

**H.R. 4347, DEPARTMENT OF
THE INTERIOR TRIBAL
SELF-GOVERNANCE ACT OF 2009**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

Wednesday, June 9, 2010

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**LEGISLATIVE HEARING ON H.R. 4347, TO
AMEND THE INDIAN SELF-DETERMINATION
AND EDUCATION ASSISTANCE ACT TO PRO-
VIDE FURTHER SELF-GOVERNANCE BY
INDIAN TRIBES, AND FOR OTHER PUR-
POSES. "DEPARTMENT OF THE INTERIOR
TRIBAL SELF-GOVERNANCE ACT OF 2009."**

**Wednesday, June 9, 2010
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 10:00 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Napolitano, Boren, Herseth Sandlin, Lujan, Hastings, Young, Lummis, Baca, Sablan and Smith of Nebraska.

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

The CHAIRMAN. The Committee on Natural Resources will come to order. The Committee is meeting today to conduct a hearing on H.R. 4347, the Department of the Interior Tribal Self-Governance Act of 2009, sponsored by the gentleman from Oklahoma and a valued Member of our Committee on Natural Resources, Mr. Dan Boren. Under self-governance, Indian tribes assume the duties of the Federal Government for certain programs within the Department of the Interior and the Department of Health and Human Services. This has been hailed as one of the most successful Federal programs for Indian tribes.

The Government Accountability Office has noted that tribes engaging in self-governance have greater gains in employment levels compared to tribes that participate less in the program. In addition, self-governance tribes have experienced positive growth and employment levels and per capita income. Congress made changes to the self-governance program at the Department of Health and Human Services in 2000. Since then, Indian tribes have experienced improvements in administration of self-governance within the Indian Health Service. The bill before us today would amend the Department of the Interior Self-Governance Program to make

it consistent with the self-governance program at the Department of Health and Human Services.

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. Again, I want to commend our colleague from Oklahoma, Mr. Boren, for his valuable leadership and his advice to our Committee on so many issues of importance to Indian tribes, and welcome his participation today. I recognize the Ranking Member.

[The prepared statement of Chairman Rahall follows:]

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

The Committee is meeting today to conduct a hearing on H.R. 4347, the "Department of the Interior Tribal Self-Governance Act of 2009," sponsored by the gentleman from Oklahoma, Dan Boren.

Under self-governance, Indian tribes assume the duties of the Federal government for certain programs within the Department of the Interior and the Department of Health and Human Services. This has been hailed as one of the most successful federal programs for Indian tribes.

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I look forward to hearing the testimony this morning.

**STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you, Mr. Chairman, and thank you for scheduling this hearing on the Department of the Interior Self-Governance Act of 2009. This legislation builds upon a policy of promoting tribal self-determination that was initiated, at least in the modern era, by President Richard Nixon in his Special Message on Indian Affairs dated July 8, 1970. While the principle of tribal self-determination is a simple one, H.R. 4347 is quite lengthy and complex. Three years ago, the Committee held a hearing on a similar version of the bill and, at that time, the Department of the Interior raised a number of institutional, as well as constitutional, concerns with the proposal. It is my understanding that H.R. 4347 is somewhat scaled back compared to that version. I look forward to hearing the analyses of today's witnesses as we explore the means of maximizing the freedom of tribes to improve the lives of their members. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes another valued Member of our Committee, the gentleman from Michigan who is Co-Chair of the Native American Caucus in the Congress, Mr. Dale Kildee.

**STATEMENT OF THE HON. DALE KILDEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. KILDEE. Thank you very much, Mr. Chairman. I would like to applaud this Administration's willingness and openness in working with Congress and tribes on this legislation. The Administration still has questions concerning the legislation, but they have demonstrated their desire to work on a compromise. This is a vast improvement from previous administrations who were flat out opposed to any changes in tribal self-governance. I look forward to working with you, Mr. Chairman, and your counterpart, Doc, who is a dear friend also, and hopefully we can resolve this and bring it to a closure and send a good bill over to the White House. Thank you.

The CHAIRMAN. Thank you. I now recognize the gentleman from Oklahoma, Mr. Boren.

**STATEMENT OF THE HON. DAN BOREN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. BOREN. Thank you, Mr. Chairman. I want to thank you and the Ranking Member for holding this hearing and for the consideration of this legislation. You know, my district encompasses the jurisdictional areas of 17 of Oklahoma's 38 Federally recognized tribes, the majority of which are self-governance tribes, and all of them have tremendous positive impacts on their communities, so naturally, when an issue that so closely affects Oklahoma tribes comes and falls into my lap, we sit up and pay attention. This was the case with the issue of tribal self-governance. The premise of this initiative is simple.

It relates specifically to two core principles: (1) tribal sovereignty and the right of tribal nations to control their own destinies; and (2) the enormous rewards that come from allowing local control over local programs. The self-governance approach was born in the late 1980s upon the revelation that only about a penny—I can't believe this—about a penny on the dollar of Federal money appropriated for the benefit of Indians actually made it out of the bureaucracy and into Indian Country. This statistic was even more disturbing when compared with the woeful social and economic disparities that exist for Native Americans compared to any other demographic, a sad statistic that is still very true today.

So tribes approached Congress and sought out a way to give Indian Country more control about where and how scarce Federal dollars were to be spent for their benefit. The result was a myriad of well-intentioned approaches that culminated eventually in 1994 with the birth of Title IV of the Indian Self-Determination and Education Assistance Act. Title IV empowered tribes at their choosing to be able to have control necessary to maximize the services of their people, and the results speak for themselves. To quote the late Cherokee Nation Chief, Wilma Mankiller, she said "The success of self-governance has been nothing short of astounding."

Through the years of rulemaking and implementation, we learned volumes about what works and what doesn't work, so when Congress came back years later to apply the same model to the Indian Health Service, which is Title V, many improvements were made. The result was a much more mature and efficient self-

governance program at IHS, but those improvements we have seen work so well at IHS have yet to make it into the Title IV BIA program. My bill, H.R. 4347, simply tries to bring parity between the two self-governance programs. Additionally, my office was approached with concerns for tribes who may opt for direct service instead of self-governance but still utilize Title I contracting authority for individual projects who also highlighted needs for improvements, so H.R. 4347 also includes updates to Title I intended in the same spirit of improving the clarity and efficiency of the programs intended for the benefit of Native Americans.

So many of us on the Committee come here and advocate that our citizens know best what the needs are of their own communities. It is the same for tribal nations. Respecting that view is fundamental to the concept of tribal sovereignty and what this legislation is all about. Tackling a project is complicated. I can tell you it has been a challenge for me, particularly, and I know it has been for my staff. I want to personally thank Wendy Kirchoff. That was not in my prepared remarks. I want to thank you so much for all that you have done. She has been a real trooper on this. Also, the entire Committee staff and all of the tribes involved and the Administration. We would not be here today without your diligent work. Again, I want to thank Chairman Rahall. I look forward to the testimony of our witnesses. I yield back.

The CHAIRMAN. Thank you, Mr. Boren. The gentleman from Virginia, Mr. Wittman. OK. All right. We are ready for our first panel which is composed of Ms. Laura Davis, Associate Deputy Assistant Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. She is accompanied by Mr. George Skibine, the Acting Principal Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior, Washington, and Mr. John Rever, Director, Office of Facilities, Environment and Cultural Resources, U.S. Department of the Interior. Laura, we welcome you to the Committee once again. We have your prepared testimony. You may proceed as you wish.

STATEMENT OF LAURA DAVIS, ASSOCIATE DEPUTY ASSISTANT SECRETARY OF THE INTERIOR, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.; ACCOMPANIED BY MR. GEORGE SKIBINE, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C., AND MR. JOHN REVER, DIRECTOR, OFFICE OF FACILITIES, ENVIRONMENT AND CULTURAL RESOURCES, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON D.C.

Ms. DAVIS. Thank you, sir. Good morning, Chairman Rahall, Ranking Member Hastings and Members of the Committee. Thank you very much for the opportunity to appear before you today to discuss the Department of the Interior's Tribal Self-Governance Program and H.R. 4347, the Department of the Interior Tribal Self-Governance Act. President Obama recognizes that Federally recognized Indian tribes are sovereign, self-governing political entities that enjoy a government-to-government relationship with the United States Government, as expressly recognized in the U.S. Constitution.

During the opening remarks delivered by the President at the Tribal Nations Conference at the Department of the Interior on November 5, 2009, the President affirmed that he is “Absolutely committed to moving forward with tribes and forging a new and better future together. It is a commitment that is deeper than our unique nation to nation relationship. It is a commitment to getting this relationship right so that you can be full partners in the American economy, and so your children and your grandchildren can have an equal shot at pursuing the American dream.” Secretary Salazar, too, is a strong supporter of the principle of tribal self-determination, and he is committed to working to fully enable tribal self-governance.

We believe that Indian leadership is critical in facing and solving the problems of today and that Indians must have a voice in programs and government efforts which are important to their lives. I want to begin by underscoring that the Department of the Interior supports the Indian Self-Determination and Education Assistance Act. We really appreciate the ways that the compacts under this Act have helped to strengthen the government-to-government relationship with tribes. We support appropriate strengthening of the existing Act to make it work better for the Federal Government and for tribes. We know that self-governance tribes have been good managers of the programs they have undertaken.

Many times tribes add their own resources to the programs and they are able to fashion programs to meet the particular needs of their tribal members. Tribes are also better suited to address the changing needs of their members. Our support for the principles of self-determination and self-governance is unequivocal, but H.R. 4347 as currently drafted poses practical and legal problems with regard to appropriate management of Federal funding and programs. Thus, the Department does have significant concerns with the bill as drafted. The legislation deals not only with funding agreements between tribes and BIA, but also funding agreements between tribes and non-BIA bureau programs within Interior that have both Indian and non-Indian stakeholders.

We are interested in discussing with you and tribes how to improve and increase the frequency of these important agreements, but under this legislation as drafted, the ability of the Secretary is limited to maintain appropriate levels of control over the programs that would be subject to self-governance contracting. Given the breadth of the Department’s responsibilities, we are concerned that the legislation could hinder the Department’s ability to accomplish its statutory mandates by limiting Secretarial discretion in some areas and allowing for the transfer of certain functions that we believe should appropriately be maintained at the Federal level.

For example, provisions allowing redesign and consolidation of projects appear to give tribes the ability to unilaterally change construction project design, and, as you know, construction projects may be subject to very specific authorizations and the Secretary needs to retain an appropriate level of oversight to ensure that it is carried out in accordance with that authorization.

We are also concerned about the mandatory demonstration projects identified in Section 405[b][2] of Title II. We are concerned that the legislation doesn’t include measures for success for these

projects, and there are already many examples of successful operation of self-governance programs, so we question the need for inclusion of these particular projects as mandatory demonstration projects.

For broader context, I would like to provide some examples of successes the Department has had under the current act. The Chickasaw Nation is a great example. The tribe very successfully directly administers education, law enforcement, Court and career services under self-governance. The Bureau of Reclamation has had successes under the current law. In Fiscal Year 2009 they had five annual funding agreements with five tribes totaling about \$67 million, including Recovery Act funds. So we feel strongly we have had good success in implementing these important programs with tribes under the current act.

Let me just say again, while we have concerns with the legislation as introduced, we very much want to work with the Committee and with tribes on expanding compacting opportunities, we want to work with you on this legislation, we want to improve our program. I also want to reiterate the Administration's commitment to restoring the integrity of the government-to-government relationship with Indian tribes. Mr. Chairman, this concludes my oral statement, and I will be happy to answer any questions that you may have. Thank you very much.

[The prepared statement of Ms. Davis follows:]

**Statement of Laura Davis, Associate Deputy Secretary,
U.S. Department of the Interior**

Good morning, Chairman Rahall, Ranking Member Hastings, and Members of the Committee. Thank you for the opportunity to appear before you today to discuss the Department of the Interior's Tribal Self Governance program and H.R. 4347, the Department of the Interior Tribal Self-Governance Act. President Obama recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that enjoy a government-to-government relationship with the United States government, as expressly recognized in the U.S. Constitution. Secretary Salazar too is a strong supporter of the principle of tribal self-determination and he is committed to working to fully enable tribal self-governance.

This Administration believes in Indian self-determination. Furthermore, we believe that Indian leadership is critical in facing and solving the problems of today, and that Indians must have a voice in programs and government efforts which are important to their lives. During the opening remarks delivered by President Obama at the Tribal Nations Conference held on November 5, 2009, the President affirmed that he is "absolutely committed to moving forward with [Tribes] and forging a new and better future together. It's a commitment that's deeper than our unique nation-to-nation relationship. It's a commitment to getting this relationship right, so that you can be full partners in the American economy, and so your children and your grandchildren can have a equal shot at pursuing the American Dream." In the spirit of our ongoing efforts to get this relationship right, we hope that this statement can lead to productive dialogue and perhaps to improvements in our application of the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 450 et seq.).

I want to begin by underscoring that in general, the Department of the Interior (Department) supports ISDEAA. We appreciate the ways that funding agreements under this Act have helped to strengthen the government-to-government relationship with Tribes. We support appropriate strengthening of the existing ISDEAA to make it work better for the Federal government and for Tribes. Self-governance Tribes have been good managers of the programs they have undertaken. Many times, Tribes add their own resources to the programs and are able to fashion programs to meet their needs and the particular needs of their members. Tribes are also better suited to address the changing needs of their members. Tribes have often observed that when they are working under Self-governance compacts and funding agreements, they are not viewed by the Federal government as just another Federal

contractor, and that their work under funding agreements reflects a true government-to-government relationship characterized by mutually agreed-to responsibilities and tribal empowerment to make a program work.

However, while our support for the principles of self-determination and self-governance is unequivocal, H.R. 4347 as currently drafted poses significant practical and legal problems with regard to appropriate management of federal funding and programs. This legislation deals not only with funding agreements between Tribes and BIA, but also funding agreements between tribes and non-BIA bureau programs within Interior. We are interested in discussing how to improve and increase the frequency of these agreements, but under this legislation as drafted there is very little ability on the part of the Secretary to maintain appropriate levels of control over the programs that would be subject to self-governance contracting. Given the breadth of the Department's responsibilities, this legislation could significantly hinder the Department's ability to accomplish its statutory mandates by limiting Secretarial discretion and allowing for the transfer of certain functions that should appropriately be maintained at the Federal level.

The Administration continues to analyze this complex bill. Nevertheless, the Department has identified significant concerns with this bill as drafted. We would like to work with the Committee and tribal representatives to discuss Departmental concerns with this legislation. We also note the bill as introduced reflects efforts by the bill proponents to address some of the issues raised by the Department when we testified on a similar bill two years ago. With further dialogue and information exchanges, this bill could be significantly improved.

My statement will begin with a brief discussion of the history of the ISDEAA. I will then discuss some examples of successes that the Department has recently had under the enacted ISDEAA. Finally, I will conclude with a discussion of certain specific concerns with the bill.

Background

In 1988, Congress amended the ISDEAA 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 that meet criteria established for the program to negotiate funding agreements with the Department for programs, services, functions or activities administered by the Bureau of Indian Affairs (BIA) and, within certain parameters, authorized funding agreements with other bureaus of the Department. In 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.

Current law allows federally recognized Tribes and tribal consortiums to assume programs administered by the Department's bureaus and offices other than the BIA, subject to negotiations when the programs are available to Indian Tribes or Indians because of their status as Indians. The law also provides the Secretary with discretion to include other programs administered by the Secretary which are of special geographic, historical, or cultural significance to the participating Tribe requesting a compact.

Tribal participation in self-governance has progressed from seven tribes and total obligations of about \$27 million in 1991 to an expected 100 agreements including 260 federally recognized tribes and obligations in excess of \$420 million in FY 2011. This figure includes funding from BIA and other Federal funds that pass through BIA. Other Department bureaus also fund agreements under the authority of P.L. 93-638.

These self-governance funding agreements allow federally recognized tribes to plan, conduct, consolidate, and administer programs, services, functions, and activities according to priorities established by tribal governments. Under these agreements, tribes provide a wide range of programs and services to their members such as law enforcement, education, and welfare assistance. 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. Under tribal self-governance, tribes have authority for BIA programs to redesign or consolidate programs, services, functions, and activities other than construction. In addition, self-governance tribes can reallocate funds during the year and carry over unspent funds into the next fiscal year without Secretarial approval. As a result, these funds can be used with relative flexibility to address each tribe's unique

condition. Self-governance tribes are subject to annual trust evaluations to monitor the performance of trust functions they perform. They are also subject to annual audits pursuant to the Single Audit Act Amendments (P.L. 104-156) and OMB Circular A-133. In addition, most self-governance tribes have included language in their funding agreements indicating that they will work with the Department to provide applicable data and information pursuant to the Government Performance and Results Act of 1993.

What makes these funding agreements unique is that Title IV of ISDEAA allows participating 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 to respond to the unique needs of their tribal members without seeking approval by Departmental officials.

Because the Administration recognizes the need to fund Tribes for the work they do on behalf of the Federal government, the President's proposed 2011 budget for the Bureau of Indian Affairs provides an increase of \$19.5 million for Contract Support. This is one of the highest priorities for the Tribes. Current appropriations fund the majority of direct and indirect costs needed by Tribes to administer programs under P.L. 93-638. The budget also addresses one-time start up costs for new funding agreements with an additional \$2 million for the Indian Self Determination Fund. There is also an increase of \$3.0 million for Small and Needy Tribes, which is intended in part to encourage a more diverse group of Tribes to enter into contracts.

The budget also increases funding for Tribal Grant Support Costs in the Bureau of Indian Education, raising the support to approximately 66 percent of total direct and indirect costs. This program fosters self-determination by providing resources for Tribes to directly operate BIE-funded schools under contract or grant authorization.

Successes

Many Tribes have been successful implementing Self-Governance programs to meet their tribal needs. A few of the many success stories will be mentioned here. 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 of ISDEAA authorizes other bureaus within the Department 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 the interior of Alaska. The CATG is a consortium that represents 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.

Activities subject to the AFAs include: 1) wildlife harvest data collection; 2) Yukon Flats moose management, including estimating moose populations (in cooperation with the Alaska Department of Fish and Game) and establishing the Yukon Flats Moose Management Steering Committee to enhance outreach efforts and increase communications with local residents regarding Yukon Flats National Wildlife Refuge moose management activities; and (3) maintaining Federal property in and around Fort Yukon. Public use (including sport and subsistence hunting, fishing, and trapping) is not affected by these agreements. Consistent with Title IV, man-

agement authority remains with the U.S. Fish and Wildlife Service (FWS) as required by the National Wildlife Refuge System Administration Act.

A true partnership and spirit of cooperation has developed from the history of controversy between the FWS and the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation over the National Bison Range Complex in Montana. Effective on October 1, 2008, a funding agreement for fiscal years 2009–2011 provides for an on-the-ground partnership in the management of programs by the CSKT on 4 units of the Refuge System, located on the Flathead Indian Reservation in Montana. In January 2009, under the direction and decision-making authority of the Refuge Manager, CSKT assumed management of the biological, maintenance, fire management and portions of the visitor services programs. CSKT staff have participated in a variety of FWS sponsored trainings and the bison round-up event in October 2009 was highly successful. In fiscal year 2009, FWS provided approximately \$1.7 million to CSKT, including a \$650,000 for a ARRA-funded bridge replacement project. Approximately \$986,000 will be transferred to the CSKT for operations in fiscal year 2010.

The agreements between the Grand Portage Band of Chippewa and Grand Portage National Monument show how the Self-Governance program works in the National Park Service. Grand Portage National Monument and Grand Portage Band of Chippewa have had 11 years of successive base contracts for all maintenance, design and construction at the monument. There have been 13 amendments to the base contract plus 68 additional projects for GIS, sewage lift stations, trail work, exhibits, parking lots, landscaping, signage, mortar work, generator and roof repair, and more. The tribe manages roughly one quarter of the annual appropriations made to NPS for the Grand Portage National Monument. As of September 2009, \$4,514,173 has been transferred and used for projects completed.

The Bureau of Reclamation has also had successes implementing the current law. In FY2009, Reclamation had five annual funding agreements with five Tribes, totaling about \$67 million, which includes ARRA funds. One of these funding agreements is with the Chippewa Cree Tribe (CCT) of the Rocky Boy's Reservation. Reclamation's Montana Area Office in the Great Plains Region and the CCT have been working together under a series of Self-Governance Annual Funding Agreements (AFAs) under Title IV of P.L. 93–638 to implement on-reservation water resource development as provided for in the CCT's 1999 water rights settlement act. Under these AFAs, the CCT assumed responsibility for planning, designing, and constructing dam enlargement and rehabilitation for Bonneau, Brown's, and East Fork Dams and Towe Ponds, as well as providing for future water development.

The CCT created the Chippewa Cree Construction Company (CCCC), which has successfully completed much of the work carried out under these AFAs, providing training and jobs for tribal members in the process. Reclamation's role has been to provide administrative oversight and technical assistance. The working relationship between the CCT and Reclamation has been cordial, productive, and carried out in a professional manner. As of August 2009, the CCT completed all of the work at Bonneau, Browns, East Fork Dams and Towe Ponds. At this time, all of the facilities are operational and are full or substantially full. Another successful working relationship between Reclamation and the CCT under Title IV involves ongoing work on features of the Rocky Boys/North Central Montana Water Project, a rural water system.

One of the most exciting demonstrations of the success of Tribes that participate in Self-Governance programs has been their recognition from Harvard's Kennedy School of Government through the Honoring Nations Award, which celebrates outstanding examples in Tribal Governance. One recipient of the Award was the Cherokee Nation. The Nation received an award for the history course that is required for all employees. The course provides employees with a strong sense of pride and a solid understanding of self-governance. It has changed their self-perception from being service recipients to that of service providers and active citizens. Another recipient was the Oneida Nation (Wisconsin). They were recognized for their achievement in creating an Oneida Nation Farm and Agricultural Center which merged land use and sustainable development. The Farm and Agricultural Center provides for economic development and the use of the land in a manner that recognizes and respects traditional and cultural values.

Recently, the Osage Nation received "High Honors" from Harvard's Honoring Nations program for its successful efforts toward achieving governmental reform. The Osage Nation's Government Reform Initiative was recognized for its successful design of a new government that could better represent and serve all Osages. The Gila River Indian Community is another Self-Governance tribe that received a past Honoring Nations Award for dramatically improving its capacity in law enforcement and

public safety. Since compacting for tribal control, the Gila River Indian community police improved effectiveness and efficiency of service to their community.

Major Concerns with H.R. 4347

I will highlight a number of our specific concerns, although there are others that we would like to discuss with Tribes and this Committee. First, and of concern from the perspective of the overall Departmental budget are provisions of this legislation that would potentially reduce the Secretary's discretion to reallocate funds among different programs as a result of changing priorities and the emergence of new critical needs. As we interpret various provisions of this bill, including section 413 as proposed in title II, programs or projects that are funded through Title IV funding agreements under H.R. 4347 would have to be specifically identified in the President's budget submissions to Congress. Further, the bill potentially limits the discretion of the Secretary or the President to make a determination about the relative priority of programs for budget purposes, and may give an advantage to the programs funded through Title IV agreements. This could result in the reduction of important programs, such as law enforcement and education.

Second, we are concerned about several of the provisions in the bill concerning construction, several of which will be identified here. One concern is provisions allowing the "redesign and consolidation" of projects, found in sections 103 and 406(d) (as proposed in title II). Read together with section 408 (as proposed in title II), which allows Tribes to carry out construction projects under self-governance funding agreements, the provisions on "redesign and consolidation" appear to give Tribes the ability to unilaterally change construction project design. Construction projects may be subject to very specific authorizations and the Secretary needs to retain an appropriate level of oversight to ensure that the construction is carried out in accordance with the Congressional authorization.

We also have concerns about the potential lack of flexibility to negotiate adequate oversight of planning and design, as well as construction inspection, for construction projects over which the Secretary maintains long-term responsibilities, or which have public safety implications, such as dam construction activities or other activities related to safety of dams. Additionally, we are concerned that section 408 (as proposed in title II) does not adequately deal with various construction contingencies and that as a result there are potential liabilities for both the Secretary and the contracting tribes. For example, section 408 does not deal with the possibility of a construction project being started but not completed, perhaps due to lack of funds or some other unforeseen circumstance. At the very least, concerns about the respective liabilities of the Secretary and the Tribes in such circumstances should be dealt with up front, as part of the agreement relating to the construction project.

Third, we want to draw the Committee's attention to section 408(b) as proposed in title II of this legislation, under which Tribes carrying out construction projects under self-governance funding agreements have the option of assuming "Federal responsibilities" under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and "related provisions of law that would apply if the Secretary were to undertake a construction project." The bill language requires that the Tribe accept the jurisdiction of Federal courts to enforce the responsibilities of the responsible Federal agency under the relevant law. We are aware that this authority exists for the Indian Health Service at 25 USC 458aaa-8 and that similar authority exists under the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA), such that tribes assume federal NEPA responsibility for NAHASDA and Indian Community Block Grant projects funded by the federal Department of Housing and Urban Development (HUD). While we understand that the delegation of authority has worked in these contexts, we are concerned that NEPA decision-making in the context of the Department's natural-resource management missions involves more complex balancing of missions and requires very specialized policy expertise. We want to discuss ways of involving Tribes more closely in environmental and other types of compliance for relevant projects consistent with the regulations of the Council on Environmental Quality implementing NEPA, the regulations of the Advisory Council on Historic Preservation implementing the NHPA, and other government-wide requirements. We have concerns with and do not support language delegating to Tribes the Federal responsibility for making a determination of policy under NEPA, the NHPA, and related environmental and cultural compliance requirements for Department bureaus. This is particularly the case for some of the larger construction projects sometimes undertaken by Department bureaus which have the potential to affect many diverse communities, threatened and endangered species, and cultural treasures.

Fourth, we note that Section 405(b)(2) as proposed in title II of this legislation would establish three demonstration projects, for each of which the Department

would be required to make available designated programs, functions, services, activities, or portions thereof to designated tribes for the period 2011–2015 under Title I or Title IV of P.L. 93–638. We have met four times with the Tribal Self-Governance Title IV Task Force, including the tribes who would undertake the demonstration projects, with the most recent meeting occurring on April 8, 2010. In one of the meetings with this group, the demonstration projects were discussed with the respective tribes. Each tribe provided a brief description of the planned demonstration projects and identified certain goals. However, the legislation does not include measures for success in the proposed demonstration projects, nor is the purpose of selecting these particular projects as demonstration projects specified. Since there are already many examples of successful operations of self-governance programs, which are discussed later in this statement, we question the need for the inclusion of these particular projects as mandatory demonstration projects.

Moreover, we object to the requirement described in Section 405(b)(2)(A) that the Bureau of Reclamation make available to the Hoopa Valley Tribe all programs, functions, services and activities “carried out under Public Law 102–575 for the purpose of restoring the Trinity River fishery.” Under P.L. 102–575, Reclamation works with multiple entities to restore Trinity River fisheries to their pre-dam levels. These include the Hoopa Valley Tribe and the Yurok Tribe, with whom Reclamation entered into Title IV funding agreements in FY2009 in the amounts of \$1.5 and \$1.4 million respectively. These funding agreements constituted about one-third of FY 2009 Trinity River project funding. The scope of the Trinity River restoration program is large; in addition to working with the tribes, Reclamation also works with the states of California and Oregon, Trinity County, power companies; Central Valley water districts; other federal bureaus, and numerous private landowners along the Trinity River. The Department believes that, given this broad range of interests, it is important for the effectiveness of the program for the Federal role to be maintained. While we consider Hoopa Valley Tribe an important partner in the Trinity River Restoration, we must be mindful of the Federal responsibility to a broad range of stakeholders in the basin.

Conclusion

While we appreciate the effort made to address some of the concerns raised by the Department two years ago, we have significant concerns with the bill. We would like to continue to work with this Committee and Tribes to expand compacting opportunities and improve our program.

On a broader note, I would like to reiterate this Administration’s commitment to restoring the integrity of the government-to-government relationship with Tribes. Many challenges face our Native American communities. This Administration is committed to working with this Committee and with Tribes so that, together, we can create opportunities for these communities to thrive and flourish.

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

The CHAIRMAN. Thank you. Do either of the other gentleman want to speak? All right. OK. All right. Then let me ask you the first question, Ms. Davis.

Ms. DAVIS. Sure.

The CHAIRMAN. Title V authorizes Indian tribes to invest Indian Health Service funds using the prudent investment standard. Would you please explain why this same standard should not apply to Indian tribes.

Ms. DAVIS. Certainly, Mr. Chairman. I appreciate the question. I think that we do recognize that that is the standard in Title V for IHS, and I think that we do retain some concern on the part of the Department with regard to investment, that we are just not entirely comfortable with that standard. We would welcome working with you on that and trying to work this through a little bit more. Again, we do recognize that that is the standard that is utilized under Title V.

The CHAIRMAN. All right. We appreciate that. Would you please explain the difference between the “clearly demonstrating the validity of the grounds standard” and the “clear and convincing

standard” used at hearings. Also, please explain why different burden of proof should apply to the Department of the Interior than the one used by the Indian Health Service.

Ms. DAVIS. Mr. Chairman, Mr. Skibine administers this program for the Assistant Secretary, Indian Affairs. I am going to defer to him, if that is OK, on this question.

The CHAIRMAN. Sure. Sure. We have identified him for the record.

Mr. SKIBINE. Thank you, Mr. Chairman. We believe that the standard that should be used is; that the standard that is in the bill, which is clear and convincing, is a higher standard that is somewhat indefinite, and we don't think it is appropriate for the issues that are relevant to self-governance compacts. In general, the clear and convincing evidence standard would be higher, more difficult to implement, and it appears in several sections of the bill. One of the sections, for instance, is the reassumption of programs. We are concerned that making it more difficult to reassume program by having a much higher standard would be a detriment to not only the government, but to the tribes also, to the beneficiaries.

I am saying that because, in general, when we administer these programs, we do not want to reassume our programs, we do not want to, well, to reassume programs because often do not have the resources to administer reassumed programs. If we have to, and we have done so in very, very few cases, then it becomes imperative that we be able to do so if there is evidence that the tribe can no longer run that particular program. By imposing a higher standard, which is clear and convincing, and making it harder to reassume a program where there is a danger to funds or to the safety or people, we believe that it will not be beneficiary, especially since we do that in so few instances. It is only when it is absolutely necessary that we have done that. So we are concerned with having a higher standard for reassumption, for instance.

The CHAIRMAN. Have any tribes ever lost all their self-governance funds due to investments in anything other than government securities?

Mr. SKIBINE. Well, I am told that has happened, but I am not really prepared to discuss the specifics of—

The CHAIRMAN. Well, if it does happen, then did the Department provide replacement funds?

Mr. SKIBINE. No.

The CHAIRMAN. No. OK. That concludes my questions. Mr. Hastings?

Mr. HASTINGS. Thank you, Mr. Chairman. Ms. Davis, welcome to the Committee. You alluded in your written statement to concerns that are raised by the Department of the Interior on similar legislation. Let me be at least specific as it relates to liability when the Interior was here several years ago, and I will quote their testimony. “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”. So that is the statement that was made there. Question: Is this issue resolved in the bill before us today?

Ms. DAVIS. Thank you for the question, Mr. Hastings. Let me first say that, I mean, quite obviously this is new legislation, and we are a new Administration and we are looking at everything with fresh eyes. I think it is fair to say that we retain some concern about management of Federal funding and programs and potential liability. I think this is one of the issues that we would like to work with the Committee on and I feel confident that we can work with the Committee on and come to resolution, so I am uncomfortable sort of, you know, making a precise characterization about our concerns, same or different, again because this is a new bill and we really have taken a fresh look at it.

Mr. HASTINGS. I mean, the point, all I am saying is that, I wasn't trying to point figures, I was just simply saying that Interior said last time there is a problem with liability. You are acknowledging that there is a problem. I mean, I am assuming that, you know, the Department wanted to work with us as I hope the Department would want to work with us on anything. So you are suggesting that there are at least some concerns with liability and you want to work with us. Is that a fair statement?

Ms. DAVIS. Yes, that is a fair statement. I mean, I think that that is addressed in my testimony, and that is a fair statement. Yes.

Mr. HASTINGS. OK. Good. Let me then, again, always with the assumption you want to work with us—

Ms. DAVIS. Of course.

Mr. HASTINGS.—there is the issue of whether if there is a problem and then the Department reassumes control if there is a level of gross mismanagement. Now, in that regard, where is the liability of the Federal Government in that situation? You follow what I am getting at? In other words, you have that level, there are some actions that were taken, you take it over because there was gross mismanagement, and at what point is the Federal Government liable on that under this bill, or is that something you want to work with us on?

Ms. DAVIS. For me, it is an open question. I mean, George—

Mr. SKIBINE. I am not sure exactly where—if there is a gross mismanagement then the government reassumes the program.

Mr. HASTINGS. Right, and what is the liability under that assumption prior—you know, assuming there was gross mismanagement that led you to take over, where is the liability to the Federal Government prior to taking it over?

Mr. SKIBINE. No. I am not sure where that would be. That would be a question for our lawyers to answer, but essentially, if we are becoming aware that there is mismanagement and we reassume the program, there would be no liability on the government for what happens beforehand.

Mr. HASTINGS. I know lawyers answer a lot of things. If you could get back to us specifically on that?

Mr. SKIBINE. OK.

Ms. DAVIS. We would be happy to, sir.

Mr. HASTINGS. I would certainly appreciate it. That is all I have, Mr. Chairman. Thank you.

The CHAIRMAN. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. First of all, I want to welcome the witnesses. Ms. Davis, you are very welcome here and you have a great reputation of concern and care for our Native Americans. Mr. Skibine, we have known each other, as young as you are, for a long time and appreciate all the great work that you have done. Mr. Rever, thank you again for your concern and interest for justice for our Native Americans. All of you deserve a great deal of credit. I have just a very generic question. Is it the Administration's hope that we can reach accommodation among the tribes, the Congress and the Administration that will serve the needs of all those involved? I, myself feel for the first time some interest on the part of the Administration of trying to do that. Is that reading the Administration correctly?

Ms. DAVIS. Yes, sir, it is our hope, and I believe I could even say it is our intention that we find a path forward on this legislation that works, you know, for the tribes, most importantly, for the Committee and for the Administration. We certainly are committed to working with you toward that end.

Mr. KILDEE. I appreciate that. You know, I appreciate sometimes the little things. The fact that you put the tribes first, right. It is a question of attitude. Our obligation under the Constitution, Article I, Section 8, which you referred to gives us enormous responsibility to make sure that we actively work with that sovereignty of the tribes. I commend the Administration for what they are doing and commend all three of you for your labor of love in this whole area and labor of law. Thank you very much, Mr. Chairman.

The CHAIRMAN. Gentelady from Wyoming, Ms. Lummis.

Ms. LUMMIS. Well, thank you, Mr. Chairman. I want to commend the sponsor of the bill, Mr. Boren, for providing for further self-governance for Indian tribes. In my view, the tribes that I am familiar with are ready for that and find the layers of bureaucracy frustrating. After my visits with them, I, too, find them frustrating. You know, it is frustrating enough to deal with the various bureaucracies that non-Indians deal with, but then you add that extra layer of bureaucracy under Indian administration of Federal law and it is just exponentially more complicated, so my compliments, Mr. Boren. We do want to do it right.

When I was meeting with the Palestinian Authority in January it occurred to me that when there was rampant corruption within the Palestinian Authority, they were not receiving IMF, or USAID, or any other type of aid directly, they were receiving it through a receiver, someone who would make sure that it didn't go to corrupt purposes, but for the purposes as intended. The current head of the Palestinian Authority has proven to be so capable of meeting out corruption that we now send monies directly to the Palestinian Authority, as does the IMF. I wonder if there is something analogous here, and I am just thinking out loud, whether if, to address Mr. Hastings concern here, that Federal funds that go to a tribe that has, you know, an exemplary track record of the funds going to the appropriate purpose, you know, that it just goes there rather than having some sort of intermediary, but where there is a tribe that is not, does not have a similar track record, that maybe there could be some sort of intermediary. Do you have any comment on that? As I said, I am just thinking out loud here. Thank you.

Ms. DAVIS. Thank you for the question. I think I would note that in Title IV in the self-governance compacts that we execute with tribes, that the tribes or tribal organizations must complete a planning phase and show financial stability, and financial management capacity over a period of three years, you know, to be able to enter into these compacts and undertake these programs, so I think that may be part of an answer that you are looking for. I think what I am suggesting is that, you know, there is, you know, appropriate oversight of use of Federal funds, certainly in that area. George, I don't know if you would care to—

Mr. SKIBINE. The tribes perform an audit, but really, the concept of self-governance is that the funds right now go through the Office of Self-Governance, which is administered by Sherry Freeman who stands behind me, and essentially then she disburses the money to these tribes. These tribes can administer their programs, they essentially can redesign the program. It is really the notion that tribes are sovereign entities and self-governing tribes, and essentially it is what the government's policy is. Now, we have limited so there was a yearly audit, there are trust evaluations performed by the Office of Special Trustee for Trust Programs, but beyond that, I think if there are very limited circumstances for reassuming those programs.

The fact that there have been so few I think is an indication of how successful this has been and how successful the tribes have been to keep clean audits, you know? So I don't think that is really—that really is not a big concern at this point. If I may add, I think that the legislation two years ago was fundamentally different than the one today because it sought to make mandatory compacting with non-BIA agencies. This is no longer the case here, except for the demonstration program, so it is a vastly different legislation that has really taken care of a lot of the government's concern. Where we have seen an issue is in construction programs mostly because the construction programs also apply to construction programs not only by BIA, by Mr. Rever, but by some of these other BIA agencies.

Ms. LUMMIS. Mr. Chairman, I might comment that our U.S. Department of Defense has never had a clean audit, ever, so these issues are not, you know, these issues are not unique to sovereign nations, they are true within our own government. I yield back.

The CHAIRMAN. The gentleman from Oklahoma, Mr. Boren, the sponsor of this legislation.

Mr. BOREN. Thank you, Mr. Chairman. I ask, first, unanimous consent to put into the record a letter of support from the Mille Lacs Band of, I want to say this right, Ojibwe Tribe. I want to pass that down if unanimous consent.

The CHAIRMAN. Without objection. If you pronounce it correctly, it will be made part of the record.

Mr. BOREN. OK. Yes. Hope that is right. I also wanted to let everyone know here on the Committee that we just received another co-sponsorship of this legislation. The other Co-Chair of the Native American Caucus, Tom Cole, has joined Mr. Kildee supporting this. We have bipartisan support of this legislation. As we all know, he is a member of the Chickasaw Nation. A couple of things I wanted to point out in the beginning. First, I want to say thank you all.

We have been sitting down at the table for a long time, particularly our staff and you all. I want to go through a couple of things. We have been made aware of the NEPA concerns and do intend to address them in this legislation as we move forward.

I also think that there is an important conversation to be had on the non-BIA programs, but we have decided to take out the demonstration projects completely in the substitute. Also, there continues to be negotiations on the construction provisions, and it is my hope and intention to see if we can work something out there as we kind of move forward toward our end goal. What I would like, if you all don't mind, if these are your primary concerns or there are other concerns, maybe in the next few weeks if you could submit those to us in writing so we can get—it is my hope, and I have to talk to the Chairman and others about a date when we can start marking up this legislation. So maybe by, yes, like next Friday maybe get some of that to us in writing. It would be great.

Ms. DAVIS. We would be happy to.

Mr. BOREN. OK. Great. Thank you so much. I have a couple of questions. One of them, the Department has expressed reservations about consulting with Indian tribes prior to revising, amending or requiring additional terms in funding agreements. Can you please state what these concerns are and under what circumstances the Department believes that the Secretary should be able to unilaterally alter funding agreements?

Ms. DAVIS. I will let Mr. Skibine speak to that, if that is OK.

Mr. BOREN. OK.

Mr. SKIBINE. I think that we consult with, certainly you consult with Indian tribes on funding agreements. I am not sure exactly what the issue are. We have sent out a guidance every year on what the negotiations are going to be like, so I am not sure exactly what the concern is.

Mr. BOREN. Let me just ask under what circumstances would you unilaterally alter anything? You know, there are a lot of different steps in the alteration process, whether it is having to come all the way to Congress to change something versus just something going on in the Department. Under what circumstances would you all alter anything, or would you?

Mr. SKIBINE. Alter what?

Mr. BOREN. Any of the agreements—

Mr. SKIBINE. I see.

Mr. BOREN [continuing]. Without tribal consultation.

Mr. SKIBINE. OK.

Mr. BOREN. The agreements that you have with the tribes, if you all just unilaterally, the Secretary just says we are going to change this, we haven't talked to X tribe, but we are going to just do this.

Mr. SKIBINE. You are talking about, it is in the bill, it is talk about unilateral changes.

Mr. BOREN. Correct.

Mr. SKIBINE. OK. Essentially, I think that if there is a change in Federal law, in law, or that would require us to change the agreements.

Mr. BOREN. But no other reason than a change in Federal law would you all do any unilateral changing without talking to tribes.

Mr. SKIBINE. That is correct. Well, that is part of Federal law, if there is a Court decision that requires us to do something. Right.

Mr. BOREN. OK. Another question I have. I have heard from some tribes in my district, particularly the Cherokee Nation, and this one kind of troubled me, it is in my district, that during negotiations of subsequent funding agreements there have been instances where DOI has withheld money that should be paid out to the tribe under current agreements as a way to force the tribes to concede to the Department's position to their subsequent agreement. What legal authority allows you all to do this? I think it is out of the Office of Self-Governance. This did happen in a situation with the Cherokee Nation, and I have been briefed on it. That, to me, seems like, you know, I am here, a tribe, and you are holding this over me, it seems kind of an unequal situation. Did that happen, and is that legal? I mean, I don't know. Can you do that?

Ms. DAVIS. I think, not being familiar with the operational specifics of the program, we would like to be able to get back to you with a written response, if that is acceptable.

Mr. BOREN. Not just on the specific, but, I mean, in the future as we—

Ms. DAVIS. Understood.

Mr. BOREN. Just a more of a general question that this one specific concern did that I had a concern about. That is something that I definitely want. I am hitting a red light here. Mr. Chairman, I have a lot of other questions. Would it be best if we would submit these to you in writing, and if you could come up as we move forward over the next few weeks, maybe we could work together. Again, I do want to say thank you all so much for your efforts, for the Administration for working with us, and working with the tribes. As Mr. Kildee mentioned, there is a new breath of fresh air here. Thank you.

Ms. DAVIS. We would be happy to answer.

The CHAIRMAN. The gentlelady from California, Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I have another area of concern with the Native American Bureau of Indian Affairs and Native Americans in terms of two areas. One is health services' mental health service delivery because I understand from prior hearings that there is a very high percentage of suicide or suicide attempts, and alcohol and drug use, unemployment, et cetera, and what is happening that the Bureau is doing to work with other agencies to address that? Is this self-reliance, self-governance not focusing enough on youth, on the unemployment, on the mental health issues? I have a grave concern also on the delivery of water, clean water, to many of the tribes. So those are the main issues that I have that I would like to see addressed, and since I am Chair of the Subcommittee on Water and Power, those have come up repeatedly, that there is not enough infrastructure delivery to some of the tribes because they are so spread out. What are we doing about it?

Ms. DAVIS. Let me speak first to your first question about mental health. I will ask Mr. Skibine to fill in if he wishes. Let me just say that we are working directly, and have been working directly, with Indian Health Services and both Secretaries, actually. Sec-

retary Sebelius and Secretary Salazar are engaged and concerned and working together on this issue between the Departments.

Mrs. NAPOLITANO. How closely, though, because I never heard anybody from HHS. Because I work directly with mental health services because I am Co-Chair of the Mental Health Caucus also. I have never even heard any mention of Native American issues coming up. That bothers me.

Ms. DAVIS. Well, I can't speak to why that is. I can tell you that the Secretaries have spoken, that we have a working group between the Deputies and that this is an issue that is the programs, and, you know, the coordination, and the better coordination of the programs is addressed. We would certainly be happy to get you more information about what we are doing currently.

Mrs. NAPOLITANO. I would appreciate it.

Ms. DAVIS. I am going to have to defer on the water programs. I am not too deeply involved in issues of Indian water rights and delivery of clean water.

Mrs. NAPOLITANO. Well, not necessarily water rights, but clean water delivery, because a lot of them may have water that is contaminated. We were at the Grand Canyon, for instance, and there is an issue of the uranium tailing contamination for some of the tribes that are there, of the water that has a lot of selenium. Is that hurtful? Is the HHS looking at the impact this may have on the lives of the tribes that are taking this contaminated, or high salinity, or high infected water?

Ms. DAVIS. I regret that I don't know the direct answer to your question, Madam Chairwoman, but I would be—Mr. Skibine may want to fill in.

Mrs. NAPOLITANO. Yes. I would like to make sure that this is part of what you discuss when you have your self-governance. Ensure that some of the folks are given the tools to be able to move forward on getting these things resolved. Sir?

Mr. SKIBINE. OK. We will look into it, but my impression is that we at the Department of the Interior are really not involved in the health issues that IHS and HHS look into, so if it is addressed under—

Mrs. NAPOLITANO. Why not?

Mr. SKIBINE. Well, because it is not our program, it is their program.

Mrs. NAPOLITANO. But do you not work as agencies cooperating with each other to address these issues?

Mr. SKIBINE. To some extent, yes. I would have to look at how much they are involving us in that issue.

Mrs. NAPOLITANO. Well, I would like to see more involvement because we are saying, OK, you take care of it over there. You take care of it is not working with you to be able to bring forth some of the solutions for the delivery of the service to the Native Americans. That should not be. We should be working in tandem. Am I correct, sir? Anybody? Thank you.

Ms. DAVIS. Thank you.

Mrs. NAPOLITANO. I mean, you know, agencies don't talk to each other. That has got to stop because what is hurting is the Native American tribes who don't have access, who don't have information, who don't have knowledge of where to go and what to ask for. So

if you don't help them in the deliverance and in your self-governance to make sure you introduce it there to be able to have the agencies be part of the solution, then we are still going to be back here saying, OK, we have our finger in our ear, how do we do this?

Mr. SKIBINE. We will take a look at the issue of the water delivery system and we will get back to you.

Mrs. NAPOLITANO. Mr. Chair, I would like to have that report to the Subcommittee and to the full Committee because I think this is an important issue for the Native Americans. Thank you, Mr. Chair.

The CHAIRMAN. Gentleman from CNMI, Mr. Sablan. Yes. You are recognized.

Mrs. NAPOLITANO. Thank you, Mr. Sablan. I certainly can use it. The current staffing, can the current staff handle Title IV compliance? Does it meet the needs to handle Title V compliance? Ms. Davis?

Ms. DAVIS. I think we are comfortable with current staffing to handle the needs of Title IV compliance, and I think that we frankly have some concerns about the applicability of the specifics of Title V to the Department of the Interior's wide breadth of mission and agency responsibilities and that is one of the things that we would like to work with the Committee on.

Mrs. NAPOLITANO. And what additional human resources would the Bureau of Indian Affairs need in order to oversee compliance in Title V requirements from the Indian Health Service to the Bureau of Indian Affairs?

Ms. DAVIS. I think it is probably best if we ask if we can get back to you with a written response on that. I think we need some additional—

Mrs. NAPOLITANO. Would appreciate it, ma'am. And how much would these new standards cost? Is there the funding to be able to deliver them?

Ms. DAVIS. Similarly, I think we are, you know, undertaking that analysis, but it would be better if we responded in writing to you, ma'am.

Mrs. NAPOLITANO. Then, does it make sense for the compliance and agreement requirements to be applied to the issues of the BIA, that is, the natural resources management, et cetera.

Ms. DAVIS. I think that is the crux of our issue. I think you have identified it.

Mrs. NAPOLITANO. Mr. Chair, I think that should be something that we need to look at. Thank you, Mr. Chair.

The CHAIRMAN. Any further questions from Members? If not, we thank you for being with us again. Thank you. Chair will now call panel number two composed of the following individuals: The Honorable Gregory E. Pyle, the Chief, the Choctaw Nation of Oklahoma, Durant, Oklahoma; The Honorable Marcus D. Levings, the Chairman, the Three Affiliated Tribes, New Town, North Dakota; Mr. Robert Keith, Chairman of the Board, Kawerak, Inc., Nome, Alaska; and Mr. Donovan Gomez, the Tribal Programs Administrator, Taos Pueblo, Taos, New Mexico. Gentlemen, we welcome you to the Committee on Natural Resources. We do have your prepared testimonies. They will all be made part of the record as if

actually read. You may proceed as you desire starting with you, Chief Pyle.

**STATEMENT OF THE HON. GREGORY E. PYLE, CHIEF,
CHOCTAW NATION OF OKLAHOMA, DURANT, OKLAHOMA**

Mr. PYLE. We really appreciate having this time to come up and voice our concerns. We recognize our Congressman Boren—he is from Oklahoma, the great state, Oklahoma is the Choctaw word meaning land of the red people—and his leadership in introducing H.R. 4347. He and his staff have worked diligently on behalf of tribal governments throughout eastern Oklahoma, and we are greatly appreciative of his efforts for tribal self-governance authorities throughout America. Amendments to Title IV are essential, and include many benefits for tribes. The Title IV amendments create consistency between the Title IV Self-Governance Initiative of the Department of the Interior and Title V of the Self-Governance Initiative in the Department of HHS.

Almost all the proposed Title IV amendments have already proven successful in the health care content under Title V. H.R. 4347 minimizes some of the existing administrative burdens and advances self-governance opportunities with the DOI agencies. Self-governance has dramatically improved the efficiency, accountability and effectiveness of programs and services for the tribes and their citizens. H.R. 4347 would further refine and improve the self-governance program of the DOI. Self-governance has been a huge success with the Choctaw Nation. For example, we have managed our entire health care delivery system since 1985, initially, through a 638 contract under Title I, and since 1994, through a self-governance compact under Title V of the ISDEAA.

Our health care delivery system is comprised of a 37 bed hospital, eight outpatient clinics, two substance abuse inpatient centers and a wide range of preventative programs, including nutrition counseling and a diabetes wellness center. These programs are all JCAHCO accredited. We strongly urge the enactment of H.R. 4347. In conclusion, I would like to thank the Committee for holding this important hearing on tribal self-governance, and I hope this Congress passes this. One quick side note. For many years the U.S. Government has appropriated dollars. We run our system in a very business manner, we don't allow politics in the system, and we were able to double, in many instances, the amount of services came out. It is the only hospital in 50 miles.

Today we have such things as a helicopter service. Before, people simply died because they couldn't get the hospital. It is a three hour drive over the mountains in eastern Oklahoma. Those are very important, but the real importance is the side effect. Since 1985, we have learned how to manage with consultants and people that have, we call gray hair, lots of experience in business. Since then, we have started six business, several thousand employees, created jobs for people. Now the children can actually go to school and hold their heads up, to be successful. Their parents can hold their heads up because they have a job. That is the residual.

That is not just Indian Health and Bureau Indian Affairs, that is residual to the tribe. Learning how to manage. It was a learning experience for us, and that is the real side effect. We have thou-

sands of people working that would not be. And actually, getting government assistance, today they are not getting government assistance. They are being very proud. We want to appreciate you so much. Thank you, and God bless.

The CHAIRMAN. Thank you very much, Chief Pyle. Chairman Levings?

[The prepared statement of Mr. Pyle follows:]

Statement of Gregory E. Pyle, Chief, Choctaw Nation of Oklahoma

Halito. My name is Gregory E. Pyle and I am the Chief of the Choctaw Nation of Oklahoma. I am pleased to be here today to provide formal testimony before the Committee on this very important Tribal Self-Governance initiative.

First, I would like to acknowledge and personally thank Congressman Dan Boren, also from the great State of Oklahoma, for his leadership in introducing H.R. 4347, the "Department of Interior Tribal Self-Governance Act of 2009". He and his staff have worked diligently on behalf of Tribal governments and we are greatly appreciative of his efforts to advance Tribal self-governing authorities under H.R. 4347. This important piece of legislation enhances Tribes' abilities and Self-Governance opportunities by amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) (P.L. 93-638 as amended). I am here today to urge you to promptly take action to enact H.R. 4347.

Benefits of Title IV Amendments

The Title IV amendments create consistency between the Title IV Self-Governance initiative in the Department of the Interior (DOI) and the Title V Self-Governance initiative in the Department of Health and Human Services (DHHS). Since its enactment in 2000, Title V has provided a solid foundation for implementing government-to-government agreements and has served as an excellent vehicle in advancing health care for American Indian and Alaska Native people. Specifically, Title V directly addressed many of the problems that emerged during the Title IV rulemaking process. As a result, many of the improvements included in Title V are unfortunately not included in Title IV. Tribes like Choctaw Nation, who operate Self-Governance programs under both Title IV and Title V, are left with two different sets of administrative requirements, one for IHS and one for DOI.

H.R. 4347 provides further consistency and clarity to bring implementation of Self-Governance under Title IV in line with Title V of the Act. Further, H.R. 4347 minimizes some of the existing administrative burdens and advances Self-Governance opportunities within other DOI agencies.

The Title IV amendments have long been a top legislative priority of Self-Governance Tribal leaders. As a matter of fact, Tribal leaders and staff have worked with both the Administration and Congress over the past decade on this legislative effort. Enactment of these Title IV amendments would be a significant landmark to advance Tribal self-reliance and would positively impact the 260 Tribes currently participating in Self-Governance within the DOI as well as those Tribes considering Self-Governance as an option.

Reasons for Self-Governance

Under Title IV, Tribes have responsibility for management and operation of numerous DOI programs such as education, roads, housing, law enforcement, Tribal courts and natural resources, just to name a few. The benefits of managing these programs under a Self-Governance agreement include:

- **Improve the quality & quantity of services provided to Tribal citizens;**
- **Recognize Tribe's right to determine priorities, redesign and create new programs to meet local needs;**
- **Formalize relations between the United States and Indian Tribes on government-to-government basis as provided for in the U.S. Constitution;**
- **Promote greater social, economic, political, cultural stability and self-sufficiency among Indian tribes;**
- **Establish better fiscal accountability through expanded Tribal Governmental decision making authority;**
- **Institute administrative cost-efficiencies through reduced bureaucratic burdens and streamline decision-making authority; and**
- **Change roles of the Federal Departments and agencies serving Indian Tribes by shifting their responsibilities from day-to-day management of Tribal affairs to that of *Protectors and Advocates* of Tribal interests.**

Self-Governance is not just another federal program. Rather, Self-Governance is the exercise of Tribal sovereignty through genuine decision-making power. Self-Governance is about Tribal empowerment, accountability, responsibility and self-sufficiency. Since enactment of the initial 7 Self-Governance agreements under DOI Self-Governance in 1991, the total number of Tribes participating in DOI Self-Governance under Title IV has steadily increased to a total of 260 Tribes today. Self-Governance works because it places management responsibility in the hands of those who care most about seeing Tribal programs succeed and services to citizens improved—the Tribal government itself.

Choctaw Nation—Self-Governance Best Practices

The Choctaw Nation of Oklahoma is federally-recognized by the United States government through the Secretary of the Interior. The Nation consists of ten and one-half counties in the southeastern part of Oklahoma— bounded on the east by the State of Arkansas, on the south by the Red River, on the north by the South Canadian, Canadian and Arkansas Rivers. The western boundary generally follows a line slightly west of Durant, then due north to the South Canadian River.

The Tribe is governed by the Choctaw Nation Constitution which was ratified by the people on June 9, 1984. The Constitution provides for an Executive, a Legislative and a Judicial branch of government. The legislative authority of the Tribe is vested in the Tribal Council, which consists of 12 members. Members of the Tribal Council are elected by the Choctaw people. The Tribal Council is responsible for adopting rules and regulations which govern the Choctaw Nation, for approving all budgets, making decisions concerning the management of Tribal property, and all other legislative matters. The Tribal Council Members are the voice and representation of the Choctaw people in the Tribal government.

The Choctaw Nation of Oklahoma believes that responsibility for achieving self-sufficiency rests with the governing body of the Tribe. It is the Tribal Council's responsibility to assist the community in its ability to implement an economic development strategy and to plan, organize, and direct Tribal resources in a comprehensive manner which results in self-sufficiency. The Tribal Council recognizes the need to strengthen the Nation's economy, with primary efforts being focused on the creation of additional job opportunities through promotion and development. By planning and implementing its own programs and building a strong economic base, the Choctaw Nation applies its own fiscal, natural, and human resources to develop self-sufficiency. These efforts can only succeed through strong governance, sound economic development, and positive social development.

I have served as the Chief of the Choctaw Nation since 1997. In this capacity, I have witnessed and been part of the significant growth and development of all programs and services provided to our citizens and I am proud of our strong history and governance capability.

The Choctaw Nation operates under Self-Governance agreements with both DOI—Bureau of Indian Affairs (BIA) and HHS—Indian Health Services (IHS) programs. Because of the flexibilities and authorities provided under Self-Governance, we have numerous success stories and best practices that could be shared. However, I would like to talk briefly and highlight our Choctaw Nation Health Services Authority, the best rural health care system in America.

We provide health care services to all American Indians/Alaska Natives who present at our facilities. We have managed our entire health delivery system since 1985, initially through a 638 contract under Title I of the ISDEAA, and since 1994 through a Self-Governance Compact under Title V of the ISDEAA. Our health care delivery system is comprised of a 37-bed hospital, 8 out-patient clinics, 2 substance abuse in-patient centers and a wide range of preventative programs including nutrition counseling and a diabetes wellness center. All these programs are JCAHCO accredited. Our emergency room is the only ER service within a 50 mile radius. It is a life saver for the community, for Indian and Non-Indian. The Choctaw Nation Health Services Authority's mission statement is "To provide the highest quality health care to the people we serve." Self-Governance has been instrumental in making this Mission become a reality.

Conclusion

In conclusion, I would like to thank this Committee for holding this important hearing on Tribal Self-Governance. I sincerely hope that this Congress will enact H.R. 4347, to further assist us in achieving our mission and goals.

**STATEMENT OF THE HON. MARCUS D. LEVINGS, CHAIRMAN,
THREE AFFILIATED TRIBES, NEW TOWN, NORTH DAKOTA**

Mr. LEVINGS. Good morning. Thank you, Chairman Rahall, and Committee Members for the opportunity to be here today. My name is Marcus Dominick Levings, Eh-Bah-Dah-Gish, White Headed Eagle, Chairman of the Three Affiliated Tribes, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Indian Reservation. I am here to express the Three Affiliated Tribes' strong support for H.R. 4347, the Department of the Interior Tribal Self-Governance Act. We recognize the need to expand and improve Title IV of the Indian Self-Determination Act, the self-governance program within Interior. Even though we are not currently a self-governance tribe, this bill would also make significant and much needed changes to Title I of the Act under which the Three Affiliated Tribes currently contract a wide range of programs from both the Indian Health Service and the Bureau of Indian Affairs.

My testimony will focus on the Title I provision proposed by H.R. 4347. The Three Affiliated Tribes' health care services, law enforcement, realty services, road construction and maintenance, and water treatment and water distribution are services under Title I contracts with Indian Health Service, Bureau of Indian Affairs and the Bureau of Reclamation. Tribe members have seen dramatic improvements in services since the tribes assumed control of these services. Just as Congress envisioned, placing the Federal Indian programs in the hands of the local tribal people being served has enhanced responsiveness to local needs and power to local tribal government and reduced the influence of the Federal bureaucracies over the day-to-day decisions, yet, Title I contracting could even be better.

Current Title I continues to allow excessive bureaucratic oversight and impose a lack of flexibility and cost effectiveness. The Title I amendments in H.R. 4347 would enhance the tribes' ability to provide essential government services in a way that best meets the specific social and cultural needs of the Ft. Berthold Reservation. The key changes are as follows: Section 101 would amend the definition of self-determination contract to make clear that these government-to-government agreements are not ordinary procurement contracts and are not subject to any Federal procurement laws. This clarification is necessary since the BIA, and IHS and other Federal agencies have taken the position that these contracts between sovereigns are just like agreements with private contractors.

Section 102 would impose a strict burden of proof on agencies to show on appeal that their decisions are supported by clear and convincing evidence. This standard is not only in accordance with that in current Title V of the Act but is familiar standard applied by Courts, unlike the current standard requiring the Secretary to clearly demonstrate the validity of the grounds for his or her decision. Section 103 would expand Title I's tribe authority to redesign and consolidate programs and services similar to Titles IV and V so long as the effect would not be to deny service to otherwise eligible persons. This provision would allow us to tailor programs and services to meet tribal priorities, the essence of self-determination with even less unnecessary Federal involvement.

Section 104 would codify the long-standing 50 percent rule under which the Three Affiliated Tribes can charge up to 50 percent of its contract cost incurred administering Federal programs under Title I agreements to the indirect cost pool without burdensome documentation and oversight. Finally, Section 105 would clarify that any additional contract terms beyond the mandatory statutory model contract terms cannot be unilaterally imposed unless they meet the strict declination standards in Section 102. These modest amendments would help balance the negotiating positions with tribal and Federal Governments, and help tribes target Federal and other resources where they are needed the most.

The amendments would cost the Federal Government nothing, yet would enhance the efficiency and effectiveness of Federal programs for the benefit of the Three Affiliated Tribes, and other Title I tribes and the many enrolled members who rely on the government services which we provide. Although the Title I amendments to H.R. 4347 are the most immediate importance to the Three Affiliated Tribes, I want to make clear that we strongly support the entire bill, including the revisions to Title IV, the Department of the Interior Self-Governance Program. The Title IV amendments negotiated for several years would make the Title IV consistent with Title V, the IHS self-governance legislation creating administrative efficiencies for tribes.

Although the Three Affiliated Tribes is currently content with our Title I contracts, we would appreciate the future option to enter self-governance compacts and funding agreements with IHS and Interior that operate under the same set of rules at some point in the future. Like the Federal tribal government-to-government relationship itself, Title I has evolved since its initial enactment in 1975. The law needs to evolve again to reflect maturation and growing capacity of tribal governments carrying out self-determination contracts. The old provisions retaining obtrusive Federal oversight, limiting tribal redesign and consolidation authority are effects of an earlier era.

The Three Affiliated Tribes, like many other tribal contractors, now administer multi-million dollar health care and other programs. H.R. 4347 would help our tribes and others diagnose and treat members, provide dental services, build and maintain roads and provide a host of other government services through its Title I contracts. Self-determination allows the Three Affiliated Tribes to prioritize their needs and plan our future in a way consistent with the tribes' distinct culture, traditions and institutions. I urge you to enact H.R. 4347 so that tribes and the Federal Government can build on the successes of the past 35 years and further tribal self-determination and self-governance. Chairman Rahall, that concludes my prepared statements. I again thank you for the opportunity to present the views of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara. I would like to thank you, and yourself, and the Natural Resources Committee for this time. I would be happy to answer any questions you may have. Migwe'c. Thank you.

The CHAIRMAN. Mr. Keith?

[The prepared statement of Mr. Levings follows:]

Statement of The Honorable Marcus D. Levings, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation

Good morning. Thank you, Chairman Rahall and Committee members, for the opportunity to be here today. My Name is Marcus Dominick Levings, Eh-Bah-Dah-Gish, (Bald Eagle). I am the elected Tribal Chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

I am here to express the Three Affiliated Tribes' strong support for H.R. 4347, the Department of the Interior Tribal Self-Governance Act. We recognize the need to expand and improve Title IV of the Indian Self-Determination Act, the Self-Governance Program within Interior, even though we are not currently a self-governance tribe. But this bill would also make significant and much-needed changes to Title I of the Act, under which the Three Affiliated Tribes currently contract a wide range of programs from both the Indian Health Service and the Bureau of Indian Affairs. My testimony will focus on the Title I provisions proposed by H.R. 4347.

The Three Affiliated Tribes provide health care services, law enforcement, realty services, road construction and maintenance, and other programs and services under Title I contracts with the Indian Health Service and Bureau of Indian Affairs. Tribal members have seen dramatic improvements in services since the Tribes assumed control of these services. Just as Congress envisioned, placing the federal Indian programs in the hands of the local tribal people being served has—

- enhanced responsiveness to local needs;
- empowered the local tribal government; and
- reduced the influence of the federal bureaucracies over day-to-day decisions.

Yet Title I contracting could be even better. The current Title I continues to allow excessive bureaucratic oversight and impose a lack of flexibility and cost-effectiveness. The Title I amendments in H.R. 4347 would enhance the Tribes' ability to provide essential governmental services in a way that best meets the specific social and cultural needs of the Fort Berthold Reservation community. The key changes are as follow:

- Section 101 would amend the definition of “self-determination contract” to make clear that these government-to-government agreements are *not* ordinary procurement contracts and are not subject to any federal procurement laws. This clarification is necessary since BIA and IHS (and other federal agencies) have taken the position that these contracts between sovereigns are just like agreements with private contractors.
- Section 102 would impose a strict burden of proof on the agencies to show, on appeal, that their decisions are supported by “clear and convincing evidence.” This standard not only accords with that in the current Title V of the Act, but is a familiar standard applied by courts, unlike the current standard requiring the Secretary to “clearly demonstrate[e] the validity of the grounds” for his or her decision.
- Section 103 would expand Title I tribes' authority to redesign and consolidate programs and services, similar to Titles IV and V, so long as the effect would not be to deny service to otherwise eligible persons. This provision would allow us to tailor programs and services to meet tribal priorities—the essence of self-determination—with even less unnecessary federal involvement.
- Section 104 would codify the longstanding “50% rule,” under which the Three Affiliated Tribes can charge up to 50% of its contract costs incurred in administering federal programs under Title I agreements to the indirect cost pool without burdensome documentation and oversight.
- Finally, Section 105 would clarify that any additional contract terms beyond the mandatory statutory model contract terms cannot be unilaterally imposed unless they meet the strict declination standards in section 102.

These modest amendments would help balance the negotiating positions of tribal and federal governments, and help tribes target federal and other resources where they are needed most. The amendments would cost the federal government nothing, yet would enhance the efficiency and effectiveness of federal programs for the benefit of the Three Affiliated Tribes, the other Title I tribes and the many enrolled members who rely on the governmental services which we provide.

Although the Title I amendments in H.R. 4347 are of the most immediate importance to the Three Affiliated Tribes, I want to make clear that we strongly support the entire bill, including the revisions to Title IV, the Department of the Interior Self-Governance Program. The Title IV amendments, negotiated over several years, would make Title IV consistent with Title V, the IHS self-governance legislation, creating administrative efficiencies for tribes. Although the Three Affiliated Tribes is currently content with our Title I contracts, we would appreciate the future op-

tion to enter Self-Governance compacts and funding agreements with IHS and Interior that operate under the same set of rules at some point in the future.

Like the federal-tribal government-to-government relationship itself, Title I has evolved since its initial enactment in 1975. The law needs to evolve again to reflect the maturation and growing capacity of tribal governments carrying out self-determination contracts. The old provisions retaining obtrusive federal oversight and limiting tribal redesign and consolidation authority are artifacts of an earlier era. The Three Affiliated Tribes, like many other tribal contractors, now administer multi-million-dollar health care and other programs. H.R. 4347 would help our Tribes and others diagnose and treat members, provide dental services, build and maintain roads, and provide a host of other governmental services through its Title I contracts.

Self-determination allows the Three Affiliated Tribes to prioritize our needs and plan our future in a way consistent with the Tribes' distinct culture, traditions, and institutions. I urge you to enact H.R. 4347 so that tribes and the federal government can build on the successes of the past 35 years and further tribal self-determination and self-governance.

Chairman Rahall, that concludes my prepared statement and I again thank you for the opportunity to present the views of the Three Affiliated Tribes. I would like yourself and the Natural Resource Committee for this time and I would be happy to answer any questions you may have.

STATEMENT OF THE HON. ROBERT KEITH, CHAIRMAN OF THE BOARD OF KAWERAK, INC., NOME, ALASKA

Mr. KEITH. Thank you for the opportunity to testify today on H.R. 4347, which aims to address some issues of deep and continuing concern for Alaskan Natives. My name is Robert Keith. I am the Chair of the Board of Directors for Kawerak, a regional tribal consortium serving 20 tribes from the Bering Straits region in northwest Alaska. I am also President of the Native Village of Elim and also serve on the Norton Sound Health Board and the Tribal Self-Governance Advisory Group. Kawerak is headquartered in Nome, Alaska, and we are the largest community in the Bering Straits region and serves as the principal transportation and service hub. Kawerak currently contracts to provide a wide range of Federal and state services, including almost all services previously provided by the Bureau of Indian Affairs.

The Kawerak Board consists of the tribal president or tribal council designee from each of the 20 Federally recognized tribes in our region. Our service area includes Seward Peninsula, Norton Sound, St. Lawrence Island and Little Diomed. This region extends 230 miles north to south and covers 570 miles of coastline and includes an area of 26,000 square miles. We have 9,300 people, of which 7,000 are Alaskan Native and Siberian Yupik and Central Yupik. We have an extremely high unemployment rate. Less than 40 percent of the population are part of the labor force in Nome. In villages, as many as 70 percent of adults are currently unemployed. It is not because they choose to be, but because there are no jobs available.

Our people are highly skilled sustenance hunters and fisher. We remain heavily dependent on natural animal and fat resources for every day sustenance. Alaska Natives are one of the largest land owners in the State of Alaska, owning 12 percent of the state, 44 million acres. 221 million acres of land owned by Federal Government in Alaska are not parks and refuges to us, they are our backyards. For millennia, our people have hunted, fished and lived on the lands that are now Federally owned. Our stewardship of these

very same lands speaks for itself. If we had not taken pristine care of the land, it would not have been worth putting into parks and refuges. Our innate understanding of the land around us makes us perfect candidates for future management.

When Title IV of the Indian Self-Determination Act, Public Law 93638, was passed in 1994, we thought it would be an open door to broader Native involvement in the parks and refuges of Alaska. Title IV authorized non-BIA Interior Department agencies to compact the tribes when particular program of Federal activity had a close geographical or cultural nexus to the tribe. Kawerak immediately applied to compact functions of the Bering Land Bridge National Preserve and also part of the National Park Service Beringia program. Beringia supports cultural, biological and other research projects related to the Bering Straits Land Bridge which has a close geographical, historical and cultural nexus to Alaska Natives, particularly those living in the Bering Straits region.

To illustrate the difficulties that arise when agencies within the Department of the Interior are not mandatory obligated to negotiate self-governance agreements with tribes or tribal organizations, I have attached a copy of a letter that was sent to Ms. Glenn Key, then counselor to the Secretary, in which we summarized the problems we encountered. Kawerak's attempt to compact with NPS was plagued with difficulties every step of the way from our willingness to provide necessary information to their unwritten policies and unclear negotiating hierarchy. Kawerak was eventually able to negotiate a self-governance agreement with national parks resulting in \$180,000 of Beringia funds being reallocated to Kawerak.

This funding agreement went into effect in 1996 and was the first NPS tribal self-governance agreement in the United States. To my knowledge, this is the only one of two Title IV non-BIA agreements in Alaska, despite tribal and regional organizations' attempts to negotiate agreements with National Park Service, U.S. Fish & Wildlife and other agencies over the last 15 years. The Kawerak NPS agreement is far from a success story. Three years after it went into effect, it was discontinued by NPS, not because of nonperformance, nonreporting or other use, rather, NPS unfortunately treated it as a competitive grant and a nongovernment's agreement. Kawerak viewed the Beringia agreement as establishing a permanent relationship and as a compromised settlement of a much broader tried at war application.

I believe you have the rest of my testimony. I do want to touch upon the issue that the Congresswoman from California raised in regards to water and sewer. We are currently, our compact with BIA includes IRR funds and road funds, and we are, you know, in negotiation with the Native Village of Stebbins because they have HUD money for building HUD houses. IHS funds for water and sewer and the State of Alaska has funds for an airport. The power company needs to move their fuel tanks. Negotiating with four different entities at this time, you know, this has allowed us to do that. By doing all these projects in a comprehensive plan, it is going to cost \$60 million outside of that, but if we do it all together, we could probably do it for \$40 million, and so that saves the Federal Government and the state government a lot of money if we can

have one comprehensive plan, one NEPA process to go through all this.

In regard to suicide prevention, you know, Norton Sound Health Corporation has a separate organization for doing suicide prevention and we have one, and we are working very close together and we are trying to pull in other partners to do the same. Self-governance has allowed us to do that. One thing in regards to IRR funds real briefly. We wrote a letter, and BIA seems to have lost it. The stimulus money, in regards to maintenance funds, we have raised the issue of equitable distribution and we haven't received a response yet from them. So our engagement continues, it has been continuing, and even with this new law here, it would give us new tools. I am sure it will continue. It is a continuing process, it involves a lot of staff and a lot of legal people. So thank you for this opportunity.

The CHAIRMAN. Thank you. To introduce our next panelist I will call on our colleague and valued member of our Committee on Natural Resources, the gentleman from New Mexico, Mr. Ben Ray Lujan.

Mr. LUJAN. Mr. Chairman, thank you very much. Today I have the pleasure of introducing one of my constituents, Donovan Gomez, from the Pueblo of Taos where he serves as the Tribal Programs Administrator and Self-Governance Coordinator for the Pueblo. Mr. Gomez has a long history of serving Indian Country in New Mexico. Throughout Mr. Gomez' career he has administered various educational programs for Ohkay Owingeh Pueblo and for the eight Northern Indian Pueblo Council. He has been serving in his current position with the Pueblo of Taos for almost six years and has been with the Pueblo through their transition to self-governance with the Department of the Interior in 2007 and Indian Health Services in 2009. Thank you for joining us today, Mr. Gomez, on behalf of Governor Lujan, Sr. I look forward to your testimony. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Keith follows:]

Statement of Robert Keith, Chairman of the Board, Kawerak Inc.

Thank you for the opportunity to testify today on H.R. 4347—*Department of Interior Tribal Self-Governance Act of 2009*, which aims to address some issues of deep and continuing concern to Alaska Natives.

My name is Robert Keith. I am here as the Chair of the Board of Directors of Kawerak, Inc.—a regional tribal consortium serving twenty tribes from the Bering Straits region of Northwest Alaska. I am also President of the Native Village of Elim, serve on the Board of the Norton Sound Health Corporation and on the National Tribal Self-Governance Advisory Group.

Kawerak, Inc., is headquartered in Nome, Alaska which is the largest community in the Bering Straits Region and serves as the principle transportation and service hub. Kawerak currently contracts to provide a wide range of federal and state services, including almost all services previously provided by the Bureau of Indian Affairs. The Kawerak Board consists of the Tribal President or a Tribal Council designee from each of the 20 federally recognized Tribes in the region.

Our service area includes the Seward Peninsula, Norton Sound, St. Lawrence Island, and Little Diomed Island. This region extends 230 miles from north to south, covers 570 miles of coastline, and includes an area of more than 26,000 square miles—equivalent in size to the State of West Virginia. The region hosts 9,300 people of which 7,000 are Alaska Native Inupiaq, Siberian Yupik, and Central Yupik. In the villages outside of the main hub of Nome, Alaska Natives comprise 90% of the population. Our villages are some of the remotest communities in the United States, with all being closer to Russia than Anchorage.

We have an extremely high unemployment rate. Less than 40% of the population (mostly in Nome) is even considered part of the labor force. In the villages, as many as 70% of adults are currently unemployed—not because they choose to be, but because there are no jobs available. Our people are highly skilled subsistence hunters and fishers. We remain heavily dependent on the natural animal and plant resources for our everyday sustenance. Alaska Natives are one of the largest land-owners in the State of Alaska, owning over 12% of the state (44 million acres). The 221 million acres of land owned by the federal government in Alaska are not parks and refuges to us—they are our backyards. For millennia our people have hunted, fished, and lived on lands that are now federally owned. Our stewardship of these very same lands speaks for itself; if we had not taken pristine care of the land, it would not have been worth putting into parks and refuges. Our innate understanding of the land around us makes us the perfect candidates for its future management.

When Title IV of the Indian Self-Determination Act, PL 93-638, was passed in 1994, we thought it would open the door to broader Native involvement in the parks and refuges of Alaska. Title IV authorized non-BIA Interior Department agencies to compact with Tribes, when the particular program or federal activity had a close geographical or cultural nexus to the Tribe. Kawerak immediately applied to compact functions of the Bering Land Bridge National Preserve and also part of the National Park Service Beringia program. Beringia supports cultural, biological, and other research/projects related to the Bering Land Bridge, which has a close geographical, historical and cultural nexus to Alaska Natives, particularly those living in the Bering Strait Region.

To illustrate the difficulties that arise when the agencies within the Department of the Interior are not mandatorily obligated to negotiate self-governance agreements with Tribes or tribal organizations, I have attached a copy of a letter that we sent to Ms. Glenn Key, then Counselor to the Secretary, in which we summarized the problems we encountered.

Kawerak's attempt to compact with NPS was plagued with difficulties every step of the way—from their unwillingness to provide necessary information to their unwritten policies and unclear negotiating hierarchy. Kawerak was eventually able to negotiate a self-governance agreement with NPS resulting in \$180,000 of Beringia funds being reallocated to Kawerak. This funding agreement went into effect in 1996, and was the first NPS Tribal Self-governance agreement in the United States. To my knowledge, this is one of only two Title IV non-BIA agreements in Alaska, despite tribal and regional organizations' attempts to negotiate agreements with NPS, USF&WS and other federal agencies over the last 15 years. The Kawerak NPS agreement is far from a success story. Three years after it went into effect, it was discontinued by NPS, not because of non-performance, non-reporting, or other issues; rather, NPS, unfortunately, treated it as a competitive grant and not a self-governance agreement. Kawerak viewed the Beringia agreement as establishing a permanent relationship, and as a compromise settlement of a much broader Title IV application.

For the reasons listed above, and many more, we would like to make some recommendations for amendment to H.R. 4347. Prior to this new draft, the bill allowed for the expansion of mandatory compacting of programs to the Department of the Interior beyond the Office of the Special Trustee, and the Bureau of Indian Affairs. If enacted, the prior draft of 4347 would have allowed tribes and tribal organizations to negotiate contracts for the administration of non-BIA agencies, such as the National Park Services (NPS), United States Fish and Wildlife Service (USFWS), or other agencies within the Department of the Interior (DOI). With the new draft excluding the expansion of mandatory compacting to the DOI, we believe that the DOI will construe Title IV so narrowly that it will be of limited application outside of the BIA.

Many of the agencies within the Department of the Interior foster the idea that they do not have any Native programs and therefore, are not obligated to enter into self-governance agreements. In their adamancy, the DOI has not even acknowledged that the ANILCA subsistence program is Native in nature. The DOI's continued reluctance to entering into non-BIA DOI self-governance agreements significantly limits our ability to be fully engaged in helping manage and protect the resources upon which we have depended for thousands of years. For example, Kawerak has a cooperative agreement with the USFWS to fund activities associated with the co-management of Pacific Walrus. Under the Marine Mammal Protection Act, Alaska Natives are the only people authorized to hunt marine mammals. Several years ago, Kawerak's funding level for the Eskimo Walrus Commission was \$360,000 a year. Our funding was subsequently cut to \$80,000 and we have been placed in the position of seeking to restore full funding ever since. When we explored why our co-man-

agement funding had been reduced, we discovered that USFWS redirected the dollars to fund their fixed cost increases within the department. If these funds had been in a compact/annual funding agreement, I believe they would have been protected, since agreements historically have not allowed for unilateral reduction of funding by agencies except for congressional approved increases or decreases. Congress needs to mandate the Department of Interior to partake in negotiation processes, in good faith, with Tribes for non-BIA DOI program service functions/activities. We request that section 405(b)(1) be amended to provide for the expansion of compacting beyond OST and BIA to the DOI.

Kawerak, in partnership with the Bering Straits Native Corporation, the regional Alaska Native Claims Regional Profit Corporation, will be initiating another attempt to compact for functions associated with the Bering Land Bridge and the National Park Service Beringia program. If Congress does not make the DOI mandatorily obligated to negotiate in good faith, we will most likely face the same issues we did in the mid-1990's. In reviewing the Treasured Tribal Landscapes Initiative, it appears that the administration is more supportive of Native Americans having a role in the management of the lands in which they have a geographical, historical, or cultural nexus. By amending this bill to expand mandatory compacting to include the Department of Interior agencies, other than just the Bureau of Indian Affairs and the Office of the Special Trustee, this bill would further the administration's goal of engaging Native Americans as stewards, protectors, and conservators of those lands upon which we depend.

In the past year, Maniilaq, our sister consortium in the Kotzebue region, has indicated to NPS their interest in compacting for functions associated with four parks in Northwest Alaska. In their attempt, Maniilaq has faced many of the same problems Kawerak did in the mid-1990's, such as incomplete information. Most recently, they received a draft an annual funding agreement (that was created for discussion only) for the possible assumption of the janitorial, custodial, and maintenance functions associated with the four parks. This after Maniilaq had clearly expressed their interest in managing the visitor center in Kotzebue and the transporter permitting processes. NPS continues to claim that functions are "inherently federal" as a means to avoid compacting with Tribes and Tribal Consortiums. The management of a park visitor center is not an inherently federal function. In fact, this is the type of activity that ANILCA, sections 1306-1308 supports Alaska Native entities contracting to provide. Maniilaq is a tribal consortium that compacts with Indian Health Services (IHS) to provide health services in the Kotzebue region, operates the local hospital, and contracts with both the State and Federal governments for a broad range of other services. Maniilaq has BIA and IHS self-governance compacts which have been in effect since for years. They manage millions of dollars in federal and state contracts and have demonstrated that they are fully capable of negotiating and managing NPS functions in the four parks requested. The redraft of H.R. 4347, to compel the DOI to be mandatorily obligated to negotiate in good faith, will provide Maniilaq with the opportunity to manage the land that our people have been stewarding for millennia; to hire staff who are local and have actual knowledge of the natural and cultural resources; and to have a say in the research and projects that take place in the area.

In our view, the enhancement of the funding and contractual mechanisms recommended here will allow for more flexibility and involve less bureaucratic red tape than typical grants and contract. Because self-governance agreements are negotiated on a government-to-government basis, they carry a sense of equality and respect that other federal funding mechanisms do not. They bring the parties together on an annual basis. They ensure cooperation and acknowledgement.

For many years Native organizations in Alaska have sought a closer relationship to the federal agencies that manage the lands in our areas. Our people are directly impacted by the activities of these agencies. And it only makes sense that we should have a meaningful role in the operation of the land units. H.R. 4347 must expand mandatory compacting of programs in the DOI agencies in order to take the large and necessary step in the right direction.

Thank you very much for the opportunity to testify here today.

**Addendum to Robert Keith's testimony before the
Committee on Natural Resources**

While we have spent much time recommending further amendment to H.R. 4347, we would like to draw attention to some of its strengths. H.R. 4347, if enacted, will streamline self-governance Tribes' administrative requirements by creating consistency between Title IV (Department of Interior) and Title V (Department of Health

and Human Services). We strongly support the creation of administrative efficiencies for Tribes in their dealings with the DOI as well as the implementation of the beneficial provisions of Title V that will be included in Title IV with the passage of H.R. 4347. H.R. 4347, if enacted, will protect Tribes from the imposition of unilateral terms in funding agreement compacts. It will also limit the reasons that the DOI may use to decline to enter into a proposed agreement with a Tribe and includes a clear structure for Tribes to challenge adverse decisions. The passage of H.R. 4347 will enhance the administration's efforts to build stronger and clearer government-to-government relations (*see* EO-13175 Consultation and Coordination with Indian Tribal Governments) by promoting uniformity, transparency, and workability between the DOI and the Tribes. The improvement and enhancement of Tribal authority under Title IV will further allow Tribes to prioritize needs, plan for the future, and increase self-sufficiency.

Thank you for this opportunity to testify.

**STATEMENT OF DONOVAN GOMEZ, TRIBAL PROGRAMS
ADMINISTRATOR, TAOS PUEBLO, TAOS, NEW MEXICO**

Mr. GOMEZ. Thank you very much. With respect, Chairman Rahall, Ranking Committee Member Hastings, Members of the House Committee on Natural Resources, thank you for inviting the Pueblo of Taos to testify at this important hearing. My name, as Congressman Lujan said, is Donovan Gomez. I am the Tribal Programs Administrator and Self-Governance Coordinator for the Pueblo of Taos, as well as a tribal member. On behalf of the Taos Pueblo Tribal Council, Governor James Lujan, Sr., and War Chief David G. Gomez, I am here to provide testimony in support of H.R. 4347, the Department of the Interior Tribal Self-Governance Act of 2009. Taos Pueblo are known as one of the most guarded and conservative Pueblos in our traditions and our governance.

We don't have a constitution, we don't vote for our tribal leaders; however, our tribal leadership is elected annually by legislators of the Tribal Council. Under self-governance, the Tribal Council has authorized a provision for determining community interests and needs in the reallocation of funds the self-governance process provides. What self-governance does, Committee Members, for us as a traditional community, it provides us the opportunity to maintain our traditionalism, but to do new and different things with these Federal funding that we have. Our role in self-governance proceeds Public Law 93638 through one of the most publicized land claims in tribal and Federal history, the return of Blue Lake to Taos Pueblo in 1970.

The land transfer was part of President Richard Nixon's reversal of harmful Federal Native American Indian policies to tribal self-determination policies. This year, Taos Pueblo is celebrating the fortieth anniversary of the return of Blue Lake to the Taos Pueblo people and acknowledges the bill that clearly indicates Federal interest in Native American issues and the starting point for launching a new Federal Indian policy of self-determination. We have been a Title I tribe since the beginning of this new policy, and now we have begun to look into self-governance by being a self-governance tribe with both DOI and IHS. Among the pueblos, we are known for taking action rather than a wait and see stance, and we are the only second tribe in the southwest region of BIA to execute a self-governance compact.

We are also the first tribe in the Albuquerque area office to enter into an IHS self-governance compact. We are very, very proud to

have played a historic role in the formation of Public Law 93638. Now, regarding H.R. 4347 and having gone through self-governance negotiations recently, it is very apparent to us that these dissimilar rules which BIA and IHS follow are very harmful to the self-governance effort. The H.R. 4347 amendments, as proposed, would greatly aid tribes wishing to enter self-governance and would facilitate our own future self-governance operations and negotiations by aligning BIA rules to IHS rules adopted in 2000 and would clarify or revise some Title I provisions still applicable to both agencies.

For example, the criterion process which govern agency decisions to decline a tribe's self-governance proposals are very different under Title IV and Title V. Title IV basically allows tribes to require the BIA to satisfy the 638 Title I declination criteria and burdens of proof to use the Title I declination process. In contrast, Title V establishes more stringent declination criteria and broader statutory declination burden of proof requirements and declination appeal process applicable to IHS self-governance declinations. This was done a decade ago. These statutory differences have also led to different regulations addressing these issues. All these regulations are different. It is very burdensome to deal with so many different regulations which could be streamlined into one set to apply to all self-governance declinations.

In Section 407[c] of H.R. 4347 would require the Interior Department to follow the same stringent declination rules at IHS. This would give the tribes only one uniform set of rules and appeals standards for resolving declination disputes regarding our self-governance initiatives. The new Title IV regs called for in Section 415 of H.R. 4347 would have to conform to that statute which would require that the Title V and Title IV regulations governing declinations and appeals would essentially be the same. Section 415 of the bill also causes the immediate appeal of the existing Title IV provisions. All of this would be a great improvement, Committee Members, as dealing with different statutes unnecessarily increases our legal operation costs in moving forward with self-governance and adds a layer of confusion that advances no one's interests. With this, Taos Pueblo strongly supports H.R. 4347.

[The prepared statement of Mr. Gomez follows:]

**Statement of Donovan Gomez, Tribal Programs Administrator/
Self-Governance Coordinator, Pueblo of Taos**

With your respect, Chairman Rahall, Ranking Member Hastings, and Members of the House Committee on Natural Resources, thank you for inviting the Pueblo of Taos to testify at this important hearing. My name is Donovan Gomez and I am the Tribal Programs Administrator and Self-Governance Coordinator for the Pueblo of Taos as well as a tribal member. On behalf of the Taos Pueblo Tribal Council, Governor James Lujan, Sr., and Warchief David G. Gomez, I am here to provide testimony in support of H.R. 4347, the Department of Interior Tribal Self-Governance Act of 2009.

The Pueblo of Taos is a traditional Pueblo community located in Taos County, New Mexico, 70 miles north of Santa Fe. Our population is 2,505 tribal members residing on a land base of 103,637.31 acres

The Pueblo supports this government-to-government forum and process for Tribes and the United States to make the necessary amendments that allow for the fulfillment of tribal self-determination, self-governance, sovereignty, and treaty rights, as

well as sufficient levels of funding to address the needs of Tribes and their tribal citizens.

History

Taos Pueblo is known for our beautiful and prominent architecture, especially of our multi-storied adobe Pueblo. The North-Side House said to be one of the most photographed and painted buildings in the Western Hemisphere. It was designated a National Historic Landmark on October 9, 1960, and in 1992 became a World Heritage Site.

Governance

Taos Pueblo is also known for being one of the most guarded and conservative pueblos in our traditions and governance. Our governance is similar to that of other tribes and governments with our Council as the legislative branch, the Governor and Warchief's Offices as the executive branch, and the traditional courts located in each Office as the judicial branch. Our Tribal Council is composed of 56 Councilmen. We are traditional in governance and have always been self-governing. As such, the move toward Self-Governance was not unfamiliar as we have always governed ourselves.

Traditionalism

We do not have a constitution, we do not vote for our tribal leaders. Our tribal leadership is elected annually by our religious leaders and the Tribal Council. However, under Self-Governance, the Tribal Council has authorized a provision of determining community interests and needs in the reallocation of funds the self-governance process provides.

Taos Pueblo and Self-Governance

Taos Pueblo has been a Self-Governance Tribe since 2007, negotiating a compact and funding agreement with DOI in the same year and with the Indian Health Service in December 2009.

With the trust responsibility, Taos Pueblo received a commitment from the federal government to provide for the health, safety, and welfare of our people into the future. This federal trust responsibility has never been fully met as our people experience lower life expectancy rates, higher dropout rates, and higher poverty rates than any other racial or ethnic group in the country. The overall prosperity of Taos Pueblo is directly tied to the health and well-being of each tribal member.

Taos Pueblo calls upon Congress to address these issues by passing H.R. 4347 Amendments to assist existing Self-Governance tribes and to encourage participation of new tribes:

- *To provide greater legal authority to tribes as they pursue the goal of transferring authority and responsibility from federal bureaucracy to tribal program administration;*
- *Much needed reform and parity in negotiations between tribal governments and the federal government;*
- *To provide much needed services to the community in the reallocation and design of programs functions services and activities or portions thereof;*
- *To set our own priorities and determine how program funds should be allocated;*
- *To insure the intent of congress reaches the tribes and tribal members.*

Taos Pueblo and PL 93-638

The Pueblo's role in self-governance precedes Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, through one of the most publicized land claims in tribal and federal history, the return of Blue Lake to the Taos Pueblo people in December 1970.

The land transfer was part of President Richard Nixon's reversal of harmful federal Native American policies to tribal self-determination policies; most prominent of his actions was the return of Blue Lake to the Taos Pueblo.

Our self-determination efforts began in earnest in 1906 when President Theodore Roosevelt appropriated 48,000 acres of Taos Pueblo land toward the creation of the Carson National Forest. The Pueblo waived their right to the town of Taos and surrounding areas, asking only for the return of our sacred Blue Lake. The U.S. Forest Service cut roads into the area, made it available to campers and tourists, built cabins and corrals, allowed fishing in the sacred lake itself, allowed grazing of herd animals into the area, allowed clear cutting of some 2,000 acres of timber, and threatened to mine the area immediately adjoining Blue Lake.

On December 15, 1970, Bill H.R. 471 was signed by President Nixon into law and Taos Pueblo got back 48,000 acres of our sacred space including Blue Lake.

This year Taos Pueblo is celebrating the 40th anniversary of the return of Blue Lake to the Taos Pueblo people and the bill that clearly indicated federal interest in Native American issues and the starting point for launching a new federal Indian policy of self-determination.

Taos Pueblo has been a Title I tribe since the beginning of this new policy and has now begun our transition to self-governance. Among the Pueblos, we are known for taking action rather than a wait and see stance. Thus, we are only the second tribe in the Southwest Region, BIA to execute a self-governance compact in 2006. We were the first tribe in the Albuquerque Area Office to enter an IHS self-governance compact in 2009. And we are very proud to have played a historic role in the formation of Public Law 93-638.

H.R. 4347 Will Aid Self-Governance Tribes

Having only recently gone through self-governance negotiations with BIA in 2006 and with IHS in 2008-2009, a grueling two year initial negotiation, the dissimilar rules which BIA and IHS follow are very apparent to us. The H.R. 4347 Amendments as proposed would greatly aid tribes wishing to enter Self-Governance and would facilitate our own future self-governance operations and negotiations by aligning BIA rules to the IHS rules adopted in 2000 and would clarify or revise some Title I provisions still applicable to both agencies.

For example, the criteria and process which govern agency decisions to decline a tribe's self-governance proposal are very different under Title IV and Title V. Title IV (at 25 U.S.C. § 458cc(1)) basically allows tribes to require the BIA to satisfy the Pub. L. 93-638 Title I declination criteria and burdens of proof and to use the Title I declination process as set out at 25 U.S.C. § 450f(a)(2). In contrast, Title V (at 25 U.S.C. §§ 458aaa-6 and 458aaa-17) established more stringent declination criteria and broader statutory declination burden of proof requirements and declination appeal processes applicable to IHS self-governance declinations. This was done a decade ago.

These statutory differences have also led to different regulations addressing these issues. 42 C.F.R. Part 137, subparts H and P (Title V declinations and appeals); 25 C.F.R. Part 900, subparts E and L (Title I declinations and appeals); 25 C.F.R. § 1000.179 and subpart R (Title IV declinations and appeals). All of those regulations are different. It's very burdensome to deal with so many different regulations which could be streamlined into one set to apply to all self-governance declinations.

§ 407(c) of H.R. 4347 would require the Interior Department to follow the same stringent declination rules as IHS. That would give the tribes only one uniform set of rules and appeal standards for resolving declination disputes regarding our self-governance initiatives. The new Title IV regulations called for in § 415 of H.R. 4347 would have to conform to that statute which would require that the Title V and Title IV regulations governing declinations and appeals (and on the many other issues where there are presently differences) to essentially be the same. § 415 of the Bill also causes the immediate repeal of the existing Title IV provisions.

All of this would be a great improvement as dealing with different statutes unnecessarily increases our legal operational costs in moving forward with self-governance and adds a layer of confusion that advances no one's interests.

Thus, Taos Pueblo strongly supports H.R. 4347.

Recommendations to Other Tribes in Area

The Pueblo wholeheartedly supports tribal self-governance and H.R. 4347 as proposed in that its provisions would greatly assist our future self-governance operations and negotiations and will help other tribes, especially the Pueblos as they move to negotiate self-governance agreements with the United States.

We will continue to focus on our traditionalism and how we have begun to use Self-Governance to support it rather than to bury it. With good graces, the Committee will see that the Title IV amendments will not only aid self-governance tribes but aid the entrance of the Pueblos into Self-Governance; the participation of the Pueblos will certainly give the Self-Governance movement new colors, strength and spirituality.

Thank you.

The CHAIRMAN. Thank you. Let me ask Chief Pyle the first question. In your testimony you note that self-governance promotes greater economic stability and better fiscal responsibility and accountability. Would you please explain how self-governance has

promoted better fiscal accountability and improved the economic stability of the Choctaw Nation.

Mr. PYLE. Yes, sir. I would go back a little bit. The question was asked later when the lady was here and I think left. She asked about the accountability of a tribe to be able to go into self-governance. The original Act is, as long as it is still in place, you have to have three years of no significant major findings in three submit years, three year audits, in a row before you are eligible for self-governance, so you have to start that process early. When we came into it, the self-governance, we actually took over a contract for our service unit in 1985, and nine years later, then that was evolved into self-governance in 1995, about nine years later.

Each year we would try to get better in our accounting and our businesses and find out who our good leaders were and we were able to start these businesses. Now, it took years sometime to get them really successful and we did a lot of planning there, but you find out you have systems, you have accountants, you have no politics in business, there is not room for it, and so you get these principles. We adopted probably five or six major principles there to go into business. Along the way, we actually went to, if we were in New Mexico, we would go out and find the best tribes there, maybe in south there, and we were in Mississippi, we would go to another tribe, and we were in the northwest, we would go look at them.

A lot of that, when we were going to self-governance conferences, we would intermingle with these tribes. So it was a learning experience for us over about 12 or 15 years that evolved into being able to go in businesses and know how to operate those businesses. Now, we had the business background sometime, but it is a political environment that was sometime, many tribes will stifle by. They allow politics, we found. We found that it has to be a very strong council and a strong leadership at the helm to be able to go in and said no politics because there is not room for it. The margins are slim but the returns are great in the fact that if you have 100 people at a job, that is 100 families you helped, and so that is the residual many times.

So sometime we go into it for dual effect, try to make some money, but big jobs, amount of jobs. So the thing that we learned from here is you have to go in, you are audited, if you are not doing something right they will tell you, and, actually, we have good relationships with our auditors to find out what we can do better. It is a learning curve there that we have enhanced on.

The CHAIRMAN. The pending legislation would make the Interior Self-Governance program consistent with the Indian Health Service Self-Governance program. One of the changes would be to authorize the Indian tribes to submit a final offer. Would you explain why this change is necessary.

Mr. PYLE. I believe you are talking about the funding agreement when you are negotiating.

The CHAIRMAN. Correct.

Mr. PYLE. Well, it seems to be today is there was originally, they have come under the originally Title IV and Title V. It would seem that the Indian Health Service will negotiate and if you can't come to some agreement, they will say, OK, until we can come to an agreement, let us use the previous year's budget and let you con-

tinue your program. It has been some cases where the Department of the Interior comes in and says a little different. They say if we can't come to an agreement on this funding, we will just withhold all funds. That is the problem right there, the services that are not getting to the people. I don't think Congress intended that.

I think we would like to see some of the better, we call it, you know, the better management tools. What works. It doesn't always work every time perfect, but let us keep on changing it until we get it right. We have seen that if we can change that, where we get services and you have to go back to last year's and let us try to negotiate it out to further that year. We would like to see it where those services continue for those people, and let us go, let them use last year's, that is OK, until we can come to conclusion. Don't just stop it. They kind of hold a hatchet over your head.

The CHAIRMAN. Chairman Levings, you testified that the BIA and the Indian Health Service treat self-determination contracts the same as Federal procurement laws. How have the agencies treated self-determination contracts the same as Federal procurement laws?

Mr. LEVINGS. Chairman Rahall, what I experienced in my time as a tribal leader, and a tribal councilman, and a tribal director/administrator for the Mandan, Hidatsa and Arikara, Three Affiliated Tribes, is that I think we are doing exactly what the CFR criteria requires of us, you know? There has been nothing that we don't do that we are not supposed to. The three bids, you know, for procurement in your case that you are requesting, suggesting, is there any difference, I don't think so. Knock on wood, I am former Bureau worker myself, a Bureau of Indian Affairs realty specialist. When I came from the Bureau to the tribe, I continued on that same format of doing business, but I inherited the same conservative governing that was before me.

The former administrators, and directors, and council members, and chairmen, they have all been respectively conservative in regards to following the rules, and the regulations and the laws. So as I sit here and talk about self-governance, I am kind of interested. We have contracted every program with the tribe that has been offered to us with the Bureau of Indian Affairs, the Indian Health Service and the Bureau of Reclamation. The only one we turned back, Chairman Rahall, was the realty of the BIA. In 1986 there was a referendum that took the discussion or debate and the issue to the people, and the people said leave realty and range with the BIA. Those are the only two programs that are left on my reservation that we didn't 638.

We recently did two more 638 letters of intent to BLM. We have oil and gas on Ft. Berthold. We have a lot of oil and gas. In fact, they are calling us the Saudi Arabia of Indian Country. So we are looking at BLM not doing their part so we want to 638 them. We have a one stop shop that we are looking at to do the oil and gas. We don't think they are doing their job. We want to 638 that. In May of 11 on 2008 we 638 Indian Health Service. We are the first tribe in Great Plains, Aberdeen area that took on that task. As Honorable Chairman from Choctaw has said they have done for decades, well, we are the first for Aberdeen. Then, in December of 2007, we took on the law enforcement. We were the first in Aber-

deen area to do that. So we are doing it effectively, efficiently, and we are doing audits every year.

The problem we are having, Chairman Rahall, is that when we are doing our audits, it includes everything. So if we have an enterprise development, a radio station, a college, they are encompassing all of those outside organizations that should be standing alone on their own audit. No. They want the audit for everything. So it is kind of unusual thing that holds us back, even though every the Three Affiliated Tribes, the Mandan, Hidatsa and Arikara, supplement these Federal contracts to the tune of millions every year. When I first got elected Chairman November 2006, I gave the bill to the Senate Indian Affairs Committee and I said, Chairman Dorgan, you owe us \$26 million for the last 10 years of supplements that we have had for the 638 contracts. We do also retrocede. We let the criminal investigation go back because we know when it needs to be done differently. Maybe two, three years from now we will 638 it back into the tribe's organization structure. But we have had all areas. In self-governance, I think one day we want to be there, but it is just down the line. Respectfully, Chairman Rahall. Thank you.

The CHAIRMAN. Thank you, Chairman Levings. Mr. Hastings?

Mr. HASTINGS. Thank you.

The CHAIRMAN. We should not interrupt our hearings to sing Happy Birthday to Don Young, by the way.

Mr. HASTINGS. Sounds good. Go ahead.

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. HASTINGS. Boy, talk about an entrance. I will tell you.

The CHAIRMAN. I know it. Every time. At least he comes to the right side of the aisle, though.

Mr. HASTINGS. That is debatable, but that is all right. I want to thank all of you for coming and your testimony. As I mentioned in my opening remarks, certainly the issue of self-governance sounds pretty simple, but it gets complex when you go into the various areas, so my question to you is kind of the principle. Let me just ask the question. I want to ask it of all of you and couch it as I see how this unwinds. My question is should tribes incur financial liability for programs they assume pursuant to self-governance agreements authorized under this bill? Let me couch it in this way because the mere fact that this bill says that the government can reassume whatever that program is or function would imply that there is a risk involved.

Obviously, there is risk and reward, as Chief Pyle has said, from at least financial programs that they run. Chairman Levings, you essentially said the same thing. So there is risk and reward here. Listen. That is the essence of what our economic system is anyway. So the question is on the liability part, and you heard my exchange with the Department of the Interior, it is once a program is in place, up to the time after going through a number of steps there has to be a reassumption, who assumes that liability? My question to you is should you be part of that liability? I would like to have your response from all of you. Chief Pyle, we will start with you.

Mr. PYLE. Yes, there is a responsibility there, but it is like the lady said, the Department of Defense has never had a complete audit. I don't know what the Federal Government does when they

operate programs and they are not efficient and they have a big problem. I am not certain what they do on recovering the money. I don't know they take it out of that budget next year or does the entity actually pay it back. I am not real familiar with the Federal Government, but I know when they don't live up to it, I think it is just like, OK, well, you keep going. Here, I think, you know, if there is some kind of fraud, obviously, somebody has to pay on that. If it is not getting the job done as good, as efficiently, usually the Federal agencies still have the authority, if it is not run right and there is gross mismanagement, to actually come in, and, in certain circumstances, they can take a program over if it is mismanaged grossly. I really don't know of any programs right now. There may have been some somewhere.

Mr. HASTINGS. Well, I am talking hypothetically. There is going to be, I mean, if there is a takeover, there has to have been established going through some steps that something went wrong. The question is who is responsible for that part? That is really what I am asking. I am asking in the broader sense should the tribes under this process assume some of that financial liability? That is all I am saying.

Mr. PYLE. Yes. We actually, like our good friend here, Three Tribes there, Levings, we put in millions of dollars every year into ours, and we are proud that we do that and we take a financial responsibility on that. Some tribes not may have been fortunate to have those businesses or locales. A lot of ours is because of location sometime. You would have to go back and would really need to go back into the laws and see what is there. I really couldn't answer you at this time. We will certainly research it and send you what we could come up with.

Mr. HASTINGS. Would you do that? I would appreciate it.

Mr. PYLE. Certainly.

Mr. HASTINGS. Thank you.

Mr. LEVINGS. Effectively, I guess I would just have to give an example of what we ran into regards to your question. There was a year that we were looking at cutbacks. The COPS FAST program under Department of Justice wasn't going to be refunded and the Three Affiliated Tribes were successful in having that contract for five years, I believe, in six years and then the funding was cut. Well, our police force of 20 was going to go down to six. Fourteen of our COPS FAST were under tribal general fund, so we were going to end up with six officers and we were going to be devastated, basically. The liability really wasn't ours because the contract for law enforcement services was still with the Bureau of Indian Affairs. If we didn't fund those 14 positions, there was going to be chaos on our reservation because we have a million acres and 12,000 enrolled members. So we funded it under the general fund, and, yes, we bore ownership of that liability.

Mr. HASTINGS. OK. Yes, Mr. Keith?

Mr. KEITH. I am not sure about the exposure side of the question. I know that, you know, our audits have doubled in their cost and I know they are quite a bit more extensive. Those audits are provided to, you know, our funders, and first and foremost is the Office of Self-Governance that receives those audits. It is at that point where there is some engagement if there are findings or other

issues. So, but we haven't gone through that process, so I am not really familiar with, you know, how that works. I know there is a process of engagement that occurs. We have seen it with one of our tribes. It has always been addressed before it gets to the point of liability.

Mr. HASTINGS. OK. Good. Good. But there is at least some assumption of some liability, but it was addressed before any action was taken. Is that a fair way to say that?

Mr. KEITH. Yes. I know there are some requirements for insurance be placed on—

Mr. HASTINGS. Right. All of those would be a factor. I am just talking about the issue of some sort of liability. Mr. Gomez?

Mr. GOMEZ. Thank you, Mr. Chairman. First of all, with respect to the Committee, I would like to acknowledge Mr. Lujan, our Congressman from the Third Congressional District. Thank you very much, Mr. Lujan, for all the support you have given to the Pueblo. Mr. Chairman, he is no stranger to our Governor's office. We regularly have him. You have a good person on your Committee here in Mr. Lujan. Regarding the liability portion, that is a tricky question, I agree with the members of the panel here, but when it comes to accountability and responsibility, whether it is a 638 contract, or a Title IV, or a Title V compact, Taos Pueblo will assume the responsibility for the operation of these programs.

It is just not a financial interest of us, but it is delivering these programs and services without red tape to our community members. We have done a lot so far in our short time as being a self-governance tribe. Now, regarding the liability, we have some programs that were covered under the Federal Tort Claims Act. Because we are operating these what they call PS of As, we are operating those, and we are covered by the Federal Tort Claims Act in some of those activities that we assume. When it comes to liability and responsibility, I believe that is a shared process between the Federal Government and the tribes. This is a compact. This is an agreement between the Federal Government and the tribes, and that is the way we look at it at Taos Pueblo.

Mr. HASTINGS. Good. Thank you very much, Mr. Chairman.

The CHAIRMAN. Gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. I am very happy to be co-sponsor of this bipartisan bill. The two co-chairs of the Native American Caucus are sponsors, and Mr. Boren being the chief sponsor. I really appreciate your very clear testimony on this. You have helped inform us a great deal. Kind of a personal note. I have a former student of mine, I used to be a schoolteacher in Flint, Michigan, and one of my former students now lives in what he calls Dude Ranch, Oklahoma. We share Christmas cards and phone calls once in a while. I have mentioned that to Mr. Boren here a number of times. Chief Pyle, he always speaks of you reverentially. It is really touching.

I like to see respect shown to people who have earned respect, like yourself. He speaks of you so reverentially, it is almost like you are his Godfather in the best sense of the word. I have learned a lot about you through Dan Boren. So all I can say is, all of you, keep up the good work, and, Chief Pyle, you continue to keep up

the great work which Dan Boren tells me about all the time. Thank you. God bless you.

Mr. PYLE. We really appreciate it. It is because we have a great Congressman, Dan Boren. Thank you.

Mr. BOREN. Thank you. Keep it up.

The CHAIRMAN. The Chair will have to second that. Gentleman from Alaska, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman. Again, thank all of you for recognizing that 77 years ago my poor mother gave birth to me. Just for the information of the audience, I was born in northern California on a ranch with a midwife, and the day I was born it was 110 degrees above and it was like that for 60 straight days.

The CHAIRMAN. OK. That is too much information.

Mr. YOUNG. I just want you to know that is why I moved to Alaska. Exactly right. Mr. Keith, thanks for coming all the way down. I saw you last week in Nome. Mr. Chairman, and I have read your testimony, could you just give us an example what has happened in your attempt to work with Fish & Wildlife, Park Service, et cetera, trying to work with them and trying to achieve a goal of mutual self-determination and area with Federal agencies.

Mr. KEITH. As I stated, it requires legal counsel, it requires a team of people. We have a good team of people up at Kawerak. It involves a lot of people to negotiate, and it takes time, and it takes human resources, and it takes money, and, above all, it takes a will to engage the Federal agencies. They are not always, you know, cooperative. We are taking away responsibility from them upon ourselves, and we are willing to do that but they are not so willing to give up that responsibility, and so that is where the engagement usually occurs.

Mr. YOUNG. Have you been successful?

Mr. KEITH. Well, with National Park Service we were for three years.

Mr. YOUNG. And when you say three years, they have canceled that?

Mr. KEITH. Yes.

Mr. YOUNG. Did they give you a reason why?

Mr. KEITH. Well, it was they viewed it as a grant. They viewed it as, you know, this was their program.

Mr. YOUNG. But it is in your area?

Mr. KEITH. Yes, that is correct.

Mr. YOUNG. Mr. Chairman, this is the problem with this whole program, the reason I support this bill. BIA shouldn't be under the Department of the Interior because it is in conflict with other agencies under the Secretary. You have the Fish and Wildlife Service and Park Service in an area of the Seward Peninsula where these people live and they don't really want to deal with them because they have their own little program, yet BIA is under the Department of the Interior, and what these people are trying to do, the way I understand it, is be able to be part of those other agencies, but they don't want to deal with them. This is what this bill does, at least I hope it does, it better, because I really, I have never understood it.

We were sold, before your time and everybody else in this room, the bill of Alaska National Lands Act, then the Native Claims Act

under the National Act. We were supposed to be partnerships. I think you are the only one, there may be one more in the Interior, that has been able to deal with the Department of the Interior. They don't want to deal with the people who live in those areas. I think that is terribly unfortunate. I am supporting this legislation. It may need some improvement. I don't know for sure, but there is no reason why—we have Doyon, we have the Bering Straits, we have Chiulista. Chiulista is right in the middle of a huge refuge and they don't work with them, yet they are the people directly affected. Why can't they be doing the job instead of finding somebody up out of, all due respect, Massachusetts and have them work because they know better.

I think you are willing to take the responsibility. I do think you have—Marine Mammal Commission up there works pretty good. The health program works real good now. It is mostly all contracted out, and it shows it can be done and they are accountable. So it is unfortunate we have to have this legislation, I will be honest with you. It could have been done through the agencies themselves if they just made the attempt. So I hope we see this bill come to the Floor of the House in a very rapid fashion. Again, thanks for flying all the way down here. It is a good weather today. Get out of here tonight. Tomorrow it is going to be 90 degrees, not 110. Go ahead.

The CHAIRMAN. The gentleman from Oklahoma, Mr. Boren.

Mr. BOREN. Thank you, Mr. Chairman. Look forward to being in Alaska, actually, in 2011. That is my plan. Mr. Young and I have been talking about maybe having an expedition together, a little bear expedition. Anyway, I appreciate you co-sponsoring the legislation and your support. Also wanted to say again to Chief Pyle, thank you for your efforts on this legislation, also for all you do for the Choctaw Nation in southeastern Oklahoma. You mentioned earlier in your testimony, you talked a lot about, you know, the health care improvements that have happened, and Assistant Chief Gary Batten also is a big part of that. I have a question for you. The Choctaw Nation has been through this. You all have been involved in self-governance. What advice do you have for other tribes that are kind of starting where the Choctaw Nation was, you know, 15, 20 years ago?

Mr. PYLE. Well, sir, we have a saying. In our part of the state we like to kid and joke, and this is only a half a joke and half truth. We steal our best ideas. When I say that, we go and we find, if we want to do something, we find some veteran that has got, of any service. If it is Indian health, we find somebody that has got 30 years experience that were very high level as we can. We figure that, you know, they have so much knowledge back there, 30 years, which would take us many years to duplicate, and we ask them to come in. We ask a lot of good consultants that were successful in whatever area they are at. Also, when we travel around, assistant chief for many years, depends on what committee, I would actually find out who were the most successful tribes in the nation.

We have been to every one of them, and we have asked every tribe ahead of time if we can come and see how they do their businesses, and talk to their leadership and talk to their counsel of problems they had. It is just a learning experience. We don't have

any golden rules. Then, when we went into business, we actually had to fund those for several years before they, you know, we had to put capital into them. Not every business are success. We tried to visit with our counsel, but not every business is going to be successful ahead of time. It takes years to be successful. The biggest thing is we use the gray hair theory. Somebody that has got that 20 or 30 years experience.

If I were going to come to Washington, the first thing I would do is ask some of the men and women up before me today what do you have to do to be successful? Well, number one, you know, the harder you work, the luckier you get. Well, that is what it has taken, and we have these people who have 30 years' experience in self-governance. We open up our doors just like all other tribes opened up to us, and we will share the good and the bad. So I guess that is the biggest experience—

Mr. BOREN. Let me ask you this question. I think I heard this statistic this past weekend. How many jobs have the tribe created? Was it 8,500? Then maybe how many millions of dollars of an impact over the last few years? Hundreds of millions is what I—

Mr. PYLE. Yes. I have been there about 28 years and I had a background in business, but it is a long growing effect. In the last few years, after you are kind of successful in one or two ventures—and we got that, really, from the self-governance because we had to have all these systems and it took several years. That started programs. We are a little over 8,000 employees today, and we are in six different type of businesses. Now, we were in seven. Recently we got into a business and after a few years we lost our shirt and we sold the business. We got out of it. We said there is not a future in here. We had consultants come in and says you are not going to have a future in it. So we got into it. We try to refine that as going in and using good consultants now. Experts has been doing something for years.

We find that we are much more successful. Really what it does in our area is create for the communities. We actually take roads money and pave the streets. Right now we have a city that has been very archaic that said recently we want to get business here, can you help us, and we have some land there, we will donate it for an industrial park, we will even do the paving in around. The Congress a few years ago allowed us to do that. We can take our roads money and do all the paving in this industrial area, and they can build the building, and we will donate the land and the other things, and so it is not just us. We figure if the community around us, whether Indian or non-Indian, I mean, a lot of Indians are there, if they grow, we grow, and it is vice versa. Sometime you have to take that first step.

There has been a lot of animosity for years. A little bit is left. We bypass the towns that don't want to work with us. We go into places that welcome us. We find that if you help somebody out several times, they help you. So that is really the best thing there. We like to say to be a good missionary, sometime you have to be a good businessman because we pump millions of dollars, get \$7 million a year just in the health system, as we have been more successful. It helps all the people in that area. It is one of those hospitals that

is allowed to—it is kind of like Alaska. Everyone uses our hospital, whether you are Indian or non-Indian alike.

Mr. BOREN. That is great. It looks like we have run out of time, Mr. Chairman. Again, thank you, Chief Pyle, for being here and all of the other witnesses today.

The CHAIRMAN. The gentlelady from California, Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. Question for Mr. Keith. Why is the health care facilities mentioned are there no mental health illness treatment options? Are they in compliance in authorization requirements in the way of using the funds?

Mr. KEITH. Why is there no?

Mrs. NAPOLITANO. Is there any service delivery of mental health?

Mr. KEITH. There is. I think Norton Sound Health Corporation was one of the first tribes to use their tribal monies—under the compact, monies that we get come with additional administrative dollars, and the health corporation started a village-based counselor system up in Alaska. The question, specifically, is a little bit out of my league—if there are actually funds in the system for this.

Mrs. NAPOLITANO. Could you try to find out?

Mr. KEITH. I know we have taken administrative funds to start up our own counseling system, and I do believe that the Federal Government is probably funding something like that since we have created that. Initially it was a tribal initiative. We have 15 remote sites that the hospital serves and there are clinics in each, and then we have put village-based counselors and are training them up, and getting them certified and all that kind of stuff into that field.

Mrs. NAPOLITANO. Well, part of my concern has been that many years ago, and I don't know if Mr. Kildee remembers, there was a hearing on the Senate side, same questions were being asked then, mental health service delivery. To any of you, the concern is that does BIA work with HHS? Is there ability to be able to fund some of the programs that are going to prevent suicide, to be able to inform, educate the teachers, or the tribal elders, or parents of some of these youngsters who are facing some kind of depression that leads them to suicide? The issues are there seems to be quite a high percentage in Native American youth, as well as some of the adults. What are you doing? What can be done? What agencies need to come to the forefront and, as Mr. Young was saying, work together in tandem to be able to address it, whether or not it is their responsibility, whether or not it is in law, whether—you know, we need to address the issue.

Mr. KEITH. One of the effects, and I think Mr. Pyle has talked about this and I think we have all talked about this, is that self-governance puts the responsibility on us. We have made a great effort in working with different agencies, and pulling together different, and Kawerak working with Norton Sound Health Corporation and addressing these issues. I think self-governance has brought a lot of more people into the workforce and a lot more financial and political influence within the area of Nome, which, it has changed the dynamics. You know, 50 years ago there were signs up: No Eskimos or dogs allowed. So that kind of attitude, you know, even though those signs aren't around, the effects of those

signs are. Self-governance has made a very big impact on those at least.

Mrs. NAPOLITANO. OK. I would like to ask some of the other witnesses if they have some comments on this. How can we help, be able to ensure that these services are made available to those in need in your respective areas?

Mr. LEVINGS. Chairman Rahall and Committee Members, in 2005, the Mental Health Service for the Minne-Tohe Clinic in New Town for the Indian Health Service was the holder of the contract at that time. We took it over in May of 2008. Well, in 2005 when they were failing, there were zero mental health counselors. Today, we have six, seven, eight counselors. We had an agreement worked out with the University of North Dakota to bring in some students to actually learn, intern, but get paid, too. So it has went from zero to six, and it is something that was a complete failure by Indian Health Service. So when we did the letter of intent and the 638 resolution, my primary focus was that because you would have elders and tribal members come in routinely looking for services at the clinic and there was none in 2005. Then we moved for 638 contract, and now we are doing well.

Mrs. NAPOLITANO. Well, but that is your own tribal entity taking the initiative.

Mr. LEVINGS. Right.

Mrs. NAPOLITANO. What about BIA? What about HHS? What about are they working in tandem with you, and, if not, why not? I mean, that is my question is you need the services. Anybody else?

Mr. GOMEZ. Mr. Chairman, Congresswoman Napolitano, as you had mentioned, the overall prosperity at Taos Pueblo is directly tied to the health and well-being of each tribal member. We can't run these DOI programs that we don't have a healthy populous.

Mrs. NAPOLITANO. Right.

Mr. GOMEZ. I think you are raising a very, very important issue here. When I first came into this hearing I noticed there wasn't any DOI, I mean IHS people here, but then, of course this is about DOI/BIA, but I think it is very important. They need to be part of this discussion so we can begin to make those ties in like that. I think you are raising some very, very legitimate, very important issues and those type of questions need to be addressed. It shouldn't be foreign to this discussion on Title IV.

Mrs. NAPOLITANO. Thank you. Well, the concern that I have, Mr. Chair, is that if you don't have a good economy, self-governance, be able to provide employment for your people, then you have this depressive mood that prevails and you are going to have much more of the depression leading to suicide. So it is a concern, and I am glad to be able to work with you on this. Mr. Chair, thank you.

The CHAIRMAN. Thank you. Gentelady from South Dakota, Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman. I thank you and the Ranking Member for holding this important hearing on a very important bill, H.R. 4347. I commend Mr. Boren for the work that he has put into this bill. There are some new aspects to the bill in this Congress that we have been discussing with Mr. Boren. We are still seeking input and consulting with tribes I represent in South Dakota, and we will continue to work with Mr. Boren's

committee staff on some of those new provisions and how they may affect tribes in South Dakota. You know, many tribes have had experiences and some difficulties in the 638 contracting process. Nonetheless, you know, the ability for tribes to exert their sovereignty through compacting with the Department of the Interior is a crucial element of self-governance.

I find Mr. Young's comments about where the BIA should be situated are interesting, and the questions that Ms. Napolitano is raising—you know, Mr. Gomez, your responses—because I think just as we have encouraged the Administration to adopt an inter-agency strategy of working with tribes—to leverage programs and resources that are available that may help overcome some of the difficulties that we have had with 638 contracting or some of the challenges that self-governance tribes have faced. In South Dakota, we have nine tribes. None of them are self-governance tribes, I will talk about that in a minute—you know, we need to have an appropriate sort of intercommittee strategy, whether it is through the appropriations process or through the authorizing committees, so that we can work through some of these issues more effectively.

The bill that Mr. Boren has introduced is sort of one angle among many, you know, that we have to work so that as we are looking at consultation and capacity building and meeting the needs most effectively in concert with treaty obligations, you know, we don't have such a decentralized way of having to try to manage that, which is, I think, part of the problem. Now, as I mentioned, tribes that I represent, nine Lakota-Dakota-Nakota Tribes in South Dakota, they have a long treaty-based history with the Federal Government, treaties that establish the duty of the Federal Government to directly provide services, whether that be in health care and education, in exchange for very valuable land and resources that were taken from Native Americans, and so I am concerned when I hear reports from tribes I have the honor of representing that feel that the BIA actually favors providing services through 638 contracts rather than working with tribes to directly provide BIA services as part of the Federal trust responsibility. There are some reasons why tribes in South Dakota, many of whom do have 638 contracts, have concerns about going in the direction of some other tribes in the country, whether they be from Oklahoma, California, Alaska, in part because of their geographic location, and I guess their inability to as effectively access other funds or to have any kind of revenue stream to be able to supplement the dollars that are necessary through some of what we have seen. I think, you know, Chairman Levings, you spoke to this earlier. I didn't hear your testimony, but I understand that you had indicated that from 1996 to 2006 your tribe supplemented to the tune of over \$20 million—

Mr. LEVINGS. Yes.

Ms. HERSETH SANDLIN [continuing]. In terms of some of what you had contracted for. Can you just describe a little bit more the experiences that your tribe has had, and maybe other witnesses could talk about it. Does this bill effectively address some of those concerns? How do we best get at that particular problem that some tribes face more acutely than others depending on where they are located in the country?

Mr. LEVINGS. Chairman Rahall and Committee Member Sandlin, that was my boilerplate statement, I guess you can say that, to try to cover all the other tribes that are listening to me out there that they are dealing with. Some of them are in remote areas, and some of them don't have casinos, and some of them depend primarily on the 638 contract. We are fortunate now we have a casino, we are fortunate we have oil and gas, we are fortunate we have other means that are coming about to make our tribe move for independence one day, but we are still making that transition. When we had the 638 contracts offered to us in the 1970s, and the 1980s and the 1990s, the tribe has moved effectively and progressively for that, but nine times out of 10, every single contract had to have a general fund obligation supplement from our tribal government to budget in for roads, for instance.

Every year since the year one we had to put \$500,000 on top of the contract from our general fund. We took that in 1992. Eighteen years, I believe, times \$500,000 would be \$9 million. That is for one contract. Now you go across the board to KDU, that was the same situation. Every year they were supposed to give us \$450,000, so every year we had that contract is another \$9 million, and successfully as you go around the contract service that we have taken on. Even in the Indian Health Service that we took on in May 2008, there was a declination of indirect cost to contract support, and we had to sue and appeal the government. We just settled here about a month and a half ago for \$1.7 million.

There was a second concept that we were going to do on our clinic 638 contract is to serve as a business non-Indians in the community. We were taken to task on that, and we were able to do that one day when we get to that point, to provide a community clinic. So that would be a business, as Chairman from Choctaw, Mr. Pyle, is doing effectively. Hearing, Committee Member Sandlin, South Dakota, my brother/sister tribes, I know full well what they are dealing with. It is a challenge for the Chairman, and Presidents, and Chairwoman down in South Dakota. I am from North Dakota. New Town is not moving forward without remembering where we came from. When I first got elected to council back in 1998, and I was a Taro Director prior to that, our unemployment rate was 40 percent.

Today, it is four percent. So I know what it was like to have challenges in South Dakota, my brother and sister tribes down there. Today, western North Dakota is doing well. We came a long ways. Instead of having 250 people looking for work every work, now they could have two jobs if they choose. When I hear the comments and questions about, well, self-governance, that is why I said there is kind of like a mountain. You got to get a clear, clean audit for three years. Well, when they include all our enterprises that are challenged, are struggling, when they are including all of our radio stations and our papers that have nothing to do with the 638 contract, it is almost like a mountain for us tribes to get over, but yet, we still supplement every year \$3 million to all those contracts. Respectfully, Chairman Rahall and Committee Member Sandlin, that is the challenge that the 638 tribes have.

Mr. GOMEZ. Mr. Chairman, with your respect, I would like to add to more what Congresswoman Sandlin is talking about; also, to ad-

dress your question regarding a final offer. Under IHS rules right now, if you hit an impasse, if the tribe and IHS hit some tough areas and you are not agreeing on things, the tribe can make is what we call a final offer to IHS. That provision is not included with the BIA. It is like if they don't agree with you, you end up like going where Chairman Pyle's tribe is going, holding up your funds, things like that. With the final offer of IHS, that gives a provision. The IHS must prove, they must tell you exactly why they are declining your final offer, and they must give you legal reasons for why they are denying your interests in running certain types of programs or certain types of funding.

However, with Title IV, they revert to the Title I, the contracting portion of 638. So, in that sense, we are still doing contracting even though this is supposed to be a government-to-government compact with the United States regarding DOI programs. That may be the connection point with Congresswoman Napolitano's comments there. The way we look at self-governance at Taos Pueblo, we don't look at it as BIA and IHS, we look at it at services to the community. Here at Washington, D.C., you know, it is made like that, it is compartmentalized like that. We don't work together. That is them, this is us. When it comes down to services to the community, at Taos Pueblo, when we talk about self-governance, we talk about services to the community, whether it is health, whether it is DOI type programs. That is our argument for including these amendments to the 638 law.

The CHAIRMAN. Thank you. Any other Members wish additional questions? If not, the Chair wishes to—I am sorry. Yes?

Mrs. NAPOLITANO. This is to Mr. Keith. You mentioned a letter that was not answered by, is it BIA or Interior, that you are still waiting for an answer?

Mr. KEITH. Yes. The lost letter. We resent it to them. It regards the stimulus money and the \$150 million of maintenance funds.

Mrs. NAPOLITANO. Mr. Chair, would it be possible to ask this Committee to look at that letter and see why there has not been an answer to them if this is critical for their well-being?

The CHAIRMAN. Sure.

Mrs. NAPOLITANO. Would you submit it, sir?

Mr. KEITH. Yes, I will. I believe there are two other bills out there in relation to—Title VI of DHHS would probably address some of the questions that you have asked. I think there is a 477 bill out that has been proposed also that works with a multitude of different agencies and helps us to consolidate a whole host of different programs to make it work at the local level.

Mrs. NAPOLITANO. But if the agency's not complying with a request for information, we need to know. I would like to know.

Mr. KEITH. OK.

Mrs. NAPOLITANO. Mr. Chair? Thank you.

The CHAIRMAN. The Chair wishes to thank the panel. We know you have traveled long distances to be with us today. It has been very helpful to us as we continue to draft this legislation under the superb leadership of our colleague from Oklahoma, Mr. Boren. We will continue to work with him on both sides of the aisle in trying to make progress so we can use the benefit of your testimony in

this whole process. We appreciate it. Anything else? If not, the Committee on Natural Resources stands adjourned.

[Whereupon, at 12:03 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by Hon. Jerry Isaac, President, Tanana Chiefs Conference, follows:]

**Statement submitted for the record by The Honorable Jerry Isaac,
President, Tanana Chiefs Conference**

I am Jerry Isaac, President and Chairman of the Tanana Chiefs Conference (TCC), the traditional tribal consortium of the 42 villages of Interior Alaska that is grounded in the belief in tribal self-determination and regional Native unity.

On behalf of the Tanana Chiefs Conference, I am happy to submit this prepared statement of support and comments for the Hearing Record relative to the hearing held on June 9, 2010, on H.R.4347, the "Department of the Interior Tribal Self Governance Act of 2010."

The TCC is a strong supporter of the Tribal Self Governance Program and for decades has contracted and compacted various programs traditionally managed by the U.S. Department of the Interior and the U.S. Indian Health Service. The result of these undertakings has been that TCC has stronger ties with Federal agencies as well as the development of administrative and technical capacity within the TCC.

The Tribal Self Governance Program has also assisted our member tribes in establishing themselves as stronger self-governing entities, better able to build strong communities and economies while maintaining their culture. TCC maintains a strong commitment to assist our member tribes improve their self-governing capabilities while providing program training, enhancing program service delivery, while strengthening tribal administration.

TCC also provides management for tribal programs and activities to ensure contract and compact compliance with their programs and all requirements and while promoting tribal self-determination.

Under Federal law, Indian tribes are authorized to redesign and reallocate Federal program funding according to tribal priorities. The Tribal Self-Governance Program affords Indian tribes the opportunity to acquire the administrative acumen and expertise through Tribes training and technical assistance and, in the process, further their ability successfully manage an array of programs.

Since 1994, TCC has compacted for Department of the Interior programs on behalf of 34 tribes which has provided the tribes in the TCC region the option of directly administering these programs or having TCC administer them on the tribes' behalf. This compact was carried out through Annual Funding Agreements (AFA) until 2009 when TCC entered a Multi-Year Funding Agreement (MFA). Fort Yukon is a co-signer to the TCC compact.

Having secured funding through the MFA, TCC then enters into an Annual Memorandum of Agreement (MOA) with participating tribes. The Interior programs included in this compact are Village Government Services, Family Services, Education, Employment and, most recently, the Indian Reservation Roads program which was begun in entered 2009. With this arrangement, participating tribes are provided two options through the MOA: they may have TCC manage the programs; or they may administer them through their respective tribal council offices.

Pursuant to the terms of the compact, the programs described may be reallocated and tailored to accommodate each tribe's unique situation. In this way, the tribes—and not the Federal government—may determine what best fits their needs. For example, if a tribe has more Higher Education students than funding available, funding may be transferred from Job Placement and Training to Higher Education to fit the funding needs.

Section 409(d) of the legislation before the Committee will continue to authorize tribes to redesign or reallocate or consolidate programs in a way they feel best serves their communities.

Section 409 (k) of the legislation will authorize tribes to carryover funding from one year to the next until the funds are fully expended. The proposed change will authorize tribes to fully expend carryover funds without diminishing the amount of funding potentially available to tribes the following fiscal year. This carryover benefits the tribes by their continued ability to serve their tribal members in the most effective manner. Tribal BIA program needs fluctuate year to year and a flexible carryover mechanism helps to address these fluctuations.

TCC has been very active in managing health programs and activities as well. Between 1973 and 1984, TCC contracted with the Indian Health Service (I.H.S.) for a number of non-medical programs and in 1984 contracted with the I.H.S. to manage the Chief Andrew Isaac Health Center (CAIHC), including medical, dental, pharmacy, nursing, business office, medical records, and public health nursing. TCC's Health Services manages the health delivery system for the villages of Interior Alaska under the terms of Public Law 93-638.

In partnership with our villages, TCC's Health Services also operates and manages smaller satellite clinics in 28 villages. In January 2003, (AAAHC) reviewed Chief Andrew Isaac Health Center, Counseling Center, Dental Clinic and Eye Clinic and received a three-year accreditation of these facilities.

It is the mission of TCC Health Services to provide culturally-sensitive, quality medical care that is fiscally responsible.

Thank you for the opportunity to submit this statement and if the Committee has questions or would like additional information, please do not hesitate to contact us.

The documents listed below have been retained in the Committee's official files.

- Cherokee Nation, Chad Smith, Principal Chief—Written statement in support of H.R. 4347. No date. 3 pages.
- Hoopa Valley Tribal Council—Written statement in support of H.R. 4347. June 9, 2010. 4 pages.
- Jamestown S'Klallam Tribe, W. Ron Allen, Chairman—Written testimony in support of H.R. 4347. June 9, 2010. 5 pages.
- Kawerak, Inc., Loretta Bullard, President—Letter to Hon. Larry EchoHawk, Assistant Secretary of Indian Affairs, on Implementation of the Recovery Act Road Repair and Restoration Program. February 23, 2010. 6 pages.
- National Congress of American Indians (NCAI)—Letter in support of H.R. 4347 to Rep. Dan Boren. May 25, 2010. 4 pages.
- Northern California Power Agency (NCPA)—Letter expressing concerns with a provision in H.R. 4347. June 8, 2010. 2 pages.
- Ojibwe Indians—Letter in support of H.R. 4347. June 8, 2010. 8 pages.
- Redding Electric Utility—Letter of concern with H.R. 4347. June 8, 2010. 2 pages.

