-determination, ability to take over programs, it has made it much more complicated to run a BIA program because you have the broader infrastructure designed to support the program, but big pieces of it become missing when we give that out to tribes.

The long-term intent of that process is a good intent, that in the long-term as a matter of public policy tribes should be running their own affairs. They are sovereign governments within the United States, they ought to be running their own affairs. It just becomes a matter of finding the right kinds of mechanisms to support that.

My opinion and the administration's opinion on the bill, there is a number of problematic things in the bill where we don't have the discretion within the Department of Interior under the provisions of the bill to make good decisions to influence the decisions about how we go about facilitating self-governance.

Within the framework of the bill it is pretty unilateral. An Indian tribe comes in, and it says we want to do this and we have to give it to them just the way they are coming to ask. The funding streams associated with it are ones that we fund a base infrastructure from, and when you start taking pieces out of the base infrastructure it makes the resulting piece harder to run.

If I illustrate it with a puzzle, if you have a puzzle that gives you a nice picture because all the pieces are in and you start taking random pieces out, at some point you lose the basic infrastructure of the picture. So the suggestion that I am making is not to push back that tribal self-governance and advancing of it is wrong, no.

That is the right direction, but we need to find a better way to actually manage that transition because it is not a one for one, I

take this piece out of BIA, I give it to the tribe and BIA operates just as efficiently afterwards. So there are some complications associated with it, there are some funding implications associated with the bill.

It is pretty clear that in one of the provisions of the bill it suggests that the Department would be responsible for requesting all of the money needed to properly implement all our statutory requirements, and that would be difficult in this environment.

Ms. FALLIN. Excuse me. I said Title X, I meant Title V.

Mr. CASON. I knew what you meant.

Ms. FALLIN. I can read my numbers, I just misspoke.

Mr. CASON. I knew where you were going.

Ms. FALLIN. Can I ask you another question, too? You testified that extending the Title V to Interior programs would potentially increase the Federal government's liabilities. In what manner and under what circumstances are you thinking that this might develop?

Mr. CASON. Well, the provisions of the bill state explicitly that nothing that happens in implementing the bill would reduce the Secretary's liability for trust assets. What we are effectively doing is removing the Secretary's resources to implement trust responsibilities, transferring that to tribes under self-governance, the decisions under self-governance about how to manage those assets, but the Secretary still remains liable for whatever the results are.

One of the fundamental principles of management is you try to align resources with responsibility, and that wouldn't happen in this case. So that is one of the areas that we would be concerned with.

Ms. FALLIN. OK. Thank you, Mr. Chairman. Thank you.

Mr. RAHALL. The gentleman from Michigan. Sir.

Mr. KILDEE. First of all, thank you for your testimony this morning. I have more of a statement. I have been running back and forth between two hearings in both of my committees.

I want to do everything we can working with you and working with the various sovereign tribes in this country to best recognize the needs of the Indian tribes and to give them the tools they need to serve their citizens and at the same time focus on their sovereignty and focus on the government-to-government obligations we have through the various treaties and the various agreements we have made with the Indian tribes, so I think we have to have a continuing growth of the self-determination.

They have an obligation to serve their citizens. I use the term citizen rather than members because they are sovereign governments. So I want to work with the tribes and with yourself to see how they can achieve this self-determination and at the same time recognize that the Federal government has a government-to-government responsibility, also, to carry out the various treaty and other agreements with the native people and their sovereign tribes.

Thank you very much, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Kildee.

Mr. Carson, we thank you. Cason, I am sorry. I am sorry, Jim.

Mr. CASON. That is all right, Mr. Chairman.

Mr. RAHALL. We thank you very much for being with us today. We may have some additional questions, other members may have

as well, and we would ask that you answer those in writing at a later time.

Mr. CASON. We would be happy to.

Mr. RAHALL. Thank you. Thank you very much.

Mr. CASON. Thank you.

Mr. RAHALL. Our next panel is composed of the following individuals: Honorable Ron Allen, Chairman of the Jamestown S'Klallam Tribe; and Honorable Melanie Benjamin, Chief Executive, the Mille Lacs Band of Ojibwe; Honorable Jefferson Keel, Lieutenant Governor, Chickasaw Nation; Honorable J. Michael Chavarria, the Governor of the Pueblo of Santa Clara; Mr. Ben Stevens, the Executive Director, Council of Athabascan Tribal Governments.

Lady and gentlemen, we welcome you to our committee this morning. As I said earlier, we do have your prepared testimonies, and they will be made part of the record as if actually read. You are recognized to proceed as you wish. I believe the gentleman from Oklahoma would like to introduce one of the members of the panel, and I recognize her now for that purpose.

Ms. FALLIN. Thank you, Mr. Chairman. I appreciate that. I had mentioned I would like to say a few words about Lieutenant Governor Keel because I have known him for a very long time. I ran into him a few minutes ago getting a cup of coffee down at the basement snack bar and just wanted to say welcome to Washington, D.C.

He was very fortunate just to win his third term as Lieutenant Governor of the Chickasaw Tribe, and I have had the opportunity to work with him for many years. I was the former Lieutenant Governor of Oklahoma, so we have common positions that we have both enjoyed spending time together and working on behalf of the state.

Please tell your Governor, Governor Anoatubby, how much we appreciate you coming up here. He represents Congressman Cole's district. Congressman Cole is on this committee. I don't know where he is at today. Congressman Boren of course is from Oklahoma. So we welcome you, and we are glad to have you here and thank you for helping us with this testimony on a very important piece of legislation. Welcome.

Ms. FALLIN. Thank you, Mr. Chairman. I yield back my time.

**STATEMENT OF THE HONORABLE JEFFERSON KEEL,
LIEUTENANT GOVERNOR, CHICKASAW NATION**

Mr. KEEL. Thank you, Mr. Chairman. Ma'am, I certainly appreciate that. I am honored to be here. My name is Jefferson Keel, I am the Lieutenant Governor of the Chickasaw Nation. We are located in Oklahoma. On behalf of the tribes in Oklahoma I do want to thank you for the honor of being here to testify on behalf of those tribes that have entered into the self-governance compacting arrangements with the Federal government.

I also serve as the First Vice President of the National Congress of American Indians, and I can assure you that the National Congress of American Indians does in fact support this legislation and are in fact in favor of the passage of this.

The Indian tribes in Oklahoma that have compacted with the Federal government under the Self-Determination Act have experi-

enced tremendous success in operation of the programs and services that they have compacted to manage on behalf of the people that they serve.

They have proven that they are both responsible, they accept the responsibility that comes with governing themselves, but also, they have proven and shown that they are closer to the people that they serve, they can in fact prioritize the needs of those people and can manage the assets and resources that have been given to them for the operation of those programs.

The Chickasaw Nation has engaged in self-governance compacting with the Department of the Interior since Fiscal Year 1994. We have in fact achieved great success in the operation of those programs. We have a compact with the Indian Health Service within the Department of Health and Human Services since Fiscal Year 1995, and we do in fact enjoy success in the operation of that program.

The greater level of success in the operation of health programs is due in fact to the authority and flexibility of self-governance law provided in Title V of the Indian Self-Determination and Education Assistance Act.

Since taking over the Federal operation of its health program, the Chickasaw Nation has expanded staffing, vastly improved capital infrastructure and increased service capacity well beyond anything anticipated. The number of physicians on the staff has increased by more than threefold.

Tribal Federal partnerships and leveraging Federal funding have allowed for the construction of health clinics, wellness centers and a pharmacy distribution facility. The Federally designed hospital that had anticipated a capacity of 60,000 patient visits per year under Federal operation has realized more than 300,000 patient visits in the past fiscal year.

In addition to that, with regard to the BIA programs we have achieved similar success. Contained in Mr. Cason's testimony is in fact some examples that I would like to iterate just for the record. The accomplishments of the Chickasaw Nation in 2006 included education services to over 7,000 students, over 950 students participated in remedial education and tutoring and 82 percent of those students received tutoring gained one grade level or more.

The Chickasaw Nation is also engaged in the governing or the compacting of the law enforcement agency. We refer to them as the Lighthorse Police. They have implemented a new computer system which has aided in multiple dispatching methods and improved data collection, investigation and crime analysis and reporting.

The flexibility allows us to enter into cross-deputization agreements with other local and state law enforcement agencies, and it does in fact allow us to better police and serve the people that we serve. There are a number of other successes that we enjoy, but in the essence of time, my written testimony has been provided, and I would actually submit those for the record.

I want to thank you for the honor of allowing me to testify this morning. Thank you.

Mr. RAHALL. Thank you, Lieutenant Governor.
Chairman Allen, you want to proceed?

[The prepared statement of Mr. Keel follows:]

**Statement of Jefferson Keel, Lieutenant Governor,
The Chickasaw Nation**

I am Jefferson Keel, Lt. Governor for the Chickasaw Nation, and I also served as the First Vice President of the National Congress of American Indians. On behalf of the Chickasaw Nation, thank you for this opportunity to testify in support of H.R. 3994, the Department of the Interior Tribal Self Governance Act of 2007.

The Chickasaw Nation has engaged in self governance compacting with the Department of Interior since Fiscal Year 1994, and has achieved great success in the operation of its programs. Furthermore, the Chickasaw Nation has had a compact with the Indian Health Services within the Department of Health and Human Services since Fiscal Year 1995, and has enjoyed even greater success.

The greater level of success in the operation of health programs is due, in part, to the greater authority and flexibility of self-governance law provide in Title V of the Indian Self Determination and Education Assistance Act (ISDEAA). Since taking over the federal operation of its health program, the Chickasaw Nation has expanded staffing, vastly improved capital infrastructure, and increased service capacity well beyond anything anticipated. The number of physicians on staff has increased by more than three-fold. Tribal-federal partnerships and leveraging federal funding have allowed for the construction of health clinics, wellness centers and a pharmacy distribution facility. And a federally-designed hospital facility that had an anticipated capacity of 60,000 patient visits per year under federal operation, realized more than 300,000 patient visits in the past fiscal year.

Authority for clearly identified availability and use of tribal funds, tribal management of construction programs and streamlined administrative requirements contained in Title V of the ISDEAA have all contributed to more effective compact and funding agreement negotiation, program management and service delivery. Similar authority for Department of Interior and related programs is strongly desirable.

The time for update Title IV of the ISDEAA is long overdue. The self governance compacting process authorized under Title V of the ISDEAA with the Department of Health and Human Services affords unique opportunities to tribes currently non-existent with the Department of the Interior.

The strengthening and expansion of compacting authorities in H.R. 3994 allow tribes more flexibility in investment and interest income, operating construction programs and conducting compact negotiations with Interior.

Specific language allowing the prudent investment of advanced funding provides the opportunity for tribes to earn additional service dollars and to carry-over funds into subsequent fiscal years without jeopardizing future funding. In a federal budget environment where every federal dollar appropriated to discretionary programs becomes more dear, increasing a tribes' ability to provide more services through earned revenues becomes more important.

Various capital improvements are sorely needed throughout Indian country, and the expansion of authority for the operation of construction programs contained in the bill, including advance payment, contingency and savings provisions, will greatly enhance tribal management of construction projects.

H.R. 3994 authorizes a final offer process in compact negotiations, similar to that with DHHS, is of specific importance. No longer can a compact or funding agreement negotiation be dragged-out indefinitely. The inclusion of final offer provision establishes a definitive means and timeframe for concluding negotiations. Additionally, clear language on the availability of tribal shares will allow tribes to negotiate for fair funding for the administration of compacts and compacted programs.

However, despite the clear advantages of the proposed bill for tribal compacting, a provision within the existing law needs to be re-added that will further reduce the administrative burden of managing self governance compact and funding agreements. The existing language of Section 403(h), codified at 25 USC 458cc(h), would maintain an existing authority that is still needed.

Therefore, I am requesting that the following provision be added to the language of H.R. 3994:

“(h) Civil actions

(1) Except as provided in paragraph (2), for the purposes of section 450m-1 of this title, the term “contract” shall include agreements entered into under this part.

(2) For the period that an agreement entered into under this part is in effect, the provisions of section 81 of this title, section 476 of this title, and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to attorney and other professional contracts by Indian tribal governments participating in Self-Governance under this part.”

Mr. Chairman, as you well know, the very core of self governance is tribal governments retaining the ability to control and manage its affairs to better serve Indian people. A critical step in retaining this control is granting tribal governments the full right to exercise self-government through the transfer and effective management of federal programs designed to benefit Indian people. This is a vision that extends to all Indian people, and I urge you to support and promote this long-overdue reaffirmation of an Indian Tribe’s inherent right to self-government.

Thank you.

**STATEMENT OF THE HONORABLE RON ALLEN,
CHAIRMAN, JAMESTOWN S’KLALLAM TRIBE**

Mr. ALLEN. Thank you, Mr. Chairman, and thank you for accepting our testimony on this very important matter. I am Chairman of the Jamestown S’Klallam Tribe located up in northwest Washington.

Mr. RAHALL. Maybe you want to put your microphone on.

Mr. ALLEN. I am sorry. Guess I had to turn that on, didn’t I? OK. So anyhow, as the Chair of the Jamestown S’Klallam up in northwest Washington State I have been a Chair for 30 years and have been involved with these pieces of legislation that affect our tribes throughout that time.

I have had the honor and pleasure of watching the tribes grow as governments and interact with the Federal government, taking on our responsibilities as governments and advancing our goals and objectives for our tribal citizens. It has been a fabulous experience, and I really want to emphasize to this committee that the tribal governments have increased our capacity many times over.

Our ability to take on programs from the BIA to IHS to other agencies has moved forward exponentially and in a very impressive manner, which is really exciting for all of us in Indian country. This bill is an important bill for us to advance this concept.

My tribe was one of the original 10 tribes back in 1988 when this emerged out of that brouhaha that emerged with regard to mismanagement, fraud, abuse, misuse by Federal programs as they are applicable to Indian tribes in our communities. From that they basically said well, if the self-determination wasn’t quite working right and the bureaucracy wasn’t quite working right, what is the better system?

We emerged after negotiating with the administration and subsequently proposing legislation to this Congress that it accepted with this self-governance concept. It really is about empowering the tribes as governments. Putting us in control of the resources that are intended for our people so that we can make choices just like the Federal government does or state government does on behalf of its citizens.

That is what the system is all about. It is intended to reduce Federal bureaucracy and enhance the tribal operations and capacity to better use the very limited resources that are available for

our citizens that Congress has made available for all of the various programs. We have had nothing but success.

We have written books and, again, provided reports on the success of our program. It doesn't mean that we haven't had problems. We do have problems. Any time you are going to reduce bureaucracy the bureaucracy is going to fight it. The bureaucracy is always going to justify its intention and its purpose.

We have found ourselves wrestling with the bureaucracy with regard to what Congress intended in terms of transferring these resources and functions over to the tribal governments. When the bills were passed we tried to negotiate regulations, and we went through five years, almost six years, of negotiating for regulations for a law that Congress passed.

It became evident to us that we are going to have to ask Congress to clarify its intent by amending the legislation. Now subsequently, after the bill was passed in the early 1990s and IHS became involved through Title V, we were more successful there and Congress clarified, you know, what its intent was with regard to that agency, which is far larger than the BIA.

The amount of money that Congress appropriates for those programs is far greater than the BIA. As a matter of fact, the success is greater over there. We have over 330 tribes participating in IHS. We have 230 tribes, 234 I think it is, with the BIA. Now, it doesn't mean that it is a failure on the BIA side, it just means that there are some recalcitrance issues that we have to deal with.

So we believe that this bill is addressing many of those issues to continue to advance this improved relationship between the tribe and the Federal government with respect to the BIA and the non-BIA agencies that have programs that are very relevant to our interest.

We think that it provides a vehicle and a clear process in terms of how we can negotiate and address the issues of concern on the Department side as well as the desires on the tribal side to come to a common agreement. Now, I will emphasize that there are a lot of issues and clarifications, sometimes confusion over how this process works. It is not easy, but no one said it was going to be easy, but it is working.

We simply need further instruction from Congress, and this is common when Congress has advanced a new initiative, that you have to work out the issues and find a common ground to make it work forward. Now, what is not in this bill is a section that we would like you to consider, and we have attached it to our testimony, Section 419, that would deal with the transportation side of issues that affect our communities, and it is Section 419 that deals with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA-LU) program.

We would ask you to consider that because transportation infrastructure for our tribal communities is as important as the services to our communities, and we believe that it should be incorporated in so that we eliminate a lot of the unnecessary bureaucracy, and the transfer of those functions and the oversight of those functions from DOT to BIA and Interior and back to the tribes.

So I will close, Mr. Chairman, with those opening comments, and appreciate your leadership in helping us move this agenda forward,

Representative Boren for introducing this legislation. We are excited to move this agenda forward. Thank you.

Mr. RAHALL. Ms. Benjamin, I am sorry, you may proceed.
[The prepared statement of Mr. Allen follows:]

**Statement of W. Ron Allen, Tribal Chairman/
Chief Executive Officer Jamestown S'Klallam Tribe**

Good morning. Thank you for the opportunity to be here today. My name is W. Ron Allen and I am the Tribal Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe located in Washington State. I am also the Chairman of the Department of the Interior (DOI) Self-Governance Advisory Committee. Today, I offer my testimony in both these capacities.

I am pleased to testify in support of H.R. 3994, a bill to strengthen Indian tribes' opportunities for Self-Governance by amending Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638 as amended). The proposed Title IV amendments advance several important purposes. First, they ensure consistency between Title IV and Title V, the permanent Self-Governance authority within the Department of Health and Human Services enacted in 2000. Second, they broaden and clarify the scope of compactable programs, especially those in DOI agencies other than the Bureau of Indian Affairs (BIA). Third, they introduce clear timelines and criteria under which BIA and other Interior agencies must consider tribal proposals, and the appeal procedures to be followed when a tribe challenges an agency decision declining a proposal.

The true import of these proposed amendments, however, cannot be understood without an appreciation of the unprecedented positive impact Self-Governance has had on Indian tribes over the past almost 20 years.

Background of Title IV

Although it is hard to imagine today, 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 Department of Health and Human Services (DHHS) and the DOI to assume the management of programs serving Indian tribes within these two agencies. Frustrated at the stifling bureaucratic oversight imposed by BIA and the Indian Health Service (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 Project authorizing the Jamestown S'Klallam Tribe and nine other tribes to enter into a demonstration phase. Seven of the nine Tribes entered into planning and negotiations grants and in 1991 negotiated compacts with DOI. In 1992, DHHS followed in the planning and negotiations process. 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 Indian Self-Determination Act, thereby implementing a permanent Tribal Self-Governance program within DOI.

The Success of Self-Governance

The increasing number of tribes that have opted to participate in Self-Governance on an annual basis reflects the success of Self-Governance. In Fiscal Year 1991, the first year Self-Governance agreements were negotiated by the BIA with tribes, only seven tribes entered into agreements. At that time, the total dollar amount compacted by Indian tribes was \$27,100,000. By Fiscal Year 2006, 231 tribes and tribal consortia entered into 91 annual funding agreements, operating over \$300 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 33 times greater than in 1991. While only a tiny fraction of tribes participated during the first year in 1991, today approximately 40% of all federally-recognized tribes are Self-Governance tribes and the interest by other tribes is continuing to grow.

Under Self-Governance, tribes have assumed the management of a large number of DOI programs, including roads, housing, education, law enforcement, social services, court systems, and natural resources management. Why? Simply put, Self-Governance works because it:

- *Promotes Efficiency.* Devolving 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 Self-Governance, 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 has 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, not a monolithic federal policy.
- *Affirms Sovereignty.* By utilizing signed compacts, Self-Governance affirms the fundamental government-to-government relationship between Indian tribes and the U.S. Government. It also advances a political agenda of both the Congress and the Administration: namely, 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 and their members.

Need for Title IV Amendments

As important and successful as the Self-Governance initiative has been for my Tribe and so many others, it is not perfect. Shortly after Title IV was enacted, the DOI began a rulemaking process to develop and promulgate regulations. The process was a failure in many ways. Ultimately, five years after the rulemaking process began, DOI published regulations that, from the tribal perspective, failed to fully implement Congress's intent when Title IV was enacted. Instead of moving the initiative forward, it moved backwards.

Tribal leaders began discussions about how the statute could be amended. At the same time, Congress in 2000 enacted Title V of the ISDEAA which created a permanent Self-Governance authority within DHHS, and which directly addressed many of the issues that proved to be problematic during the Title IV rulemaking process. But many of the improvements and tribal authority reflected in Title V remain absent from Title IV. Consequently, many Self-Governance tribes are forced to operate under two separate administrative requirements, one for IHS and one for BIA.

Tribal leaders decided that Title IV needed to be amended to incorporate many of Title V's provisions. It has long been a top legislative priority of tribal leaders to amend Title IV. Three years ago, I testified before the Senate Committee on Indian Affairs in support of S. 1715, a bill that would have amended Title IV in many of the same ways as H.R. 3994. Although that bill did not pass, tribes continued to work toward amending Title IV. Numerous meetings and extensive correspondence between tribal and federal representatives sought to narrow the remaining differences. On September 20, 2006, several tribal leaders presented testimony to the Senate Committee on Indian Affairs regarding problems in implementing Self-Governance within DOI under Title IV. These problems, ranging from inadequate funding levels to bureaucratic recalcitrance, have caused participation in tribal Self-Governance to level off and even recede. That is unfortunate since Self-Governance has dramatically improved the efficiency, accountability and effectiveness of programs and services for my Tribe and many other tribes and their members. The Senate hearing reinforced the need to continue the tribal-federal effort to reach agreement on Title IV amendments.

In the past year, the ongoing negotiations between the Tribal Title IV Task Force and DOI representatives intensified. During those discussions, DOI representatives

identified concerns with earlier versions of the draft legislation that the tribal technical team sought to address in subsequent versions. The proposed bill incorporates all of the resulting changes that have been agreed upon by tribal and federal representatives. While some points of contention remain, agreement has been reached on 95% of the issues. The vast majority of the proposed amendments are not new or radical ideas—most have been adapted from the DHHS version of Self-Governance in Title V.

Thus, H.R. 3994 reflects nearly six years of discussion, drafting, negotiation, and redrafting. The time has come to pass this legislation, which would significantly advance Congress's policy of promoting Tribal Self-Governance.

Overview of H.R. 3994

The proposed bill will bring Title IV into line with Title V, creating administrative efficiencies for tribes while also importing the beneficial provisions of Title V currently missing in the older Self-Governance statute. Let me quickly summarize a few of the key provisions in H.R. 3994. To address problems in the DOI's implementation of tribal Self-Governance, and to expand tribes' options for pursuing their right to Self-Governance, H.R. 3994 would, among other things:

- Expand the scope of contractible programs from those benefiting Indians exclusively to those of which Indians are "primary or significant beneficiaries";
- Allow tribes to contract their shares of programs involving federally reserved rights of tribes to water or other resources;
- Expand tribal rights to compact non-BIA programs within DOI;
- Clarify and limit the reasons for which the agency may decline to enter a proposed agreement, and the time frame for making the decision;
- Protect tribes from DOI attempts to impose unauthorized terms in compacts or funding agreements; and
- Provide a clear avenue of appeal and burden of proof for tribes to challenge adverse agency decisions.

Of course, the DOI does not agree with the way H.R. 3994 addresses all of the issues listed above, and you may hear testimony from Department representatives opposing one or another provision of the bill. In weighing such testimony, I ask that you keep three facts in mind. First, the bill contains the consensus language on 95% of the original points of contention, which federal and tribal representatives were able to work through over the course of several years. The enormous progress made over that time should not be squandered merely because a few disagreements remain.

Second, there is ample precedent for most of the provisions to which DOI has not yet agreed. Title V, which has worked very well in the context of health care services, served as the model for H.R. 3994 and contains most of the contested provisions, none of which has caused the IHS concern over the years.

Finally, to some extent Self-Governance presents an inherent, and perhaps intractable, tension between tribes and the Department. A bureaucracy such as the DOI will inevitably resist yielding its authority—and its funding—to other entities, such as tribes. For this reason, complete agreement between tribal and federal viewpoints is impossible, and Congress should not wait for such agreement before acting. I believe that H.R. 3994 appropriately balances the interests of the federal and tribal governments, and we believe this Committee will too.

Need to Clarify the Applicability of Title IV to the Department of Transportation

None of the provisions presently included in H.R. 3994 are new. Tribal leaders have been advocating them for over six years and many of them come directly from Title V itself. I would like to take a few minutes to discuss a provision that I believe should be added to the bill that would be new. However, a proposed Section 419 would clarify that Title IV applies to agreements entered into by tribes and the Department of Transportation (DOT) to carry out transportation programs such as the Indian Reservation Roads Program. See enclosed description of the provision.

Let me explain why this new provision is a good idea. The 2005 highway bill, SAFETEA-LU, authorized tribal governments to receive funding from and participate in a number of Department of Transportation (DOT) programs as direct beneficiaries without having the BIA or state governments acting as intermediaries. Agreements can be entered directly with the Secretary of Transportation to undertake transportation functions "in accordance with the [ISDEAA]."¹ Some DOT officials have interpreted this language to mean the agreements must be consistent with the ISDEAA but are not really ISDEAA agreements. This erroneous interpreta-

¹ 23 U.S.C. § 202(d)(5).

tion has caused a great deal of confusion and disagreement over whether, and to what extent, Title IV applies to DOT. The new section 419 would make clear that the negotiation and implementation of tribal funding agreements with DOT will be governed by Title IV.

Conclusion

In conclusion, I would like to step back for a moment and reinforce a broader point. As Chairman of the DOI Self-Governance Advisory Committee, I have had the opportunity to talk regularly with many other tribal leaders regarding Self-Governance. Although they recognize the implementation problems cited above, and the need for the amendments embodied in H.R. 3994, every single tribal leader made a point of praising the overwhelming success of Self-Governance and the positive improvements in their respective communities as a result. That has also been our experience at my Tribe as well. Self-Governance allows us to prioritize our needs and plan our future in a way consistent with the Tribe's distinct culture, traditions, and institutions.

My deepest hope is that this Congress will enact H.R. 3994 so that we can build on the successes of the past 19 years and further the Self-Governance of Indian tribes, in partnership with the United States, to achieve our mission and goals.

Thank you.

Proposed new Section 419

“SEC. 419 Applicability of the Act TO THE DEPARTMENT OF TRANSPORTATION

(a) The Secretary of the Department of Transportation shall carry out a program within the Department of Transportation to be known as the Tribal Transportation Self-Governance Program.

(b) Notwithstanding any other provision of law, the Secretary of Transportation shall enter into funding agreements under this title with any Tribe who elects to utilize the authority of this title to govern any funds made available to Indian tribes under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) or successor authorities.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each funding agreement entered into under this section shall be governed by the provisions of this title. “

Explanation for new Section 419

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized tribal governments to receive funding from and participate in a number of Department of Transportation (DOT) programs as direct beneficiaries without having the Bureau of Indian Affairs or state governments acting as intermediaries. For example, section 1119(g)(4) of SAFETEA-LU [23 U.S.C. §202(d)(5)] provides for tribal governments to enter into contracts and agreements directly with the Secretary of Transportation to undertake transportation functions “in accordance with the Self-Determination and Education Assistance Act...” (ISDEAA). Some DOT Federal Highway Administration (FHWA) officials have interpreted this “in accordance with” language to somehow mean that FHWA-Tribe agreements under SAFETEA-LU are not ISDEAA agreements, and they have refused to include standard Title IV provisions in their agreements. This erroneous interpretation has sharply limited the number of FHWA-Tribe agreements that have been executed, and has generated a great deal of confusion and disagreement over the scope and extent of the applicability of Title IV to those agreements.

Section 419 will fix these problems by establishing a Tribal Transportation Self-Governance Program within the DOT. It directs DOT, upon the request of an Indian tribe, to enter into funding agreements under Title IV for any programs and funding made available to tribes by SAFETEA-LU. This section makes clear that the negotiation and implementation of those funding agreements will be governed by Title IV. Section 419 would echo existing authority in SAFETEA-LU and clarify in Title IV itself that Title IV applies to these DOT funds and programs.

STATEMENT OF THE HONORABLE MELANIE BENJAMIN, CHIEF EXECUTIVE, MILLE LACS BAND OF OJIBWE

Ms. BENJAMIN. Good morning, Mr. Chairman, and members of the Committee. On behalf of the Mille Lacs Band of Ojibwe I am

pleased to appear today in support of H.R. 3994. Less than two months ago we celebrated an important 20 year anniversary in Federal Indian policy. September 17, 1987, was the 200th anniversary of the U.S. Constitution.

Tribes met to discuss the meaning of our relationship with the U.S. It was at this meeting that the concept of modern day self-governance policy was born. These visionary leaders prepared a tribal self-governance path for the rest of us to follow built on six foundations.

First, that each Federal agency deal with tribes on a government-to-government basis. Second, that all Federal agencies recognize the fact that the most efficient way to provide services to tribal members is through Indian tribes. Third, that tribal, not Federal priorities should shape what is done in our communities.

Fourth, that Federal agencies should rely on the fact that the elected leadership of tribes are accountable to tribal members. Fifth, the Federal systems should be converted into resource centers that provide technical assistance to tribal governments. Sixth, no program that is supposed to benefit a tribe should be kept out of reach of a tribe seeking to take over that function.

This six pillars of tribal self-governance have served us well for the past 20 years, but as with all good ideas that have weathered the storms of time there is room for improvement, which brings me to the need for H.R. 3994, the bill before the Committee today.

In 1994, Congress enacted Title IV which governs our BIA and Interior funded self-governance operations. When Congress wrote Title V in 2000, which governs Indian Health Service self-governance, it made several improvements. Unfortunately, Title IV has not received those same improvements, and so tribes like the Mille Lacs Band must operate under two sets of rules.

Ironically, self-governance was supposed to streamline tribal operations. Instead, two different laws have made tribal administration more complex. H.R. 3994 would bring Title IV into conformity with Title V. This is long overdue. We support the bill because it clarifies many things.

First, H.R. 3994 defines very narrowly the types of Federal functions that can't be transferred to Indian tribes. Second, the bill defines very broadly the tribal shares that can be transferred to Indian tribes. Combined, these two changes will streamline negotiations. Third, the bill would prohibit Federal officials from making unilateral changes to our agreements after they have been negotiated by requiring our consent to any changes.

Fourth, tribal shares of central office functions were initially provided to some self-governance tribes. In the mid-1990s the administration stopped this through an appropriation rider. The bill restores this practice. Fifth, tribal shares of the Office of the Special Trustee were also once provided to some self-governance tribes.

Again, in the mid-1990s the administration stopped this practice by moving some trust management functions from BIA to OST and then claimed those dollars were beyond the reach of self-governance tribes. The bill restores the original system and practice. Sixth, and perhaps one of the most important changes, H.R. 3994 would apply final offer procedures if negotiations reach an impasse.

This would require the Interior Department to follow specific timeframes in concluding negotiations. Similar provisions in Title V have streamlined negotiations with IHS since 2000. We also strongly support a new Section 419 which would clarify that the Secretary of Transportation is to enter into funding agreements under Title IV for reservation road funds.

This provision is critical for tribes seeking to improve their infrastructure. Finally, Mr. Chairman, I want to note that last Saturday a 15 year old law enforcement agreement between the Mille Lacs Band of Ojibwe and the Mille Lacs County ended. In my written statement I have detailed the legal hostilities that resulted in the termination of the agreement, all which stem from the county's insistence that our reservation no longer exists.

I want to refer you to a recommendation by University of Minnesota Professor Kevin Washburn when he appeared before the Senate Committee a few months ago to discuss law enforcement in Indian country. He talked about our situation with Mille Lacs County and suggested in extreme situations like ours when retrocession of Public Law 280 jurisdiction is not an option the Federal government must find a way to enter into a direct relationship with tribes for purposes of law enforcement.

I attached his recommendations in my written statement for your further review. If there is a way to create a law enforcement pilot program under self-governance we would request your support and ask that Mille Lacs be included. In conclusion, I just want to mention a final word about where self-governance is going in the long run.

About 12 years ago the Mille Lacs Band sat down with the Clinton administration and looked at whether we could move tribal self-governance to the next level. We sought to consolidate into one single agreement all Federal funds the Band was eligible to receive. This would bring us closer to restoring a full government-to-government relationship that our treaties once provided.

To the Mille Lacs Band this is a logical progression of self-governance, and we are very interested in pursuing this idea. I thank you, Mr. Chairman, and members of the Committee for your support of self-governance and urge you to adopt H.R. 3994.

Mr. RAHALL. Thank you. Let us see. Governor Chavarria.

[The prepared statement of Ms. Benjamin follows:]

**Statement of Melanie Benjamin, Chief Executive,
Mille Lacs Band of Ojibwe**

Good morning, Mr. Chairman and members of the Committee. I am pleased to appear today in support of H.R. 3994, a bill to amend Title IV of the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

On behalf of the Mille Lacs Band of Ojibwe, thank you for convening this hearing, and for collaborating with Representatives Boren and Pallone and others in introducing this bill.

H.R. 3994 has the strong support of the Mille Lacs Band. It contains many provisions we and other Indian Tribes have long sought to be written into federal law. We ask that you make every effort to secure early passage of H.R. 3994 by the House and Senate.

My testimony will survey some relevant history, describe why key provisions of H.R. 3994 are needed, and provide some examples of tribal self-governance successes that can and should be replicated. I will urge immediate expansion of Tribal Self-Governance express authority to the Department of Transportation, and even-

tually, in the form of a consolidated federal grant, to all federal agencies. And finally, I will ask that at some point in the near future you consider utilizing the Self-Governance Program as a vehicle for the federal government, through the Department of the Interior, to enter into a direct relationship with tribal governments in P.L. 83-280 states in the area of criminal law enforcement.

HISTORY

Less than two months ago we celebrated an important, 20-year anniversary in federal Indian policy. It was on September 17th, 1987, that the late Chairman of the Mille Lacs Band, Art Gahbow, attended a meeting in Philadelphia with several other Tribal Chairmen, including Wendell Chino of the Mescalero Apache Tribe, and Roger Jourdain of the Red Lake Band of Chippewa.

They met to discuss plans for the 200th Anniversary of the U.S. Constitution, and what this observation might mean for Indian tribes. It was at this meeting that the concept of what we today call, Tribal Self-Governance, was born. These visionary Tribal Leaders prepared a Tribal Self-Governance path for the rest of us to follow. It was built on six foundations insisted upon by Indian Tribes:

- First, that each federal agency deal with each Indian Tribe on a respectful, government-to-government basis.
- Second, that all federal agency decisions honor the fact that Indian Tribes, as the governments closest to those served, provide the best quality and most efficient services to Tribal members.
- Third, that federal law should allow Tribal government priorities, not federal priorities, to shape what is funded and done in Indian communities.
- Fourth, that federal agencies can and should rely on the fact that the elected leadership of Indian Tribes are, by definition, accountable to Tribal members.
- Fifth, that federal bureaucracies should be down-sized, reformed, and restructured into technical assistance resource centers that aid Tribal governments in meeting the needs of Tribal communities, with the resulting financial savings transferred to Tribal communities for program services.
- And sixth, no function, program, service or activity that is supposed to benefit an Indian Tribe should be kept out of the reach of any Indian Tribe seeking to take the money and do it for themselves.

These six pillars of Tribal Self-Governance—government-to-government relations, delegation of authority to Tribes, deference to Tribal priorities and program design, Tribal accountability, right-sizing the federal bureaucracy, and no program or function off-limits—have served well for the past 20 years. But as with all good ideas that have weathered the storms of time, there is room for improvement. And in some instances, there has been a creeping retreat, rather than steady progress, in implementing these principles. Which brings me to the need for H.R. 3994, the bill before the Committee today.

But first, some Tribal Self-Governance history that is specific to the Mille Lacs Band of Ojibwe. My Tribe was one of the first ten tribes to be involved in the Self-Governance Demonstration Project in the late 1980's, and in 1990 ours was the first Tribe to negotiate a Self-Governance Compact with the Department of the Interior. We soon thereafter negotiated an agreement with the Indian Health Service (IHS). Since then, the project has grown to include more than 300 tribes in BIA and/or IHS Tribal Self-Governance.

I recall our first negotiation with two personal representatives of Interior Secretary Manuel Lujan sitting across the table from us in the double-wide trailer that then served as our tribal headquarters. We opened with prayer in our language and a tobacco pipe made its way around the table. The Mille Lacs Band set the negotiation agenda. We explained what the Band had to have in the way of an agreement. When we reached an impasse, we called our friends on Capitol Hill. Secretary Lujan's aides called him and came back to the table with agreement. Many terms were set in that initial negotiation year, all were founded on the six principles I just described.

The Mille Lacs Band insisted upon, and got, respect from their federal counterparts in these negotiations. And the basic framework of that early agreement endures through to this day. But not without room for improvement. In fact, our nearly 17 years of experience with Tribal Self-Governance and the Department of the Interior tells us that we very much need H.R. 3994 enacted as soon as possible. Here's why.

WHY KEY PROVISIONS OF H.R. 3994 ARE NEEDED

H.R. 3994 is the product of more than six years of discussion, drafting and negotiation between Tribal and Interior representatives. The bill before you reflects many compromises. In large part, that's attributable to the flexibility of Interior offi-

cial. But perhaps even more, it is due to the stamina of Tribal representatives. And our sense that we really need this bill.

The overarching reason we need H.R. 3994 enacted is because, for six years now, the Mille Lacs Band, and many other Self-Governance Tribes, have had to operate under two sets of often conflicting rules. Ever since 2000, when the Congress enacted Title V to govern our Tribal Self-Governance operation of health programs funded by the IHS, the Mille Lacs Band has had to follow two different sets of procedures, meet two different sets of standards, and split its Self-Governance administration into two separate operations.

Congress last reformed Title IV, governing our Interior-funded operations, in 1994. Informed by our experience, Congress improved upon Title IV when it wrote Title V to govern our IHS-funded operations in 2000. But at that time Congress made no changes to Title IV. And so Self-Governance Tribes like the Mille Lacs Band have since then had to maintain different requirements and two sets of investments. Tribal Self-Governance is supposed to streamline Tribal operations and permit consolidation of Tribal effort. Instead, having two different laws, Title IV and Title V, has served to make Tribal administration more complex and difficult. H.R. 3994 would bring Title IV into conformity with Title V. This is long over due.

What follows are some of the key provisions of H.R. 3994 that would bring Title IV into line with Title V, and thereby greatly facilitate more efficient Tribal administration at the Mille Lacs Band and allow our leadership to provide more services within the present constraints of limited federal funding.

Clarify Inherent Federal Function. H.R. 3994 would for the first time narrowly and uniformly define by statute what is an inherent federal function that cannot be transferred to an Indian Tribe. Section 401(8). Such a narrow and uniform definition will greatly streamline negotiations and result in a greater transfer of federal Indian funding to the local Tribal community level and assist federal officials in efficiently restructuring the federal administrative structure.

Clearly Identify Tribal Share Funds. H.R. 3994 would add greater clarity to the definition of what is and is not a tribal share, and in combination with the narrow definition of an inherent federal function, greatly streamline negotiations and result in a greater transfer of federal funding to the local level. Section 401(11).

Ban Unilateral Federal Changes to Agreements. H.R. 3994 would stop a practice that has reappeared in recent years of attempts by certain federal officials to make unilateral changes to Tribal Self-Governance agreements after they have been negotiated. Section 405(c). It would require the specific consent of a Self-Governance Tribe before any changes are made.

Resume the Transfer of Central Office Functions to Tribes. A tribal share of all funds related to all functions, including those organized within the BIA Central Office, are to be made available to a requesting Self-Governance Tribe. Sections 405(b)(1) and 409(c). Tribal shares of Central Office functions were provided to some Self-Governance Tribes in the early to mid-1990's until the Administration collaborated with the Appropriations Committees and then-Senator Slade Gorton to stop this through an appropriations rider.

Resume the Transfer of Office of Special Trustee Functions to Tribes. A tribal share of all funds related to all functions, including those organized within the Office of Special Trustee (OST), are to be made available to a requesting Self-Governance Tribe. Sections 405(b)(1) and 409(c). Tribal shares of the OST were provided to some Self-Governance Tribes in the early to mid-1990's until the Administration moved some trust-management functions from BIA to OST and tried to claim they were beyond the negotiation authority of Self-Governance Tribes.

Transfer Non-BIA Functions to Tribes. Likewise to be made available to a requesting Self-Governance Tribe is a tribal share of funds related to all functions provided by non-BIA/OST offices of the Interior Department for the benefit of Indians because of their status as Indians or with respect to which Indian Tribes or individuals are the primary or significant beneficiaries. Section 405(b)(2). The Department has been reluctant to transfer significant authority or funding to Indian Tribes under the existing authority of Title IV, so further precision in this authority is included to encourage greater cooperation by the Department in response to Tribal negotiations.

Streamline Negotiations With Final Offer Authority. One of the most important changes to Title IV in H.R. 3994 is in the "final offer" provisions that have worked so well to facilitate negotiations with IHS under Title V. Section 407(c). When negotiations reach an impasse, Section 407(c) would specify timeframes and standards by which the Department must respond to a Tribe's "final offer". Similar provisions in Title V have streamlined negotiations with IHS since 2000.

Make Uniform Burden of Proof Standards in Appeals. As in Title V, when negotiations break down, or other grounds arise for legal appeal by an Indian Tribe

of a federal decision, H.R. 3994 would assign to the Department the burden of proof to demonstrate by clear and convincing evidence that its decision is validly made. Section 407(d). This approach has worked well with IHS since 2000. Having the same legal standard and procedure for Interior as IHS would facilitate Tribal administration.

Expand Tribal Construction Authority. Where an Indian Tribe has hired or contracted with licensed professionals regarding health and safety considerations in the design and construction of a facility, H.R. 3994 would clarify that, as in Title V with the construction of clinics and hospitals with IHS funds, the responsibility and accountability for adherence with standards rests with the Indian Tribe and its professional certifications. Section 408(c). This approach will reduce the duplicative costs of federal engineering oversight while guaranteeing compliance with industry standards.

Make Investment Standard Uniform for Titles IV and V. One advantage of current authority for advance lump sum funding is that an Indian Tribe can invest those funds until they must be spent during the program year. However, while hundreds of millions of IHS funds are annually invested by Indian Tribes under the “prudent investment standard” pursuant to Title V, the BIA has declined to allow Indian Tribes to similarly invest funds transferred to Indian Tribes under Title IV. As a result, Indian Tribes have had to maintain two separate investment portfolios, losing the advantages of a single and coordinated investment structure. H.R. 3994 would conform Title IV authority to Title V authority and permit an Indian Tribe to invest its Title IV advance funds using the prudent investment standard. Section 409(j)(3).

Expedite Regulation Waiver Requests. Tribal requests to waive certain regulatory requirements have often gone ignored in the past two decades. H.R. 3994 would resolve this in a manner similar to the one used in Title V, by applying specific timeframes and standards by which the Department must respond to a Tribe’s request for waiver of a regulation. Section 410(b).

Bring Unfettered Self-Governance Authority to Federal Indian Roads Programs. Ever since Congress amended SAFETEA-LU, the roads program, to authorize direct self-governance agreements between the Department of Transportation (DoT) and Self-Governance Tribes, the lack of precision in the statute has slowed its implementation. Accordingly, I and other Self-Governance Tribal leaders are asking that you add a provision to H.R. 3994, a new Section 419, which would state simply and effectively that the Secretary of Transportation shall enter into funding agreements under Title IV with any Tribe that elects to utilize the authority of Title IV to govern any funds made available to Indian tribes under SAFETEA-LU, and that the negotiation and implementation of each such funding agreement shall be governed by Title IV, as amended by H.R. 3994.

Proposed new Section 419

“SEC. 419 Applicability of the Act TO THE DEPARTMENT OF TRANSPORTATION

(a) The Secretary of the Department of Transportation shall carry out a program within the Department of Transportation to be known as the Tribal Transportation Self-Governance Program.

(b) Notwithstanding any other provision of law, the Secretary of Transportation shall enter into funding agreements under this title with any Tribe who elects to utilize the authority of this title to govern any funds made available to Indian tribes under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) or successor authorities.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each funding agreement entered into under this section shall be governed by the provisions of this title. “

Explanation of proposed new Section 419 to H.R. 3994

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized tribal governments to receive funding from and participate in a number of Department of Transportation (DOT) programs as direct beneficiaries without having the Bureau of Indian Affairs or state governments acting as intermediaries. For example, section 1119(g)(4) of SAFETEA-LU [23 U.S.C. §202(d)(5)] provides for tribal governments to enter into contracts and agreements directly with the Secretary of Transportation to undertake transportation functions “in accordance with the Self-Determination and Education Assistance Act...” (ISDEAA). Some DOT Federal Highway Administration (FHWA) officials have interpreted this “in accordance with” language to somehow mean that FHWA-Tribe

agreements under SAFETEA-LU are not ISDEAA agreements, and they have refused to include standard Title IV provisions in their agreements. This erroneous interpretation has sharply limited the number of FHWA-Tribe agreements that have been executed, and has generated a great deal of confusion and disagreement over the scope and extent of the applicability of Title IV to those agreements. The proposed new Section 419 to H.R. 3994 will fix these problems by establishing a Tribal Transportation Self-Governance Program within the DOT. It directs DOT, upon the request of an Indian tribe, to enter into funding agreements under Title IV for any programs and funding made available to tribes by SAFETEA-LU. This section makes clear that the negotiation and implementation of those funding agreements will be governed by Title IV. Section 419 would echo existing authority in SAFETEA-LU and clarify in Title IV itself that Title IV applies to these DOT funds and programs.

TRIBAL SELF-GOVERNANCE SUCCESSES

My predecessors who led my Tribe imagined a future in which Mille Lacs Band members were politically empowered, self-determining, self-governing, and self-sufficient. They imagined a world in which the Mille Lacs Band not only was able to take care of its members, but also to take care of future generations of Band members.

My generation of leaders must still look to our imagination for such a world. Our world today remains beset by hurdles thrown on our path, some by petty federal bureaucracies, some by county officials who attack our rights, and some by a neglectful and distracted Congress (which of course would be obviated by prompt enactment of H.R. 3994, a move that would go a long way towards making our imagined world a reality).

Nevertheless, our imagination has begun to pay off:

- Over 300 Indian Tribes now participate in some form of Tribal Self-Governance. With enactment of H.R. 3994, and the greater administrative efficiencies that it will bring, I am certain that number will increase.
- For the Mille Lacs Band, and for many other Indian Tribes, the last decade or so has seen our Tribal members choosing to return home to their Indian communities and Reservations. There are more and more jobs available in Indian Country. There is more and more meaningful work here than was available 20 years ago. In utilizing our resources, we are always striving to protect our way of life, our culture, our ceremonies, and our language. Tribal Self-Governance has been the main cause of this, as we govern ourselves according to our own Tribal priorities.
- One benefit of Self-Governance is that many Indian people who previously served as federal employees have now come back to offer their training and expertise to their own tribal communities. As our Band government and enterprise workforce grows, I imagine a time when the Band reciprocates by sending Band-trained experts to serve in federal agency positions, under a reverse-Intergovernmental Personnel Act or reverse-IPA program.
- Self-Governance has enhanced our ability to govern. Our sovereignty is inherent, but our ability to govern ourselves properly was difficult when permission was required of the federal government for our every fiscal move. The enactment of Title IV changed that. We enact budgets. We determine program priorities. We administer services. We manage programs. We recruit, hire and fire a Tribal workforce. We raise Tribal revenue from a variety of enterprises and activities. We are responsible and accountable to our Band membership. Much of this can be traced to our assumption of federally-funded programs, functions, services and activities under Tribal Self-Governance.

IMMEDIATE ISSUE ON LAW ENFORCEMENT

There is an additional issue that has come up only in the last few days, and that is the need for a federal law that would authorize, perhaps on a demonstration or pilot basis, a Self-Governance Tribe like the Mille Lacs Band to utilize an "escape valve" to resolve conflicts in the provision of law enforcement services in certain emergency situations where public safety requires it.

The Mille Lacs Band provides significant law enforcement services on our Reservation. We spend approximately \$2 million a year on law enforcement activities and employ 19 full-time tribal police officers who are certified under both State and Tribal law. These officers have exercised primary responsibility for policing the portions of the Reservation in which most Band members live, and routinely provide assistance to the County Sheriff's Office as well as the police offices in local towns.

The State of Minnesota also has law enforcement jurisdiction on our Reservation, under a federal statute known as Public Law 83-280. In 1991 and again in 1998,

we entered into cooperative agreements with Mille Lacs County to coordinate the provision of law enforcement services on the Reservation.

Less than a week ago, we ended the agreement with Mille Lacs County. While we have continuing law enforcement and other agreements with neighboring counties, we were unable to continue the agreement with Mille Lacs County because of the rise in hostile actions by County leadership directed toward Band members, Band law enforcement officials and Band Government.

Under our agreements with the County, our officers had referred many criminal cases to the County Attorney for prosecution. Typically, we referred cases involving non-Indian defendants, over whom we have no prosecutorial jurisdiction, or Indian defendants when the seriousness of the charge warranted greater penalties that could be imposed under State law.

Recently, the relationship between the County and the Band deteriorated. The County Attorney insisted that we refer every case handled by our law enforcement officers to the County for prosecution, even when those cases involved only Band member defendants suspected of violating Band laws. The County Attorney also insisted that our officers not confer with our attorneys before deciding which cases to refer, and demanded that our attorneys not communicate with Band officers about such matters.

These extraordinary demands apparently stemmed from the County Attorney's challenge to the existence of the Mille Lacs Reservation. In a memo to County employees last year, the County Attorney ordered all employees to stop referring to Indian land as "reservation" land and to purge County files of all references to the Reservation. She has since prosecuted cases against Band members for "civil/regulatory" violations on the Reservation, over which the State has no jurisdiction under Public Law 83-280, on the theory that there is no Mille Lacs Reservation.

In addition, her office caused an arrest warrant to be issued for a Band child who had been the victim of a crime, on a failure to appear charge. This led to the child's arrest, incarceration overnight, and appearance in court in handcuffs, leg shackles and an orange jail jumpsuit. The County Attorney has defended and refused to apologize for this treatment of a child crime victim.

We will continue to provide law enforcement services on our Reservation, notwithstanding the end of our Agreement with the County. However, the County Attorney is now threatening to sue to challenge our officers' law enforcement credentials, and may take other actions that hinder cooperation among law enforcement agencies on the Reservation.

Public Law 83-280 has a provision for "retrocession" of state jurisdiction to the federal government, but it requires the consent of the state. University of Minnesota Law Professor Kevin Washburn testified several months ago about the need for an escape valve in situations like ours. When retrocession of P.L. 83-280 jurisdiction is not an option, the federal government should find a way to enter into a direct relationship with an Indian Tribe for purposes of law enforcement. We would like to work with the Committee to develop such authority and make it part of Title IV. I will be providing your staff with a copy of Professor Washburn's statement.

A Tribal option for retrocession, that is, a choice, would further Tribal self-government by putting key law enforcement questions in the hands of the Tribe and force the state to be responsive to the Tribe if it wishes to keep the Tribe as a partner. It would also further public safety because it would make the government accountable to the community it is supposed to be serving. If a Reservation community believes that the state is doing a good job, then the state can continue. But if the state is doing a poor job, then it can install a federal/Tribal system in which Tribal officials will be forced to exercise greater accountability for public safety.

WHERE WE MUST GO AFTER H.R. 3994 IS ENACTED

About twelve years ago, the Mille Lacs Band sat down with the Clinton Administration and looked at whether we could move Tribal Self-Governance to the next level. We sought to consolidate into one single agreement all federal dollars the Band was eligible to receive. This would bring us closer to restoring the full, government-to-government relationship that our treaties once provided. To the Mille Lacs Band, this is a logical progression of Self-Governance and we are very interested in pursuing this idea.

There is no sound policy reason why Tribal Self-Governance must be limited to the BIA and IHS and Tribal roads programs. Tribes receive funds aimed at Tribal communities from many different federal agencies: housing and community development grant funds from HUD, rural development grants from USDA, environmental program funds from EPA, child and family grant funds from HHS's Administration for Children and Families, addiction and mental health funds from HHS's Substance Abuse and Mental Health Services Administration, education grants from

DoEd, energy development funds from DoE, border security funds from DHS, and on and on.

Just imagine the creativity and efficiencies that would be unleashed if Tribal governments would be able to consolidate all these sources of funding into one Tribal Self-Governance agreement and administer the funds under one set of rules that respected Tribal priorities, Tribal accountability, and Tribal Self-Governance.

CONCLUSION

Title IV is in dire need of a major overhaul to bring it into conformity with Title V. Without prompt enactment of H.R. 3994, Tribes like the Mille Lacs Band will be forced to waste time, effort and money maintaining duplicative and separate Tribal Self-Governance structures and programs. Reforming Title IV, as proposed in H.R. 3994, will bring great efficiencies to our Tribal administrative efforts.

I also urge you to join with me in imagining into reality one single Tribal Self-Governance agreement for all federal funding.

But first, enact H.R. 3994 and get Title IV caught up to Title V.

If you have any questions, please contact me at (320) 532-7486. You may also contact Tadd Johnson, the Mille Lacs Band's Special Counsel on Government Affairs, at (320) 630-2692.

STATEMENT OF THE HONORABLE J. MICHAEL CHAVARRIA, GOVERNOR, PUEBLO OF SANTA CLARA

Mr. CHAVARRIA. Good morning. Un Bi Agin Di, Un Sengi Thamu. Out of respect and good morning. Greetings in my Tewa language. Good morning, Chairman, and members of the Committee.

Out of respect I come before you to testify on H.R. 3994 introduced by Congressman Boren and others which proposes to amend the Indian Self-Determination Education Act by providing further self-governance by Indian tribes and nations and for other purposes, which bill is also known as Department of Interior Tribal Self-Governance Act of 2007.

My name is Joseph Michael Chavarria, I am the Governor of Santa Clara Pueblo located in land of enchantment in the great State of New Mexico. Before I proceed, Chairman, may I respectfully ask that I say a few words in my Tewa language out of respect.

[Witness spoke a prayer in Tewa language.]

Mr. CHAVARRIA. In my prayer, I asked the Creator to look down upon us today to give us the strength, the courage and wisdom that are needed, and to give each and every one of us insight to examine how the enactment of H.R. 3994 will impact tribes, nations and pueblos.

As a tribal leader in this day and age I can tell you that challenges still linger in the midst of our many successes. My pueblo has found the collaboration and partnership with Federal, state and local agencies assist greatly in meeting those challenges.

As a productive pueblo we have created opportunities through self-governance compacts, funding agreements and through agreements with the state, the Federal and local agencies all of which assist in greatly enhancing and protecting our natural resources including our people, timber, water, which are all necessary for the continuance of our life here on this Earth.

If H.R. 3994 is enacted the Title IV amendments will allow our pueblo and other tribes and pueblos to expand self-governance operations within and outside the BIA, increase our Federal program responsibilities, reduce the number of Federally operated programs

and reduce the obstacles that exist to our self-governance operations.

Santa Clara Pueblo has experienced many benefits through self-governance, but has also been met with resistance from the BIA to the pueblos assuming greater self-governance.

For example, during our recent forestry compact negotiations we expanded a significant amount of time, and effort and resources in order to get from the BIA accurate descriptions of our program services, tribal share formulas, factual data using those formulas, inherent Federal functions and funds available for those tribal funds, all of which should have been made readily available to us.

However, when the information was made available to us it was usually the day before our negotiations and often contained incorrect program descriptions and inaccurate data regarding our pueblo. The amendment to Section 401 of this bill will help by defining tribal share and inherent Federal functions which would make more information and more money available to tribes.

Section 405[c] of H.R. 3994 would also prohibit the Secretary from making unilateral changes to funding agreements. This prohibition addresses a very difficult problem that my pueblo has had dealing with the Indian Reservation Rules program.

During this time my pueblo has struggled to obtain BIA signatures on an IRR addendum, a document that outlines the conditions and responsibilities for Santa Clara Pueblo to take over road construction activities on our reservation. Time and time again my pueblo negotiated and submitted an IRR addendum that was based on the latest BIA model only to have each addendum rejected or left unsigned at central office.

Recently central office made unilateral changes to the latest IRR addendum we submitted, changes that weakened and watered down our agreement. Entire sections and provisions from the negotiated addendum were revised or deleted taking all good faith out of our negotiations.

Section 405[c] would prohibit such unilateral actions by central office. I respectfully suggest that H.R. 3994 would even help more if it included provisions that would enable self-governance tribes to directly negotiate future road construction agreements with the Department of Transportation Federal Highway Administration using the Indian self-determination Title IV rights and protections.

This bill contains improvements over current Title IV law that allow my pueblo to continue to progress as a government and as a people while keeping us accountable for our use of Federal funds.

Such improvements include the subsequent funding agreement provisions and restrictions against unilateral changes in Section 405, a timely advanced payments provision and restrictions against Department of Interior withholding funds in Section 409, and for new tribes the authorization of planning and negotiation grants, shortfall funds and a formula for central office shares.

We thank you for these and other improvements that are contained within the bill, and I know my pueblo's self-governance program will greatly benefit. Another important section for Santa Clara Pueblo is Section 405 where it includes provisions regarding non-BIA programs.

This will merely give my pueblo the opportunity to contact Department of Interior agencies that deal with our pueblo, people, land, water and wildlife, to begin the dialogue with the U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey.

If H.R. 3994 is enacted, Santa Clara could negotiate with the U.S. Geological Survey (USGS) to take responsibility for some portion of completing the cadastral surveys that are much needed right now on reservation lands under conditions that include verification that survey standards are being met.

It would also give Santa Clara Pueblo an opportunity to negotiate a Title IV agreement with the U.S. Fish and Wildlife Service to reduce poaching, provide a joint enforcement of the pueblo's wildlife codes, improve our ability to sustain wildlife and improve all live habitat on my pueblo's lands, lakes and rivers.

If enacted, H.R. 3994 will give all tribes, pueblos and nations the opportunity to determine their destiny by utilizing the Self-Determination Education Assistance Act to further accomplish self-governance in the future. Thank you for this opportunity to testify before you, Chairman, and members of the House Natural Resources Committee.

Santa Clara Pueblo has also submitted written testimony to the Committee that expresses the pueblo's support of H.R. 3994 in more detail. Kun De La Ha. Thank you very much, sir.

Mr. RAHALL. Thank you. Mr. Stevens, we will hear from you, then recess for the pending roll call vote on the Floor, come back for questions.[21][The prepared statement of Mr. Chavarria follows:]

**Statement of J. Michael Chavarria, Governor,
Pueblo of Santa Clara**

Un Bi Agin Di, Un Sengi Thamu:

Out of Respect and Good Morning. Greetings in my Tewa language.

Good Morning Chairman and members of the Committee. Out of respect I come before you to testify on H.R. 3994 (introduced by Congressman Boren and others), which proposes to amend the Indian Self-Determination and Education Assistance Act by providing further self-governance by Indian Tribes and for other purposes, which bill is also known as the "Department of Interior Tribal Self-Governance Act of 2007."

My name is Joseph Michael Chavarria. I am the Governor of Santa Clara Pueblo located in the Land of Enchantment in the Great State of New Mexico. Before I proceed may I respectfully ask that I say a few words in my Tewa Language.

In my prayer I have asked the Creator to look down upon us today to give us the strength, courage and wisdom that are needed and to give each and everyone of us the insight to examine how the enactment of H.R. 3994 will impact Tribes, Nations, and Pueblos.

As a Tribal Leader in this day and age, I can tell you that challenges still linger in the midst of our many successes. My Pueblo has found that collaboration and partnerships with federal, state, and local agencies assist greatly in meeting those challenges. As a proactive Pueblo, we have created opportunities through Self-Governance Compacts and Funding Agreements and through agreements with federal, state, and local agencies, all of which assist greatly in enhancing and protecting our natural resources, including our People, timber, wildlife, and water, which are all necessary for the continuance of our life here on this earth.

If H.R. 3994 is enacted, the Title IV amendments would allow our Pueblo and other Tribes and Pueblos to expand Self-Governance operations within and outside the BIA, increase our federal program responsibilities and reduce the number of federally operated programs, and reduce the obstacles that exist to our Self-Governance operations.

For instance, Section 401 of this bill proposes to define the terms “tribal share” and “inherent Federal function,” which are not currently defined in Title IV. It has been our experience that this lack of definition of these terms has resulted in an overbroad determination by the Bureau of Indian Affairs of the programs, services, functions and activities (PSFA) that are “inherent Federal functions.” As a result, less money is made available for tribal shares. These definitions would make it clear that Congress intended for tribes to assume all PSFAs except for those that cannot legally be delegated to Indian tribes. Accordingly, more tribal share funds would be available to Santa Clara and other Pueblos and Tribes who want to take responsibility for federally operated programs.

In the last few years, as our Pueblo has attempted to expand our Self-Governance, we have been met with resistance from the BIA. Forestry Management provides a good example. We had to expend a significant amount of effort and resources in order to get from the BIA accurate descriptions of program services, tribal share formulas, factual data used in the formulas, inherent Federal functions, and funds available for tribal shares—all of which should have been made readily available to us.

When the BIA finally provided the necessary information to us, it was often only provided the day before our negotiations and often contained incorrect program descriptions and inaccurate data regarding our Pueblo. Funding for inherent Federal functions was often so inflated that less money was made available for all 24 tribes in our Region or for the eight Pueblos in our Agency than was allocated for federal positions (See Example A for Northern Pueblo Agency funding, attached hereto). Additionally, the tribal shares identified did not always add up to 100% of what little funding was being made available to tribes. When we questioned the data, some federal officials became very defensive. Others just shrugged their shoulders and pointed out that correcting the errors would take more time than was available for negotiations and getting signatures on the agreement. And actually, they were right. With inherent federal funding so inflated that tribal shares were minimal and the threat of an unsigned agreement (meaning the Pueblo would receive no funding for its next year), the obstacles often seemed insurmountable.

We respectfully suggest that H.R. 3994 would help even more if it included provisions that would require DOI agencies to limit their residual funding at all levels to the minimal amounts necessary for carrying out inherent Federal functions as defined in these amendments, to negotiate tribal share formulas with Regional tribes at least once every three years, and to use tribal data in funding formulas that is updated at least bi-annually.

Section 405 proposes that, under prescribed circumstances, a funding agreement will remain in effect when negotiations have not been concluded as to a new funding agreement, and, thereby, fund the tribe in the successor year while negotiations continue regarding unresolved issues. This amendment would level the playing field between the negotiating parties, as tribes would no longer be hemmed in by the threat of losing funding if negotiations regarding a new funding agreement are stalled.

Section 405 also prohibits the Secretary from making unilateral changes to funding agreements. This prohibition addresses a very difficult problem that our Pueblo has had with the Indian Reservation Roads program for the last two years. During that time, our Pueblo struggled to obtain BIA signatures on an IRR Addendum, a document that outlines the conditions and responsibilities for Santa Clara to take over roads construction on our Reservation. Time and time again, our Pueblo negotiated and submitted an IRR Addendum that was based on the latest “BIA model,” only to have each Addendum rejected or just left unsigned in the Central Office. Last summer, we again negotiated tribal and BIA responsibilities and terms and conditions with the Regional Roads staff and the Regional Director and submitted our IRR Addendum for Central Office signature. As before, the document was not signed. Worse, the Central Office made unilateral changes to it—changes that weakened and watered down the IRR Agreement. Entire sections and provisions from the negotiated Addendum were revised or deleted. There was no communication with our Pueblo about the changes. These actions by the Central Office took all “good faith” out of our negotiations; the changes appeared to be dictated from an unseen bureaucratic figure who never contacted or met with us or attended our negotiation sessions.

Section 405 in H.R. 3994 would prohibit such unilateral actions by the Central Office. And, we respectfully suggest that H.R. 3994 would help even more if it included provisions that would enable Self-Governance tribes to directly negotiate future roads construction agreements with the Department of Transportation Federal Highway Administration using ISDEAA Title IV rights and protections.

If H.R. 3994 is enacted, the Title IV amendments would make BIA Self-Governance (Title IV) much more like Indian Health Service Self-Governance (Title V).

This would greatly benefit the Pueblo since Title V has provisions that address the issues my Pueblo has struggled with before and will likely continue to face in the future, such as federal officials who resisted our desire to take responsibility for managing our forests, federal rules and requirements that restricted our ability to provide timely and flexible services to our people such as in higher education and social services, and delays in making funds available which then slowed down our ability to both provide services and to strengthen our federally funded programs in areas such as law enforcement.

The amendments would also benefit other New Mexico Pueblos and Tribes and would encourage them to enter into Self-Governance agreements. For several years, the Pueblo of Santa Clara has provided Self-Governance information to other New Mexico Pueblos and Tribes to try to answer their questions and increase their interest in Self-Governance. This has been difficult, though, because other tribes rightfully point out that tribal share funding is minimal, inherent Federal functions use up most Regional Office and many Agency Office dollars, accurate tribal share and formula information is difficult to get, BIA planning and negotiation grants are no longer available, shortfall funding is no longer available, and there are no longer any Central Office shares. If H.R. 3994 is enacted, these obstacles will be reduced or overcome. The Section 405 improvements should make more tribal share information and funding available, Section 413 calls for planning and negotiation grants to help new tribes research and prepare for Self-Governance, Section 413 also calls for shortfall funding which helps during the transition time when federal funding is being transferred from Regional and Agency offices to tribes, and Central Office shares are again required under H.R. 3994. In total, these Title IV amendments will make it easier and more beneficial for other Pueblos, Nations, and Tribes to prepare for and participate in Department of Interior Self-Governance.

From our experience in Self-Governance, we see the ISDEAA's strength. Self-Governance has transferred much responsibility and funding from federal agencies to the participating tribes. Self-Governance has authorized tribal governments to flexibly use program funding to provide more and better services to their people. In a recent negotiation, we were told by BIA officials that our tribe would actually receive fewer services if we returned funding for a difficult program that we had taken over and that we were doing more in this program than could the Bureau. These amendments will allow us to continue to use the law's strength and will reduce the obstacles in our way.

This bill contains improvements over current Title IV law that will allow our Pueblo to continue to progress as a government and as a People while keeping us accountable for our use of federal funds. This bill includes many provisions that were enacted in the Title V legislation with the Indian Health Service but that have not been included in agreements under Title IV with the Bureau of Indian Affairs. Such improvements include the subsequent funding agreement provisions and restrictions against unilateral changes in section 405, the timely advance payments provisions and restrictions against DOI withholding funds in section 409, and, for new tribes, the authorization of planning and negotiation grants, shortfall funds, and a formula for Central Office tribal shares. We thank you for these and other improvements that are in the bill and we know that our Pueblo's Self-Governance program will benefit.

This bill also will open new areas for our Pueblo that could assist us in the future. Because our BIA Self-Governance has been very successful, we are interested in reaching similar agreements with the Department of Energy, the U.S. Forest Service, and other federal agencies that regularly interact with our tribal government. The section 405(b) provisions regarding non-BIA programs will provide immediate opportunities to contact Department of the Interior agencies that deal with our land, water, and wildlife and with the U.S. National Park Service regarding nearby Bandelier National Monument. Section 405(b) gives a structured way for the Pueblo to assume responsibility and funding and to coordinate services with those federal programs that affect our resources. For instance, once H.R. 3994 is enacted, Santa Clara could negotiate an agreement with the U.S. Geological Survey to take responsibility for some portion of completing the cadastral surveys that are needed right now on Reservation lands under conditions that include verification that survey standards are met. And the Pueblo would like to negotiate a Title IV agreement with the U.S. Fish and Wildlife Service to reduce poaching, provide for joint enforcement of the Pueblo's game codes, and improve our ability to sustain wildlife and improve wildlife habitat on Pueblo lands, lakes, and rivers.

As a Pueblo, we are not rich or wealthy with dollars; however, we are rich and wealthy in our Culture, Traditions and Language. Today's challenge of the federal dollar dwindling on a yearly basis has forced many tribes to take on a new animal—economic development. In order to provide necessary services to our people that

were supposed to be provided by the federal government we have undertaken many critical service programs such as Social Services, Tribal Courts, Law Enforcement, Forestry, Child Welfare Assistance, Realty, Community Health Representatives, Head Start, Senior Citizen Programs and have provided supplemental funding to these programs in the amount close to one million dollars annually. If not required to fill gaps in the federal funding, these supplemental tribal funds could have been used to create an endowment fund for scholarships to send our children to any college they may want to attend, to start new businesses, or to provide assisted living for our elders. These funds could have also assisted the Pueblo in providing health care insurance to each and every tribal member, since the critical services at the Indian Health Services are being drastically eliminated at a steady and alarming rate. Why? Because of lack of funding.

If enacted, H.R. 3994 will give all Tribes, Pueblos and Nations the opportunity to determine their destiny by utilizing the Self-Determination and Education Assistance Act to accomplish further Self-Governance in the future.

Thank you for this opportunity to testify before you, Chairman and members of the House Natural Resources Committee. Kunda Wo' Ha'

Example A —

Santa Clara compacted Forest Management into Self-Governance in 2005 and has experienced significant hardships acquiring appropriate funding amounts and receiving correct information from the BIA. Due to over-inflated residual amounts, the managing BIA Agency is receiving much more money than Santa Clara to manage much less commercial forest land (commercial land is the BIA's own benchmark measure for determining Forest Management funding). While Santa Clara owns 74% of the forests in its Agency,¹ it is only receiving 28% of the total available Agency program budget to manage this important resource.² In addition to losing most money to residual BIA budgets, the Pueblo has also been shorted by the BIA's refusal to use our current forested acres in the appropriate funding formulas even though these acres are in trust status and are incorporated into our BIA-approved Forest Management Plan. These problems and holdups are severely impacting the state of our forests and precious ecosystems. These BIA tactics need to be addressed to give Tribes the ability to adequately manage their resources before their forests are lost to catastrophic wildfire and insect/disease outbreaks. I urge that this Committee strongly consider these problems and ultimately make these BIA agencies more accountable for successfully negotiating Self-Governance programs such as Forest Management and using accurate figures and reasonable residual amounts.

**STATEMENT OF BEN STEVENS, EXECUTIVE DIRECTOR,
COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS**

Mr. STEVENS. Thank you, Mr. Chairman, members of the Committee. My name is Ben Stevens, I work with the folks at the Council of Athabascan Tribal Governments, CATG, as the Executive Director. My organization and the 10 tribes that we represent strongly support H.R. 3994 as it will expand opportunities for tribes and tribal organizations to enter into Title IV agreements with Department of Interior agencies other than the BIA.

My testimony focuses on this aspect of the bill because CATG has had instructive experiences with two such agencies, one successful and productive and one not so successful. First, let me tell you a little bit about who we are. CATG is an Alaskan Native non-profit organization created in 1985 by a consortium of 10 tribal governments in the Yukon Flats region of interior Alaska.

The traditional homelands of CATG's tribes include the entire Yukon Flats National Wildlife Refuge and portions of the Arctic

¹Information from material provided by BIA in its 2008 Forest Development Funding Tables. SCP has 21,440 commercial timber forest acres, while the Northern Pueblo Agency is responsible for a total of 29,051 commercial timber forest acres.

²Information from material provided by BIA in its 2008 Forest Management Funding Tables. SCP is to receive \$80,106 out of a total NPA budget of \$280,976, which is 28%.

National Wildlife Refuge. Since time memorial our tribal governments have managed these lands and resources in this region.

CATG has been involved in self-governance since 1999 when it became a cosigner of the Alaska Tribal Health Compact and negotiated its first self-governance compact and funding agreement with the BIA under Title IV. CATG has since been recognized by researchers from the Kennedy School of Government, Harvard, as an example of a successful organization promoting and implementing Alaska tribal self-governance.

The most valuable resource our tribes and our members have is the land on which both the traditional economy and the culture is based. Most of the land in our tribe's traditional homeland is now considered Federal public lands under the jurisdiction of the U.S. Fish and Wildlife Service and the BLM, the Bureau of Land management.

Today, I will tell you two stories about CATG's attempts to participate in the management of these lands. Both hold lessons on the potential of self-governance if the current bill is enacted. First, a success story. In 2004, CATG and the U.S. Fish and Wildlife Service entered a funding agreement under which CATG was to carry out certain programs related to the Yukon Flats National Wildlife Refuge.

These included subsistence harvest data collection, moose population counts, environmental education and outreach, logistics and maintenance activities. This was the first Title IV agreement that the U.S. Fish and Wildlife Service entered with a tribal entity, and it did not come easy. At first, CATG approached the U.S. Fish and Wildlife Service with a Title I proposal.

That was rejected because the refuge does not benefit Alaska natives solely but rather a broader public. CATG then approached them with a Title IV agreement which would allow, but does not require, non-BIA agencies to compact activities of special geographic historical or cultural significance to the participating tribe requesting the compact.

Because this provision is purely discretionary the Service could have walked away at any time making negotiations extremely difficult. Through hard work, though, and a lot of blind trust we forged an agreement that has benefitted both the Federal and tribal interests.

Instead of wasting Federal dollars and putting resources at risk as the nay sayers predicted we found improved management and stewardship of the tremendous resources within the refuge. In 2006, the refuge manager submitted a letter in support of CATG and Harvard's Honoring Nations program endorsing CATG as an outstanding example of tribal governance.

Recently, officials from the U.S. Fish and Wildlife Service's headquarters here in D.C. traveled up to the refuge to see for themselves the successes reported by the Alaska region. They were impressed. They not only expressed interest in continuing our relationship but hoped to develop similar types of strategic partnerships in other areas of the country.

Unfortunately, my second story is not much of a success. It illustrates that our success is the exception rather than the rule. In 2005, CATG sent the BLM a letter requesting to begin negotiations

for fire related activities up in the region. The first meetings were encouraging. The BLM had heard of our successes with the refuge and endorsed the concept of collaborative working relationships.

However, when it came time to identify the funding directly associated with activities the BLM rejected CATG's proposed administrative budget. CATG had no negotiating leverage under the current Title IV as BLM kept reminding CATG that the law allowed but did not require them to enter into agreement.

Ultimately, CATG settled for an agreement with a drastically reduced scope of work, one that was whittled down in the subsequent year, and this year we haven't even heard from them yet.

Mr. RAHALL. Mr. Stevens, I am sorry. We are going to recess now for a roll call vote. We will come back and hear the rest of your testimony as well as questions. The Chair would like to note that Mr. Cason, Assistant Deputy Secretary, has remained with us for the testimony of the witnesses, and I am sure they appreciate and I know the Committee appreciates his being with us during this second panel as well. The Committee will stand in recess for 15 minutes.

[Whereupon, at 11:08 a.m., the Committee recessed, to reconvene at 11:23 a.m., this same day, Thursday, November 8, 2007.]

Mr. RAHALL. The meeting is reconvened. Mr. Stevens, you may begin your testimony.

Mr. STEVENS. Thank you, Mr. Chairman. I was at a point where I was going to say that the example that we have experienced with the Bureau of Land Management is a story that illustrates a simple fact about the current Title IV, the discretionary provision that authorizes non-BIA agencies to work with tribes, does not work.

By contrast, the provisions in H.R. 3994 would have changed the entire dynamic in the discussions between CATG and BLM. The new law would require non-BIA agencies to negotiate funding agreements for programs for which Indian tribes or Indians are primary or significant beneficiaries. The agency could not simply walk away from CATG's proposal to assist in the management of those traditional lands.

Moreover, H.R. 3994 would add crucial timing provisions to prevent agencies from dragging out negotiations indefinitely which BLM has done. CATG's experience clearly illustrates what self-governance can accomplish for tribes and for the public and what obstacles remain in the current law.

We respectfully request the Committee's support for H.R. 3994 so that more tribes and more bureaus within Interior can benefit from the self-governance program in a way that CATG and the Fish and Wildlife Service have benefitted from their partnership in the Yukon Flats National Wildlife Refuge. Thank you.

[The prepared statement of Mr. Stevens follows:]

**Statement of Ben Stevens, Executive Director,
Council of Athabascan Tribal Governments**

Good morning. My name is Ben Stevens, and I am the Executive Director of the Council of Athabascan Tribal Governments (CATG). My organization and the ten tribal governments it represents strongly support H.R. 3994, which would greatly enhance the opportunities for the Alaska Native Villages in our region to exercise their self-governance rights.

My testimony focuses on Title IV agreements with Department of the Interior agencies other than the Bureau of Indian Affairs (BIA). Before addressing this critical issue, however, let me briefly describe who we are.

CATG and Its History of Self-Governance

CATG is an Alaska Native non-profit organization created in 1985 by a consortium of ten Tribes in the Yukon Flats region of the Interior of Alaska. The traditional homelands of CATG's tribes comprise a 55,000 square mile region extending from the White Mountains in the South to the Brooks Range in the north, and from Rampart, downriver of the Trans-Alaska Pipeline east to the Canadian border.

The purpose of CATG is to provide essential services to the member villages, such as natural resource management activities, health care and educational services, and pursuit of economic development opportunities. The region of CATG encompasses a large amount of federal public lands, including the entire Yukon Flats National Wildlife Refuge (YFNWR), and portions of the Arctic National Wildlife Refuge. Since time immemorial, the tribal governments of CATG have managed the lands and resources in the region.

CATG has been involved in self-governance since 1999, when it became a co-signer of the Alaska Tribal Health Compact and began carrying out Indian Health Service (IHS) programs in the region. That same year, CATG negotiated its first self-governance compact and funding agreement with the Bureau of Indian Affairs (BIA) under Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA). CATG has been cited as a model of what the ISDEAA was intended to accomplish—and what Alaska tribal organizations have accomplished in terms of effective self-governance and service delivery. Researchers from the Kennedy School of Government at Harvard University summarized CATG's accomplishments as follows:

CATG has been successful at running health, natural resources, and early childhood education programs, has helped to prevent service delivery jobs—badly needed in villages characterized by high unemployment—from migrating to Fairbanks, has expanded local management capacities, has served as a resource to local governments, and has engaged local citizens in generating their own solutions to problems.¹

Because carrying out governmental programs consistent with self-governance principles worked so well for IHS and BIA programs and activities, CATG sought to expand self-governance into an area of central importance to its member Villages: management of the land and resources that provide the subsistence base for members of all of the tribal governments in our region. We worked with two non-BIA federal Agencies in these efforts: the United States Fish & Wildlife Service (USFWS or Fish & Wildlife) and the Bureau of Land Management. Our experience with one was a success and with the other we faced unforeseen challenges that ultimately resulted in failure. I will talk about both of these experiences below because both hold lessons on the potential of self-governance to expand and flourish if the Title IV amendments are enacted into law.

Success Story: The Fish & Wildlife Service Compact For Yukon Flats National Wildlife Refuge

For many years, CATG has worked on behalf of its constituent tribes to ensure proper management of the region's natural resources that are vital to the continuation of Alaska Native cultures. Through a series of cooperative agreements CATG entered into with the USFWS, CATG implemented one of the primary purposes of the Alaska National Interest Lands Conservation Act: the continuation of subsistence traditions by Alaska Natives. For example, the 1997 USFWS-CATG cooperative agreement states:

Harvesting of subsistence resources is essential to residents of the area not only as sources of nutrition but also as the cornerstones of their cultures. The harvesting of subsistence resources is done within traditional territories and distribut[ion] is governed by social obligations and kinship. Subsistence foods are the primary sources of protein for the area's Native residents.²

CATG brought to the partnership with the USFWS a wealth of traditional and ecological knowledge. CATG has experience working with the local people to gather accurate data and has demonstrated its efficiency and effectiveness.

¹ Stephen Cornell & Joseph P. Kalt, *Alaska Native Self-Government: What Works?* at 7 (Harvard Project on American Indian Economic Development, 2003).

² 1997 Cooperative Agreement

CATG sought to expand this partnership by taking responsibility for certain work related to the Yukon Flats National Wildlife Refuge (YFNWR or Refuge) under the authorities set out in the ISDEAA. Initially CATG sought to negotiate an agreement with the USFWS under Title I of the ISDEAA, but USFWS rejected the proposal on the basis that the refuge programs could not be contracted under Title I because they do not exclusively benefit Indians. In 2002, CATG proposed to enter into an Annual Funding Agreement (AFA) with Fish & Wildlife under the Title IV Self-Governance Program. Like its Title I proposal, CATG could not include Refuge programs under the mandatory provisions of Section 403(b)(2) of the ISDEAA, because the Refuge does not benefit Alaska Natives exclusively. Under the discretionary provisions of section 403(c), however, a Title IV AFA can include programs, services, functions and activities that are of “special geographic, historical or cultural significance to the participating Indian tribe requesting a compact.”³ After initially rejecting CATG’s proposal, Fish & Wildlife eventually agreed that the Refuge’s programs are of such significance to the CATG member Villages.

Negotiations were sometimes difficult, particularly because Section 403(c) is discretionary and the USFWS could walk away at any time. Through hard work, though, CATG and Fish & Wildlife eventually entered an AFA for FY 2004. This was the first Title IV agreement the USFWS entered with a tribe or tribal organization anywhere in the United States. Under the AFA, CATG performed the following activities related to the Refuge:

- Locate and Survey Public Access Easements
- Environmental Education and Outreach
- Subsistence Wildlife Harvest Data Collection
- Eastern Yukon Flats Moose Population Estimation Survey
- Logistics (Ft. Yukon Equipment and Facility Maintenance)

CATG brought to the partnership a wealth of traditional and ecological knowledge. It has experience working with 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.

The partnership embodied in the Title IV agreement with Fish & Wildlife is now over three years old, and by all accounts it has been a success. In 2006, the USFWS Manager in charge of the Refuge submitted a letter of support of CATG as a semifinalist in Harvard’s “Honoring Nations 2006” program, endorsing CATG as an outstanding example of tribal governance. In this letter, attached as an exhibit to my testimony, the Refuge Manager concluded that “our two annual funding agreements with CATG have helped improve our communications with local residents of the Yukon Flats and have helped us both (the Refuge and CATG) improve our management and stewardship of the wonderful natural resources within the Yukon Flats ecosystem.”

Recently, officials from Fish & Wildlife headquarters in Washington, D.C. traveled to the Refuge to see for themselves the successes reported by the Alaska region. These officials were so impressed that they hoped to develop similar types of collaboration with tribes and tribal organizations in other regions of the country.

Unfortunately, there have been few success stories like CATG’s Fish & Wildlife agreement nationally or even in Alaska. As the next story shows, part of the problem is that Title IV, as currently configured, does not give tribes and tribal organizations enough leverage in negotiations with non-BIA agencies, so the benefits illustrated by CATG’s Refuge agreement are too often lost.

Lessons from the BLM Fire Management Negotiations

Having successfully negotiated a Title IV agreement with Fish & Wildlife, and having seen the tangible benefits to the Refuge and to the people in the region that resulted, CATG sought to expand its self-governance responsibilities to fire management functions carried out in the region by BLM’s Alaska Fire Service. In 2005, CATG sent BLM a letter of interest requesting to negotiate a funding agreement to perform fire-related activities in the Upper Yukon region. CATG proposed to assume these activities under section 403(c). Like Fish & Wildlife before it, the BLM initially resisted on the grounds that fire-fighting activities have no particular significance to CATG and its member tribes. CATG eventually was able to convince the agency that fires are part of the natural resource system in which subsistence and other cultural patterns are embedded.

After that initial stumbling block, the first meetings were encouraging: The BLM agreed that collaboration could result in significant improvements for fire management in the region. When it came time to actually identify the funding to be trans-

³ 25 U.S.C. § 458cc(c).

ferred, however, the BLM rejected CATG's proposed administrative budget. CATG had no negotiating leverage under the current Title IV: BLM staff kept reminding CATG during the negotiations process that the law allowed but did not require them to enter an agreement, and the agency was free to simply walk away at any time.

Rather than accept the full scope of work that it had initially proposed with no funds for administrative support—a recipe for failure—CATG ultimately agreed to a much narrower scope limited to fire crew training and certification for the 2006 fire season. The funding agreement was signed by the parties on December 15, 2005. Giving Congress 90 days for review, as required by the current Title IV, the agreement should have been final and funds ready to distribute by March 15, 2006. But the BLM did not submit the agreement to Congress until March, or close to three months after the agreement was signed by the parties, resulting in additional delays. By the time the AFA was approved, it was too late in the season for CATG to train crews effectively, and the work actually carried out was limited to observing BLM pack tests and refresher courses.

When CATG proposed to restore the original scope of work for the following year, 2007, the BLM did not even come to the table to negotiate a Title IV agreement, but proposed a take-it-or-leave-it \$4,000 contract. This year, CATG once again has written the BLM proposing negotiations on a full range of fire management activities for 2008, but BLM has yet to even respond to CATG's correspondence. Under existing Title IV authorities CATG has no real option to place pressure on BLM to even meaningfully sit down and negotiate over these programs.

Conclusion

These two stories illustrate the potential benefits of the self-governance program as well as some of the problems inherent in the existing statute.

CATG's experience with USFWS illustrates how the program can effectively address the interests of the United States and the tribal governments in the YFNWR. On the other hand, CATG's experience with BLM illustrates some real problems with the current Title IV statute: The discretionary provisions for assuming non-BIA functions place unlimited discretion in the hands of federal agency officials who may not have any interest in implementing Congress' policy of self-governance to decide for themselves if they want to collaborate with a tribal organization like CATG. The simple fact is that CATG's experience with the BLM makes clear that the discretionary provisions in the existing Title IV statute need to be amended to fulfill Congress' and tribes' visions of how the self-governance program should be implemented by non-BIA Agencies.

The non-BIA provisions in H.R. 3994 would have significantly changed the entire dynamic in the CATG-USFWS and BLM negotiations in several key ways:

- Proposed 405(b)(2)(A) provides that non-BIA Interior agencies "shall" enter funding agreements for "those programs with respect to which Indian tribes or Indians are primary or significant beneficiaries." While there will always be funding and other issues to hash through, the agency could not simply walk away, as both the USFWS and BLM threatened to do.
- H.R. 3994 would also amend Title IV to add crucial timing provisions to prevent agencies from dragging out negotiations indefinitely, as BLM has done in the past three years. In the event the parties cannot reach agreement, the new section 407(c)(1) would allow tribes to submit a "final offer" to which the agency must respond within 45 days, or the offer is deemed approved. The same section clearly states the reasons for which a final offer can be rejected, and sets forth the appeal process. These provisions, substantially identical to those in Title V, the IHS self-governance statute, are lacking in the current Title IV, giving Interior agencies no incentive to continue negotiating and no consequences for failing to do so.
- Finally, H.R. 3994 eliminates the 90-day congressional review requirement. This requirement has not served a meaningful oversight function, but it did result in delays and is an additional means non-BIA Interior agencies can use to stall implementation of an agreement.

In sum, CATG's experience provides a good example of what tribal self-governance can accomplish with both BIA programs and with non-BIA programs within the Department of Interior. Unfortunately, the current Title IV makes our experience with the BLM fire management project the norm, and our successful collaboration with Fish & Wildlife the exception. We respectfully request the Committee's support for H.R. 3994, so that more Tribes—and more agencies within Interior—can benefit from the Self-Governance Program

Thank you.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Yukon Flats National Wildlife Refuge
101 12th Avenue, Room 264
Fairbanks, Alaska 99701-6293



April 6, 2006

IN REPLY REFER TO:

Amy L. Besaw, Director of Honoring Nations
The Harvard Project on American Indian Economic Development
79 John F. Kennedy Street
Cambridge, MA 02138

Dear Ms. Besaw:

I am very pleased to submit a letter of support for the Council of Athabascan Tribal Governments as semifinalist in the "Honoring Nations 2006" award program.

The Yukon Flats National Wildlife Refuge is an 8.6-million acre wildlife refuge located in the interior of Alaska. The Council of Athabascan Tribal Governments (CATG) is a federally-qualified consortium of tribal governments representing 10 predominantly Athabascan Indian villages within or near the boundary of the refuge. In August of 2004, CATG and the U.S. Fish and Wildlife Service, Yukon Flats National Wildlife Refuge, entered into an annual funding agreement under Title IV of the Indian Self-Determination and Education Assistance Act. The one-year \$59,000 agreement provided for the tribes to: 1) conduct an inventory of subsistence wildlife harvests in local villages, 2) assist the Refuge staff with environmental education and outreach in the villages, 3) maintain Fish and Wildlife Service facilities and equipment in Fort Yukon, 4) help locate and survey public access easements within the boundary of the Refuge, and 5) assist the Alaska Department of Fish and Game with an aerial moose survey.

The annual funding agreement with CATG was the first of its kind for the U.S. Fish and Wildlife Service and understandably drew attention from the public. (A summary of public comments received on the draft agreement is available at http://alaska.fws.gov/media/catg/Public_Comments.pdf). The annual funding agreement with CATG has been a positive experience for the Refuge. The agreement has resulted in the Refuge staff spending less time on some traditional activities and more on oversight and collaboration with CATG. However, the increased cooperation has enabled the two parties to work together cooperatively to accomplish needed conservation efforts while improving CATG's capacity.

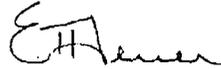
CATG performed the moose survey in cooperation with the Alaska Department of Fish and Game. The subsistence harvest surveys were accomplished fairly and economically. Accurate harvest surveys would be difficult for non-local residents to conduct because of logistical challenges, costs associated with multiple trips to the villages, and lack of trust of outsiders. We believe CATG can provide more accurate subsistence harvest information for less money than the refuge staff could.

Additionally, the Fish and Wildlife Service has benefited from paying CATG to disseminate information about the public access easements to local residents and to assist with the development of a bilingual outreach product. Similar to subsistence wildlife harvest surveys, past education and outreach efforts by

Refuge staff have been somewhat limited by logistical and economic challenges. The proximity of CATG's office to Refuge facilities in Fort Yukon has also enabled CATG employees to be diligent about the maintenance and caretaking of our Fort Yukon facilities. Overall, we have been pleased with CATG's performance and have entered into a successor annual funding agreement with CATG which went into effect in November of 2005.

We believe that our two annual funding agreements with CATG have helped improve our communications with local residents of the Yukon Flats and have helped us both (the Refuge and CATG) improve our management and stewardship of the wonderful natural resources within the Yukon Flats ecosystem.

Sincerely,



Ted Heuer, Refuge Manager

Mr. RAHALL. Thank you, Mr. Stevens. My first question is for Chairman Allen. H.R. 3994 expands the scope of contractible programs, "from those benefitting Indians," to those for which Indians are, "the primary or significant beneficiaries." Which programs will now be contractible because of the expansion to programs in which Indians are the, "primary or significant beneficiaries"?

Mr. ALLEN. Thank you, Mr. Chair. I don't have a comprehensive answer to it. What it allows us as with Parks, and Fish and Wildlife, and BLM and BOR, there are a number of programs that are applicable to the tribes that fit under that criteria. What this bill would do, it will authorize the tribes and strengthen the current provisions in the bill for the tribes to negotiate with the Secretary for those functions.

Some people are alarmists, you know? That means that tribes are going to completely take over a park. It doesn't allow us to do that because there are some inherent Federal functions and there are some activities that we can't take over.

I would say that in each area with respect to the tribes' rights, the nexus with respect to that tribe, whether it is Alaska, or whether it is Oklahoma or anywhere else in Indian country, it allows us to go to those bureaus and negotiate for those functions that actually have a nexus relationship, a cultural significant relationship to the tribe and the tribe's activities, and we can enter in negotiation for those functions that we believe that we should be able to compact.

Mr. RAHALL. Thank you. I appreciate your answering that totally wrong perception that seems to be out there in some peoples' minds that this legislation would cause the Department of the Interior to turn over units of the national parks to Indian tribes because the legislation is explicit in prohibiting the delegation of any inherent Federal function from the Park Service to an Indian tribe. I am glad you answered that.

Mr. ALLEN. If I might add, Mr. Chair, we agree. We have always agreed with that issue. The inherent Federal function is an area where we have been trying to get a clearer definition, and that has

been very challenging between the tribes and Interior, and we have been asking for a clearer definition.

Now, there are other Federal functions that are gray areas, and our view is that those are negotiable. Let us just talk about what we can take over that can be compacted out and/or identify the functions that the Secretary has to retain because of his or her legal obligations.

Mr. RAHALL. Thank you. Let me ask you, your written testimony indicates that participation in self-governance has receded. How many tribes have returned self-governance programs?

Mr. ALLEN. I don't know of any tribe that has actually returned. I don't know of a tribe that has actually retroceded any program at all that I can think of. There may be an example or two out there. There are 234 tribes that are currently compacting functions, A through Z. They have actually been adding and not subtracting.

Mr. RAHALL. Do you know how many tribes may be interested in participating in self-governance because of this legislation?

Mr. ALLEN. There are many tribes that want to actually participate. The problem that this bill will help address is it provides some finality to negotiations. There has been some entrenching by the system in terms of actually identifying the resources that are available to them and that they should be able to negotiate for, activity, or function, et cetera, within each of their respective areas.

So that has been part of the problem is the sincerity of it. That is what this bill would do is it would provide a clear process and a finality to final offers and responses so we can know where we have an impasse.

Mr. RAHALL. Thank you. Ms. Benjamin, let me ask you, in your written testimony you mention that the Clinton administration, the Appropriations Committee and then Secretary Slate Gordon stopped the transfer of the tribal share of central office funds. I am accurate in that?

Ms. BENJAMIN. Yes. Thank you, Mr. Chairman.

Mr. RAHALL. Well, again, my question is what was the administration's and the Congress' rationale for stopping the transfer of the tribal share of central office funds?

Ms. BENJAMIN. Central office claimed it needed tribal shares for BIA management, and so we lost services at our reservation. I think a lot of times the Federal bureaucracies always insist they need our dollars.

Mr. RAHALL. The bill authorizes the transfer of Office of Special Trustee functions. What Office of Special Trustee functions and programs will be eligible for transfer upon enactment of this legislation?

Ms. BENJAMIN. Trust management.

Mr. ALLEN. Well, if I might, Mr. Chair?

Mr. RAHALL. Yes.

Mr. ALLEN. Because many of the functions for trust management, after these got transferred over to OST they developed an argument in Interior that those were more Federal functions because of the Cobell case that they had to actually administer. So essentially what they have done is they have taken those activities, those functions, off the table so that the tribes can't go after those particular programs.

We believe that we can administer them and that they are not inherent Federal functions or they are not even in a gray area that they have to carry out those activities. So we believe that there is quite a few different functions and programs out there that are administered in terms of management, trust resources, management of the individual accounts and so forth that we actually can take over.

Now, some tribes I think have retained some of those functions today, but now it has stopped. Tribes want to continue to go after those programs and believe that we rightfully should be able to administer them.

Mr. RAHALL. Thank you. Lieutenant Governor Keel, let me ask you a question. The bill authorizes tribes to invest funds using the prudent investment standard. Has your tribe invested Title V funds using this standard, and does your tribe use the interest to provide additional services for which the underlying funds were allocated?

Mr. KEEL. Thank you, Mr. Chairman. Under Title V we do engage in what we refer to as third-party billing. Under the authorities that we have we are able to bill for private insurance and third-parties for services that are provided, particularly for Indian healthcare. We in turn utilize that revenue that we receive to improve and expand the level of services that are provided through our health system.

As an example, the amount of money that is received per capita in Oklahoma for Indian healthcare for our citizens is about \$850 per person per capita for the tribal citizens in Oklahoma. We take that revenue, obviously that is the lowest in the country, but we are able to utilize the services or the money, revenue, that we generate through third-party collections and hire additional physicians.

We have changed our healthcare delivery system in Oklahoma in the Chickasaw Nation health system to a family practice model. We operate four outpatient clinics whereby we utilize third-party revenues, and we have hired family practice medical doctors who are Board certified physicians. They in turn supervise the outpatient clinics in the four clinics that we manage.

We have improved the level and quality of services whereas under the old system our patients, our citizens, would not be able to see the same physician sometimes. They would come back, see another physician, or whatever. Under this model they now have a family practice physician who supervises their care.

We have also been able to develop a diabetes treatment clinic which specifically focuses on the treatment of diabetes for all of the Native American patients, not necessarily just Chickasaw. These are not Chickasaw patients, but these are all Native Americans that are identified with diabetes. That frees up a lot of the resources, and particularly time and other available resources, to deal with other lesser ambulatory services.

So the flexibility that we have been able to gain through the third-party revenues, as you mentioned, interest or whatever, that does allow us to improve not only the level but the quality of services that are provided to our people.

Mr. RAHALL. Thank you. Governor Chavarria, let me ask you a question. In your written testimony you indicate that the Department has made over broad determinations of the programs, services, functions and activities that are inherent Federal functions. What types of programs, services, functions and activities has the Department deemed inherent Federal functions in which the tribe disagreed and which would be eligible for compacting under the legislation?

Mr. CHAVARRIA. Panel, you are going to have to help me out on this one here. Ron? I think one of the things that we are looking at on that program, function, services, we are looking at what is actually eligible and actually helping us define the inherent Federal functions to determine what can a tribe then compact?

Because right now that is a gray area for us is what is actually inherent Federal function that is eligible to be compacted for Santa Clara Pueblo to then perform our duties on behalf of our constituents there in Pueblo country. I think that with that provision that is going to help us then determine what is going to better be compactable for us in Santa Clara and leave the other obligations with the Secretary.

Mr. RAHALL. OK. Let me ask my final question, Mr. Stevens. H.R. 3994 mandates that non-BIA agencies within the Department of Interior enter into funding agreements for, "programs with respect to which Indian tribes or Indians are primary or significant beneficiaries." My question is given this mandate, what options does the Department have to reject a situation where a tribe is truly not capable of performing the duties required of the program?

Mr. STEVENS. What options would the Department have?

Mr. RAHALL. To reject a situation where a tribe is truly not capable of performing the duties required of the program?

Mr. STEVENS. I am not really sure how to answer that. Mr. Allen, can you help me there?

Mr. ALLEN. Yes. Mr. Chair, these are discretionary programs, and so the Secretary in negotiating for the activity or function that the tribe is negotiating for, Secretary has the authority to identify or ask the tribe to identify its capability to administer that program.

In its discretion, that is retaining the Secretary's discretion, he or she can say that in their judgment that the tribe has not exhibited the capacity, the accountability and the capability to administer that particular program or activity, and they can decline the proposal, the proposed compact activity that the tribe is asking for. So that will be in their declination.

Right now they are not required to even do that, and so we want them to in their declination to basically show us why you believe that we don't have the capacity so that we have the ability to go back and say no, we do have the ability. So that is where the Secretary retains the discretion, and all we are looking for is the identification of that issue.

If I might add, you know, in Mr. Keel's answer to the investment, the interest, when we get the money in a lump sum we do put it in and invest it, and we get interest. What you will notice, in every one of our programs that we are completely underfunded. We have made this case to Congress many a time.

So what we do is when we generate additional revenues from the investment we can show you categorically that money goes back into those programs basically to address what we call unmet need. So it wouldn't matter whether it is healthcare, which happens in IHS, or if it is a small amount of money that we can generate on the DOI, BIA programs, so it is an investment.

To even make the case even stronger, categorically you will see that the tribes add dollars, their own dollars, to that program so that it functions even better.

Mr. RAHALL. Thank you. Yes, sir?

Mr. KEEL. Mr. Chairman, in addition to the answer that has already been provided, I believe that in the bill itself there is a requirement for a planning phase for each tribe to go to be undertaken. In that planning phase the determination would be made whether or not the tribe would be capable of undertaking a particular program or not.

That determination would then be made not only by the Secretary but by the tribe. It would be a joint effort. That truly comes back to the government-to-government relationship where the determinations are made not unilaterally but jointly to determine whether or not a tribe could assume or not assume, or whether or not they would prefer to assume either in whole or in part some of those programs.

Mr. RAHALL. Thank you. Anybody else wish to comment on the question or any of the questions? Yes, sir?

Mr. ALLEN. Just one final comment, Mr. Chair. We work really hard with Interior, and we want to compliment Interior in terms of working with the tribe to try to bring a proposed bill to you that has worked out the majority of the issues. We believe that we have done a good job, and we are really appreciative of the Interior actually stepping up with their personnel to work out the majority of the issues.

There were a lot more a few years back. This has been about a three year process in developing the bill to where it is. Just like Title V you are going to get basically 90, 95 percent of the issues resolved, and we are just going to make our pitch to you, here is what they believe is what they want in a bill, and here is what we believe what we want, and then we ask you to basically make the decision.

That is what happened in Title V. In Title V Congress sided with the tribes, and we have shown in the last seven years of experience that it works. So we have a difference of opinion, and that is going to happen. We just can't resolve all issues in negotiation and ask the Congress to basically make the decision.

Mr. RAHALL. Appreciate it. Thank you. Thank you all for being here today. Again, the Chair wants to thank the Assistant Deputy Secretary, Mr. Cason, for staying with us during the entire hearing this morning. Thank you. the Committee will stand adjourned.

[Whereupon, at 11:45 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by The Honorable Clifford Lyle Marshall, Chairman, Hoopa Valley Tribe, follows:]

**Statement submitted for the record by Chairman Clifford Lyle Marshall,
Hoopa Valley Tribe**

Chairman Rahall and Members of the Committee, my name is Clifford Lyle Marshall. I am the Chairman of the Hoopa Valley Tribe, a federally recognized Indian Tribe whose life and culture depend on the fishery resources of the Klamath River Basin (which includes the Trinity River as the largest tributary of the Klamath River). I offer these written comments in support of H.R. 3994, Tribal Self-Governance Act of 2007, a bill to amend the Indian Self Determination and Education Assistance Act (ISDEAA) to enable tribes to contract to perform activities that might otherwise be performed by various agencies of the U.S. Department of the Interior.

Tribal contracting abilities can be used either directly, as a lever to improve deliveries of services and to reduce federal bureaucracy, or as a mechanism to incorporate tribal input in the management of trust resources and assets. I draw your attention in particular to section 405(b)(2)(B) of H.R. 3994 that would enable Indian tribes to contract to perform programs, or portions thereof, that "restore, maintain or preserve a resource (for example, fisheries, wildlife, water, or minerals) in which an Indian tribe has a federally reserved right, as quantified by a Federal court." Because of the wealth of experience reflected in the Hoopa Valley Tribe's departments and staff, we believe that this provision would improve environmental protection and resource management to the benefit of the Tribe and the United States. Resources and ecosystems elsewhere would also benefit from enhanced tribal management capacity. I focus my written testimony on this section of the proposed legislation.

A. Hoopa Valley Tribe's Reliance on the Fishery

The Hoopa Valley Tribe, the Hupa people, and the Klamath/ Trinity Rivers stand to directly benefit from the passage of H.R. 3994.

The Trinity River, which is located in northwestern California, once contained thriving salmon runs. The lower 12 miles of the Trinity River flow through the Hoopa Valley Reservation, which extends six miles to either side of the river. The impressive fish stocks defined the life and culture of the Hoopa Valley and Yurok Indian Tribes. As described by the Interior Department Solicitor in 1993, a primary purpose for establishing the reservations of the Hoopa Valley and Yurok Tribes along the Trinity and Lower Klamath Rivers, respectively, "was to secure to these Indians the access and right to fish without interference from others" in order to preserve and protect their right to maintain a self sufficient livelihood from the abundance provided by the rivers. Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Tribe. The fishery resources of the Trinity River and Lower Klamath River Basins have been characterized as "not much less necessary to the existence of the Indians than the atmosphere they breathe." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981).

As the U.S. District Court for the Northern District of California has noted:

[T]o modern Indians of the Hoopa Valley Reservation, fishing remains a way of life, not only consistent with traditional Indian customs, but also as an eminently practical means of survival in an area which lacks the broad industrial or commercial base which is required to provide its population, Indian or otherwise with predictable, full time employment and income adequate to provide sufficient quantities and qualities of the necessities of life.

United States v. Wilson, 611 F. Supp. 813, 818 n.5 (N.D. Cal. 1985), rev'd on other grounds sub nom., *United States v. Eberhardt*, 789 F.2d 1354 (9th Cir. 1986). As a result, "the [Hoopa Valley and Yurok] tribes are entitled to a sufficient quantity of fish to support a moderate standard of living, or 50% of the Klamath fishery harvest in any given year, whichever is less." Memorandum from John D. Leshy, Solicitor of the Department of the Interior to the Secretary of the Interior 3, 15, 18-21 (Oct. 4, 1993), cited with approval, *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996).

The quantification of the Tribe's fishing right, as recognized by the Solicitor's Office and affirmed by the Federal courts, creates a protectable property right in a share of harvestable fish and the water necessary to make those fish productive, which are reserved by federal law. See, e.g., Central Valley Project Improvement Act Pub. L. 102-75, § 3406(b)(23), 106 Stat. 4714, 4720 (expressly identifies fulfilling the

federal trust responsibility to restore and enhance the fishery resources of the Hoopa Valley Tribe). These tribal rights provide strong tools to compel federal, state and private actors to halt damaging activities. See *United States v. Washington*, 2007 WL 2437166 (W.D. Wash. 2007) treaty requires State not block spawning areas). The Tribe is actively involved in water allocation issues and fishery protection in the Klamath and Trinity River Basins. However, what the Tribe can do is limited by access to funds. The proper management of the Tribe's fishery resources by the Bureau of Reclamation (Reclamation) is no less important to our future and rights than any other program presently included in the BIA's budget. Unfortunately, the mere fact that our fishery resources are being managed by the Reclamation, because it is the manager of the Central Valley Water Project, has been viewed by the Department of the Interior as a reason to prevent and complicate contracting its programs with the Tribe. In the Department's view, even programs that exist because of the United States' trust responsibilities to restore and maintain the fishery resources that are intended for the Tribe are discretionary under the present Self-Governance provisions of the ISDEAA. As explained below, if passed, H.R. 3994 will make it possible for the Tribe to contract to perform activities directly that might otherwise be performed by various agencies of the Interior Department thereby benefiting the Tribe and the resource.

B. Importance of H.R. 3994

Section 405(b)(2)(A) provides an important recognition of purposes of Title IV of the Indian Self Determination and Education Assistance Act ("ISDEAA") and a critical expansion of the ability of tribes to contract for programs that benefit both Indians and non-Indians. H.R. 3994 would amend Title IV to provide a new section 405(b)(2) that provides that "a funding agreement shall...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" that are for the benefit of Indians because of their status as Indians or that are programs with respect to which Indian tribes are "primary or significant beneficiaries." Allowing tribes to contract for programs that benefit both Indian and non-Indian beneficiaries addresses one of the major practical and legal hurdles tribes face in obtaining contract funding for significant tribal programs.

The existing language in the ISDEAA is interpreted by the Department as giving the Secretary absolute and unbridled discretion to manage non-Bureau of Indian Affairs (BIA) trust programs in manners that create significant financial burdens on the Tribe. For example, the Department is not required to execute funding agreements with the Tribe in any specific timeframe, allowing for unnecessary and detrimental bureaucratic delays. The trust fishery resources, however, do not comply with the same bureaucratic delays in their life cycles. Since the Tribe entered into its first funding agreement with the Reclamation in 1993, the Tribe has had to advance in no-interest loans over \$11 million to carry out programs associated with the Trinity River Restoration Program because the activity needed to be performed before the contract was finally approved. The Tribe has documented that at times its contracts have not been approved until after the eighth, sometimes even the eleventh month, of a fiscal year. Every one of these programs which are funded by the Tribe has direct benefits to non-Indians as well as Indians. Attached is a table demonstrating the timing of funding agreements between the Tribe and Reclamation since 1993 until 2005.

Besides creating a significant financial burden for the Tribe, delays in executing contracts have also created administrative, programmatic and staffing nightmares for the Tribe. For example, funding non-interest advances for carrying out Trinity River Restoration programs has caused internal problems under our budget deficit controls set forth in the Tribe's Budget Ordinance. Our Fisheries Department staff has had to create budget "enterprise" accounts under the Tribe's budget which allow the Tribe to carry out deficit spending until Reclamation finally approves the contract. In FY 2006, the Tribe's contract with Reclamation was not completed until September—the eleventh month of the fiscal year. After the Reclamation contract is finally approved, the Tribal Fiscal and Fisheries staff are required to reconstruct the entire year's spending to transfer budget expenses from the enterprise deficit account to the Reclamation contract budgets. From the programmatic and staffing perspectives, our Tribal Government is never sure what expenses and costs are really going to be budgeted for and reimbursed by Reclamation's contracts. In some cases, Reclamation has made adjustments to budgets after the Tribe has performed a fishery management activity and has disallowed costs even though they were agreed to in previous years.

The Tribe believes strongly that these problems stem from the vague and overly discretionary interpretations of the existing ISDEAA. The Department of the

Interior has often argued that creating mandatory contract requirements for non-BIA programs will create problems in carrying out programs that benefit non-Indians. However, the Department has never explained how non-Indians are benefited by Reclamation's funding remaining in the U.S. Treasury for most of the fiscal year while their fishery management activities are being carried out using non-interest loan funds provided by the Tribe.

There are clear inconsistencies between the Department's application of unbridled discretion in carrying out the Trinity River Restoration Program and recurring delays in executing contracts with the Tribe. Even the Courts have been clear about the United States' trust obligations to effectively carry out the Trinity River Restoration Program. In August 2004, the 9th Circuit Court of Appeals ruled in the Tribe's favor and against the Central Valley Project (CVP) contractors. The Court stated:

The number and length of the studies on the Trinity River, including the EIS, are staggering, and bear evidence of the years of thorough scrutiny given by the federal agencies to the question of how best to rehabilitate the Trinity River fishery without unduly compromising the interests of others who have claim on Trinity River water. We acknowledge, as the district court highlighted, concerns that the federal agencies actively subverted the NEPA process, but our review of the EIS shows that the public had adequate opportunity to demand full discussion of issues of concern.

Twenty years have passed since Congress passed the first major Act calling for restoration of the Trinity River and rehabilitation of its fish populations, and almost another decade has elapsed since Congress set a minimum flow level for the River to force rehabilitative action. Flow increases to the River have been under study by the Department of the Interior since 1981. "[R]estoration of the Trinity River fishery, and the ESA-listed species that inhabit it...are unlawfully long overdue.

As we have disposed of all of the issues ordered to be considered in the SEIS, nothing remains to prevent the full implementation of the ROD, including its complete flow plan for the Trinity River. We remand to the district court for further proceedings not inconsistent with this opinion.

Westlands Water District v. U.S. Dept. of Int., 376 F.3d 853, 878 (9th Cir. 2004). Clearly, the Department's consistent failures to carry out the ISDEAA's Self-Governance contract requirements in a timely and proper manner are in direct conflict with these legal mandates. The source of this abuse of discretion is the ambiguous and vague language of the existing ISDEAA, which is intended to be addressed by the non-BIA provisions contained in H.R. 3994.

The existing system does not work. An example of the importance of this bill is the administration of Trinity River restoration activities under the Interior Secretary's Record of Decision of December 2000 ("ROD"). The ROD was adopted to carry out the Secretary's responsibility to restore and protect Hoopa tribal fish resources as mandated by Congress in Pub. L. 102-575, § 3406(b)(23), 106 Stat. 4720 (Oct. 30, 1992). Despite the express Congressional recognition of trust responsibility and the purpose to protect tribal fisheries, the Department of the Interior agencies handling Trinity restoration work have denied the Hoopa Valley Tribe's right to carry out or manage specific restoration activities. The Tribe challenged this action, but the Ninth Circuit Court of Appeals affirmed the district court's decision that the Tribe could not contract specific services because the Tribe was not the sole intended beneficiary of the restoration program. *Hoopa Valley Tribe v. Ryan*, 415 F.3d 986 (9th Cir. 2005). Rejecting the Tribe's proposal to contract particular programs, functions, services, and activities to implement Congressionally mandated restoration of the Trinity River and the Trinity fishery meant that, even though the Department of Interior and the Federal courts have affirmed the Tribe's right to 50% of the harvestable fish of the Trinity River system, the Tribe could not contract to provide a significant portion of the river and fishery restoration work. This result is counter-intuitive and most certainly contrary to the needs of the resource.

Without the provisions of H.R. 3994, the Tribe remains unable to include those activities in its self-governance compact. The Tribe's work and Congress's directive created these programs. Interior's management of the programs jeopardizes them and makes successful restoration elusive.

In stark contrast, enabling tribes to contract for non-BIA administered programs that affect "quantified rights" will serve many positives. H.R. 3994 will promote efficiency by allowing tribal leaders and staff familiar with the resource and local conditions to make more informed management decisions that could also save on costs. By placing tribes in decision making positions with respect to their own "quantified rights," H.R. 3994 will vest tribes with the information and resources necessary for enhanced stewardship of our resources. Most importantly, H.R. 3994 affirms tribal

sovereignty by shifting federal functions to local control and enabling tribes to decide for themselves how best to manage these critical resources.

A bedrock principle of the ISDEAA was that prolonged federal domination of Indian service programs and programs benefiting Indians had retarded, rather than enhanced, the progress of Indian people. Worse, federal program administration has failed to protect resources. Where an Interior Department program directly affects tribal reserved rights such as fisheries, wildlife, water or minerals, the experience of the past 30 years has demonstrated the importance and the benefits of permitting tribes to carry out the services. Indian tribes have a proven track record of protecting these vital resources.

Congress is committed to "the establishment of a meaningful Indian self determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning conduct and administration of those programs and services." 25 U.S.C. § 450a(b). Both the plain language of § 450(a)(1)(E) and the underlying policy declared in § 450a(b) compel the conclusion that H.R. 3994 makes a reality by expanding the universe of contractible programs available to Indian tribes. As such, H.R. 3994 helps end the "Federal domination of Indian service programs," 25 U.S.C. § 450, that Congress sought to eliminate through the ISDEAA.

Congressional, administrative and judicial records have all demonstrated the importance of the fishery resources of the Klamath and Trinity Rivers to the health and well being of the Hoopa Valley Tribe. Even the Bureau of Reclamation cannot overlook the influence that the fishery resources has on the future economic well-being and livelihood of the Hupa people. The Tribe urges you to favorably recommend this legislation for passage by the House.

Thank you for your consideration of our testimony. If you have any questions, please contact me at the Hoopa Valley Tribal Office.

**Hoopa Valley Tribe
Tribal Advances to Bureau of Reclamation Activities**

Year	BOR funding codes	Date Tribe advanced funds for BOR activities prior to approval of agreement	Amount of advance
1992			TBD
1993			TBD
1994			TBD
1995	285	3/7/95	\$228,142
1996	286	8/2/96	\$413,359
1997	287	5/1/97	\$913,978
1998	288	8/4/98	\$638,822
1999	289	7/19/99	\$861,585
2000	290	9/13/00	\$778,847
2001	291	8/6/01	\$1,250,548
2002	292	9/12/02	\$1,116,551
2003	293	5/21/03	\$1,113,680
2004	294	7/16/04	\$1,190,612
2005	295	3/17/05	\$747,914
TOTAL			\$9,254,038

[A statement submitted for the record by The Honorable Chad Smith, Principal Chief, Cherokee Nation, follows:]



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 Chad "Comtassel" Smith
 Principal Chief
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 Joe Grayson, Jr.
 Deputy Principal Chief

November 9, 2007

The Honorable Nick Rahall, Chairman
 House Committee on Natural Resources
 United States House of Representatives
 140 Cannon House Office Building
 Washington, D.C. 20515
 Facsimile: (202) 225-1931

RE: H.R. 3994 'Department of the Interior Self-Governance Act of 2007'

Dear Chairman Rahall:

On behalf of the Cherokee Nation, I am writing to request the Natural Resource Committee accept my written testimony in support of H. R. 3994, a bill to strengthen Indian nations opportunities for Self-Governance by amending Title IV of the Indian Self-Determination and Education Assistance Act (P.L., 93-638) as part of the record relating to the hearing conducted Thursday, November 8, 2007. I want to thank you for convening this hearing and introducing this important legislation.

With legislative policies like H.R. 3994, Congress has taken a pertinent step to reestablish bilateral relations with Indian Nations and to continue the restoration of the tribal right of self-determination. Historically, the United States Constitution recognizes Indian nations as governments and hundreds of treaties, federal laws and court cases have reaffirmed that Indian nations retain the inherent powers to govern themselves. Since the passage of the Indian Self-Determination and Education Assistance Act in 1975, ISDEA has made possible the administering of programs and services formerly administered by the Bureau of Indian Affairs and the Indian Health Service on behalf of their people. This law was amended in 1988 and in 1994 to broaden the scope of Self-Governance and tribes began to negotiate Self-Governance agreements with the federal government to reflect their distinctive cultural, political, and economic rights that continue to encourage greater political independence of tribes. In 2000, Congress enacted further amendments authorizing Self-Governance as a permanent option for Indian Health Service.

The Cherokee Nation was among the first ten Self-Governance nations and has experienced great success designing and delivering services based upon the specific needs and priorities of our citizens. We are able to take meaningful control of programs exclusively affecting us, rather than basing our outreach and community sustainability upon broad federal priorities. This policy is moving toward a culturally appropriate

application of tribal empowerment and allows enough flexibility to recognize the specific concerns of numerous Indian Nations that vary widely from community to community across the United States.

The successes of Self-Governance nations are due, in part, to Tribal governments local control of service delivery, flexibility of resources, community partnership development and their collaboration with other local governments. It is fueled by the overall ability of a people to govern themselves and thereby control their destiny.

However, there are obstacles that still remain in order for Self-Governance to reach its full potential. The proposed tribal amendments to Title IV of the Indian Self-Determination and Education Assistance Act have been drafted to fulfill several important purposes:

- (1) 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);
- (2) to clarify statutory requirements governing construction-related matters; and
- (3) to clarify the terms for the assumption and administration of non-BIA programs.

While the Cherokee Nation is supportive of the proposed bill as introduced, we have concerns regarding section 405(e) existing and subsequent funding agreements. It has been the experience of Cherokee Nation that an inequity in negotiation power has existed between the parties, due in large part, to the Department of Interior's ability to withhold payment if the Nation does not agree to the terms of the Department. In recent years, the reality of discussions has been "agree to the terms, or don't get paid." Conversely, under negotiations with the Indian Health Service, funds due to the Nation continue to be paid under *Title V Section 505 (e) Subsequent Funding Agreements*. This allows for the parties to concentrate on reaching compromise on the issues and for true negotiations to occur. **It is imperative to the furtherance of Self-Governance that the same provision and interpretation afforded under Title V with Indian Health Service be extended to the Bureau of Indian Affairs under these amendments.**

Thank you for introducing this important legislation and I appreciate your time in reviewing this request. Should you require additional information, I encourage you to contact Cherokee Nation's Senior Legislative Officer, Paula Ragsdale, at (202) 393-7007. Again, thank you for your work on behalf of the Cherokee people and your continued support in Indian Country.

Sincerely,



Chad Smith
Principal Chief
Cherokee Nation