

**IMPLEMENTATION ON THE TRIBAL SELF-
GOVERNANCE DEMONSTRATION PROJECT**

**HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON IMPLEMENTATION OF THE SELF-GOVERNANCE DEMONSTRATION PROJECT ACT BY THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE

OCTOBER 20, 1993
WASHINGTON, DC

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IMPLEMENTATION OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

WEDNESDAY, OCTOBER 20, 1993

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

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Office Building, Hon. John McCain (vice chairman of the committee) presiding.

Present: Senators McCain, Cochran, Campbell, Murkowski, and Wellstone.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator McCain. Good morning. I want to welcome you all here this morning.

Chairman Inouye wanted very much to be here this morning, but he is currently managing the Defense Appropriations Bill on the Senate Floor. As many of you know, he is the chairman of the Defense Appropriations Subcommittee and we have been involved in spirited debate for the last 4 or 5 days. I am sure he would much rather be here than there.

Chairman Inouye, of course, was one of the original congressional visionaries for the potential of self-governance to better define the Federal/Indian relationship.

Today's hearing will focus on the implementation of the Self-governance Demonstration Project Act by the Bureau of Indian Affairs and the Indian Health Service. We will discuss some of the obstacles as well as some of the successes of the project since its enactment in 1988.

For the past 2 days, a number of the self-governance tribes have been meeting here in Washington, DC to discuss establishing the project on a permanent basis. To assist with those deliberations, I provide the tribes with a draft bill that would make the program permanent for the Department of the Interior with the full intention of including the Indian Health Service at a later date.

I would be interested in any comments the tribes might have on this draft bill as well as your own ideas on what should be included in permanent legislation.

I believe this project has been a success and deserves to be established as a permanent option for all tribes. To fulfill our solemn treaty obligations and to give real meaning to the policy of Indian self-determination, I believe the Congress and the Executive

Branch must work together to see that we do everything in our power to allow the tribes to govern themselves and to dispense their own funds in the best manner in which they see fit.

As Joe DeLaCruz, president of the Quinault Indian Nation stated,

No right is more sacred to a nation, to a people, than the right to freely determine its own social, economic, political, and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself.

I would like to point out that there is already a vote scheduled at 10:30 this morning. I have an amendment on the Floor following that. I will try to get someone to take over the hearing during that period. If not, we may have to stand in recess for a relatively brief period of time.

Before we call our witnesses, I would like to ask my friend, Ben Nighthorse Campbell, if he has any opening comments.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S.
SENATOR FROM COLORADO**

Senator CAMPBELL. I would just ask unanimous consent to introduce something in the record, Mr. Chairman. I have a conflict as well, so I can only stay for a few minutes. I would prefer to save that time for people who are here to testify.

Thank you very much.

Senator MCCAIN. Without objection, your prepared statement will appear in the record.

[Prepared statement of Senator Campbell appears in appendix.]

Senator MCCAIN. I would like to call our first witnesses, Michael Lincoln, Acting Director of the Indian Health Service, and William Lavell, Director of the Office of Self-Governance, Bureau of Indian Affairs.

Welcome, gentlemen. Thank you for joining us here this morning.

As you know—and as I would like to inform all the witnesses—your complete statements will be made a part of the record. If you choose to summarize your statement, you are free to do so. If you choose to give your entire statement, you are also free to do so.

Mr. Lincoln, we will begin with you this morning. Welcome.

**STATEMENT OF MICHAEL LINCOLN, ACTING DIRECTOR, INDIAN
HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN
SERVICES, ROCKVILLE, MD**

Mr. LINCOLN. Thank you, Mr. Chairman.

It is our privilege to be here in front of the committee today. I will not go through the entire statement. We will submit that for the record, but I would like to summarize some of that statement for those points we think most important.

I am joined today by Reuben Howard, who is the acting director of our Office of Self-Governance, and Douglas Black, who is the associate director of our Office of Tribal Activities. Under his leadership, over the past year he has guided our self-governance activities.

The Indian Health Service was afforded self-governance demonstration authority just over 1 year ago. In that period of time, we

believe much accomplishment has occurred. There have also been many stumbling blocks that we need to work through. I would like to summarize a little bit of that accomplishment.

We have signed 14 self-governance agreements with tribal governments that are effective this fiscal year, 1994. These 14 agreements transfer almost \$50 million to tribal governments, \$7 million of which are what is called tribal shares. These tribal shares are Indian Health Service administrative funding from our headquarters office and from our area offices where these compacts were negotiated. We believe this is a marker in terms of complying with the intent of title III of Public Law 93-638.

The Indian Health Service will provide \$4 million of tribal shares from the organization, the remainder to be financed using the anticipated appropriation for the self-governance shortfall funding, which is approximately \$3 million. Our appropriation was marked up by the Conference, I understand, a couple of days ago. We believe these funds are in that appropriation.

Implementing self-governance in the arena of health cannot occur in isolation of some of the more recent events and recent documents that will be coming forward to the Congress. There are many, many bills in front of the Congress now regarding health care reform in some form. We believe that as we look at health care in Indian country, not only those services provided by the Indian Health Service but through title I contracts and through Title III self-governance compacts, that we must take into account and start anticipating the impact of the national health care reform effort on our health delivery systems.

In addition, there has been a report called "The National Performance Review" issued by the vice president. The reinventing government ideas, the downsizing, the expanding the span of control that administrators may be experiencing—at least in the Federal Government—are all factors that will impact on our ability to provide adequate, excellent services to Indian people.

The Indian Health Service will be absorbing a \$9.4 million reduction in administrative costs in fiscal year 1994, consistent with the President's proposal and concurrent approval by the Congress. The combination of a \$9.4 million reduction and the proper absorption of tribal shares at the area and headquarters, will cause the Indian Health Service to take a serious look at how best those administrative reductions can occur.

To this end, the Indian Health Service has appointed a small working group composed of tribal representatives and key Indian Health Service staff to start overseeing the effort to appropriately absorb these administrative reductions.

We have established an Office of Self-Governance with the Indian Health Service. This is one of those areas where I believe the Indian Health Service could be accused of not moving quick enough. In essence, we have had the authority for a year and we have had appropriations for 1 year. We have assigned some of our best staff in acting capacities to carry out the intent of the Office of Self-Governance.

We believe we had done that well, but it is now time to put a permanent staff on board. Just yesterday, the directorship of the Office of Self-Governance advertisement closed. We will be working

with the self-governance tribes to establish a process for their review of qualified applicants for that position. We would expect, certainly, a recommendation from those tribes as to how the permanent director of the Office of Self-Governance would be.

In general, Mr. Chairman and Senator Campbell, we support the principles of self-governance that have been outlined in Title III of the Indian Self-Determination and Education Assistance Act. We believe that there has been great learning by the Indian Health Service over the past year and we believe there is so much more to learn this coming year. We expect to have a partnership relationship, a government-to-government relationship, with the self-governance tribes. We look forward to this next phase of this partnership.

Thank you, Mr. Chairman.

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

Senator McCain. Thank you.

Mr. Lavell, welcome.

STATEMENT OF WILLIAM LAVELL, DIRECTOR, OFFICE OF SELF-GOVERNANCE, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. LAVELL. Thank you, Mr. Chairman.

I am William Lavell, Director of the Office of Self-Governance. I will be delivering the statement of Ada Deer, Assistant Secretary for Indian Affairs, who is unable to be here today due to a prior commitment in Albuquerque.

Since she is not here, I would like to read her statement into the record.

Mr. Chairman, since my confirmation hearing, I have taken the reigns of Indian Affairs, and I must say that there are many horses on this team and not all are pulling in the same direction. I aim to change that.

Also, since my confirmation hearing, Vice President Gore has issued the national performance review report entitled "Creating a Government that Works Better and Costs Less". The self-governance demonstration project fits perfectly into this model.

Things will work better as tribal sovereignty is enhanced with tribal governments assuming greater control over the use of Federal resources. Programs can now be designed and delivered by tribal governments with the ultimate customers clearly in mind—individual Indians living on various reservations throughout the country or in Alaska villages.

Further, as tribal governments assume more responsibility for managing their share of the Federal budget, there will be a reduced need for Federal staff. This will assist the BIA in meeting targeted FTE reductions and administrative cost savings.

As I indicated in my confirmation statement to you in July, Secretary Babbitt and I want to accelerate the trend toward self-governance and at the same time respect the rights of those tribes who choose a different course. Thus, while many tribes are reinventing their relationship with the Federal Government, other tribes have chosen to maintain their current relationship. It is critical that support for non-participating tribes be maintained.

I applaud the many tribal leaders and Members of Congress who have worked very hard, first, to pass the necessary legislation and, since then, to implement the self-governance objectives. Their hard work has achieved remarkable results as many different kinds of tribes have come forth to participate in the demonstration project.

In 1993, 19 tribes and consortiums operated programs under self-governance annual funding agreements with total direct program resources of about \$60 million which represents just under 10 percent of all BIA funds contracted or granted to tribes under the provisions of Public Law 93-638. These annual funding agreements ranged from a low of \$530,000 to a high of \$10.6 million. In 1994, we anticipate that 28 tribes and consortiums will have annual funding agreements totalling approximately \$100 million. These tribes and consortiums represent 9 of the 12 BIA areas.

The results of the project to date have been very positive. Tribal leaders from self-governance tribes indicate greatly increased flexibility in directing resources toward tribal priorities and needs. They describe a much greater level of interest in tribal council sessions, particularly budget sessions where tribal priorities are set. These leaders also report evidence of a new attitude by tribal program managers and staff as they take a more active role in the design and execution of tribal programs rather than simply being vendors of the BIA.

As Wilma Mankiller, principal chief of the Cherokee Nation, has stated: "The self-governance project has served to achieve the goal of real self-determination. As the 20th century closes, the Cherokee Nation has reassumed its place in the family of American governments."

What excites me about self-governance is that the decisions are being made by those most directly affected by the decisions. This is the way it was for hundreds of years for the many Indian nations prior to the arrival of the Europeans.

There are a few remaining issues yet to be settled. Some of these include: Settling on a process to determine tribal shares of the BIA budget; determining if any changes are needed that would allow the Secretary's trust responsibility to be fulfilled in a more flexible manner and then determining the support necessary to perform these retained trust functions; creating an efficient process to waive BIA rules and regulations to expedite program redesign; and developing regulations that will flesh out other parts of the project that require attention.

While I do not yet have answers to these and other questions, I can say it is my full intent to implement the self-governance project consistent with the laws that authorize it. In essence, these laws direct me to look for ways to include, not exclude, funds from all programs, functions or activities that benefit Indian tribes either directly or indirectly into the self-governance negotiations. This, however, must be tempered by the fact that as an executive branch agency, the BIA will always have a responsibility for certain inherent Federal functions that cannot be contracted or compacted to tribes.

To this end, I will form a study team that will be headed by one of my senior staff members to study these issues. Further, I intend to support tribal governments in their effort to redesign programs to meet their own unique circumstances by accelerating the regulation waiver review process.

Tribal leaders have just finished a 2-day conference in which they have considered what should be included in legislation to make self-governance a permanent option for those tribes that desire such a government-to-government relationship. I believe that it is time for the tribes, the Congress, and the administration to work together on the specifics of such legislation that will provide self-governance as a permanent option.

One of the strengths of the self-governance demonstration project is that it has remained a tribal initiative and I want to continue to support this undertaking. Where self-governance can be implemented through administrative procedures, then I favor this. There is still much to be learned about the possibilities and road blocks from this demonstration project. These can be addressed more efficiently by adjusting a procedure or policy rather than legislatively locking in a certain concept or process.

I know the tribes and the Congress are concerned about BIA restructuring in response to resources and responsibilities being shifted to self-governance tribes. The Senate Appropriations Committee has directed the BIA to submit a detailed report on the impacts of contracting and compacting for every program at every agency and area. This will provide a good foundation for future decisionmaking.

I want to explore ways in which tribal governments, who are the beneficiaries of tribal trust assets, can play a greater role in the management of trust programs. With the passage of Public Law 93-638 and more recently Public Law 100-472, which includes provisions for the self-governance demonstration project, Congress has authorized participation by the tribes in the administration of the trust programs. It is important to me that while we not lessen our trust responsibility, we take advantage of this participatory component. In meeting this trust responsibility, I see us moving increasingly away from actual resource management to trust oversight. Conducting annual trust assessments jointly with the tribal governments and the BIA has been a step in that direction.

In summary, what we are doing is having self-governance be the lead horse that will guide the other horses in reinventing that portion of the Federal Government dealing with Indian people.

I am sorry that I was unable to attend your hearing and I look forward to a continuing partnership with the self-governance tribes and the Congress as this demonstration project unfolds. To this end, I support the continuation of the Self-Govern-

ance Demonstration Project Council, and invite tribal leaders to share their input with me.

This concludes my prepared statement. I will be happy to respond to any questions that the committee may have.

[Prepared statement of Ada E. Deer appears in appendix.]

Senator McCAIN. Thank you, Mr. Lavell.

I want to take this opportunity to thank you very much for the outstanding stewardship that you have provided to this program. You have done a magnificent job. We are grateful to you. We understand that you will be retiring in a month or so and we wish you every success. The fact that you are leaving your present position I hope does not mean that you will lose contact with this committee and our staff, who appreciate your wisdom and your insight that you have provided us on this and many other issues over the past 10 years.

Mr. LAVELL. Thank you, Mr. Chairman. I assure you that I will be around. [Laughter.]

Senator McCAIN. Mr. Lavell, the Congress has intended the self-governance demonstration project allow tribes increased flexibility in deciding what programs and functions shall be provided, and in redesigning those programs to meet the unique circumstances of their reservation.

What reporting requirements do you feel are warranted for self-governance if we make this program a permanent option? Do you feel that we could eliminate many of the multiple reports that presently exist?

Mr. LAVELL. As you know, Mr. Chairman, at present we have several reports. First, there is the semi-annual cost and benefits report in reference to the baseline measures. I believe that clearly could be modified in that the baseline measures could be reduced somewhat in size. The tribes, as I understand, are working on that at the moment. This should only be an annual report.

Second, we have an annual trust assessment. This should continue, in my opinion. It is a new thing, really. It is something that probably should be done Bureau-wide.

Finally, we have the Single Audit Trust Act audit, which deals with the handling of the money.

Frankly, I would be loathe to get into any more reporting than that. I think that is adequate.

Senator McCAIN. The Self-governance Demonstration Project Council was established, as you know, to provide policy guidance to the Assistant Secretary. When is the council due to expire? Would you recommend that the council continue?

Mr. LAVELL. It is due to expire in December and I definitely recommend that it continue. As you heard the Assistant Secretary's statement, she also will recommend that it continue. It exists by a secretarial order. I am sure our recommendation will go forward to the Secretary.

Senator McCAIN. Mr. Lincoln, have you considered establishing such a policy council?

Mr. LINCOLN. Mr. Chairman, we have not considered that. It has not been under active discussion. We do believe that as we hold our next series of meetings with the self-governance tribes—the next meeting to occur in November—that there are a number of out-

standing issues that have not been resolved by the Indian Health Service. We can certainly put this on the list and have this fully discussed.

Senator McCAIN. Thank you.

I would like you to consider that because it has been successful at the Department of the Interior.

Mr. Lavell, numerous tribes have indicated a desire to negotiate for a share of Central Office programs rather than just receiving \$45,000. Would you recommend allowing for such negotiations for next year?

Mr. LAVELL. Actually, Mr. Chairman, we are planning to have a negotiation for at least a portion of this year for Central Office funds. The commitment has been made both at the secretarial level by the counselor to the Secretary and by Ms. Deer to form a team—and that is the team to which she is referring in her statement—to review the Central Office and to determine what amounts should be on the table for negotiation and to actually establish a negotiation, hopefully later this fall or early winter.

Senator McCAIN. Do you plan to downsize in response to self-governance?

Mr. LAVELL. There has been some downsizing in response to self-governance that I am aware of. Let me give you one example.

When the Cherokee first contracted, they took over the entire agency, since they were a one-tribe agency, and left just enough money to cover one position in the area office to handle trust matters. They did not negotiate for area office funds that year.

This year, two other Muskogee Area tribes came in as self-governance tribes, and all three tribes negotiated a share of the area office. Among the three of them, they represent about 50 percent of the budget for that area. The area director, as a part of restructuring, reduced staff at the area office by seven positions effective October 1.

So there are some things happening but there has been no overall uniformity, no.

Senator McCAIN. I would ask you and Mr. Lincoln to formulate plans for downsizing as the tribes take over more of their own responsibilities. I think it would be foolish for us to implement self-governance and yet at the same time not reduce the size of the bureaucracy that is supposed to be performing these functions. I am very concerned about that aspect of self-governance. I would appreciate it if you would provide the committee with your plans in writing, if you would.

Mr. LINCOLN. Mr. Chairman, we negotiated in 14 compacts approximately \$7 million worth of tribal shares at area offices and at headquarters. We indeed are putting those plans together now that will demonstrate that those are real administrative savings and the downsizing associated with that. We would be glad to provide that information to the committee.

Senator McCAIN. Thank you.

Mr. Lavell and Mr. Lincoln, the information that this committee has received is that the tribes—now some 28—that have chosen the self-governance project—and I emphasize again and again that it is a voluntary action on the part of the tribes—are uniformly pleased

with the success of their projects. Would you share that view, Mr. Lavell?

Mr. LAVELL. Definitely. An assessment was done on the first year of operation by an outside entity consortium in Oklahoma. They reported very favorably having done an assessment of the operation. There is a whole list of findings that they have which are extremely positive concerning the flexibility and the ability of tribal governments under this program to adapt the funding to the needs of that reservation at that particular time.

My observations as I travel around and as I talk to tribal leaders lead me to the same conclusion. This is a program whose time has come. It is the program that is putting tribal governments in the proper place in the system of American governments.

Senator McCAIN. Is that your view as well, Mr. Lincoln?

Mr. LINCOLN. Mr. Chairman, we have had compacts in place for exactly 20 days now. We still are in the demonstration phase. We believe that the planning phase and the working relationship with self-governance tribes is healthy, positive, and certainly can be improved. It is a little early for us to be exercising any judgment, given the amount of time we have been involved.

Senator McCAIN. We contemplate in draft legislation to make the self-governance demonstration project permanent for the BIA, not for IHS. Have you a handle on how long it would take the IHS to be prepared to be fully engaged in self-governance?

Mr. LINCOLN. I have not fully considered that issue, Mr. Chairman. We believe that the flexibility that is going to be exercised by the self-governance tribes to redesign the program will have to have a strong evaluation phase. The baseline measures that will be negotiated individually with the tribes I think are the key to that answer.

There is one other element that I do believe is key, Mr. Chairman, and that is the outcome measures associated with this activity. I certainly believe that there will be improved health status associated with more tribal and community control of resources. We will want to be able to document that effort, however.

Senator McCAIN. Do you believe that there are any health functions that should not be compacted with the tribes, Mr. Lincoln?

Mr. LINCOLN. No; I do not, Mr. Chairman.

Senator McCAIN. As you know, Mr. Lavell, I met yesterday with the self-governance tribes and we had a very lively discussion. One of the major topics that kept coming up was how many tribes in draft legislation should be allowed and whether there should be any geographic balance mandated by the legislation.

Do you have any views on that?

Mr. LAVELL. I don't think the need for geographic balance would exist when the program becomes permanent. We are getting pretty good geographic balance as it is. We have all but three areas and Navajo officially started their planning phase last week. We have the other two areas covered with people in planning. I think geographic balance would not be important when permanent.

As to numbers, it is going to be a function of how much traffic can be handled in a given year by the staff available. I would be much in favor of pushing the staff to the limit and get as many tribes in as we can.

Senator McCAIN. Would that be 30 a year?

Mr. LAVELL. I would say up to.

Senator McCAIN. And how much would your staff have to increase?

Mr. LAVELL. Well, we are hoping to add about three people to our financial end of the program. We are taking over more and more responsibility in moving the money starting this year, and next year we are going to do even more so that will be three additional positions. Plus, I would like to open an office in the southwest to better serve tribes. It works better to have somebody local. That would be an addition of around five positions.

Senator McCAIN. Thank you.

I note the presence of Senator Cochran, a distinguished member of this committee.

Do you have any comments or questions?

STATEMENT OF HON. THAD COCHRAN, U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. No, Mr. Chairman; I came by to indicate my interest, though, in looking at this demonstration program. In our State of Mississippi, the Choctaw Nation is observing and monitoring this very closely, particularly as it relates to the Indian Health Service funds. So the testimony and the record we are accumulating today and the information will be quite helpful to tribes all over the country, whether they are now participating in the demonstration program or not.

We thank you for conducting the hearing and again express the fact that we appreciate your leadership on this committee very much.

Senator McCAIN. I thank my friend from Mississippi.

Mr. Lincoln, the tribal self-governance initiative, as amended, provides direction that all programs, services, functions, and activities will be considered available for negotiations. Do you believe this also includes construction activities?

Mr. LINCOLN. Mr. Chairman, our opinion is that it does. And I speak for the Indian Health Service.

Senator McCAIN. Thank you.

I want to thank you both very much. I would like to submit to you several questions we would like to have you answer for the record.

Mr. Lavell, do you have anything additional you would like to say?

Mr. LAVELL. If I may have a moment for a personal observation, Mr. Chairman, I want to take this opportunity—since I will be leaving this position shortly—to thank you and the members of the committee and your staff for the inspiration and help you have been in getting this thing going. I especially want to thank the tribal leaders and members. It has been my privilege to work in this program. If I may refer to Felix' reference where he likened the Nation's conduct of Indian affairs to the miner's canary in assessing the health of civil liberties in the land, I am happy to report that the winds of self-governance are blowing in fresh air and the miner's canary is well and happy.

Thank you, Mr. Chairman.

Senator McCAIN. Thank you very much, Mr. Lavell. I appreciate those comments.

As I mentioned earlier, your stewardship has been a vital element in the success of this project. You and the tribal leaders are the ones who deserve the credit for the success of this program. It is my firm belief that we should make this program permanent. The question concerns the details of it and not whether it should be permanent.

Thank you both very much. I look forward to seeing you.

Senator McCAIN. I would like to ask our next panel, which is William Ron Allen, chairman, Jamestown Band of S'Klallam Indians; Elmer Manatowa, principal chief, Sac and Fox of Oklahoma Business Committee; Joe DeLaCruz, president, Quinault Business Committee; and the Michael Pablo, chairman, Confederated Salish and Kootenai Tribes of the Flathead Reservation.

Again, gentlemen, let me emphasize that you are free to read your entire statement, if you choose. You are free to summarize. Your entire statement will be made a part of the record.

If it is agreeable with you, we will proceed in the order in which you were called, beginning with William Ron Allen.

Welcome, Mr. Allen.

**STATEMENT OF WILLIAM RON ALLEN, CHAIRMAN, JAMESTOWN
BAND OF S'KLALLAM INDIANS, SEQUIM, WA**

Mr. ALLEN. Thank you, Mr. Chairman.

My name is Ron Allen and I am the chairman and executive director for the Jamestown S'Klallam Tribe, located in Washington State. We appreciate you and this committee for calling this hearing on this important historic initiative for the tribes.

As has already been shared through your statements and others that have been here, this is a very important effort that we are embarking. We have been working on it since 1988 and we have traveled quite a road to get to this point. That is why we feel that we are really at a very important threshold in advancing the project to the next level.

We feel that is reflective of a vision that has been seen for many years. As stated earlier, its time has come. So the issue for us and for the Congress is how to transport this idea into a reality and how to make it begin to have a foundation we can build on.

This project has a very sharp distinction between self-administration of Federal programs versus self-governance. We know it when we see it and we know it when we're managing it. That is what we are trying to do here, to make that change and to make that shift.

We have seen many pieces of legislation through history—such as the Snyder Act and the Self-Determination Act, et cetera—help us progress through that era. We are now moving into what we call the self-governance phase, which is actually exercising our sovereign authority.

We know there are many skeptics out there who will question whether or not this is a viable project or a viable right for tribes to pursue this approach. But despite the skeptics or those who don't quite know or understand this project, we have been proceeding.

We are very encouraged and we think that the concept of this project is very consistent with what this Congress and this current administration is pursuing, a mandate for change, for improvement. With Vice President Gore's initiative on reinventing government, that is, how to take government and make it more efficient, more effective, and more responsive to the people taking the lead. When it comes to Indian affairs and the management of our tribal governmental affairs, we think this concept is very consistent with that reinvent government initiative. It will make the U.S. governmental policy of a government-to-government relationship very meaningful.

So as we move forward we are trying to make sure that it allows us to control, based upon our governmental priorities established through our people and our community what our needs really are. So that if the Federal Government is going to provide us resources for program A through Z—whether social services or natural resources or construction projects, et cetera—that our governments prioritize how they should be utilized and we should be able to administer them in a way and show Congress and the administration that we can do it responsibly and more efficiently.

We think a critical principle we are establishing also is the trust and respect of tribal governments. There has been a great deal of frustration over the past—and you have heard it through countless hearings—over paternal guardianship or the ward relationship with the tribal governments. We get quite frustrated with the bureaucracy or the tentacles of the regulatory system surrounding us and hindering us or obstructing our abilities to carry out our responsibilities.

This initiative would remove those obstacles. It would show that we can do it and we can do it in a very effective, responsible way. So we feel that the effort is a bold one. It is a statement to the Federal Government that you need to learn to understand and have confidence that the tribal governments can administer these programs responsibly. We can establish our own guidelines, regulations, and ordinances that would provide oversight for Indian child welfare programs or housing programs or construction projects or natural resource trust activities.

We feel that through the last 3 or 4 years of our experimentation of this concept that we have proven that the trust and treaty rights or the governmental responsibilities to the people or the stewardship of these treaty resources are managed responsibly. We have shown that we are using those resources very effectively. The independent assessments and our own reports all reflect that. We think that any other audits or any other reviews of that will reflect the successes we are experiencing.

We think part of it is that we are removing that day-to-day oversight, that day-to-day observation by the bureaucracy. This is where your priorities should be, or this is how you should conduct this particular activity, or this is what your needs truly are in terms of enforcement, courts or whatever they think it might be.

The initiative is not necessarily about reduction of administrative authority. It is empowerment to tribal governments to control our affairs. It does mean a reduction of the bureaucracy. It means an elimination of FTEs. It means an elimination of offices that

aren't necessary. It means elimination of programs that are now being transferred to the tribal governments because we can administer them and manage them effectively and we do not need the administration to do that.

It does mean a redefinition of their role into an advocacy role. And it means that you have to go through a transition to understand what that role means. There is a great deal of difficulty in learning about that new role.

We feel that over the last 3 years we have proven and justified that we don't need to remain in the pilot demonstration phase. It is time now to say that it does work. There are some problems out there that have shared, and you probably hear about them one way or another, because of the complexities of Indian country from Alaska to Florida. But we can solve those problems. We are showing that our creativity and our ability to tackle those issues—whether it is identification of how we would share in certain activities or Central Office functions, et cetera, how we carve out the share—we can find ways to accomplish that objective.

But in our judgment, the need for this legislation is great. First, we need to make sure the administration knows that it truly is going to be a legal document or a legal instrument that the tribes can use to carry out their governmental functions and responsibilities, that it does comply with greater consistency with our sovereign authority.

Second, is the fact that there is a lot of tribes sitting at the threshold of the door wanting to get in. Now that more and more tribes understand what is going on, they know that they want to become involved. Now they are looking at the legislation as it currently exists and sees a restriction of 30 tribes. We have slowly opened it up, and now we are at the point where it must be open for those who want to participate relative to the capacity and capability of the administration. I think it is very important that we accomplish this objective and continue to move forward with regard to that new partnership.

We have in place the structure that is necessary to administer the project and to inform other tribes as they consider the project and embark on it themselves. Our own restructuring efforts conducted by the participating tribes may want to be entertained or utilized as examples as new tribes modify their own operations.

We have designed a process with which you can continue to measure the success of the project. We have designed a formula with criteria as to how you would allocate the dollars or share dollars at all levels of this operation. And the reporting structure that shows the accountability is in place.

We want to establish a piece of legislation that will transcend new Members of Congress, new congresses, and new administrations. It is a bipartisan concept. That is very important: A foundation that does not shift in whether or not we are going to continue to examine it. So that stable commitment is going to be very important.

It is still pioneering, to a large extent, because we will be moving into other aspects of the Federal Administration as we move from the Department of the Interior into HHS and IHS, or we begin to explore the other Federal agencies and departments.

We would like to look at this initiative from the perspective of our past experiences with the Self-Determination Act and the 638 regulations. This initiative came out of that effort. It took 5 years to get those regulations published. It simply reflects that mechanism has a lot of problems in terms of advancing the tribes' governmental authority and responsibilities.

I think that what I would like to point out is that we have shown that we can identify our priorities. We can determine what they are and administer them through this approach. We have our own regulations and our own rules that will guide our operations. We have shown that the reallocation of resources works effectively and responsibly and that Indians are accountable.

I would like to conclude by reminding the committee of some principles in change that Dr. Eddie Brown had shared with us a short while ago. I think they are very appropriate. He called them the four Ts: Tradition, time, turf, and trust.

We are changing tradition: A traditional way of doing business with tribes, traditional ideas about how you conduct business with tribes, traditional thoughts and ideas about who councils are and how responsible and effective they are.

Time—it takes time to resolve these kinds of initiatives. And it takes time to work out the issues that we need to examine in making it work. It takes time to get people together. As you are well aware, there are a lot of issues on our plate that this Congress is entertaining: health care initiatives, tribal courts initiatives, gaming issues, and on and on. You see this constantly in these various forms.

Turf—whose turf is it? Who should control tribal affairs? That is an attitude and a philosophy. People come into this system and they bring with them their presuppositions about what Indian tribes are, what they can, and what they cannot do. We need to shift that turf and that notion of those turfs about who should be in control.

Last but not least, of course, is trust. If we want partnership, we're going to have to bridge that trust. It must be a meaningful concept that is going to bridge our relationship.

So Mr. Chairman, I would like to say that I would really encourage this Congress to advance this legislation through expeditiously. It would be a foundation upon which we can build. It is something that is meaningful. We have proven that it succeeds and works. We can work out the details as we work our way through it.

I thank you for this opportunity to testify and look forward to answering any questions you may have.

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

Senator McCAIN. Thank you, Chairman Allen.

Chief Elmer Manatowa.

**STATEMENT OF ELMER MANATOWA, JR., PRINCIPAL CHIEF, SAC
AND FOX OF OKLAHOMA BUSINESS COMMITTEE, STROUD, OK**

Mr. MANATOWA. Good morning, Mr. Chairman.

Thank you for the opportunity to appear today. My name is Elmer Manatowa. I am the principal chief of the Sac and Fox Nation. We are a second tier self-governance tribe.

I appeared here 2 years ago to discuss with the committee and to let you know how it was going out there in Indian country. At that time, I mentioned that the Office of Self-Governance was working very closely with the tribes at that time. I want to let you know that they are still doing that.

I didn't indicate that we were having trouble with the Bureau of Indian Affairs. I used the example—and I will use it again today—did you ever try to pull a tooth out of a live alligator [Laughter.]

That is the problem that we had experienced in the early years of obtaining budget information, program information—and that still exists today. We are beginning to turn that alligator around, in my opinion. I think we need to get some teeth into some kind of legislation and hopefully the permanent legislation so that alligator is biting at wherever you want it to bite within the Federal agency of the Bureau of Indian Affairs.

The self-governance project is working for us. We entered in 1991. Prior to that, under the 638 process, we contracted the agency function of the Bureau of Indian Affairs in 1988. So going into self-governance was a relatively easy process for us program-wise. It was just like another day at the office. But it did allow us the flexibility to enhance our own types of program and it still is doing that.

Self-governance may not be for all tribes, but we feel that as time goes by, more will learn that to try to develop enhanced true self-determination and true self-governance is getting closer.

Ron has mentioned many things that need to be done. Of course, the main thing I see is making this legislation permanent. The word gets to many of the Federal agencies, I think, at least the Bureau of Indian Affairs, that it is a temporary thing and that soon the alligator will be turned back around the other way and we will go on down the road. It also gives a message to other agencies that are funding Indian programs that it is going to be time that you begin to look and plan for the future date when you will also be under self-governance.

That is one of the things that I am actively hoping for and working for, that we will be able to negotiate with these people to bring total self-governance—I don't know that we will ever reach the point of total—but get closer to that point of self-governance and self-determination. But we are going to have some teeth in some kind of legislation, in my opinion, to really let agencies know that we are for real.

I think the Indian nations and the Indian governments that have decided to go into self-governance realize that. They are here to stay.

I will not read my complete text—and I know Ron has covered many things. One of the things I did want to mention—and before I forget it, I want to back up a little bit.

We were the first government to negotiate a compact with the Indian Health Service. That has just been completed this year. In addition to that, we have entered into a prototype project with the Department of Agriculture, a new project which is working toward self-governance. I am very happy with the progress we have made in the past with that.

I especially want to comment a little more in connection with the prototype project. I think it is something where probably we ought to look toward the other agencies in bringing those in under the self-governance. Maybe some prototype projects where we can go out and demonstrate what is happening.

This administration is committed to reinvent government. I believe through the prototype project that we are working—we are assisting in convincing other agencies that this is a way to go. We hope that this will continue. We know that we are going to be successful with the projects that we are working on.

I thank you. My written comments are with you. There are several other areas I would like to cover, but I know time is of the essence. I appreciate Mr. Allen's comments and Joe DeLaCruz will be here.

I thank you again very much for allowing me a period of time to appear again. Turn that alligator around for us, please, sir.

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

Senator McCAIN. Thank you for your continued input to this committee. We are very grateful not only for the information you provide us but the example that you and your tribe provide to the rest of the Nation. I think it is exemplary. You all have been in the lead and we appreciate it very much.

I am happy to welcome back Joe DeLaCruz. We are happy to see you again. Please proceed.

**STATEMENT OF JOE DELACRUZ, PRESIDENT, QUINAULT
BUSINESS COMMITTEE, TAHOLAH, WA**

Mr. DELACRUZ. Thank you, Mr. Chairman.

I am Joe DeLaCruz, president of the Quinault Indian Nation.

Mr. Chairman and members of the committee, I appreciate the opportunity to testify before the Senate Committee on Indian Affairs regarding the progress of the self-governance demonstration project, provisions to consider for permanent self-governance legislation, and future Indian affairs policy issues for advancing the government-to-government relations between Indian tribes and the United States.

The Quinault Indian Nation and other participating tribes have worked extremely hard to advance this historic initiative since I provided testimony in mid-February 1988 on the authorization of the original title III of the self-governance demonstration project.

Mr. Lavell mentioned the miner's canary. In a way, I feel like the miner's canary because I think I am one of the only original chairmen left that came before that committee at that time. Self-governance has also taken its toll politically because of people who were afraid to move forward on a new initiative. We have moved a long way.

As the self-governance tribes have completed a 2-day conference on permanent legislation provisions, I want to request the opportunity to make a verbal presentation today and submit a more comprehensive written testimony for the hearing record.

Senator McCAIN. Without objection, your prepared statement will appear in the record.

Mr. DELACRUZ. A fundamental principle of tribal governments has been promoting through self-governance the importance of the government-to-government relationship between Indian tribes and the United States. Although presidential, White House, and Indian affairs policy statements since President Nixon have supported this principle—the U.S. Congress, through resolution 76, basically originating in the Select Committee on Indian Affairs, supports this principle—progress has been painfully slow in achieving the meaningful change to bureaucratic attitudes and traditional practices.

Change is certainly not a priority agenda item for a Federal bureaucracy, especially if change involves restructuring, reorganization, and reduction in size required under self-governance. The Federal bureaucracy has controlled, manipulated, and managed Indian affairs for over 200 years, making Indian people the most regulated people in America.

We realize it will take time to untangle twisted policies and cut through the maze of rules and regulations to restore again the original relationship embodied in the Constitution and the original laws of the United States. The self-governance concepts predate the Clinton administration's reinvent Government initiative. The White House will soon understand the resistance of the bureaucracy as it implements those policies.

We support and promote passage of self-governance permanent legislation for the Interior Department to send a clear message to the Federal bureaucracies and other agencies that self-governance is a policy of the future. This legislation is the next careful step under tribal direction and control to build a future foundation supporting tribal sovereignty and empowerment.

The new Indian affairs foundation must be built carefully, systematically, and methodically on the principles of sovereignty and government-to-government relations. Unfortunately tribal governments must educate each new department and agency involved in self-governance in the basic concepts. Often, we must return to Congress to give clear instruction to the Federal system, including the courts, that our relationship with the United States is unique, founded in our treaties and the congressional laws.

Why is this simple internationally recognized and respected principle so difficult for the American people from all walks of life to understand? Why can't our differences be appreciated and supported? Sadly, this rejection of our status and rights is tested daily by those paid to serve and protect our interests.

We have made measurable progress in moving self-governance principles forward in the Department of the Interior. As the tribes enter the implementation stages with the Indian Health Service, all the new tactics and obstacles emerge to frustrate our efforts. New bureaucracies in the near future will create traps and shadows, incentives to pull us backwards. With congressional support and understanding, we will conquer these Federal frontiers.

Also, we request that our proposed findings and policies be included in the title IV permanent authorization to reduce the bureaucracy's well-known capacity to misinterpret and misunderstand congressional intent for its own interests. We want to avoid congressional micro-management of the Federal agencies as this process has its own time-consuming entanglements. We support the

proposed Federal negotiated rulemaking process, in theory, to avoid constant congressional oversight and involvement, in theory.

I am very concerned, however, that this negotiated rulemaking embraces the principles of negotiation. It embraces the principles of negotiation between nations. Tribal governments are not constituent citizens corporations, associations, organizations, vendors, or whatever other labels have been thrown over us in the past. We don't want an inappropriate process imposed upon tribes due to the Federal convenience of past practices.

If negotiated rulemaking is to work, we must be provided the authority to creatively establish government-to-government rulemaking.

The same concern applies to the waiver of regulations process. With the bureaucracy's reluctance to support tribally developed management procedures and guidelines, we are still exercising self-administration in the name of self-governance. Despite assurances, promises, an established waiver approval process—the Federal bureaucracy will cling to the control. We want to govern ourselves according to our own management principles. We have yet to reach this formidable obstacle.

That is the one reason we have removed the term "program" to describe the permanent tribal self-governance legislation that we support.

In conclusion, we will return to the Senate Committee on Indian Affairs in the near future as we seek to build on the self-governance foundation. We truly appreciate your patience, understanding, and support as tribes and Congress together create logical, meaningful Indian affairs policy and establish true government-to-government relations. I do hope this legislation passes.

I wanted to make some comments that were made by the people from IHS and the BIA.

I don't know who would sit at the table—anyone who had experience or knowledge in negotiating—when I don't feel all the cards are on the table. I don't know—and nobody in IHS has been able to show me yet—that the total budget is on the table, that the Congress appropriates and is allocated down to the Indian Health Service. We need to look at it and analyze it to come up with an appropriate percentage share.

When we went into the self-governance demonstration project in 1988, it took us almost 2 years of demonstration and research to basically get a handle on it. We weren't sure that we had a total handle on the BIA budget. The Indian Health Service budget is much more complex.

I think we start at the table not as equals. It is not a level playing field.

The other thing—in our working conference—and I wasn't there—but I don't think the agencies still get it. We are talking government. We are talking government-to-government. It is not an agency developing rules and ideas and plans, giving them to us, meeting with us and talking about them, and call that consultation. We have an administration and a Congress that says that we are in a partnership and that is the way we must move forward.

I don't see this happening with the Indian Health Service as we started our meetings with them. When I look at what I believe—

and I have fought for all my life—to be peaceful relationships—that we get back to what the Constitution says our relationship is according to our treaties—and that is not only on the tribal/Federal relationship process, but also the relationship with the States, as per the Constitution and the different enabling acts.

Through a peaceful process of real true government-to-government—not this transfer of programs—this is beyond programs and dollars. I have said this many times.

Thank you, Mr. Chairman.

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

Senator McCAIN. Thank you, Joe. We will try to do our best to help you get the necessary information that you need.

Michael Pablo.

Michael, it is good to see you. I haven't seen you since yesterday. [Laughter.]

STATEMENT OF MICHAEL PABLO, CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, PABLO, MT

Mr. PABLO. Thank you, Mr. Chairman.

I am Michael Pablo, chairman of the Confederated Salish and Kootenai Tribes. It is always a pleasure to know that we have a friendly ear in the Senate. There has been a lot of progress in the last few years. I need to thank both you, Mr. Chairman, and Senator Inouye as chairman of the committee. Indian country appreciates that. Thank you.

Senator McCAIN. Thank you.

Mr. PABLO. The Confederated Salish and Kootenai Tribes were one of the original 10 self-governance tribes. We attempted to set up a different process to work toward self-governance. We ended up with a concept that we thought was very good, and that was a concept that was based on a budget put together at the local level, based on need, with a yearly review to see if everything we had been working on was carried out in that year.

The Assistant Secretary at that time, Dr. Eddie Brown, signed our agreement. We worked for 2 years on the agreement. Then when we began to come back to Washington, DC to negotiate on that, the BIA reneged on that whole idea. I guess it was too novel of an idea to have something based on needs and have an evaluation of it.

So what we then did was to move into the present form of compacting that we have. We now have a compact both with IHS and BIA that went into effect October 1 of this year.

There are a lot of issues out there yet remaining that we need to look at to make sure that we can get figured out for all the other tribes who wish to come into this process. One of the issues we need to look at is to make sure that the Federal Tort Claims Act covers everything within a compact. We had several programs contracted through Public Law 93-638 with the Bureau of Indian Affairs. The BIA said that those 638 contracts were not covered by Federal Tort Claims Act. However, when we compacted with the BIA, the BIA said that we were covered by the Federal Tort Claims Act.

IHS, on the other hand—we had several programs contracted through Public Law 93-638 with IHS. They said that those 638 contracts were covered by the Federal Tort Claims Act, but when we got into negotiations with IHS on the compact, they said that a compact was different from a 638 contract, so therefore it wasn't covered by the Federal Tort Claims Act.

And that was all under the previous legislation. So in order to fix that, there is language now in the Appropriations Act for this year to fix that. Maybe we need to make sure that is in here so that tribes know which way we need to go on that issue.

Another thing I think we need look at is some sort of a process for conflict resolution. If there are objections or if tribes do not feel that the budget information was correct, or tribes weren't getting a fair share of that, we need to have some process—maybe for a third party mediator to come in and say, "This is what we have."

Another thing I think we need to make sure we can do is have the waiver for regulations. A lot of times, that hinders tribes because one blanket policy does not fit the needs of each and every reservation. I believe—like on Flathead, we have proven what tribes can do when they have that ability to work on that. We got a waiver for the Federal acquisition regulations on our safety of dams program. I believe we are one of the first tribes in the country to contract for safety of dams.

We got a waiver and that has worked very well. We also at this time thank the committee for the help they gave us to keep the safety of dams program within BIA. I think it is a proven success and shows again what tribes can do because when the Bureau of Reclamation attempted to take that over, we had much support to keep that within BIA.

We finished our first project last year. It was Black Lake Dam on the Flathead. The Bureau of Reclamation engineers estimated the project at \$3 million and we brought it in at \$1.7 million. I apologize for saving \$1.3 million, but maybe we can look forward on that.

I think another area we need to look at is the funding issue. Tribes in the self-governance process—there is great concern with funding, not only from those tribes but from the tribes who are not in the process. I think we need to make sure that there is no reduction in services to other tribes anywhere because of self-governance. Maybe a possible way of doing that is to look at the funding within the other sister agencies of the Department of the Interior.

I do not know of one sister agency of the BIA that is not in a conflict or that does not have a potential for a conflict of interest with Indian tribes and the Bureau of Indian Affairs. We probably spend 30 to 40 percent of our time and budget fighting other agencies within the Department of Interior to protect tribal treaty rights. Whether that is through water rights, Bureau of Reclamation, land use issues, mining issues—it is there. Maybe we can look at a number of technicians per acre, let's say, in the Bureau of Land Management, versus what those same positions are within the BIA. The BIA for years has been on the bottom rung of the ladder when it comes to funding because of those conflict issues.

I believe at this time as we move forward the need is there to make this a permanent process. I also believe that the Indian

Health Service needs to be brought into this process. Maybe if this isn't the time to do it, maybe next year. If it isn't permanent, then there could be a perception out there that if they don't do anything for a year or two maybe the tribes would go away. I think we need to have a permanency built into that also with Indian Health Service.

I think it is also the evolution that is inevitable, as with this committee. It is great to sit here not at the Senate Select Committee on Indian Affairs, but at the Committee on Indian Affairs for the Senate. I think it is just a normal process of evolution and we need to move forward and make this process permanent.

Thank you, Mr. Chairman.

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

Senator MCCAIN. Thank you very much, Michael.

Chairman Allen, both you and Elmer Manatowa mentioned that there were problems that have been associated with implementation of the project. I understand the problems that you have had in tribe versus BIA. What difficulties have been experienced within the tribes?

Mr. ALLEN. Are you talking about internally in our individual tribes?

I think the biggest obstacle is the education of the tribal community. Usually, the tribal leadership and the administration of the tribes understand that the concept works well to administer these resources and is more consistent with the government-to-government sovereign authority of the tribe. But often the people out there being served by those various programs don't understand that. They have been used to a certain system and sometimes some of the programs get into their own little vacuums and they get threatened.

They get threatened by the notion that this concept means termination or it means out-of-control councils who abuse or misuse the resources. So the biggest need, really, is education so that the tribes have the ability to reach out to their communities through community meetings and small round table discussions, if you will, just to continue to enlighten them about why this concept is consistent with the fundamental theories that have been advocated for years to the elders and the communities.

It is just a change in concept. There is a queasiness and uneasiness in there. That is the biggest issue and there are other smaller issues. There are programmatic vacuums that can be a bit of a problem because they get sort of aloof from the tribe and get into their own little turf. As soon as you move the money into the control of the council, then they make those prerogatives and that enters into a new arena because they now have control over the allocation of those resources.

I think most tribes are working their way through it. Some who are just now entering are experiencing some problems with that, but that is basically it: The understanding of it.

Mr. MANATOWA. Mr. Chairman, the problems that I had alluded to earlier—not identifying these internally within the tribe itself. The problem we have had is with the Bureau of Indian Affairs in getting them to provide us the information needed so that we can

do our negotiations, primarily in the area of funding and the area of staffing and downsizing.

Senator McCAIN. Let me put it to you this way.

We have been in business now in self-governance going into the 5th year since the passage of the legislation and 28 tribes have chosen to participate. We have room for two more tribes. There are 510 Federally recognized tribes in America. It seems to me that if it is as good as we are getting from the witnesses that we would have had more tribes line up and request self-determination.

Maybe that is a bit of a philosophical question, but all of you feel free to respond to that, please.

Mr. MANATOWA. I think in time there will be more. I think once we remove the word "demonstration" into permanent legislation, I think you might see more people come into it. Even at that point, you may not see all 500 plus because they are individual tribal governments. They wish to handle their government they way they wish. It ought to be their prerogative. But I think you will see a lot more as we go through and remove that word as though it is a temporary thing and it might be changing back to the other side.

Mr. DELACRUZ. Mr. Chairman, I would like to comment on what we're basically dealing with because I was involved from the inception of the Self-Determination Act in 1974.

Again, the fear of change—people had advised tribes—people within the Federal bureaucracies going through the country as naysayers that self-determination is self-termination. We had to spend a lot of time educating and providing facts that that wasn't the matter.

The same thing is true with the self-governance demonstration project. The things that happen internally—a lot of them are created externally. I want to give an example for the record.

I went to a hearing of the local agency. There are 10 tribes in that agency. There are five self-governance demonstration tribes. The hearing was on the 1994 budget. The superintendent and his staff started out with the flip chart, 1988, saying, "This is all the staff and what I have been diminished because of five self-governance tribes," which was not a fact at all. He has had tribes 638 contracting since 1974. But when you have people telling people like that, the external appearance creates fear in people.

I thank the committee for the education project because we have had to go over and over and over again and diminish these basically lies with the facts. I think we will continue having to do that. That is basically why things don't go very fast.

Senator McCAIN. Joe, I appreciate that.

My question was about the tenor in Indian country and the temperature in Indian country toward this project. I know that people come to you—and other tribal leaders come to you—because you have been involved in the experiment.

If I were a tribal leader, the first thing I would do is go to people who have embarked on the experiment. I am trying to get an idea as to how it is being received amongst the Indian nations and what we can anticipate. I think that is important in the formulation of the legislation.

Mr. DELACRUZ. In that light, I think with all the things we have done with education on this, and tribes communicating with tribes,

you are going to see a greater amount. In our workshop, there are tribes that want to be in. They are concerned as to whether it is going to be expanded enough when they are ready to move in.

Senator McCAIN. Let me ask you another one real quick.

If there are people who say, "It is fine for small tribes. Big tribes like Navajo, Tohono O'odham—there is no way they would want to get into this. It is just too difficult."

What is your response to that, recognizing that it is all voluntary?

Mr. DELACRUZ. I know what my response is. I am looking at governance of a territory, of a nation. That means what we have been doing. Our courts, our police force, managing our forests, managing everything within our territories. For me, that is good because I don't think the Government has done a good job in any of those areas. I think the proof is that—we have to prove, and we have been sharing with other tribes, that the flexibility of what we're compacting gives us the opportunity to manage the money where it is needed as we are exercising the responsibility of government.

Large tribes are going to have to look at that. Are they willing to take that risk to really take over those things?

Mr. PABLO. In visiting with the Bureau of Indian Affairs Office of Self-Governance at the conference the other day, there are about 60 to 70 tribes waiting in the wings right now wanting to get in.

I think another reason is that any time there is a change, people are going to be somewhat cautious to make sure that it works, so that as we go through a process we can learn—

Senator McCAIN. You have to make sure the money is still going to be there.

Mr. PABLO. That is a good point.

I think another concern that comes about is that tribal self-governance, tribal sovereignty, tribal self-determination is however those individual tribes wish to do that. If they don't wish to come into compacts, that is their decision and not anyone else's.

Mr. MANATOWA. I have had some comments from other tribal leaders in Oklahoma. I think one of the things that they are being very cautious of—and I even had one of them say, "That is termination." I think the permanency word in the project may eliminate some of that.

They have also talked about trust responsibility,

The U.S. Government has the trust responsibility for operating and administering a program. I am going to let them get out of that. I don't want to take it over when it is their trust responsibility to do that.

I think that fear still lingers out there today. When there are issues out among the tribes such as taxation, jurisdiction primarily. We will start with that. What are the jurisdictional rights the tribe has in connection with the State? Full faith and credit for the courts—all these things that you say are not being handled. Why don't you go after those and help us do those? The mistrust is still there today, Mr. Chairman.

Senator McCAIN. Understandable mistrust. It seems to me also—and I mentioned this to Bill Lavell earlier—that if you are going to transfer the responsibilities to the tribe, then the bureaucracy should shrink. So far, in all due respect, I have not seen any reduction in the size of the bureaucracy. One of our goals here in self-

determination, quite frankly, was to save taxpayer's money in order to reduce the size of the bureaucracy.

It seems to me that the money that is spent on the bureaucracy could be spent on meaningful programs.

Mr. MANATOWA. When we contracted the Shawnee Agency, of course, there were five tribes in the agency, four fully contracted all of it. It was downsized. Now that there is one left there, they have gone the other way. They have added people.

Senator McCAIN. Using what rationale?

Mr. MANATOWA. I don't know because I don't have that much contact with the agency.

The same thing occurred with the area office in which they were directed to downsize. They made some changes and said, "We downsized." But that is going up instead of down. That is why I mentioned earlier that we need to turn that alligator around and put some teeth in there to make sure that these things are happening.

Senator McCAIN. Any final comments from the panel?

Mr. DELACRUZ. I wanted to make one comment further on downsizing. We prevented some up-sizing years ago by coming to these committees in the areas of fisheries and natural resources. I view it that we are in a true partnership. The tribes out in the Northwest, because of Federal court decisions, developed our committees, commissions, and technical capability. We provide the trustee with the information, again in partnership, to protect our trust. I think we have a better protection in those situations. I am speaking of the Northwest Indian Fish Commission.

We find even the administration—meaning the President—in the crisis on timber looking to the tribes that are involved in those because of the expertise and the things that we have been on the cutting edge on. Tribes are very capable if they are given the opportunity.

Thank you, Mr. Chairman.

Senator McCAIN. Any last word?

Mr. ALLEN. Mr. Chairman, you made one point there that I think is very important regarding this concept. This project is not intended to save the taxpayers money with regard to the transfer of those resources to the tribes. It is intended to transfer them directly so that we can use them more effectively and efficiently. We are trying to hold the line, as we shared earlier.

I would like to also point out that those of us who are actively involved are in constant demand. So the interest is very, very high out there. They want to know more about it so that they can enter into it comfortably and confidently because they understand it.

And last but not least, I think it is important for the Congress to know that we have spent a lot of our own hard-earned dollars to advance this concept, this project, beyond what Congress has been able to provide to advance it.

Thank you.

Senator McCAIN. Absolutely. I want to be perfectly clear what I mean.

I am saying that we would be saving the taxpayers money in the respect that we want to transfer the funds to the tribes but we

don't want to have to keep the same size of bureaucracy. I don't mean cutting down on the funds that would otherwise be spent.

My experience has shown that the pie isn't going to get much bigger. So we have to give a bigger slice to the tribes themselves rather than spending it on bureaucracy. I want to make that clear.

I am very happy to see all of you.

Senator Murkowski will be back so that we can continue the hearing. I will be back as soon as I finish on the Floor.

I want to thank all of you. If there is a reason to make this program permanent, it is sitting right here at this table. I don't see how my colleagues could be opposed in the face of the evidence you have provided.

Thank you very much.

The hearing will stand in recess for about 10 minutes until Senator Murkowski comes back.

[Recess.]

**STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR,
FROM ALASKA**

Senator MURKOWSKI [ASSUMING CHAIR]. I apologize for the inconvenience of those witnesses and those in attendance, but we have a vote. Senator McCain will be back shortly. I have a meeting with Secretary Babbitt at 11:30, so I am going to conduct the hearing and continue it until Senator McCain comes back.

It is my understanding that we are ready to start on panel number three.

Senator MURKOWSKI. Panel three consists of Marge Anderson, chairperson, Mille Lacs Band of Chippewa, accompanied by Karen Ecstrom, assistant commission of administration and Dan Melbridge, commissioner of human services; Henrick Kadake, president, Organized Village of Kake, Kake, AK, accompanied by Gary Williams, executive director; Edward Thomas, president, Central council of Tlingit and Haida Indian Tribes; Harold DeMoss, tribal council member, Cherokee Nation; and Faith Roessel, director of the Navajo Nation.

Before we start, in view of the time sequences, I am going to ask the BIA, who has already testified—but I want this question to be submitted in writing.

It is my understanding that the tribal compacts allow tribes to provide programs and services to tribe members that were previously provided by the Bureau of Indian Affairs. In theory, this would allow the Department of the Interior to eliminate the bureaucratic process, to some degree, at the BIA.

However, in Alaska, the BIA administrative staff has actually increased. I would like to have an explanation as to why.

Second, I was informed that 10 months ago Niles Cesar—who is well known to us in Alaska, the BIA Juneau Area director—sent a reorganization proposal to Washington, DC for approval. Yet as of today, Mr. Cesar has not received a response from the BIA. That was 10 months ago. In view of the effort to streamline the process, I would like an explanation offered by the BIA for the record, whether this is in fact a reality, and what the BIA plans are for

restructuring the Bureau in light of the many programs and services which have been transferred from the Bureau to the tribes.

So if anyone on the witness stand would care to enlighten me either now or later—or anybody in the audience—this is a good opportunity.

Nobody is jumping up to enlighten me, so we will proceed. Hopefully, we will have an opportunity to share with you the response of the BIA to the written questions.

I don't know how you want to proceed, ladies and gentlemen. It says here that we will start with Marge Anderson, but you can flip a coin or whatever.

I think Marge is ready to go, so why don't we start with Marge?

We welcome all of you to the committee and ask that you realize that you may condense your entire prepared statement and it will be entered into the record as if read.

Please proceed, Marge.

STATEMENT OF MARGE ANDERSON, CHAIRPERSON, MILLE LACS BAND OF OJIBWE INDIANS, ONAMIA, MN, ACCOMPANIED BY KAREN ECSTROM, ASSISTANT COMMISSIONER OF ADMINISTRATION, MILLE LACS BAND OF OJIBWE INDIANS; AND DAN MELBRIDGE, COMMISSIONER OF HUMAN SERVICES, MILLE LACS BAND OF OJIBWE INDIANS

Ms. ANDERSON. Good morning. I am honored to testify before this committee today.

I am Marge Anderson, the chief executive of the Mille Lacs Band of Ojibwe. I am here to talk about self-governance. I will keep my remarks brief and let my written testimony take care of the important details.

First some background. We are a first tier self-governance tribe, having signed our first compact with the Interior Department in 1990. This year, we were one of the first tribes to sign a compact with the Indian Health Service. We have a great deal riding on the future of self-governance.

Second, we strongly support a bill that would make self-governance authority permanent as soon as possible. After 4 years with it, we think the experiment is a success and should be made permanent.

We also welcome an increase in the number of tribes allowed to participate. Self-governance participation could be very valuable to many of our sister tribes.

Third, we ask that you enact a permanent bill that would make BIA negotiate line-by-line tribal shares of Central Office funds. We want BIA to negotiate Central Office funds the same way they negotiate area and agency office funds. For the past 4 years, Mille Lacs Band has asked and asked and asked for this, but BIA has refused to do so, even though in report language Congress has said that BIA should do it.

My written testimony gives the disappointing details. It is clear that this won't happen unless you require it by law. In my written testimony, we suggest bill and report language.

Fourth, we very much need a lot of changes here to clarify lines of authority and responsibility within Interior and the Indian

Health Service dealing with self-governance issues. We think many of the problems would be fixed if both Interior and IHS made regular and open use of the Self-governance Policy Council with tribal representatives allowed to participate.

The Mille Lacs Band has been shut out for most part. The council has met infrequently and has failed to make final or informed decisions. Nothing much will change until you change the law. In my written testimony, I have suggested bill and report language.

Fifth, we need you to require the Indian Health Service by law to transfer to tribes like ours a share of the \$3 million in Indian Health Service self-governance shortfall funds added by Congress to help meet our significant additional costs in making the transition from 638 contracts to self-governance. If you don't adopt language like I suggest in my written testimony, IHS will use up all of the \$3 million to make the transfer of tribal shares painless for the IHS bureaucracy. That would be terribly unfair because I and other tribal leaders asked Congress to add these funds to help meet the transition and additional costs of both the Indian Health Service and self-governance tribes.

Our tribal costs are enormous. We have had to negotiate, transfer, and implement new tribal governance management systems to administer the expanded authorities under self-governance, despite repeated IHS obstacles.

In conclusion, I want to thank this committee and its able staff for being very helpful over the first 5 years in my tribe's effort to get the Federal agencies to implement their responsibilities under the self-governance project. From that experience, I am here to tell you that BIA and IHS need more direct and specific guidance in the law on self-governance.

Let me give you a story fresh from the pages of history.

Last week, one of our staff telephoned an area office employee to ask him to telefax to us a BIA form an Indian businessman or woman must use to self-certify their company as Indian-owned and controlled. The BIA employee said that he would not fax it to us because we negotiated away our tribal share of this budget. He said that we should call the Office of Self-Governance in Washington, DC for the form.

This is the usual petty revenge we get from bureaucrats who hate self-governance because it is the bureaucratic death certificate. We had to pay our attorney to telephone the BIA to remind them that Mille Lacs Band agreed to more than \$500,000 remaining in that area office to do residual things like this.

The time has now come to make self-governance permanent for Interior and IHS. It is time for Congress to stay firmly in charge of guiding the administration's implementation of this initiative. The agencies may tell you that this is a new Administration and they need more time. With all due respect, we have been hearing that message since 1988. Either self-governance is a priority, or it is not. We tribes cannot afford to wait for an answer from the administration. We need prompt, pro-tribal implementation. The best chance lies with you, the Congress, in this permanent legislation.

In closing, for the record, I was asked by Chairman Joseph Raphael, chairman of the Grand Traverse Band of Ottawa and Chippe-

wa, to submit his written testimony, since he cannot be here for himself.

The Mille Lacs Band has worked with the Grand Traverse Band on a number of self-governance issues and hold many of the same views about BIA and the Indian Health Service.

Senator MURKOWSKI. Without objection, his prepared statement will appear in the record.

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

Ms. ANDERSON. In closing, for the record, we will followup with more written testimony within the next few weeks.

Thank you.

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

Senator MURKOWSKI. Thank you very much, Marge Anderson. I think that was excellent testimony. Be assured that the additional testimony you referred to will be entered into the record, as you requested.

Ms. ANDERSON. Thank you.

Senator MURKOWSKI. I would like to call upon two Alaskans at this time, Ed Thomas, president of the Central Council, and Henrich Kadake, president of the Organized Village of Kake, just north of Ketchikan.

I am going to make a few comments relative to my constituents' testimony because I think it is appropriate that the record reflect the reality that last Friday, October 15, the Bureau of Indian Affairs released a new list of Federally recognized tribes in Alaska and the lower 48. Specifically, this list was announced by Ada Deer, head of the BIA, at the AF of N Convention in Anchorage.

For some unknown reason, and without any explanation from the BIA, the BIA removed the Central Council of the Tlingit and Haida Indian Tribes from the list of Federally recognized tribes. I am very concerned about the Central Council being removed from that list. I am also very concerned about the apparent lack of communication or lack of courtesy—or whatever—shown the Alaska delegation and to many of the Alaska tribes by the BIA regarding the release of the list of Federally recognized tribes in Alaska.

I am further concerned that this committee, in communicating to the BIA its request for a hearing on these particular matters relative to Federally recognized tribes in Alaska and other areas, was either rejected, ignored, or unanswered. The BIA saw fit to go ahead and initiate that action. I intend to bring that to the attention of the director of the BIA for an explanation.

Obviously, she has an administrative obligation, but we also have an obligation, working together for legislation that affects America's Indian community in a manner that represents a balance. Apparently, for reasons unknown to me, that balance currently is swaying in an unbalanced situation.

Today's oversight hearing is not the proper forum to discuss the specifics of the issue in detail insofar as it affects this listing. But I did want to share with my friend from the Central Council that he is not the only person frustrated with the Bureau of Indian Affairs today. It is unfortunate that the BIA can't be better represented as we address some of their shortcomings.

I want the record to note that I support the tribal self-governance demonstration project and will support making the demon-

stration project ultimately permanent. Empowering tribes to provide services to traditional members that were previously provided by the Bureau of Indian Affairs or the Indian Health Service is an excellent idea. It is a workable program and I commend those who delegated so much of their time and energy to make it worthwhile.

So with that profound statement, I would encourage Henrich to proceed as the first witness, followed by Ed Thomas and then Harold and Faith.

STATEMENT OF HENRICH KADAKE, PRESIDENT, ORGANIZED VILLAGE OF KAKE, KAKE, AK, ACCOMPANIED BY GARY WILLIAMS, EXECUTIVE DIRECTOR, ORGANIZED VILLAGE OF KAKE

Mr. KADAKE. Thank you, Mr. Chairman.

I am president of the Organized Village of Kake, the IRA Tribe, located on Kupreanof Island in southeast Alaska.

Senator MURKOWSKI. Home of the world's tallest totem pole.

Mr. KADAKE. Yes.

I am very new at this. I just became president 1 year ago, but I have along with me my executive administrator who has been in there since 1987.

I would just like to express my feelings on this demonstration project. I think it was a great thing. We experienced a lot of good things in our community because when we dealt with the BIA, we had to do everything by phone or by flying into Juneau. But this has benefited our community and our tribe a lot. We have been able to put programs together that have benefited the people in our area. We are able to provide better service to our tribal members, enhance programs which fit with our area and our tribal members.

We increased local control. The compact has allowed us, under our economic development program, to be able to put together the fishing lodge, which is scheduled to open next year. It has provided us with a long-term plant range planning for our community.

We would like to really thank Congress for the demonstration project which we think is a step in the right direction toward self-governance and a government-to-government relationship. In light of the success of the self-governance project, OVK strongly supports permanent legislation in self-governance.

I have a written testimony that gives more detail, but OVK wishes to ensure that they can continue under self-governance compacts without interruption. In my written testimony, we have recommended language, a proposed bill, brief reference in section 402(a) that would allow each of the signatory tribes currently compacting to immediately move into separate compacts.

That is all I have right now. I thank you very much for your time.

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

Senator MURKOWSKI. Thank you very much.

Our next witness is Ed Thomas.

STATEMENT OF EDWARD THOMAS, PRESIDENT, CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, JUNEAU, AK

Mr. THOMAS. Good morning, Mr. Chairman. Greetings from Alaska. I brought some of the Juneau rain down here to lighten up your day a little bit.

Senator MURKOWSKI. To keep our webbed feet from cracking.

Mr. THOMAS. Right.

I would like to also thank you for taking your time to Chair this particular part of the hearing. We are honored that you are here. As you know, we have been involved in the self-governance demonstration project from the beginning. I provided testimony before it became law.

My name is Edward Thomas. I am the president of the Central council of the Tlingit and Haida Indian Tribes of Alaska, located in Juneau, Alaska. Richard Stitt, who is our single point of contact for the Southeast Alaska Tribes, is also here today if you have any questions relative to our compact.

One of the reasons why we originally became interested in compacting or what we used to call block grants under the previous administration when New Federalism was talked about. We are interested because we have seen growth in the Bureau of Indian Affairs' bureaucracy at our expense during the late 1970's and early 1980's. Whenever they had a pay cost increase or cost of travel increased or other kinds of benefits increased, they would take it out of our programs.

When they started the Southeast Agency, they had one staff member and a secretary. Within 5 years, they had nine staff members and our programs dollar declined at the same rate during that same period of time.

Tlingit and Haida Central Council and the other southeast Alaska tribes are very grateful for this program. I want to share with you a few successes. With the flexibility of the budgeting, we have been able to increase our college student assistance funding so that we can now provide them approximately \$2,300 per year whereas before we provided them \$1,700 per year. We have seen the increase in the college honor roll from 13 students 2 years ago to now over 80 students today.

I might point out that we don't provide full funding under college student assistance. We require our students to apply for Pell Grants and any other grants they are eligible for.

We have also been able to redirect some of the general welfare assistance funds into a tribal work incentive program. This not only encourages people to get off the welfare roles, but it also provides them a little bit extra funding to meet their needs.

We have also been able to more than double the efforts in the Native allotment certification and other trust services within the past 2 years.

One of the other things we have been able to address that is not in the BIA budget is tribal courts. We have been able to leverage some of the money we put aside for tribal courts by getting a \$35,000 BIA grant. We have Indian Child Welfare Advocacy. As you may well know, the current ICWA program does not provide

for legal costs. Many of the families that are in the process of breaking up are confronted with legal costs. So our demonstration program has helped us deal with these costs.

We have been able to set up an information system for people concerned about subsistence. Subsistence is very important in our State, as you are well aware, so keeping people informed in the villages is one of our major responsibilities.

Our people recognize the devastation of substance abuse—our young people and older people as well. So we set aside a demonstration program. Using a seed of about \$30,000 from our demonstration program, we were able to leverage a Robert Wood Johnson Foundation grant which will provide us \$150,000 for 2 years of planning. After the planning is done, we will be eligible for approximately \$1.2 million for a 3-year project that will help us deal with substance abuse.

We also set aside money for youth advocacy and the youth intern program.

These are a few of the successful components of our program. I want to state that I feel that our program has demonstrated the success by the amount subsistence of reaction and resistance we get from the bureaucracy. When we first got into the program, it took us nearly 2 years to even get the budget information from the BIA. We got it just 5 days before our first negotiations.

After we had our program approved and we had the compact signed—and after the program was due to start—it took us 6 to 8 weeks to get our first funding. It required us to borrow over \$400,000 just to keep the programs going and it took a lawsuit to free up the funds.

It also took us a lawsuit to free up more than \$900,000 of indirect costs for the compact tribes in our area. I really don't think that it should take a lawsuit to get the Bureau to carryout its responsibilities that are required under the law, yet it has taken that.

Finally, as you stated, the issue of our tribal recognition and being left off the BIA Federal Register list is very troublesome to us. I think that the fact that we have been on the list since 1982 and recognized through an act of Congress in 1935 should be enough to remain on the current BIA list.

Senator MURKOWSKI. Can you provide for the record an explanation, potentially, perhaps as to why you were left off the list?

Mr. THOMAS. No, we can't. We haven't been able to get that answer. We can only provide you the support documentation of the reasons why we feel we should be on the list.

Senator MURKOWSKI. I will ask the committee to initiate a specific request on your behalf.

Mr. THOMAS. I appreciate that.

Senator MURKOWSKI. We can see if they will give the committee an answer.

Please proceed.

Mr. THOMAS. In closing, I want to state that I think this program should be permanent. I think that it has proven its worth. Even with all the obstacles that we have encountered, we have seen nothing but positive results within our region of southeast Alaska.

I thank you once again for the opportunity to provide this testimony. I do have written testimony for the record.

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

Senator MURKOWSKI. One of the questions I brought up earlier—do you have any explanation as to why the BIA's office in Alaska is growing as dramatically as you have indicated when many of the programs and services have been transferred to the Central Council?

Mr. THOMAS. One of the efforts that BIA Area Director. Nile Cesar has been putting forward is the issue of inequitable funding across the country. As you know, the cost of delivering service is quite high in Alaska. He has put forth a proposal to the Central Office to bring some of those programs up to par or in parity with other regions.

As it turns out, we are 11th on the list of per capita expenditure in BIA programs, yet we are number one in the cost of delivering services. There are 12 BIA areas across this country and we are next to the bottom in BIA per capita expenditure.

Senator MURKOWSKI. Thank you very much, Ed.

We are going to move now to Harold DeMoss, tribal council member, Cherokee Nation.

Please proceed.

**STATEMENT OF HAROLD DEMOSS, TRIBAL COUNCIL MEMBER,
CHEROKEE NATION OF OKLAHOMA, TAHLEQUAH, OK**

Mr. DEMOSS. Thank you, Mr. Chairman.

My name is Harold DeMoss and I am a member of the Tribal Council of the Cherokee Nation, the second largest Indian tribe in the United States. I have been requested by principal chief, Wilma P. Mankiller, to speak on behalf of the Cherokee people, our tribal council, and on behalf of the principal chief herself.

The Cherokee Nation has long maintained a government-to-government relationship with the United States and was one of the first tribes to enter into self-governance. The Cherokee Nation feels that self-governance is not a cure-all to make all things right in Indian country. Rather, self-governance is about streamlining bureaucratic processes that have therefore soaked up a large percentage of the appropriation dollars before reaching the Indian people where they were intended to reach.

Before comment on S. 550, I would like to make three comments about the self-governance program.

First, the Cherokee Nation feels that the self-governance project should be made permanent. We feel that any permanent legislation should be simple and it shouldn't try to accomplish too much at one time.

Second, the Cherokee Nation feels that the effectiveness of the self-governance project depends upon adequate staffing and funding to the Washington, DC Office of Self-Governance. Each of these elements are critical to the future success of the self-governance program.

Third, we feel that before any tribe is admitted to participate in the self-governance program, it must be prepared to demonstrate its financial and administrative ability to manage and operate programs in a responsible fashion.

At this point, I would like to make my specific comments to S. 550. We have presented the committee with a written testimony.

Senator MURKOWSKI. Without objection, your prepared statement will appear in the record.

Mr. DEMOSS. The Cherokee Nation supports the provisions in 311 replacing the authority to negotiate on behalf of the departments in the director of the Office of Self-Governance. The nation feels that this would simplify the negotiations process and clarify the authority of the person negotiating with the tribe.

The Cherokee Nation supports the provisions in section 311(d) providing an expedited appeal process for the decision on residuals and tribal shares. However, the Cherokee Nation feels that the timeframes set forth in this section may be unrealistic.

Under section 311(d) the appeals must be filed within 10 days and decided thereafter in 15 days. The Cherokee Nation feels that the determination of residuals and tribal shares involve exceedingly complex issues and may not be susceptible to a fair resolution if the appeals are decided within 15 days.

The Cherokee Nation agrees with the objectives of section 311(e) which clarify the method of determining tribal shares and residual amounts. The Cherokee Nation has not only experienced difficulty in the negotiation of tribal shares and residuals, but also with the agency's methodology for determining tribal shares, residual amounts, or moneys to be reserved for inherently Federal functions. This section will go a long way toward preventing these problems in future negotiations.

Section 312(a)—in the past, the IHS and the BIA have not fully funded 638 contracts for contract support and have not fully funded self-governance compacts for contract support. The Cherokee Nation agrees that the affected secretary should ensure that the contract support costs associated with the tribe's performance and under its annual funding agreement with the United States should be fully funded for the contract support cost.

Section 314(a)—the Cherokee Nation supports this section declaring the non-applicability of FARs and similar rules and regulations to actively undertake pursuant to self-governance compacts. We feel that clarification and expansion of current laws in this section are necessary for self-governance tribes to effectively perform under tribal compacts.

Section 315(a)—an Office of Self-Governance has been established in the Department of the Interior and resides in the Office of the Secretary. That is separate and apart from the BIA. IHS has established an Office of Self-Governance within IHS. During our IHS self-governance negotiations this year, we do not feel an independent presence of self-governance. In the Department of the Interior, the Office of Self-Governance actively supports self-governance concepts and acts as an advocate for the tribe's self-governance rights.

We are uncertain that the Office of Self-Governance established within IHS can ever act in a similar manner and would recommend that an office be lodged outside the Service, as BIA.

Section 317(a)—the Cherokee Nation strongly agrees and requests that a clear definition of shortfall and its use be developed. Because of the limited availability of shortfall moneys, the nation

is concerned that improper use of shortfalls that lead to uncertainty in its funding levels and frustrates planning compacts.

Section 317(b)—we feel that this section, relating to the restructuring and downsizing of the Federal agencies, is critically important. If the tribes are to assume the roles and responsibilities formerly held by the BIA and IHS through self-governance, it is important that the respective agencies, within a reasonable amount of time, must reorganize and downsize accordingly. This can only be accomplished with a carefully crafted, written downsizing plan prepared by the agency.

S. 550 is an important amendment to the act and will greatly facilitate the implementation of the project. But with emphasis here once again, because we feel that self-governance is the future of the Federal Indian policy, it must be made permanent.

I would like to thank the committee for the opportunity to comment on these subjects.

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

Senator MCCAIN [RESUMING CHAIR]. Thank you very much, Councilman DeMoss.

Last, but certainly not least, we will hear from Faith Roessel, director of the Navajo Nation Washington Office in Washington, DC.

Welcome back, Ms. Roessel.

STATEMENT OF FAITH ROESSEL, DIRECTOR, NAVAJO NATION WASHINGTON OFFICE, WASHINGTON, DC

Ms. ROESSEL. Thank you, Mr. Chairman. President Zah sends his regrets to not being here and asked me to give these remarks to you personally.

First, before I begin, I would like to acknowledge that we do have other representatives from the Navajo Nation government here with us. There are Ramah Chapter officials that are here. As you know, chapters are our local form of government and are included in our planning grant process right now.

Senator MCCAIN. Welcome. If you would like to stand to be recognized, we would appreciate the opportunity of recognizing you.

Thank you. Thank you for coming to Washington, DC to visit your money. Thank you very much.

Ms. ROESSEL. Just recently, the Navajo Nation received a letter of commitment from the Bureau of Indian Affairs to begin the planning process for studying the possibility of going the route of self-governance through the demonstration program. We received a \$250,000 grant, although we requested \$1.5 million. We are very concerned about the seriously deficient amount because it will inhibit our ability to adequately plan. Overall, this is of concern because if there are certain time lines that have to be met and so forth, it appears that there needs to be some consideration given for large tribes like the Navajo Nation.

We have established within our government a planning office for self-governance within President Zah's executive office. I would like to say that at the outset, we do support the objectives of self-governance. But at this point, we would have to reserve judgment on the exact text and form of permanent legislation, which as I un-

derstand has been the recommendations made by prior panels and witnesses.

As far as issues unique to Navajo, I think the most important is the fact that we are a large tribe. And because of that, one major question that we are now confronted with is, How do we achieve self-governance? Because we are a government where we have 10 separate divisions which are like Federal agencies, State agencies—they have their own regulatory authority—we need to be looking at whether we need to go this route in increments so that we go division-by-division rather than one entire governmental package moving forward. So this is an issue right now because we have 6,100 tribal employees within the various divisions.

A second issue for us is sufficient funding. We believe that we are not going to be able to finish our planning process within 1 year, or even 2 years, and that it may take a longer amount of time for us. So again, resources to finish that process are of importance to us.

A third issue is just the sufficient funding for entering into the compact with the Federal Government. Our current tribal budget, including Federal and non-Federal sources, is around \$275 million for this fiscal year 1994. We have in place right now 16 BIA 638 contracts as well as 2 IHS 638 contracts. So again, this is something where we would have to look very carefully at the transition, if we did choose to go the route of self-governance.

In sum, I think that the Nation has been very heartened and helped by the work of Mr. Lavell and his office. He has been very receptive to our concerns and just last week was out there trying to start briefing our tribal officials about exactly what this means, answering questions, and trying to help us begin this process.

That is the sum of my comments, Mr. Chairman.

[Prepared statement of Ms. Roessel appears in appendix.]

Senator McCAIN. Thank you very much, Ms. Roessel. It is always a pleasure to have you with us again.

I would like to recognize with pleasure the presence of my friend and a great friend of Native Americans, Senator Wellstone, for any remarks or questions he may have.

STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman.

I don't have any formal remarks. I would, however, like to welcome Marge Anderson, chief executive of the Mille Lacs Band of Ojibwe. And I would like to mention to you, Mr. Chairman, that this is a band that is very well known for its progressive programs. It is wonderful the way in which they have taken economic development moneys and put it into two new schools. Marge Anderson and the Mille Lacs Band have really been at the forefront of what gives Minnesota its reputation for being such a progressive State.

I have some questions, but first I would like to apologize to the panelists for being late. As is so often the case, as the Chairman knows, there was an important hearing in another committee on health care that I had to attend. That issue is a real concern to me and the reason I had to be here late. So, I apologize for that.

Thank you, Mr. Chairman.

Senator McCAIN. Would you like to go ahead with your questions?

Senator WELLSTONE. That would be fine.

I assume that the framework of this self-governance program is providing you the kind of flexibility you are looking for in serving the needs of your tribes.

I would like to ask each of the panelists—starting with Marge Anderson—whether the increased freedom and flexibility in funding programs have enabled you to meet the needs of your people better than the BIA-administered programs.

I take it that this is the kind of flexibility you are looking for and more in the kind of framework of self-governance. I would just like to put that question to you, first of all.

Ms. ANDERSON. Thank you for your comments, Senator. I appreciate that.

Yes; going from 11 cents on a dollar to our 4th year of compacting we are now getting 50 cents on a dollar. So we are able to provide those services to our people a lot better than the BIA has in the past.

Senator McCAIN. Could you explain that again? What has gone from 11 cents on a dollar to 50 cents on the dollar?

Ms. ANDERSON. The appropriations from Congress—by the time it got in our area to the Mille Lacs Reservation we were getting 11 cents on a dollar prior to compacting.

Senator WELLSTONE. And now you estimate 50 cents?

Ms. ANDERSON. Yes; this year it is 50 cents.

Senator WELLSTONE. Mr. Chairman, this sounds like a good reinventing government program. [Laughter.]

I would like to ask some of the rest of you to draw on your experiences, please.

Mr. KADAKE. It has made a big impact on our community to be able to create different programs. It has done a lot for us in our area.

Senator WELLSTONE. Could you give me some specific examples of how dollars have been put to more efficient use or what you have been able to do with that additional capital?

Mr. KADAKE. Well, I have my administrator here. He knows a lot more than I do. As I said earlier, this is just my first year. Could I have him answer the question?

Senator WELLSTONE. Sure, or other panelists. It is meant to be a general question.

Mr. THOMAS. While he is coming up, I will go over my laundry list.

At Tlingit and Haida, we were able to add money to our college student assistance program. Before the program began, we were giving out \$1,700 per student and now we give out \$2,300. Although it doesn't sound like a big jump, it does make a difference. We went from having only 13 college students on the honor rolls and now we have over 80 of our student on the honor roll. We have transferred funds out of the general welfare assistance program into tribal work experience programs, which gave incentives to people who were willing to work so that they would get the experience as well as make some more money.

We have also provided more programs than are listed in the BIA budget. We have put money in tribal courts and have been able to leverage more than \$35,000 more. We were able to provide legal advocacy Indian Child Welfare cases. ICWA money may not be used for legal advocacy, but under the demonstration program, we are able to.

We provide money for subsistence education and conferences for the villages in our region. We bring them into Juneau and bring people who are knowledgeable about subsistence and they are kept up to date on subsistence issues.

We have also been able to set up a substance abuse program whereby we had the \$30,000 seed to write a proposal so that now we are able to be very competitive and we are pretty sure that we will get \$150,000 for 2 years of planning, and that will lead into about \$1.2 million in a permanent program under Robert Wood Johnson Foundation.

We have a youth advocacy program and also a youth intern program. The intern program gets people in college to actually work in the agencies, whether they are State or Federal agencies or even tribal agencies.

Those are just a few of the things that we are able to do with the flexibility.

Senator WELLSTONE. Could I ask—just because I don't want to take up a lot of time—a somewhat different kind of question that I would like each of you to respond to? Do you think that expanding this kind of self-governance project into other agencies like HUD would contribute to the overall goal of more economic development and self-sufficiency?

Mr. Chairman, I am thinking about not just Indian communities outside urban areas, but also those that are located within our cities.

Ms. ANDERSON. We are always looking to other opportunities and Mille Lacs is considering going into other areas, such as HUD. We just signed a compact with the Indian Health Service. I guess—

Senator WELLSTONE. It would be helpful to know why you signed that compact, what kind of additional flexibility will that compact provide?

Ms. ANDERSON. I guess it is to provide better services to our people. You have the Federal Government out there and the Indian Health Service out there. That does not go to these reservations and see the health needs out there. We are able to better provide those services for our people.

Senator WELLSTONE. Would any of the rest of you care to comment as to whether or not this concept might be applied to other agencies, for example, in the area of housing or health care?

Mr. THOMAS. We are interested in Bureau of Land Management. In Alaska, we have a terrible backlog of applications to certify Native allotments and Indian town sites. They have a primary responsibility in that area, but they seem to be dragging their feet quite a bit.

I wanted to make one more comment relative to the self-governance program and its benefit. I think we have made tremendous strides in trying to resolve our problems, but the money levels are most definitely not sufficient to meet the major problems confront-

ing our people. That is why we are trying to use our flexibility to leverage outside money. I hope futuristically we can get some realistic funding levels, particularly in the area of education.

Senator WELLSTONE. Thank you for your response.

Ms. Roessel.

Ms. ROESSEL. As far as the Navajo Nation is concerned, as a policy matter we have been trying to educate the other Federal agencies that they, too, have a responsibility to American Indians and Alaska Natives and That in fact the trust responsibility—the special relationship—applies to the whole Government. It is not just the BIA and IHS. In that regard, we would very much support trying to branch out to expand self-governance so that you have really a coordinated, integrated policy and relationship from a tribe to the Government.

I think as far as the future is concerned, it would be well in our interest to achieve that.

Senator WELLSTONE. Thank you very much to each of you.

Mr. Chairman, I appreciate the kind remarks you made when I arrived and it just occurred to me that I didn't reciprocate at all. The only thing I would want to say to everyone here is, that it would probably be the understatement of the year to say that sometimes the Chairman and I disagree on issues, but I can't help but be very, very impressed with the commitment of this Senator from Arizona.

I thank you.

Senator McCAIN. The Senator from Minnesota is a valued friend and a formidable adversary. [Laughter.]

Senator WELLSTONE. Did you notice he emphasized "adversary"? I noticed his voice went up right at that point. [Laughter.]

Senator McCAIN. A valued friend. [Laughter.]

Thank you very much, the Senator from Minnesota.

Mr. Williams, did you want to elaborate a bit on the question that Senator Wellstone asked about how self-governance has assisted you in various programs?

Mr. WILLIAMS. Yes; thank you, Mr. Chairman.

When I started with the Organized Village of Kake, we worked toward getting our 638 contract, which was important for our community. It was a small tribe located on an island and we needed to get services right there.

With a self-governance compact, we have been able to take that to a level where we have been able to expand our programs and really get some services out there—social services, higher education, the whole gamut of programs.

I see the tribal membership more open to coming in, feeling comfortable with our services. Also, the flexibility has been very helpful. We have been able to use it to also help with our economic development planning and also some other long-range planning.

Overall, I would applaud the Congress.

Senator McCAIN. Mr. DeMoss, would you like to comment on the potential benefits or the potential down sides to self-governance?

Mr. DEMOSS. Yes, sir.

Self-governance has given the Cherokee Nation the flexibility. We were one of the first tribes to enter into this, so each year we have grown. As we have grown, we have extended more services to

more people. Also, the negotiations and the fair shares from the area office has given us additional funds to hire additional employees so that we can reach even more people within the nation. We are in the process of negotiating an IHS compact at this time. We look forward to that. Once we have experience in that and have accomplished certain steps along that route, then we have long-term goals we intend to proceed with other programs.

Senator McCAIN. Thank you.

I would like to again emphasize that it is not the intent of Congress, nor certainly myself or Chairman Inouye, to force any tribe into this program. In fact, I think we would quickly destroy it if there were any compulsory aspects associated with it. But I also believe that you and the previous panel are the best advertisement for the viability—at least in many areas of Indian country—of this proposal, both amongst Alaska Natives as well as the lower 48.

Ms. Roessel, how much money would be required for your planning that might need to be done if the tribe embarked on this endeavor?

Ms. ROESSEL. The planning grant that we submitted to the Office of Self-Governance was \$1.5 million. That was just for getting started one year. As I indicated, it looks like we would need more than 1 year. Some folks are estimating at a minimum of 5 years because our government is so complex in terms of the 638 contracts, the other non-Federal sources, and the Federal sources.

Senator McCAIN. I have to say to you, in all candor, if it was a 5-year endeavor at \$1.5 million each you would find resistance here in the Congress to that kind of funding, and from me as well. I just find it difficult to comprehend that it would cost \$7.5 million to plan on what tribes admittedly other fairly sizable tribes have been able to do at a fraction of that amount of money.

Your testimony mentioned a division-by-division approach. How does the Ramah Navajo Chapter interface with the current planning process?

Ms. ROESSEL. President Zah has expressed by written correspondence to the Bureau of Indian Affairs that the Ramah Chapter, as a political subdivision of the Navajo Nation, is included in our planning grant. And as such, they are included as part of our government.

Senator McCAIN. Are there any additional comments that anyone on the panel would like to make?

I appreciate your patience. I appreciate you coming from a long way.

President Thomas, did you have additional comments you would like to make?

Mr. THOMAS. Yes.

I failed to mention the importance of the reporting. Prior to compacting, we have had to submit monthly reports to the Government. Now we are able to design our programs to report to our constituents. That makes a tremendous amount of difference in our relationship to our constituents. They appreciate it and now they are getting much more interested in our programs than they ever have been.

Senator McCAIN. President Kadake, did you have any additional comments you would like to make?

Mr. KADAKE. No, Mr. Chairman.

Senator McCAIN. Thank you for coming.

Council Member Harold DeMoss, would you care to make any final comments?

Mr. DEMOSS. We support the legislation you have presented and we feel that it should be kept simple.

Senator McCAIN. Thank you.

Chairperson Anderson.

Ms. ANDERSON. Yes; one last comment.

I wrote to Vice President Gore last summer asking him to consider putting self-governance in his reinventing government proposal. I haven't had a response. Any support from the Senators would be appreciated.

Senator McCAIN. As soon as I run into him, I will tell him. [Laughter.]

Actually, I think it might be helpful if Senator Inouye and I wrote him a letter asking that he look at your letter and consider this as well. As Senator Wellstone said, I think it fits right in.

Ms. Roessel, any final comments?

Ms. ROESSEL. We will revisit the numbers.

Senator McCAIN. Thank you very much.

I thank you all for coming. You have contributed enormously, I think, to the effort that I think is one of the highest priorities that this committee should have, to establish self-governance on a permanent basis.

If you have any additional ideas or thoughts for us, the committee record will be kept open for an additional 30 days.

Thank you very much. This hearing is adjourned.

[Whereupon, at 11:57 a.m., the committee was adjourned to reconvene at the call of the Chair.]

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APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Thank you Mr. Chairman. I would like to commend you for your time commitment to this exciting piece of legislation and for convening the hearing today. What started as a demonstration project to determine the feasibility of tribal governments to consolidate their federal programs is now proving to be a viable program that many more tribal governments should be eligible to participate.

What we often hear from tribal leaders about the administration of Indian programs is in many cases they are poorly managed and without a consistent coordinated process. While I understand the inherent political nature of federal agency activity, I am dismayed that Indian people must suffer as a result. Today, I believe that many tribal governments are at the point where they can administer many of these federal programs more efficiently to better serve the communities they represent. For this reason, I am happy to be a co-sponsor of S. 1618: the Tribal Self-Governance Act of 1993.

In an effort to perpetuate and foster the policy of Indian Self-Determination this legislation will build upon the success of the Tribal Self-Governance Demonstration Project and make permanent a program that will allow up to 20 tribes per year to participate in the program. Tribes who have completed the application process and are able to adequately administer a variety of programs will be eligible to participate. What immediately comes to mind is the fact that historically federal policy has never fully supported the efforts of individual tribal governments to gradually step towards greater autonomy and independence.

This legislation reflects the flexibility that tribal governments will have to participate or not to participate in the program. It is purely the discretion of tribe. While I am aware of the lethargic behavior and lack of support of the demonstration program by those in the BIA, I would hope they would embrace this legislative initiative and make it possible to swiftly implement this program when it becomes law.

As you know here in Congress and at the White House there is a major initiative to bring government to the people, to be more responsive and accountable to the people. There are a number of initiatives the President and Congress will consider to make this happen. Recently, the President signed Executive Order No. 12875 to enhance the intergovernmental partnership between state, local and tribal governments with the purpose of streamlining application processes and to develop greater consultation and coordinated efforts on matters that significantly affect communities, in this instance, potentially all Indian communities. Although this is an initial step in the streamlining process, I can guarantee it will not be the last.

It is my hope that there will be a greater effort on the part of federal agency officials to recognize the importance of these Indian programs the benefits they provide for Indian communities, beginning with agency that is largely responsible for Indian programs, the BIA. I will continue to support this legislative effort and work for greater visibility and coordination of Indian programs.

I am pleased to welcome those who are here today to testify on this important piece of legislation and I look forward to any suggestions or comments that will make this legislation better.

Thank you.

PREPARED STATEMENT OF MICHEL LINCOLN, ACTING DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Thank you for the opportunity to discuss the Self-Governance Demonstration Project and the Indian Health Service (IHS). I am Mr. Michel Lincoln, Acting Director, IHS. I am accompanied by Mr. Reuben Howard, Acting Director, Office of Tribal Self-Governance, and Mr. Douglas Black, Associate Director, Office of Tribal Activities.

Today, I would like to briefly review with you the history of IHS self-governance projects and discuss some of our future plans with respect to the demonstration program.

The Self-Governance Demonstration Project, and self-determination contracting, are both authorized under P.L. 93-638, as amended, and enable tribes to assume the operation of IHS programs. Self-governance differs from self-determination contracting by providing tribes greater flexibility to redesign programs and services to meet tribally determined priorities within their communities. A unique aspect of self-governance is that participating tribes may also access IHS administrative funding directly related to programs assumed under self-governance-agreements.

In November 1991, the IHS was advised by the Congress to begin collective planning activities with those tribes that have negotiated and signed self-governance agreements with the Department of Interior. Two months later, in January 1992, we met with these seventeen (17) tribes to begin a dialogue and establish a cooperative relationship that would promote the success of self-governance in the IHS. That initial meeting resulted in the IHS awarding a cooperative agreement in the amount of \$500,000 to these tribes to assist them in planning activities focused on researching Agency programs and the IHS budget. IHS officials have continued to meet with these tribes, and others involved in self-governance planning activities with the Interior Department, on a continuous basis since that time.

Also, in January 1992, efforts were undertaken to familiarize INS staff within the IHS with the Self-Governance Demonstration Project. A briefing was conducted for senior executive staff on the Demonstration Project in which a representative of the self-governance tribes and staff of the Senate Committee on Indian Affairs were participants. Efforts to acquaint other staff with self-governance have continued unabated over the last two years.

In October 1992, the "Indian Health Care Amendments of 1992," extended self-governance demonstration project authority to the INS. Almost immediately, a number of tribes expressed interest in negotiating self-governance agreements with the IHS. In an effort to be responsive to these tribes, the IHS spent the first six months of 1993 in activities designed to identify, at its Headquarters and Area Office levels, Agency functions and activities that are inherently Federal, and which are not. This was a demanding and difficult exercise for which there was no template. Nevertheless, its completion enabled the Agency to begin self-governance negotiations with tribes in May of this year.

Although the IHS has had self-governance demonstration project authority less than a year, we have completed negotiations and signed self-governance agreements with fourteen (14) tribal governments. We believe this is evidence of our commitment to make the IHS Self-Governance Demonstration Project work. These agreements will become effective in fiscal year 1994 and will transfer almost \$50 million from the IHS to these tribes.

As part of these agreements, we have negotiated the transfer of a total of \$7 million in IHS administrative funding to the 14 tribes. This administrative funding is related to service programs that will be operated by these tribes under self-governance agreements. The Agency will finance over half of this amount from the organization in FY 1994. The remainder will be provided to the tribes from anticipated funding provided by the Congress in our FY 1994 appropriation. Both the House and Senate versions of our appropriation bill include an increase of \$3.1 million for self-governance.

As the IHS seeks to address rapid change in the form of increasing self-governance activity, as well as deficit reduction efforts, and the "reinventing government" initiative proposed in the report of the National Performance Review, it is evident that a "new" type of IHS will be required in the future. I have established a task

group, comprised of individuals representing the INS, tribal governments and the private health care sector, to provide guidance to the Agency in efforts to restructure its administrative functions. The goal of this effort is to develop an improved, more effective standardized management structure for the INS. I will keep you advised of the progress of this effort.

In fiscal year 1994, we will work to assure the continued success of self-governance in the IHS. We have established a separate Office of Tribal Self-Governance within the Office of the Director of the IHS. Its placement within the Office of the Director signifies the importance the Agency attaches to the Self-Governance Demonstration Project and our commitment to make it work in IHS.

Also in fiscal year 1994, we will meet with self-governance tribes and those not involved in the demonstration program to review the process for determining which functions of the Agency are inherently Federal and to identify a mutually acceptable process for determining funds available for self-governance compacts.

As IHS begins the implementation of self-governance, we will be interested in examining its costs and benefits during the demonstration phase of the program. For instance, self-governance tribes will use the flexibility afforded by the demonstration project to re-direct funding to health services programs that they regard a higher priority. We will be interested in ascertaining if this demonstration program will affect workload demands on the IHS system.

In conclusion, the IHS believes that self-governance provides a unique opportunity for tribes in the demonstration program to design innovative cost effective health care delivery systems that are more responsive to tribally identified needs. We strongly support the principles of self-determination as expressed in the Self-Governance Demonstration Program.

PREPARED STATEMENT OF MICHAEL PABLO, CHAIRMAN, CONFEDERATED SALISH AND
KOOTENAI TRIBES OF THE FLATHEAD NATION

Good morning, Mr. Chairman and Committee members, I am Michael T. Pablo, Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation. We did not get a lot of notice about this hearing so I have a brief statement that I would like to now read and we will submit additional material including some clarifying amendments for the record within the next two weeks.

Our reservation is located in western Montana and we are the signatories to the Hellgate Treaty of 1855. In that treaty we ceded over 20 million acres of what now comprises western Montana. In return, we reserved for ourselves and our future generations the 1.25 million acre Flathead Indian Reservation and accepted that our lands and treaty rights would be protected forever. We were a self-governing people when we signed that treaty. We look forward to the enactment of permanent Self-Governance legislation as a means of continuing our practice of self-governing and self-determination.

The Flathead Nation was one of the original ten tribes authorized to participate in the Tribal Self-Governance Demonstration Project. After two years of extensive planning and researching, the Salish and Kootenai Tribes negotiated an agreement with the Department of the Interior which was signed by the then-Assistant Secretary of Indian Affairs, Dr. Eddie Brown. Our agreement pursued a somewhat different course than did that of the other nine original tribes. Our agreement had as its premise the fact that both the Flathead Tribes and the federal government needed to first assess what the true costs would be to operate all BIA programs. The agreement therefore contained an appropriate funding mechanism based on needs of services at the local level. This funding level would then be presented to BIA Central Office to be negotiated between the BIA and the Tribes. Our Self-Governance agreement then stipulated that it was to be jointly submitted to the Office of Management and Budget (OMB) for further discussion and inclusion in the President's annual budget request as it is submitted to Congress. However, after signing this official agreement, the BIA unilaterally canceled it. It would be an understatement to say that the Confederated Flathead Tribes were disappointed at this action by our trustee. In canceling this agreement, the BIA was clearly admitting that it did not want to be obligated to submit a budget for an Indian tribe that accurately reflected the true costs of providing services as authorized in law.

After finding the Bureau unwilling to budge on this matter, we felt we had little choice but to negotiate more standard self-governance compacts with the BIA and Indian Health Service. Such compacts have been signed and have been in effect since October 1, 1993.

The Self-Governance Demonstration Project has enhanced the government-to-government relationship between the United States and Indian country. It allows the tribes significant authority to design and redesign federal programs and allocate (limited) resources based on the priorities set by the Tribal Council, to meet the needs of the membership. It shifts responsibilities back to the tribes where it rightfully belongs, putting the decision making with those most directly affected. It has provided the tribes an opportunity to achieve true Self-Determination. The next step may be to look at more federal programs serving Indians and explore the opportunities for the tribes to operate those programs through self-governance compacts as well. Hopefully, the self-governance compacting process may end the history of federal paternalism.

Any new and innovative project like Self-Governance is not without its problems. For example, there continues to be a question on the formula used to determine the Tribe's fair share of the BIA-Central Office budget. Other problems, such as the application of the Federal Tort Claims Act (FTCA) to compacts in the Indian Health Service or the possible lack of shortfall funding for IHS seem to be resolved, at this point, through language adopted in the pending Interior Appropriations bill. However, the fix for these two concerns is therefore potentially applicable for Fiscal Year 1994 only and the permanent Self-Governance bill should also contain language addressing the shortfall and FTCA issues.

Many of the other problems can be simply resolved in Senator McCain's draft bill which proposes to establish Tribal Self-Governance as a permanent program. Although this draft bill limits itself to the BIA, the Flathead Tribes encourage the Committee to still consider the inclusion of the Indian Health Service (IHS) in the permanent authorizing bill. IHS was added to the original Self-Governance Demonstration Project via the 1991 amendments to the Act and is therefore now a part of this progressive project. As stated above, we have negotiated an initial Self-Governance Compact with the Indian Health Service. We do not understand why a decision has been made to now delete IHS from the permanent Self-Governance authorizing legislation. By failing to do so, it sends a potentially inappropriate message to the IHS. That message is that if they drag their feet and wait out the 1996 time period when the demonstration component ends they won't have to go under Self-Governance. We do not see the IHS being very cooperative with tribes during the remainder of the demonstration project if they see it as a short term pain that will eventually go away.

The proposed legislation speaks to the needs of a fair and consistent mechanism to waive regulations, such as Federal Acquisition Regulations (FAR), which hinder tribes in the implementation of programs. Our record demonstrates the Flathead Tribes' capability to administer programs efficiently and in the process improve and increase the quality of services. In the brief time the Tribes have operated under the Compact, examples can be given of the Tribes' ability to respond quickly to meet determined needs which have been neglected, ignored, or disapproved by the federal agencies. It can be as simple as purchasing dental equipment, or as difficult as redesigning an effective and efficient third party billing program to access much needed additional health resources.

The proposed legislation speaks to the need to maintain, but streamline, baseline measures mutually agreed upon by both parties. These measures will continue to document the effectiveness of tribally administered and managed programs. The Tribes believe it is through proper documentation that the unmet resource needs will be identified and, hopefully, resolved. Through this process, the goal of self-governance will be achieved. This goal, after all, is to provide the highest quality of services to the Indian people. We believe the legislation needs to contain qualitative and quantitative methods of measuring not only the success of the program but, further, that data must be available to the Congress and to the administration to demonstrate unmet need and funding requirements. If the tribes of this country are to take over these responsibilities from the federal agencies, we must be able to demonstrate what it will cost to operate them.

One issue left to administrative resolution is the development of a clear appeals process for resolving disputes in the negotiation process between tribes and the Federal government. Currently no process exists, leaving the tribes at the mercy of the federal agencies.

In conclusion, sufficient progress has been shown to move self-governance from the demonstration phase to a permanent phase. In so doing, the present limitations associated with being temporary—such as not being taken seriously by certain bureaucrats—will, hopefully, dissipate. It is like the evolution of this Committee, which made the move from a "Select" Committee to a permanent Committee. It is time for the tribes to continue with self-governance as a process of evolution,

moving from a temporary project to a permanent program, continuing with the charge to redesign, allocate, and consolidate resources with the ultimate goal of improving tribal Self-Determination.

PREPARED STATEMENT OF FAITH ROESSEL, EXECUTIVE DIRECTOR, NAVAJO NATION
WASHINGTON OFFICE, WASHINGTON, DC

Mr. Chairman and members of the Committee, my name is Faith Roessel, Director of the Navajo Nation Washington Office. On behalf of the Navajo Nation and President Zah, I would like to thank the Committee for holding this hearing on Tribal Self-Governance and the opportunity to present the Navajo Nation's comments. President Zah sends his regrets that he is unable to appear before you today. The Navajo Nation has only recently begun to explore the possibility of participating in the Tribal Self-Governance program; therefore, the Navajo Nation views this hearing as our initial step to understand the Self-Governance Demonstration process.

The Navajo Nation is the largest Indian tribe in the United States. With a citizenship of over 219,198 enrolled members, the Navajo Nation constitutes more than thirteen percent of all United States Indians. Our lands are located within the states of Arizona, New Mexico, and Utah and is comparable in size to the state of West Virginia and constitutes 36 percent of all Indian lands in the lower-48 states.

The Navajo Nation is a sovereign nation and operates an expansive tripartite government, composed of executive, legislative and judicial branches. This structure supports 6,100 employees with four executive offices and 10 "divisions," analogous to state and federal departments and/or agencies. Each division has responsibilities for specific subject areas such as: Natural Resources, Economic Development, Education, Public Safety and Social Services, and others.

The Navajo Nation government provides services to the Navajo people through funds available from tribal resources and taxes, private, state and federal sources, including P.L. 93-638 ("638") contracts. According to the Navajo Nation Office of Management and Budget, the current operating budget for the entire Navajo Nation government totals approximately \$275 million for FY 1994. Fifty-eight percent of the budget is from federal sources, primarily the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA). The Navajo Nation currently has sixteen "638" contracts through the BIA and two "638" contracts through IHS.

Given the breadth and complexity of our financial structure and federal expenditures, it behooves the Navajo Nation to proceed carefully and cautiously during the Self-Governance planning phase. The Navajo Nation respectfully requests Congress to consider tribes like the Navajo Nation that are unique due to their size (land and population), extensive use of "638" contracts currently, and highly developed programs and service delivery systems.

On September 23, 1993, the Navajo Nation received a Commitment letter from the Department of the Interior for a \$250,000 planning grant to assess the possibilities of a Self-Governance compact with the United States. The Amount is seriously deficient. The Navajo Nation's original request for a planning grant was \$1.5 million.

With these limited awarded funds, the Navajo Nation will be studying how to integrate and coordinate federal and tribal programs. During the planning process, we hope to identify ways to produce greater flexibility in the use of these funds that will: 1) meet the Navajo Nation's changing needs, 2) increase responsiveness by all federal programs to tribal policies, 3) begin and implement long term program planning and development, and 4) strengthen monitoring and management of all federal contracts. In short, the Navajo Nation wants to strengthen the government-to-government relationship.

The Navajo Nation views Self-Governance as a progressive process to address and improve our numerous unique tribal needs. We view the planning phase as a period of assessment and analysis to determine the pros and cons of compacting pursuant to the Self-Governance model. Several issues are readily apparent to the Navajo Nation. First, the severely limited amounts of funding available for planning may inhibit our ability to undertake a comprehensive assessment and to make timely informed decisions. As stated previously, the Navajo Nation's governmental operations and funding are complex and will require careful analysis. While the Office of Self-Governance and the Department of the Interior have been sensitive to our concerns, adequate funding may not become available in sufficient amounts for the Navajo Nation to complete the comprehensive planning process. We are also con-

cerned that the limited availability of funding may not support future activities in pursuit of a Self-Governance compact.

At this point, the Navajo Nation is not entirely certain how we will undertake the compact process. With our tripartite government and 10 divisions, an incremental approach by division may be in our best interest rather than the Navajo Nation undertaking Self-Governance all at once. As of today, the only division within the Navajo Nation government that is farther along in its planning to take over its BIA funded programs is the Navajo Division of Natural Resources. Until we begin the planning phase and incorporate input of all divisions, only then, will we know how to proceed. Otherwise, we may be setting ourselves up for failure.

The Navajo Nation supports the Self-Governance objectives of allowing tribes the choice to make changes in administrative procedures; streamline decision making; redesign procedures for direct funding to tribes; simplify reporting requirements; and redistribute more equitable funding pursuant to tribal priorities. Above all, our view is to strike the balance of the government to government relationship without infringing on tribal sovereignty.

Regarding S. 550, the Navajo Nation is concerned that the provision in Section 315, Subsection C, limits the membership of the Policy Council to primarily federal employees, and non-federal members representing tribes with Self-Governance agreements chosen by each Secretary. This section makes clear that the Policy Council is to have a role in Self-Governance policy development, including hearings of appeals. It also states that the non-federal, or tribal representatives, are non-voting members and have a limited, non-consecutive term of one year. The Navajo Nation strongly believes these sections be redeveloped to broaden the scope of voting eligibility, especially in light of the appeals process. To this extent, should the Committee proceed with S. 550, the Navajo Nation would like our concerns incorporated as expressed here today.

Mr. Chairman, the Navajo Nation appreciates the opportunity to present our concerns regarding the Navajo Nation's potential participation in the Self-Governance Demonstration Project. Should the Committee develop permanent legislation, the Navajo Nation respectfully requests the opportunity to comment on it. By testifying here today, we are reiterating our support for the objectives of Self-Governance and reserving judgment on the form of permanent legislation.

**PREPARED STATEMENT OF BEVERLY BENNETT, CHAIRPERSON, BUSINESS COMMITTEE,
LOWER ELWHA S'KLALLAM TRIBAL COMMUNITY COUNCIL**

My name is Beverly J. Bennett, chairperson of the Business Committee of the Lower Elwha S'Klallam Tribal Community Council. I am here today to submit this testimony in favor of legislation which will make permanent that which is now the Self Governance Demonstration Project [SGDP].

The Lower Elwha S'Klallam Tribe began to operate our tribal BIA programs under the authority of our Compact of Self Governance on March first of this year. We have found that the authority available to the tribe under the SGDP allows the tribal governing body much greater flexibility in designing tribal programs to meet the expressed needs of Lower Elwha S'Klallam tribal members.

We are in the process of building forty additional tribal housing homes, some of which are more than three miles distant from the tribal center where the tribal police office is located. We hope to be able, in the current year, to provide 24-hour police protection for our Tribal Community. This will truly be a step forward for us as Tribal Government provides a high level of personal safety for the Lower Elwha S'Klallam Community. The need is for a sufficient base of funding in the law enforcement element that will ensure the Tribal Government's ability to provide round-the-clock police protection. This is a Self Governance issue!

We have been engaged in the planning for Elwha River Restoration for a number of years. These funds have previously been identified for the Lower Elwha S'Klallam Tribe. Now, however, the Department of the Interior has assumed that directing funding for Elwha River Restoration through the National Park Service will be satisfactory. We contend that the Lower Elwha S'Klallam Tribe should be involved in determining where funding should be directed for continuing studies of Elwha River Restoration. This is a Self Governance issue!

The Lower Elwha S'Klallam tribal center was built sixteen years ago. There are now over fifty tribal employees. We have staff members whose desks are in hallway and lobby areas. We have made a request of the DOI Office of Self Governance for funding sufficient to remodel 4,800 square feet of the tribal center which was never finished off when the building was built. We realize that this request for Self Gov-

ernance Start Up monies may be large, but it is nevertheless necessary to house all of our staff now that the tribe is operating many additional government functions under our Compact of Self Governance. This is a Self Governance issue!

Thank you for the opportunity to provide this testimony to the Senate Indian Affairs Committee. The Lower Elwha S'Klallam Tribe appreciates all that you have done for Self Governance.

PREPARED STATEMENT OF LARRY NUCKOLLS, GOVERNOR, ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA

Members of the panel and the 103rd Congress, my name is Larry Nuckolls, and I am the Governor of the Absentee Shawnee Tribe of Indians of Oklahoma, headquartered in Shawnee, Oklahoma.

As one of the initial seven Tribes to have participated in the Self Governance Demonstration Project, authorized by Title III of P.L. 93-638, as amended, we feel that we are somewhat experienced in the concept of Self Governance and are compelled to submit this testimony in support of making Self Governance a permanent option available to Indian Tribes and Nations as a method of conducting business both internally and externally with other sovereign powers, among which are other sovereign Indian nations, the several states and the United States of America.

The concept of Self Governance, has from the beginning, had its roots and its driving force from the Tribes and Nations themselves, and in the main, the concept continues to be tribally motivated. The concept was initiated following a rather compelling expose' of the activities of the Bureau of Indian Affairs which was published both by the Arizona Republic and the Tulsa Tribune several years ago, in which the gross mismanagement, misuse and, in certain instances, outright fraudulent activities of the BIA were brought to public attention.

The ensuing public outcry for changes to the existing system had much to do with the success of tribal leadership's ability to legislatively succeed in establishing what we now know as "Self Governance."

Since its inception, P.L. 93-638 and its several amendments, have stressed the importance of removing the paternalistic relationship of the federal government from the burdens of the Indian Tribes and Nations. This concept existed in the statute's original language and continues today, and while the intent is admirable, the practice is not as Congress envisioned.

Self Determination succeeded in allowing Tribes and Nations to assume responsibility for the operation of a great many of the programs serving them, but was not allowed by the federal bureaucracies to truly achieve "self determination" beyond certain limitations which were established by the bureaucracies themselves. The original legislation envisioned a lessening of the size and scope of the affected agencies as more and more responsibilities were assumed by Tribes: this did not occur, in fact, just the opposite happened, the agencies grew in scope and size to "monitor and provide oversight" to tribal contractors.

Following several years of contracting, the several bureaucracies became adept at controlling the Tribes in such a manner as most Tribal contractors simply became extensions of the Bureau: little if any real redesign or streamline effort by the Tribes resulted in acceptability and approval by the Bureau. Moreover, the bureaucracies found themselves in positions to "policy away" many of the rights and privileges that the statute afforded Tribes and Nations.

These events caused there to be the opportunity for Tribes and Nations to assert themselves and their abilities via Title III of P.L. 100-472.

Under the auspices of Self Governance, the participating Tribes have chosen to exercise the truest form of Tribal Sovereignty available. No longer do bureaucrats in Washington determine and decide what "cures" are to be used to address the needs of Indian peoples. Under Self Governance, the elected governing bodies of the several Tribes identify needs and allocate available resources to those needs, and the needs and redress of needs are locally identified, locally prioritized and locally addressed.

This ability of Tribes and Nations must be preserved, protected and extended to other agencies beyond the Department of the Interior and the Department of Health and Human Services to include, at some point in the near future, other departments of the Federal government.

The abilities of Indian Tribes and Nations to locally determine their own futures is vital to the true and viable self sufficiency of those entities. Federally identified and determined redress of "Indian needs" has proven time and again to be futile. The local identification and local redress of "Indian needs" are those which are suc-

cessful. They are grassroots development in which the Tribe and its membership become a team that is unified and determined to succeed with the resources available.

Prior to this local involvement, Tribal governments reacted to the resources available in program specific categories. To address low educational levels, Tribes contracted to become an arm of the BIA, operating education programs exactly in the same ineffective and inefficient way the Bureau did: and in the main, achieved the same ineffective results. To address high unemployment levels, Tribes contracted to become an arm of the BIA and the DoL, operating employment programs exactly as those agencies had: and in the main, achieved the same ineffective results. This process was repeated again and again, with only those Tribes who fought diligently to redesign programs in such a manner as to maximize local input realizing long lasting positive results. These redesign efforts were generally achieved in spite of the participation of the federal agencies as opposed to their cooperation and assistance.

Certainly then, the Self Governance concept has successfully demonstrated that local control of federal revenues must be continued and hopefully expanded to include other Departments of the federal government as time passes. The abilities of the Tribes must not be returned to the system of paternalism and program specific oversight which evolved under Self Determination contracting. Conversely, we must continue to allow Tribes and Nations the opportunity to determine in a viable and effective way, their own respective destinies.

Compelling need for permanent legislation authorization Self Governance is the ceiling which currently limits the number of participating Tribes and Nations. Already, this ceiling is being reached, and Tribes and Nations that desire to participate are being denied their right to truly govern themselves as Indian sovereigns.

Thank you for your consideration and support to the Indian Tribes and Nations in their efforts to continue to develop under Self Governance by supporting legislation which makes permanent the option of Self Governance.

STATEMENT OF MS. ADA E. DEER, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT THE OVERSIGHT HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE ON THE IMPLEMENTATION OF P.L. 100-472, AS AMENDED, "THE SELF-GOVERNANCE DEMONSTRATION PROJECT".

October 20, 1993

Mr. Chairman, I am William Level, Director of the Office of Self-Governance, and I will be delivering the statement of Ms. Ada E. Deer, Assistant Secretary - Indian Affairs, who is unable to be here today due to a prior commitment.

Mr. Chairman, since my confirmation hearing, I have taken the reins of Indian Affairs, and I must say that there are many horses on this team and not all are pulling in the same direction. I aim to change that.

Also, since my confirmation hearing, Vice President Gore has issued the National Performance Review report entitled "Creating a Government that Works Better and Costs Less". The Self-Governance Demonstration Project fits perfectly into this model.

Things will work better as tribal sovereignty is enhanced with tribal governments assuming greater control over the use of Federal resources. Programs can now be designed and delivered by tribal governments with the ultimate customers clearly in mind -- individual Indians living on various reservations throughout the country or in Alaska villages.

Further, as tribal governments assume more responsibility for managing their share of the Federal budget, there will

be a reduced need for Federal staff. This will assist the BIA in meeting targeted FTE reductions and administrative cost savings.

As I indicated in my confirmation statement to you in July, Secretary Babbitt and I want to accelerate the trend toward self-governance and at the same time respect the rights of those tribes who choose a different course. Thus, while many tribes are reinventing their relationship with the Federal government, other tribes have chosen to maintain their current relationship. It is critical that support for non-participating tribes be maintained.

I applaud the many tribal leaders and members of Congress who have worked very hard first to pass the necessary legislation and since then to implement the Self-Governance objectives. Their hard work has achieved remarkable results as many different kinds of tribes have come forth to participate in the demonstration project.

In 1993, 19 tribes and consortiums operated programs under Self-Governance Annual Funding Agreements with total direct program resources of about \$60 million which represents just under 10 percent of all BIA funds contracted or granted to tribes under the provisions of Public Law 93-638. These Annual Funding Agreements ranged from a low of \$530,000 to a high of \$10.6 million. In 1994, we anticipate that 28 tribes and consortiums will have annual funding agreements totalling approximately \$100 million. These tribes and consortiums represent nine of the 12 BIA areas.

The results of the Project to date have been very positive. Tribal leaders from Self-Governance tribes indicate greatly increased flexibility in directing resources toward tribal priorities and needs. They describe a much greater level of interest in tribal council sessions, particularly budget sessions where tribal priorities are set. These leaders also report evidence of a new attitude by tribal program managers and staff as they take a more active role in the design and execution of tribal programs rather than simply being vendors of the BIA.

As Wilma Mankiller, Principal Chief of the Cherokee Nation, has stated:

"The Self-Governance Project ... has served to achieve the goal of real self-determination. As the 20th century closes, the Cherokee Nation has reassumed its place in the family of American governments."

What excites me about Self-Governance is that the decisions are being made by those most directly affected by the decisions. This is the way it was for hundreds of years for the many Indian Nations prior to the arrival of the Europeans.

There are a few remaining issues yet to be settled. Some of these include:

1. settling on a process to determine tribal shares of the BIA budget;
2. determining if any changes are needed that would allow the Secretary's trust responsibility to be fulfilled in a more flexible manner and then determining the support necessary to perform these retained trust functions;
3. creating an efficient process to waive BIA rules and regulations to expedite program redesign; and
4. developing regulations that will flesh out other parts of the project that require attention.

While I do not yet have answers to these and other questions, I can say it is my full intent to implement the Self-Governance Project consistent with the laws that authorize it. In essence, these laws direct me to look for ways to include, not exclude, funds from all programs, functions or activities that benefit Indian tribes either directly or indirectly into the Self-Governance negotiations. This, however, must be tempered by the fact that as an executive branch agency, the BIA will always have a responsibility for certain inherent Federal functions that cannot be contracted or compacted to tribes. To this end, I will form a study team that will be headed by one of my senior staff members to study these issues. Further, I intend to support tribal governments in their effort to redesign programs to meet their own unique circumstances by

accelerating the regulation waiver review process.

Tribal leaders have just finished a two-day conference in which they have considered what should be included in legislation to make Self-Governance a permanent option for those tribes that desire such a government-to-government relationship. I believe that it is time for the tribes, the Congress and the Administration to work together on the specifics of such legislation that will provide self-governance as a permanent option.

One of the strengths of the Self-Governance Demonstration Project is that it has remained a tribal initiative and I want to continue to support this undertaking. Where self-governance can be implemented through administrative procedures, then I favor this. There is still much to be learned about the possibilities and road blocks from this demonstration project. These can be addressed more efficiently by adjusting a procedure or policy rather than legislatively locking in a certain concept or process.

I know the Tribes and the Congress are concerned about BIA restructuring in response to resources and responsibilities being shifted to self-governance tribes. The Senate Appropriations Committee has directed the BIA to submit a detailed report on the impacts of contracting and compacting for every program at every agency and area. This will provide a good foundation for future decision-making.

I want to explore ways in which tribal governments, who are the beneficiaries of tribal trust assets, can play a greater role in the management of trust programs. With the passage of P.L. 93-638 and more recently P.L. 100-472, which includes provisions for the Self-Governance Demonstration Project, Congress has authorized participation by the tribes in the administration of the trust programs. It is important to me that while we not lessen our trust responsibility, we take advantage of this participatory component. In meeting this trust responsibility, I see us moving increasingly away from actual resource management to trust oversight. Conducting annual trust assessments jointly with the tribal governments and the BIA has been a step in that direction.

In summary, what we are doing is having Self-Governance be the lead horse that will guide the other horses in reinventing that portion of the Federal Government dealing with Indian people.

I am sorry that I was unable to attend your hearing, and I look forward to a continuing partnership with the self-governance tribes and the Congress as this demonstration project unfolds. To this end, I support the continuation of the Self-Governance Demonstration Project Council, and invite tribal leaders to share their input with me.

This concludes my prepared statement. I will be happy to respond to any questions that the Committee might have.



JAMESTOWN S'KLALLAM TRIBE

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**Testimony of W. Ron Allen,
Tribal Chairman and Executive Director
of the Jamestown S'Klallam Tribe
before the
Senate Committee on Indian Affairs
Oversight Hearing on the
Self-Governance Demonstration Project
October 20, 1993**

Mr. Chairman, I am W. Ron Allen, Chairman of the Jamestown S'Klallam Tribe. On behalf of the Tribe, I thank you for the opportunity to express our recommendations and outline our experiences on this historic initiative. We urge the Committee to consider legislation that will establish the Self-Governance concept as a permanent legal mechanism in implementing the Tribes' governmental status. I truly appreciate the patience, understanding and support over the past several years by the Committee members and staff as the Self-Governance Demonstration has progressed. We enthusiastically support the expedient introduction and passage of permanent Self-Governance legislation during this Congressional session.

SELF-GOVERNANCE AT THE TRIBAL LEVEL:

The Jamestown S'Klallam Tribe, located on the Olympic Peninsula in Washington State, has 234 enrolled members and a total land base of 36 acres. As one of the first seven Tribes to negotiate a Compact of Self-Governance in FY1991, the Jamestown S'Klallam Tribe is now entering its fourth year of implementation. Our Tribe has experienced tremendous growth, opportunity, and change; and, many accomplishments have been achieved, both internally and on the national level. As the smallest and youngest Tribe involved in the Self-Governance initiative, we have demonstrated that we can manage our governmental affairs with the same integrity and responsibility as the larger Tribes. The goal of the Tribe has been to demonstrate that successful and effective Tribal Self-Governance is not only possible, but can serve as a model for future Federal Indian policy implementing the "government-to-government" relationship with all Tribal governments, if they so choose.

The Self-Governance concept returns decision-making authority and management responsibility to the Tribe and has provided the flexibility to restructure our programs to build and address Tribal priorities and needs. The Tribe views Self-Governance as a way in which funds can be used in the most effective and Tribally-specific manner possible without diminishing the United States' trust responsibility to Indian peoples and Tribes. Key areas in which the Tribal Council approved reprogramming of funds to benefit more specific Tribal needs include:

- Consolidation of the Higher, Vocational, and Adult Education programs under one department. Funding for tuition and books for all educational purposes are budgeted at the beginning of the fiscal year based on information supplied by the Tribe's Education/Employment Counselor;
- Additional funds for housing to meet minimal annual construction needs;
- Flexibility for our Social and Cultural Program to incorporate cultural restoration and enhancement activities that were not previously available under BIA 93-638 programs;
- Enhancement of our Economic Development program to complement existing business development activities being temporarily funded through the HHS's Administration for Native Americans (ANA); and,
- Re-prioritization of funding resources to the Natural Resources Department in order to encompass new resource areas, particularly in water resource and shellfish management.

We remain enthusiastic about this initiative and have overcome many obstacles since the Project was first initiated in 1988. Although many problems still exist, processes are improving as we move forward. We have sought to carry out Self-Governance in a creative manner most beneficial to our Tribe and people. We have continued to develop and refine our management, administrative and governmental capacities as our leaders, staff, and community become more aware of the exciting possibilities afforded to the Tribe under Self-Governance.

PROBLEMS ENCOUNTERED IN IMPLEMENTING SELF-GOVERNANCE:

Although implementation of Self-Governance has provided many opportunities at the Tribal level, many problems still exist as we move forward on a national level. Self-Governance authorizes the transfer of all BIA and IHS "programs, services, functions, and activities". This concept has been misinterpreted and misapplied throughout the negotiation process between Tribes and the involved Federal Agencies. The lack of timely and accurate program and budget information has impeded negotiations and is counter to the intent of this initiative relative to the redefining of our new relationships. It is imperative that real negotiations occur and not just simply a transfer of funds. Additionally, throughout the negotiations process with the Indian Health Service in 1994, we have been deeply concerned that key project staff of IHS have been assigned to the Office of Tribal Self Governance. A clear message needs to be conveyed that the Office of Self Governance staff should be Tribal advocates.

Stable base funding remains a key issue in attaining Self-Governance goals. In order for the participating Tribes to demonstrate success, it is imperative that consistent and predictable funding conditions exist. Tribes annually experience difficulties in meeting justified cost-of-living salary increases due to the inconsistent Bureau process by which the pay cost increases for Tribes are calculated. The BIA does not consider inflation costs for Tribes. Additionally, Congressional overall budget adjustment reductions, known as sequestrations, are being applied against Tribal budgets further eroding Tribal program capabilities. The Tribe requests the Bureau be required to work with the Self-Governance Tribes in establishing fair annual adjustments for costs-of-living and inflation as a model for all Tribes.

Additionally, the BIA has not meaningfully restructured to accommodate the Self-Governance transfer of resources concept. With additional Tribes participating in this initiative, it is essential for the BIA and the IHS to begin actively restructuring to release funds to allow these stable base budgets to be established. It is critical to instruct the BIA and IHS to provide sufficient funds beyond the additional funds made available through Congress to meet both the needs of existing Compact Tribes and those Tribes entering Self-Governance Compacts and Annual Funding Agreements in the future.

RECOMMENDATIONS FOR PERMANENT SELF-GOVERNANCE LEGISLATION:

The key purpose of this proposed Self-Governance legislation is to establish a clear message to the Administration that the successful negotiated transfer of resources and management responsibilities to the Tribes under the Demonstration is sufficient evidence to justify making it a permanent option. There are a number of reasons why this legislation is necessary. The Administration must understand that Self-Governance is an encompassing policy reality supported by Congress and participating Tribes. The Self-Governance concept and approach is a viable model to transport President Clinton's "Mandate for Change" and "Reinventing Government" ideas into reality. This approach must be seriously implemented by planning and making meaningful changes to administer this mandate. We firmly believe that unless the Administration understands that it must accept this approach, it will not take the necessary steps to address this concept.

Self-Governance is a bold effort requiring the Federal government to understand and accept the fact that Tribes and Tribal governments are competent and capable governmental entities and that we are better meeting the needs of our Indian communities while being fiscally accountable to our people, as well as Congress. This initiative is intended to eliminate the paternalistic relationship of the bureaucracy and to formulate a political relationship rather than simply a relationship of administrative and organizational ties.

From our Tribal perspective, the passage of this bill is very important to the continued success of the Self-Governance concept. There is a continuing, and possibly increasing, need for nation-wide communication and education on this initiative. Confronting the rumors and misconceptions about Self-Governance has been a major task and responsibility. We believe there are still misunderstandings regarding this concept in Indian Country. Therefore, further education on the purposes, opportunities, strengths, and weaknesses need to be conveyed.

The progress we've made since 1988 through negotiations, administrative policy decisions, and legislative direction from the Congressional authorization and appropriations committees should be maintained and strengthened through permanent legislation. The provisions in our Compacts of Self-Governance and Annual funding Agreements should be respected. Established administrative procedures, such as quarterly pre-payments and other mechanisms implemented to creatively test new ways to improve Tribal-Federal interactions and Tribal operations, should remain for future improvements. And, other Federal Departments and Agencies must understand and respect these protocols for their adoption and implementation. Self-Governance policy and administrative improvements should extend to all Federal Departments and Agencies.

In conclusion, we believe permanent Self-Governance legislation is a positive, necessary next step in strengthening the government--to--government relationships. We strongly support and urge passage of a permanent authorization during this Congressional session. Now is the time to set the foundation for which we will build our future. We believe in our vision and have moved forward in making the goals of Self-Governance a reality. I would like to thank this Committee for its active involvement and commitment in Self-Governance, and we look forward to continuing our work with you.

SGTSTCIA.345

**WRITTEN TESTIMONY OF ELMER MANATOWA
PRINCIPAL CHIEF
SAC AND FOX NATION**

**BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS**

**OVERSIGHT HEARING
OF THE
SELF-GOVERNANCE DEMONSTRATION PROJECT**

OCTOBER 20, 1993

Vice-Chairman McCain and other Honorable members of the Senate Committee on Indian Affairs,

Thank you for the invitation to appear before you to comment on the implementations of the Tribal Self-Governance Demonstration Project for Indian Tribal Governments participating in this project. In particular, I would like to provide comments regarding expansion of the Self-Governance Demonstration Project to other Federal Departments and Agencies which receive funding from Congress on behalf of Indian Tribes.

INTRODUCTION

The Sac and Fox Nation appreciates the expressed interest by the Senate Committee on Indian Affairs for holding this hearing to elicit information on Federal and tribal concerns on the Self-Governance Demonstration Project as a result of tribal initiatives to move towards permanent legislation for this demonstration project with the respective participating Federal Departments as well as expansion of the Project concept to other Federal Departments.

BACKGROUND

The Sac and Fox Nation in 1988 began negotiations along with four (4) other Tribes under the Bureau of Indian Affairs - Shawnee Agency to enter into a 638 Contract for all contractible services of the agency. The negotiations were successful and we, after long hours of negotiations, entered into the contract.

The Sac and Fox Nation entered into the Self-Governance Demonstration Project through a Planning Grant which began March 31, 1991 and signed the first Self-Governance Compact and annual Funding Agreement on June 15, 1991.

The Compact status has provided the Nation the flexibility necessary, within the budgets and program guidelines, to meet the ever changing needs of the people we serve. In addition to the Department of Interior Compact, the Nation was the first tribe to enter into Compact status with the Indian Health Service and is one of two tribes, nationwide, to participate in a Prototype Self-Governance Project with the United States Department of Agriculture-Food Distribution Program on Indian Reservations, .

Within the Department of the Interior, we have found that, while Mr. William Lavell and the staff of the Office of Self-Governance are very supportive of the Nation and the other tribes involved in the Project, we continually face obstacles thrown in our path towards self-governance by the Anadarko Area Office and some Bureau Departments at the Central Office level. It appears the Anadarko Area Office has not grasped the concept of self-governance. This problem has existed from the advent of the Nation's Compact status (copy of testimony submitted by Nation to Congress is attached). With the problems experienced at the Area level, the Nation continues to seek a direct working relationship with the Central Office and the Office of Self-Governance.

In order for the Compact tribes to continue to progress, the Bureau, at all levels, must be willing to accept the tribe's ability to self-govern and be willing to support the tribe's endeavors.

The Nation, within the concepts of Self-Governance, is striving to make major changes, though not limited to, within the Housing Improvement Program guidelines, Federal Acquisition Regulations and Fee to Trust Acquisitions.

The Nation is also seeking base budget funding for Calendar Year 1995. The Administrative staff of the Nation, under the guidance and leadership of the Business Committee, is currently compiling documentation to substantiate a base funding dollar amount in the area of \$1.5 million. Legislation will be sought to enact the base budget during the coming year.

Participation in Public Law 102-184 has reaffirmed the Nation's status as a sovereign Nation with the authority to interact with other entities on a government to government basis. Compact status has provided the Nation with the recognized legal authority to determine the most effective way to address issues at the local level. Flexibility in the manner in which programs and budgets are administered and services are provided has been the most positive outcome of Compact status. The negative aspects of the Compact status have not come from within the Nation but from forces outside of the Nation. These negative aspects focus on the firmly established bureaucracy practiced by the Bureau of Indian Affairs. Again, the Bureau has yet to grasp the concept of Self-Governance and has become the greatest stumbling block in the Nation's attempts to interact at a true government to government level.

ISSUE # 1 IMPLEMENTATION AND EXPERIENCES OF THE SELF-GOVERNANCE DEMONSTRATION PROJECT

NEGOTIATION:

The primary issue with each negotiation has been the failure of the Anadarko Area Office (AAO) to negotiate in "good faith". At the onset of the first year's Compact negotiations, the AAO failed to provide complete financial information in a timely manner. In addition, the attitude at the AAO has been one of reluctance to participate in a true government to government relationship with negative attitudes towards the Nation and with bureaucratic interpretation of the law to the benefit of the AAO. Issues have been raised that have been addressed by the Office of Self-Governance to the benefit of the Nation; however, with the Office of Self-Governance negotiators changing from year to year (although Mr. William Lavell was present at each final negotiation, the OSG support staff changed three times), the history of the Nation and issues previously addressed have had to be explained a second or third time. Policy Council has yet to finalize issues raised during negotiations which is addressed further under the Budget area below.

The failure of the Department of the Interior to provide the funding during the first year of the Compact in a timely manner concerned the Nation. While the Compact status was to provide the Nation with the flexibility to operate programs and manage budgets, it appeared, initially, that the budget process would take precedence and undermine the Nation's ability to make its own decisions. The Office of Self-Governance has attempted to address the budget process problem--we can only hope that the process will be refined soon and the funded providing timely. In addition, the Nation is still in pursuit of the fifth quarter funding and, hopefully, this issue will be resolved in the CY '94 Funding Agreement.

Other issues associated with the Budget focus on those funding decisions which have yet to be determined by the Policy Council. Issues before Policy Council since the advent of the Compact are:

1993

Education - Technical Assistance
 Roads Maintenance
 Noxious Weed
 Water Management
 Cadastral Survey
 Probate Backlog Reduction
 Lease Compliance
 Land Records Improvement
 Facilities Management
 Facilities Management/Technical Assistance

1994

Scholarships and AVT (historical funding - Consolidated Tribal Government Program
 Education - Technical Assistance
 Facilities - Operations and Maintenance
 Roads Maintenance
 Business Enterprise Development Program (competitive funds; Nation requested 4.17%)
 Community and Reservation Economic Development Program (competitive funds; Nation requested 4.17%)
 Technical Assistance (competitive funds; Nation requested 4.17%)
 Noxious Weed
 Water Management
 Cadastral Survey
 Probate Backlog Reduction
 Lease Compliance
 Land Records Improvement
 Administrative Services (arbitrary 40% residual; Nation does not agree)
 Facilities Management
 Facilities Management - Technical Assistance

It is our Tribal Administration's recommendation that during negotiations it is made clear that any funding issues that are to be addressed by Policy Council be covered by shortfall/supplemental funding in the funding agreement. The length of time it takes Policy Council to address issues is not conducive to proper management and budgeting. With the funding provided by shortfall/supplemental, the Nation can then proceed with establishing a working budget. As it stands now, the Nation is working on a CY '92 budget with funding issues still outstanding.

POLICY

DOI/BIA/OSG Internal Memorandums of Understanding/Agreements have created problems for the Nation. While it is understandable that with the current staffing of the Office of Self-Governance, it is not possible for the OSG to address all daily problems affecting the tribes, the MOU/MOA delegating authorities to the AAO has not worked for the Nation. It is our premise that the Nation is still pursuing a direct working relationship with the Central Office/Office of Self-Governance.

The Nation has pursued and continues to pursue signature authority on trust acquisitions since the advent of the Compact status. The Tribal Attorney has documented the Nation's request backed by legislative authority but the Nation has been advised by the Office of Self-Governance there is not statutory authority for the Nation to assume this function. This issue was addressed with Ada Deer, Assistant Secretary, and is to be further researched by her office in conjunction with the Office of Self-Governance.

ISSUE # 2 EXPANSION OF SELF-GOVERNANCE

A PRACTICAL APPROACH TO REINVENTING GOVERNMENT

Independent assessments of the Self-Governance Demonstration Project have proven that this Project has been successful in allowing Indian Tribal Governments to (1) re-align their program and service priorities to meet the needs of their local community, (2) to improve the delivery of benefits to ensure that the tribal population is served in a culturally and politically sensitive manner, and (3) take greater control in the decision making processes and management of their respective governments.

This Project has established a successful Tribal Program management and administration model which can be implemented by other Departments of the federal government to improve the effectiveness and efficiency of Federal Programs serving Indian tribes and their members.

However, P.L. 100-472 (Title III) only applies to the U.S. Department of the Interior and the Indian Health Service. At best, the other Departments can only emulate the concept within the parameters of existing program regulations; yet, are limited in the ability to significantly change the design of programs to make them more service specific in addressing the needs of Indian Tribal Governments. For example: The U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Program on Indian Reservations provides special income considerations for elderly populations sixty years of age and older. The Sac and Fox Nation determines its members to be elderly at fifty years of age. This is a direct result of Native Americans shorter life span versus the general population.

This Administration in its commitment to "Reinvent Government" has introduced a concept by which Departments can begin immediately to experiment on new ways to conduct Department business: "Reinvention Laboratories". These laboratories are initiatives in which current policies and regulations can be waived or modified in the interest of improving the operations of any Federal Program. The goals and objectives of this concept are to make programs more effective and efficient in responding to the true needs of the service population. The scope of such a project can be as limited or expansive as dictated by the issue(s) being addressed. I quote a joint statement from President Bill Clinton and Vice-President Al Gore that was presented in the Report of the National Performance Review, September 7, 1993, "We can no longer afford to pay more for--and get less from--our government. The answer for every problem cannot always be another program or more money. It is time to radically change the way the government operates--to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up. We must reward the people and ideas that work and get rid of those that don't."

APPROACH

It is proposed that the two concepts - Self-Governance as introduced by the Indian tribes and enacted under P.L. 100-472, in 1988 and the Reinvention Laboratories as introduced by this Administration in 1993 - can be combined to expand the Self-Governance Demonstration Project to other Departments and Agencies who's programs serve Indian tribes and their members.

This Administration is proposing to do what the tribes have accomplished through the Self-Governance Demonstration Project. The Administration's reinvention laboratory concept provides an excellent opportunity for affected Departments and Agencies to implement self-governance for their "Indian" programs. Such laboratories would provide "safe" arenas for both Tribal governments and Federal Agencies to seek the most productive ways to apply the Self-Governance concept to assess its viability Government-wide. In fact, these laboratories could provide the data on field tested administration and management models for future application on a more permanent basis.

All of this is consistent with the Administration's approach to effect broad changes as commented on by Vice-President Al Gore, Town Hall Meeting, Department of Veterans Affairs, August 4, 1993, "What we're trying to do is to create a large number of changes, simultaneously, in the federal government. Because if you just change one thing without changing some of the other things that need to be changed, we won't get anywhere."

The "Actions" outlined in the Report of the National Performance Review, by Vice President Al Gore, September 7, 1993, are truly compatible with the proven approach that has been taken by the tribes participating in the Self-Governance Demonstration Project to date. It is proposed that Indian Tribal Governments participating in the Self-Governance Demonstration Project authorized by P.L. 100-472 Title III, be provided the authority to request and be granted Re-invention Laboratories or a similar method which recognizes the Self-Governance concept by other Federal Departments and Agencies not presently participating in the Self-Governance Demonstration Project, to explore viable means to expand the Self-Governance concept. This Administration should be receptive to this approach as it is attempting to achieve the same objectives established by both the Indian Tribal Governments and the Administration itself.

Your Committee and Congress, with the passage of P.L. 100-472 and amendments thereto, had the foresight to provide Indian Tribal Governments an avenue to effect change in the manner in which the Federal Government dealt with Indian Tribes. We, the Indian Tribal Governments, have answered the challenges of the Self-Governance Demonstration Project. We believe permanent legislation is appropriate and necessary. Further, we hope that both Congress and the Administration will give serious consideration for this potential for expansion.

As we enter our third year of Self-Governance, although we have made great strides, we have more to accomplish, the Self-Governance Demonstration Project is working for the Sac and Fox Nation in face of the problems we have encountered during the early years and the issues to be resolved to enable Tribal Governments to be Sovereign and Self-Governing.

I again thank-you for the opportunity to appear before you and to express our views.



Quinault Indian Nation

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**TESTIMONY OF JOSEPH B. DELACRUZ,
PRESIDENT, QUINAULT INDIAN NATION
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING
ON THE
SELF-GOVERNANCE DEMONSTRATION PROJECT**

OCTOBER 20, 1993

I appreciate the opportunity to provide testimony at this oversight hearing on the experience and progress of the Self-Governance Demonstration Project. I was honored to testify more than five years ago before this Committee on February 18, 1988 on the Title III "Self-Governance Demonstration Project" provision under consideration for inclusion with the Indian Self-Determination Act Amendments of 1988. In retrospect, Tribal governments involved in Self-Governance have certainly worked hard to establish positive change in Indian Affairs through this historic, Tribally driven effort. As Chairman Inouye so eloquently concluded at that hearing:

I have no way of knowing what the outcome will be. It may be a great success, or it may fail. But as the Vice Chairman indicated, why not try? If we maintain the status quo and insist upon it, that is where we will be: right here. I think it is about time that we took the bold steps, and in taking these steps we may fail. But that is the way we learn.

Without question, Self-Governance has been certainly a time of learning and change. The process has been a difficult, yet exciting, journey for the Quinault Indian Nation through the planning, negotiation and implementation stages with the Interior Department. We are definitely on the threshold of a new era in Indian Affairs. By comparison, the Bureau of Indian Affairs and Indian Health Service have yet to formally publish their voluminous 400 pages of draft rules and regulations for Titles I and II of P.L. 100-472, the "Indian Self-Determination Act Amendments of 1988." At the request of frustrated Tribal governments, further Self-Determination Act amendments have been introduced to pressure these Indian Affairs Agencies to change. Through Self-Governance, the Tribal and Congressional "enlightening rod" authorization has effected real change. We believe it is change for the better.

I urge you to introduce and support prompt passage of Tribal Self-Governance permanent authorization legislation. The Quinault Indian Nation has been a participant in the Self-Governance Demonstration Project since the initial authorization in 1988 and is now entering the fourth Fiscal Year of implementation of our Self-Governance Compact. Our experience and progress under Self-Governance clearly has demonstrated the positive results of providing Tribal governments the management decision-making empowerment and administrative authority over Tribal programs, services and development.

The Quinault Nation believes the permanent Self-Governance legislation is the cornerstone statute in the development of comprehensive and real government-to-government relationships between Tribal governments and the United States. Although American Indian Tribes are addressed in the U.S. Constitution and our Treaties, Executive Orders and Acts of Congress clearly establish in law our rightful presence, we have struggled with political and economic pressures over the last two centuries by the dominant society to erode, diminish and even extinguish our cultures, languages, reservation land titles and rights to exist as legitimate, independent governments.

The sovereign status of Tribal governments is certainly not a new or radical idea, but is clearly embodied in American law. Chief Justice John Marshall in the 1832 Supreme Court decision of Worcester v. Georgia clearly stated the obvious:

The Indian Nations had always been considered as distinct, independent political communities...and the settled doctrine of the law of nations is that a weaker power does not surrender its independence--its right to self-government--by associating with a stronger, and taking its protection.

Due to convenience and connivance, elements of American society have sought to redefine, subvert and twist the definition of Tribal governments and Tribal rights to our collective disadvantage. The Federal bureaucracy, predominantly through the Bureau of Indian Affairs and the Indian Health Service, have dominated, controlled and manipulated our lives and government operations to the point that American Indians are the most regulated peoples in America.

Other Federal Agencies have sought to redefine our presence to fit uniformity and convenience with labels such as organizations, corporations, associations, constituents or even vendors. On the other side of the definition game, the Office of Management and Budget generally rules that Tribal governments are not included in Congressional assistance legislation intended for the common "State and Local Units of Government and Trust Territories" designation. Through the Tribally driven Self-Governance legislation, Tribes and Congress are finally setting the record straight and forcing the bureaucracies to recognize our government status. We certainly expect this tension of a Federal bureaucracy predisposition to uniformity against the Tribal demand for clear recognition to continue on into the future. But the fundamental principle is established in the Tribal Self-Governance

permanent legislation regarding our unique relationships with the United States and the individual Indian Tribes and our inherent right of Self-Governance.

Self-Governance has empowered the government of the Quinault Nation to determine priorities, allocate resources and manage our affairs with minimal Federal intrusion. We have consolidated and expanded education and social services to cost-effectively meet the needs of Tribal members according to their personal situation rather than a superimposed set of rules. Our Tribal justice system has been strengthened to ensure adequate protections and judicial services for our people as the legitimate concern of any government. Funds expended on our forests, fisheries and environment are now effectively coordinated for logical, comprehensive management. More Quinaults are employed now than ever before. More Quinaults are furthering their education and returning home to work for their people.

There is no doubt that Self-Governance has benefitted the Quinault Indian people on the Quinault reservation. We have problems, difficulties and challenges facing us that need to be addressed. But the decisions made on priorities and the determination of means and methods to address the future are being made by our people, here at home. Self-Governance is really the forerunner of the Clinton Administration's "Reinvent Government" plans to streamline the Federal bureaucracy and "Creating a Government that Works Better and Costs Less."

I am concerned that the law clearly direct the Federal bureaucracy to deal with our Tribal governments as independent, sovereign governments in the future. The new Indian Affairs foundation must be carefully, methodically and systematically built on the principle of sovereignty. The bureaucratic obstructions and resistance to change is well known as we've struggled to establish Self-Governance. The Clinton Administration will soon understand this Federal tenacity to maintain and expand power and control.

The Federal bureaucracy has two centuries of experience and an extensive arsenal of resources available to misinterpret, misunderstand and determine Congressional intent for its own interest. New Federal bureaucracies becoming involved in Self-Governance will employ their own tactics, traps and shallow reasoning to frustrate and subvert Self-Governance. The provisions for negotiated rule-making in the permanent Self-Governance legislation must be unmistakably clear to a child's level of reasoning that the Federal bureaucracy is negotiating government-to-government, nation to nation.

We don't want Congress to micro-manage each Federal bureaucracy with thousands of pages of legislative directives to advance Self-Governance. Therefore, our government role in negotiations between governments needs to be crystal clear so even Federal law-makers can comprehend this basic principle. Hopefully, we can creatively negotiate future rules and regulations to implement policies and procedures that finally make sense and support Tribal government realities.

The permanent Self-Governance legislation, as a cornerstone to a new Indian Affairs foundation of government-to-government relationships between individual Indian Tribes and the United States, is a beginning. There will be those detractors in the Congress, Courts and the public arena who will seek to diminish Tribal jurisdiction due to peripheral concerns such as gaming, water rights or the myriad special interest agendas employed against Tribes over the centuries. The Indian Affairs foundation, however, recognizes our rights and responsibilities as independent governments to exist and develop according to our Tribally-determined priorities. In the future, I envision that permanent Self-Governance will involve

multiple Federal Departments and Agencies with negotiated agreements over multi-year periods. This permanent Self-Governance statute is a most important first step to an improved future.

I have stated many times to many audiences and forums my basic belief:

No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself.

On behalf of the Quinault Indian Nation, I want to express our deep appreciation for the understanding, support and respect you have shown to Tribal governments in the development of Self-Governance. We strongly encourage immediate introduction and prompt passage of permanent Self-Governance legislation. We look forward to working together with Congress as we enter new frontiers in establishing meaningful government-to-government relationships between American Indian Tribes and the United States.

Thank you.



MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

**TESTIMONY OF THE HONORABLE MARGE ANDERSON, CHIEF EXECUTIVE
 MILLE LACS BAND OF OJIBWE**
 BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
 OVERSIGHT HEARING ON SELF-GOVERNANCE
 OCTOBER 20, 1993

I. INTRODUCTION.

Good morning, Mr. Chairman and members of the Committee. My name is Marge Anderson. I am the duly-elected Chief Executive of the Executive Branch of the Mille Lacs Band of Ojibwe.

I am pleased to be here to discuss Self-Governance issues related to both the Department of the Interior/Bureau of Indian Affairs (BIA) and the Department of Health and Human Services/Indian Health Service (IHS).

I also want to thank you because over the past five years this Committee has been very helpful to my Tribe in our efforts to get the federal agencies to implement their responsibilities under the Self-Governance Project. I am particularly grateful for what you have done to assist us during this first year of the Clinton Administration when I have tried to get action on Self-Governance issues. At Mille Lacs, we have a great deal riding on the future of Self-Governance. For that reason, I am of the opinion that it will be necessary for Congress to give both BIA and IHS more direct guidance in their implementation of Self-Governance.

II. BACKGROUND ON MILLE LACS BAND OF OJIBWE.

The Mille Lacs Band of Ojibwe is the name used by the Ojibwe People of the Mille Lacs Reservation, located in central Minnesota about 100 miles north of Minneapolis/St. Paul. The Band has approximately 7,500 acres throughout four counties: Pine, Mille Lacs, Aitkin, and Crow Wing. While the main Reservation was established by the Treaty of 1855, it also provides services to outlying Mille Lacs communities off the Reservation. This presents challenge to effective tribal program administration. The Mille Lacs Band has a form of government, which in contrast to the other Bands of the Minnesota Chippewa Tribe, has three branches: Executive, Legislative and Judicial. Years ago we determined that a formal separation of powers was necessary for our successful self-governance and later, for implementation of our Self-Governance Compact.

The Mille Lacs Band of Ojibwe is a "first-tier" Self-Governance Tribe. We signed our first Compact with the Interior Department in 1990 for fiscal year 1991. On health programs, we were one of the first six Tribes to sign Compacts with IHS in July of this year.

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III. MAKE SELF-GOVERNANCE AUTHORITY PERMANENT FOR BOTH INTERIOR AND IHS.

The Mille Lacs Band strongly supports any and all legislative improvements that can, as a practical political matter, be enacted this year. Thus we strongly support the proposed bill that would simply make the Self-Governance authority permanent. We believe that permanent authority is a positive step forward and one that should be taken as soon as possible, especially for a Tribe such as ours that is now in its fourth year of Compact administration. We believe that our experience, and that of other Tribes, is positive proof that this experiment is a success and should be transformed from demonstration to permanent in nature. We also welcome the increase in the number of Tribes participating. There is strength in numbers. Most importantly, however, we also believe that the path of Self-Governance could be of great value to many of our sister Tribes who choose to take it.

IV. ADDITIONAL SELF-GOVERNANCE ISSUES REQUIRING COMMITTEE ATTENTION.

There are a number of additional issues which the Mille Lacs Band request that you to add to the present Self-Governance bill and enact this year. They are described below along with suggested bill and report language where appropriate.

A. COMPEL BIA NEGOTIATION OF LINE-BY-LINE TRIBAL SHARES OF CENTRAL OFFICE FUNDS.

The Mille Lacs Band just completed its fourth round of annual negotiations. Each year we pressed hard for a line-by-line tribal share of the BIA Central Office budget. Instead, we and most Tribes have received a flat amount of \$45,000 from Central Office. Some Tribes have obtained a bit more (a maximum of approximately \$100,000) depending on the overall size of their Compact funding. There is no rational basis for these BIA decisions. The law does not authorize BIA to hold back Central Office funds as being immune from line-by-line negotiation of tribal shares. Rather, the law anticipates Central Office funds being treated the same as BIA Area Office and Agency Office funds in Self-Governance negotiations of tribal shares.

At the Agency and Area budget levels, Interior has uniformly calculated and negotiated tribal shares based on factors related to the program or account being divided. For example, if a Tribe has 3% of the trust acres in an Agency Office, its tribal share is 3% of the Agency's realty funds. All we ask is that this same approach be applied to Central Office-level funds. That is what this Committee has previously suggested be done in Committee Reports. Nevertheless, Interior has refused to do so.

During our June negotiations this year, I met with John Duffey, counselor to Secretary Babbitt, to explain to him why I expected a pro-tribal response out of the Interior Department this year on Central Office shares.

We submitted a formal proposal on Central Office shares. Mr. Duffey asked for some time to respond. We agreed, anticipating with Mr. Duffey that Interior's counter-proposal would be made in time to negotiate a modification to our fiscal year 1994 funding agreement in October or November.

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As of this date, however, it appears the Department has failed even to begin the process of developing a counter-proposal. The Mille Lacs Band would like to work with the Department on this. To that end, on July 27th I wrote Assistant Secretary Ada Deer to suggest a process by which the Department could deliver on its commitment. Thus far it seems to us that the Department has become bogged down, unable to make or implement even a simple decision like who is to serve on a work group that develops options for Interior to consider. We think this is partly because of the lack of clear lines of authority within Interior on Self-Governance.

We fear that nothing will change until Congress provides specific and express direction in the statute and accompanying Committee Reports. Therefore the Mille Lacs Band suggests this Committee include the following, drawn from S. 550, as soon as possible in any Self-Governance bill you consider:

PROPOSED BILL LANGUAGE

SEC. 001. (a) Unless directed otherwise by an express provision of a statute, the Secretary shall make available, through negotiations, a tribal share of all funds and resources requested by a tribe which are specifically or functionally related to the provision of services and benefits to the tribe or its members, including all funds and resources available to the Department to support the provision of services and benefits to Indian tribes and Indian individuals regardless of the organizational level where the Secretary would have otherwise spent the funds or provided the resources, regardless of the origin of the funds or resources, and including those funds and resources which the Secretary could have otherwise distributed or allocated by competitive procedure, formula, priority list, or other mechanism.

(b) Each Secretary shall designate the Director of the Office of Self-Governance, to be the Federal negotiator for all agreements with the Secretary and may delegate to the Director authority to initial and execute any agreement authorized under this title. No later than 120 days before the proposed effective date of an agreement, the Director shall determine a specific Federal program residual and a tribe's tribal share after good faith consideration of the positions of the tribe and the Federal agency. Upon expiration of the appeal rights provided in the following subsection, the Secretary shall execute the agreement, the tribe shall execute the agreement on its own behalf, and the agreement shall be forwarded to Congress for review as otherwise provided in this title.

(c) The tribe or the affected Federal agency may appeal the Director's determination of a specific Federal program residual or a tribe's tribal share by filing a written appeal to the Department's Self-Governance Policy Council. The Council shall render a decision within fifteen (15) days of receipt of the appeal, after according the Director, the tribe, and the affected Federal agency the opportunity to file responses and make brief oral presentations to the Council. The Director shall have no vote on appeal decisions of the Council. Appeal decisions of the Council shall be final.

*(d) Unless otherwise agreed to by a tribe in negotiations, a tribe's tribal share shall be determined as follows:

(1) A residual amount for programs, activities, functions and services directly related to the natural or financial trust resources of a tribe or to the executive direction and administrative services functions of the Department shall be determined and subtracted from the total funds estimated to be available for the next fiscal year, which estimate shall be based either upon the total in the Department's budget request for that year or upon the total made available by Congress for the appropriate year. The residual amount shall be that amount which, if all Federal funds benefiting Indian tribes and Indian individuals were administered by tribes under Agreements authorized by this title, would

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be necessary to support an efficiently restructured Federal implementation of the minimum core Federal activities specifically required by statute to be carried out by a Federal official.

(2) The tribal share of a tribe shall be determined in negotiations using factors directly related to the budget account, fund or program being allocated, and shall be separately calculated at each administrative level of the Federal agency using factors specific to that level. In lieu of negotiating a tribal share of funds from the central office or other national-scope organizational level of a Federal agency, a tribe may elect to receive the sum of \$45,000 per year."

PROPOSED REPORT LANGUAGE

"The Committee is aware that, despite repeated congressional directives, no negotiation of Self-Governance tribal shares of BIA Central Office funds has been accomplished that is similar in procedure and scope with the Self-Governance negotiations used on BIA Area and Agency Office budgets during the past three fiscal years. Although significant transfers of funding and responsibilities have been accomplished at the Agency and Area Office levels, Central Office budgets remain largely untouched. The Committee therefore directs Interior to subject all Central Office budgets to the same negotiation process used with Area and Agency Office budgets, applying tribal share formulas and residual percentages to Central Office in a similar manner to that used in Area and Agency level negotiations.

B. COMPEL BIA RESTRUCTURING.

Despite repeated congressional directives, little if any BIA restructuring has occurred as a result of the negotiation of Self-Governance Compacts and annual funding agreements with Tribes during the past four fiscal years. As a result, Tribes like the Mille Lacs Band have not realized savings from BIA reorganization that was supposed to accompany our negotiation of a transfer of responsibilities and funds to us.

We believe that in a time when the federal government is being reinvented, that great care must be taken to ensure that "savings" from down-sizing the federal Indian bureaucracy be identified and transferred to benefit the Tribes. We fear that instead that savings from reducing the Indian bureaucracy, orphaned as it is by its reputation for miserable management, will be used by the Administration or Congress to help in the difficult task of meeting deficit reduction targets.

We ask that this Committee request BIA and IHS to alert the Committee and the Tribes to the details of each internal Administration proposal to reinvent BIA and IHS so that the Committee and the Tribes have the chance to analyze each proposal to ensure that savings are captured for the benefit of Indian Tribes and their members.

We also ask that this Committee inquire of the Clinton Administration why it has not high-lighted the Self-Governance Project experience as a shining example of how reinventing government could work on a broader scale. I recently wrote Vice President Al Gore asking this same question.

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C. MAKE INTERIOR'S POLICY COUNCIL USEFUL.

The Mille Lacs Band is proud of the accomplishments of the Interior Department and IHS in the area of Self-Governance. Self-Governance policy pronouncements of both the Bush and Clinton Administrations have been excellent. Even policy implementation generally has been remarkable, although the Mille Lacs Band has been periodically frustrated with its slow pace or its inconsistency.

We believe the prime cause of our frustrations has been the lack of clear lines of authority and decision-making within Interior and IHS on Self-Governance. We think many of the problems would be fixed if both Interior and IHS made regular and open use of a Self-Governance Policy Council. We have suggested this to the Administration, but bureaucratic drag seems to have held back improvement.

The Mille Lacs Band fears that nothing will change until Congress provides specific and express direction in the statute and accompanying Committee Reports. Therefore we suggest that this Committee include the following, drawn from S. 550, as soon as possible in any Self-Governance bill you consider:

PROPOSED BILL LANGUAGE

"SEC. 002. Each Secretary shall establish a Self-Governance Policy Council for the Department, which shall meet in regularly scheduled monthly meetings to finally resolve departmental policy and administrative issues concerning Self-Governance. The Interior Self-Governance Policy Council shall be chaired by the Director of the Office of Self-Governance, with additional members including the Assistant Secretary for Indian Affairs, a representative of the Office of the Secretary, the Associate Solicitor for Indian Affairs, and two non-Federal members appointed by the Secretary representing tribes with self-governance agreements with the Department. The Health and Human Services Self-Governance Policy Council shall be chaired by the Director of the Indian Health Service Office of Self-Governance, with additional members including the Director of the Indian Health Service, a representative of the Office of the Secretary, a representative of the Office of the Assistant Secretary for Health, a representative of the Office of General Counsel, and two non-Federal members appointed by the Secretary representing tribes with self-governance agreements with the Department. Each non-Federal member shall serve a 1-year, nonconsecutive term, and shall be selected in such manner as to achieve geographic representation from among nominations made by tribes having agreements authorized under this title with the Department. Each non-Federal member shall have voice but no voting privileges on all matters before the Self-Governance Policy Council. Complete minutes of each meeting of the Self-Governance Policy Council shall be timely distributed to all tribes having agreements authorized under this title with the Department."

PROPOSED REPORT LANGUAGE

"The Committee intends this section to strengthen the existing Self-Governance Policy Council within the Department of the Interior and guide the Health and Human Services Department in establishing a similar Council. Of particular importance to participating tribes is the need to ensure that each Department makes Self-Governance decisions with dispatch, with a rational basis, and in close coordination and communication with those most affected -- the tribes themselves."

D. REQUIRE IHS TO FUND THE SHORTFALL NEEDS OF SELF-GOVERNANCE TRIBES.

Earlier this year the Mille Lacs Band was the first Tribe to begin full-scale negotiations with IHS Headquarters to place our Reservation health clinic and programs under a Self-Governance Compact.

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We negotiated an amount of funds from each level of IHS administration. However, we have experienced significant additional costs in making the transition from Self-Determination Contract to Self-Governance Compact administration.

It is financially costly for any Tribe to negotiate an agreement and plan for and implement new tribal governance management systems to administer expanded authorities under Self-Governance. With BIA Compacts, Tribes were authorized to receive "shortfall" or "supplemental" funding for these transitional and ongoing additional costs.

Now with the newly-budgeted IHS Compacts, we are concerned by clear indications that IHS does not intend to allocate any of the fiscal year 1994 \$3 million in "shortfall" funds added by Congress to Tribes for such transitional and ongoing costs but instead plans to use the \$3 million exclusively for IHS-only transitional costs. For IHS to do so would distort the origin of those funds.

The Mille Lacs Band and other Tribes requested in testimony earlier this year that the congressional appropriations committees add Self-Governance shortfall to the IHS account in order to assist in meeting the transition and additional costs of *both* the IHS and Self-Governance Tribes. Congress responded with \$3 million added for this general purpose. Now IHS wants to use all of these funds to make the transfer of tribal shares painless for the IHS bureaucracy. Therefore we suggest that this Committee include the following, drawn from S. 550, as soon as possible in any Self-Governance bill you consider:

PROPOSED BILL LANGUAGE

*SEC. 003. Shortfall or supplemental funding shall be used by the Secretary of the Department of the Interior and the Secretary of Health and Human Services for two purposes --

(a) to make additional funds available to a particular Federal agency organizational level to address the Director's determination that, based on clear and convincing evidence, the provision of a negotiated tribal share will have an adverse effect on other tribes served by that organizational level; and

(b) to meet the ongoing, additional funding needs of tribes assuming the increased responsibilities and obligations inherent in agreements under this title.*

PROPOSED REPORT LANGUAGE

The bill authorizes two types of funding. First, shortfall funding is designed to address temporary, transitional difficulties the Interior Department or Indian Health Service may have in making a tribe's tribal share fully available to the tribe as negotiated. The Committee intends these shortfall funds to be used where there would be an actual reduction in the delivery of services to non-participating tribes because of a transfer of funds to an Annual Funding Agreement, but only where there are no administrative or discretionary means available to the federal agency which could be creatively applied to mitigate the effect of the transfer on those tribes. Second, shortfall funds are authorized to be provided to meet the ongoing, recurring additional costs of tribes with agreements with IHS under this Title to meet their increased responsibilities of continually assessing tribal priorities, redesigning tribal programs to meet those priorities, and developing and maintaining an effective tribal regulatory and governmental structure that builds their capacity for full self-governance.

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V. CONCLUSION.

The time has now come to make Self-Governance permanent for Interior and IHS. It is also an opportune time for Congress to stay firmly in charge of guiding the Administration's implementation of this initiative.

The Mille Lacs Band of Ojibwe thanks you and this Committee for its leadership on Self-Governance. Together with Tribes, you have been charting a dramatically new course in the relations between tribal governments and the United States. We appreciate very much your effort.

I am convinced that generations to come will look back on these days and say justice and fair dealing were the keys to the success of the Tribal Self-Governance experiment. You and I and others in this room today will know that it took hard work, some risk, and great vision.

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The Grand Traverse Band of Ottawa and Chippewa Indians

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**STATEMENT OF JOSEPH C. RAPHAEL, TRIBAL CHAIRMAN
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARINGS ON MAKING SELF-GOVERNANCE A PERMANENT PROGRAM
WASHINGTON, D.C. OCTOBER 20, 1993**

I bring you greetings from the people of the Grand Traverse Band of Ottawa and Chippewa Indians. I want to thank you for the opportunity to address you today and to discuss the issue before you today that directly affects our people.

My name is Joseph C. Raphael and I am the Tribal Chairman for our Tribe. I am here today as a representative of my people and a spokesperson for our Tribal Council.

A. Background

I am here today to ask for your assistance in passing permanent legislation for the Self-Governance Demonstration Project. The Grand Traverse Band became a Self-Governance Tribe on October 1, 1992 with BIA programs and added Indian Health Service programs on September 30, 1993. We have found Self-Governance to be the most positive piece of legislation put forward for Indian people in the 217 years that the U.S. Congress has made laws and regulations involving Indian people.

Self-Governance has allowed Tribes to grow in local control of our own governments as was the case for Indian people for centuries before interaction with non-Indian society. In the case of the Grand Traverse Band the Tribe has watched local control over our own budget grow from 13 percent in 1992 to 60 percent in 1994. This has allowed the Tribe to address long unmet needs for the first time. We of course have not been able to address all of our unmet needs but now under Self-Governance we feel that we can participate fully in working with the United States Congress in a government-to-government relationship, in meeting the unmet needs of Indian people.

B. We Support Permanent Legislation that Reforms the Program

In order for this to happen, permanent legislation must be passed that will tell the federal agencies involved in the Self-Governance Demonstration Project that Self-Governance is not a passing phase that will go away tomorrow and does not have to be taken seriously by the federal agencies. Federal agencies have created as many road-blocks as possible to the Self-Governance Demonstration Project and the Project is succeeding in spite of that fact. The fact that the Project is succeeding under these circumstances shows that Tribes have the expertise to make the Project a success and that the Project can make a change for improving conditions for Indian people.

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MANISTEE

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We now need to remove the obstructions to good government created by the federal agency staff who are interpreting current law to mean they do not have to cooperate with the Demonstration Project. They have consistently refused to take seriously the congressional directive to down-size the BIA and IHS. The BIA has slowed the financial process of the transfer in funds and our Tribe has yet to receive all funding provided for in last year's Annual Funding Agreement.

C. We Want BIA to Negotiate Tribal Shares of Central Office

There is another important point we want to join with the Mille Lacs Band and others in making. The BIA has not yet seriously discussed the negotiation of tribal shares of Central Office funds. We find this surprising, since the intent of Congress is clear -- these funds should be treated in negotiations like Area and Agency Office funds are treated. Since the BIA ignores the law as it is now written, we ask that you take the occasion of this permanent bill to write specific directions into the statute that would make the BIA negotiate these funds, line-by-line, into our Compact. Together with the Mille Lacs Band, we ask that you adopt the bill and report language we have attached to this testimony.

D. We Want an HHS Self-Governance Office Outside of IHS

We are also concerned that IHS has placed its Office of Self-Governance within the Headquarters Office, which continues to maintain control over the project and prevents many issues from being resolved. We think it should be elevated to the Office of the Assistant Secretary for Health, or higher.

In our IHS negotiations, we identified a \$33,000,000 line item in the IHS budget that we feel should but does not now provide direct assistance to us. Thus we want an equitable, tribal share of those funds. For nearly half a year now, we have not been able to get any positive action on this from IHS.

E. Conclusion

We feel strongly that these and other issues can and will be resolved if we can get the cooperation of the federal agencies. The surest way to get that cooperation is for you in Congress to require it by law in the permanent legislation. We are strongly persuaded that Self-Governance is the way to go for our Tribe at this time in our history. This is why we want to proceed on a permanent basis with Self-Governance authority that allows us to plan positively for the future of our people.

I thank you for your time today and want you to know that we appreciate the concern and positive actions that this Committee has taken on behalf of Indian people and our tribal governments.

PROPOSED BILL LANGUAGE

"SEC. 001. (a) Unless directed otherwise by an express provision of a statute, the Secretary shall make available, through negotiations, a tribal share of all funds and resources requested by a tribe which are specifically or functionally related to the provision of services and benefits to the tribe or its members, including all funds and resources available to the Department to support the provision of services and benefits to Indian tribes and Indian individuals regardless of the organizational level where the Secretary would have otherwise spent the funds or provided the resources, regardless of the origin of the funds or resources, and including those funds and resources which the Secretary could have otherwise distributed or allocated by competitive procedure, formula, priority list, or other mechanism."

"(b) Each Secretary shall designate the Director of the Office of Self-Governance, to be the Federal negotiator for all agreements with the Secretary and may delegate to the Director authority to initial and execute any agreement authorized under this title. No later than 120 days before the proposed effective date of an agreement, the Director shall determine a specific Federal program residual and a tribe's tribal share after good faith consideration of the positions of the tribe and the Federal agency. Upon expiration of the appeal rights provided in the following subsection, the Secretary shall execute the agreement, the tribe shall execute the agreement on its own behalf, and the agreement shall be forwarded to Congress for review as otherwise provided in this title."

"(c) The tribe or the affected Federal agency may appeal the Director's determination of a specific Federal program residual or a tribe's tribal share by filing a written appeal to the Department's Self-Governance Policy Council. The Council shall render a decision within fifteen (15) days of receipt of the appeal, after according the Director, the tribe, and the affected Federal agency the opportunity to file responses and make brief oral presentations to the Council. The Director shall have no vote on appeal decisions of the Council. Appeal decisions of the Council shall be final."

"(d) Unless otherwise agreed to by a tribe in negotiations, a tribe's tribal share shall be determined as follows:

- (1) A residual amount for programs, activities, functions and services directly related to the natural or financial trust

resources of a tribe or to the executive direction and administrative services functions of the Department shall be determined and subtracted from the total funds estimated to be available for the next fiscal year, which estimate shall be based either upon the total in the Department's budget request for that year or upon the total made available by Congress for the appropriate year. The residual amount shall be that amount which, if all Federal funds benefiting Indian tribes and Indian individuals were administered by tribes under Agreements authorized by this title, would be necessary to support an efficiently restructured Federal implementation of the minimum core Federal activities specifically required by statute to be carried out by a Federal official.

(2) The tribal share of a tribe shall be determined in negotiations using factors directly related to the budget account, fund or program being allocated, and shall be separately calculated at each administrative level of the Federal agency using factors specific to that level. In lieu of negotiating a tribal share of funds from the central office or other national-scope organizational level of a Federal agency, a tribe may elect to receive the sum of \$45,000 per year."

PROPOSED REPORT LANGUAGE

"The Committee is aware that, despite repeated congressional directives, no negotiation of Self-Governance tribal shares of BIA Central Office funds has been accomplished that is similar in procedure and scope with the Self-Governance negotiations used on BIA Area and Agency Office budgets during the past three fiscal years. Although significant transfers of funding and responsibilities have been accomplished at the Agency and Area Office levels, Central Office budgets remain largely untouched. The Committee therefore directs Interior to subject all Central Office budgets to the same negotiation process used with Area and Agency Office budgets, applying tribal share formulas and residual percentages to Central Office in a similar manner to that used in Area and Agency level negotiations.

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Testimony of the Honorable **Henrich Kadake, Sr.**, IRA Council President
Organized Village of Kake
before the
United States Senate Committee on Indian Affairs
Oversight Hearing on Self-Governance
October 20, 1993

Good morning Mr. Chairman, members of the Committee; greetings from the Organized Village of Kake, located in the Southeast Panhandle of Alaska. I am pleased to have this opportunity to personally present testimony to this Committee regarding Self-Governance.

I. Background on the Organized Village of Kake

The Organized Village of Kake (OVK) is a duly constituted Indian Tribe organized pursuant to the authority of the Indian Reorganization Acts (IRA) of 1934 & 1936 with the IRA Council as its duly elected governing body. We are located on Kupreanof Island, accessible only by boat and airplane. Our Tribe has 600 members. Tribal members make up the majority of Kake's overall population.

Employment in our community is based on commercial fisheries, harvesting of local timber, and employment required for local governmental operations (tribal and municipal). The traditional commercial fishing industry has declined in recent years. Timber resources on ANCSA (Alaska Native Claims Settlement Act) lands are also rapidly diminishing. Therefore, our tribal government recently has been actively pursuing the development of new jobs for the community.

As a result of OVK's status as a federally recognized Indian Tribe, we are recognized as being eligible for programs and services through the federal government.

II. OVK's Participation in the Interior Self-Governance Program

1992 marked the beginning of a new and exciting era for us. We became one of five Signatory Tribes to the Southeast Alaska Self-Governance Compact. Because of Self-governance, our existing tribal programs were significantly enhanced; additionally, new initiatives and programs were made possible. The increased local control to respond to current tribal needs has greatly benefitted our membership. Although Self-Governance does not solve all of the problems in our community, it has brought new jobs, enhanced programs and services, built community cooperation, and given our tribal members an increased sense of control over our own lives. We applaud the Congress for this initiative. As a direct result of Self-Determination and Self-Governance, the OVK tribal office has grown into a very busy and productive place from one employee in 1987 to ten employees plus three part-time staff outside of the office.

III. There is a Critical Need for Permanent Self-Governance Legislation

As one of the many Tribes who have benefitted greatly from participation in the Self-Governance Project, OVK strongly supports the proposed legislation making permanent the Self-Governance Program. We are glad to be part of a program that eliminates bureaucratic waste and inefficiency and transfers the savings directly to us as a Tribe for the benefit of our members. We are also very pleased to have the

Testimony of the Honorable Henrich Kadake, Sr., IRA Council President -- Organized Village of Kake
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responsibility of exerting more local control over how our trust responsibility is maintained and related federal dollars are spent. We view this increased control as a clear example that the "government-to-government relationship" is more than mere words.

We have worked hard to make Self-Governance work for us. We believe our demonstrated success speaks clearly -- Self-Governance has improved our lives and can improve the lives of many Native American Indians. The Self-Governance Program should be made permanent and should be available to all federally recognized Tribes in the United States.

IV. OVK Needs Bill Language That Guarantees OVK the Opportunity to Enter into a Separate and Independent Self-Governance Compact with the U.S. Government

OVK asks that you enact legislation this year that provides clear statutory authority for a Tribe like OVK now participating as a Signatory to a multi-tribal Compact to become immediately eligible for a separate, single-Tribe Self-Governance Compact with the Interior Department. OVK understands that three other Signatory Tribes, the Ketchikan Indian Corporation, Sitka Tribe of Alaska, and the Yakutat Native Association, also seek this same authority with the support of the fifth Signatory Tribe, the Central Council of Tlingit and Haida Indian Tribes of Alaska.

For years OVK operated our own "638" contracts. During the demonstration phase of Self-Governance, Interior limited our opportunity to participate only through a multi-Tribe Compact with four other Signatory Tribes. But now as the number of Tribes is increased on an annual basis and the project is made into a permanent program, we want the option to have a single Compact. Additionally, virtually all of the infrastructure for OVK to have a separate Self-Governance Compact is now in place, (e.g. fund transfer system). We ask you to avoid enacting any legislative language that could be interpreted in such a way that would exclude OVK or any other Southeast Alaska Signatory Tribe from immediately entering into a single-Tribe Self-Governance Compact with the U.S. government. It would be unfair to OVK as well as an unnecessary administrative burden on the BIA and OSG if OVK was forced to cycle back into the BIA contracting system in order to qualify to negotiate a separate Compact.

V. OVK Seeks Bill Language Requiring Full and Timely Funding of Indirect or Contract Support Costs

OVK began its Self-Governance Compact in 1992, the same year that OVK first entered into a negotiated indirect cost agreement with Interior's Office of Inspector General (OIG).

Late in 1992, OVK was informed that there was a possible shortage of contract support funds for the BIA Juneau Area Office. We immediately expressed our concerns but felt confident that the BIA would uphold its legal and moral obligation to honor our agreement with the OIG.

Regrettably, our Tribe as well as other Self-Governance Tribes in Alaska were not made whole. As a small Tribe that functions primarily as an organization providing services to its members available through P.L. 93-638, OVK cannot absorb such a significant shortage without devastating short-term and long-term negative effects.

We ask that any permanent Self-Governance legislation include language requiring the BIA to promptly and fully fund all indirect contract support costs as negotiated with the OIG. This should not only be an express legal responsibility of the federal government but a moral obligation as well, since the impact of such funding shortages results in a grossly unfair and negative reduction in services and benefits to our tribal members for whom the United States has a trust responsibility; i.e., direct programs cannot function properly without adequate administrative support.

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VI. OVK Seeks Specific Bill Language to Remove BIA Bureaucratic Obstacles to Full Tribal Self-Governance

In our first two years with a Compact, we have experienced many difficulties due to administrative power struggles within the Department of the Interior between the newly created Office of Self-Governance and the status quo of the BIA bureaucracy. The end result shows that the struggle was definitely worthwhile; however, the success of the Self-Governance Program has occurred in many cases despite the BIA rather than because of it. OVK continues to experience difficulties in implementing the Compact that stem from bureaucratic resistance to changing the status quo. This is most clearly demonstrated by the persistent refusal of the Central Office to negotiate with Self-Governance Tribes for tribal shares on a line-by-line basis. We do not negotiate on this basis at the Agency level, of course, since the Southeast Alaska Agency Office was eliminated. We do at the Area Office level, however. A line-by-line basis is also used for all other Self-Governance Tribes' negotiations at Area and Agency levels. There is no legislative authorization for the Central Office's refusal to negotiate tribal shares.

Permanent Self-Governance legislation should contain language requiring Central Office to negotiate tribal funding on a much more equitable, line-by-line basis. It should also contain language which clarifies authority and decision-making within the Department of the Interior, making it much more difficult for bureaucrats to slow the growth and development of Self-Governance in order to safeguard their own positions in the Department.

To accomplish these things, I am attaching some suggested bill and report language that is drawn from the bill developed by an inter-tribal drafting committee and introduced as S. 550, the Self-Governance Technical Amendments bill last Spring.

In closing, OVK wishes to thank the Committee for this opportunity to present this information and our requests. I would be happy to answer any questions that you may have.

Proposed Bill Language

*SEC. 1. (a) Continuing Participation.--Each tribe that is participating in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III on the date of enactment of this title shall thereafter participate in the Program under this title and cease participation in the Tribal Self-Governance Demonstration Project under title III. Without regard to the limitation in the number of participating tribes in this section, the Secretary shall negotiate a single Compact and related funding agreement at the request of a tribe participating on the date of enactment of this title as a signatory to a multi-tribal agreement under title III.

SEC. 2. (a) Unless directed otherwise by an express provision of a statute, the Secretary shall make available, through negotiations, a tribal share of all funds and resources requested by a tribe which are specifically or functionally related to the provision of services and benefits to the tribe or its members, including all funds and resources available to the Department to support the provision of services and benefits to Indian tribes and Indian individuals regardless of the organizational level where the Secretary would have otherwise spent the funds or provided the resources, regardless of the origin of the funds or resources, and including those funds and resources which the Secretary could have otherwise distributed or allocated by competitive procedure, formula, priority list, or other mechanism.

(b) Each Secretary shall designate the Director of the Office of Self-Governance, to be the Federal negotiator for all agreements with the Secretary and may delegate to the Director authority to initial and execute any agreement authorized under this title. No later than 120 days before the proposed effective date of an agreement, the Director shall determine a specific Federal program residual and a tribe's tribal share after good faith consideration of the positions of the tribe and the Federal agency. Upon expiration of the appeal rights provided in the following subsection, the Secretary shall execute the agreement, the tribe shall execute the agreement on its own behalf, and the agreement shall be forwarded to Congress for review as otherwise provided in this title.

(c) The tribe or the affected Federal agency may appeal the Director's determination of a specific Federal program residual or a tribe's tribal share by filing a written appeal to the Department's Self-Governance Policy Council. The Council shall render a decision within fifteen (15) days of receipt of the appeal, after according the Director, the tribe, and the affected Federal agency the opportunity to file responses and make brief oral presentations to the Council. The Director shall have no vote on appeal decisions of the Council. Appeal decisions of the Council shall be final.

*(d) Unless otherwise agreed to by a tribe in negotiations, a tribe's tribal share shall be determined as follows:

(1) A residual amount for programs, activities, functions and services directly related to the natural or financial trust resources of a tribe or to the executive direction and administrative services functions of the Department shall be determined and subtracted from the total funds estimated to be available for the next fiscal year, which estimate shall be based either upon the total in the Department's budget request for that year or upon the total made available by Congress for the appropriate year. The residual amount shall be that amount which, if all Federal funds benefiting Indian tribes and Indian individuals were administered by tribes under Agreements authorized by this title, would be necessary to support an efficiently restructured Federal implementation of the minimum core Federal activities specifically required by statute to be carried out by a Federal official.

(2) The tribal share of a tribe shall be determined in negotiations using factors directly related to the budget account, fund or program being allocated, and shall be separately calculated at each administrative level of the Federal agency using factors specific to that level. In lieu of negotiating a tribal share of funds from the central office or other national-scope organizational level of a Federal agency, a tribe may elect to receive the sum of \$45,000 per year.*

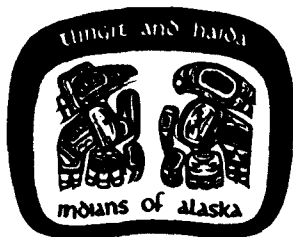
SEC. 3. Each Secretary shall establish a Self-Governance Policy Council for the Department, which shall meet in regularly scheduled monthly meetings to finally resolve departmental policy and administrative issues concerning Self-Governance. The Interior Self-Governance Policy Council shall be chaired by the Director of the Office of Self-Governance, with additional members including the Assistant Secretary for Indian Affairs, a representative of the Office of the Secretary, the Associate Solicitor for Indian Affairs, and two non-Federal members appointed by the Secretary representing tribes with self-governance agreements with the Department. The Health and Human Services Self-Governance Policy Council shall be chaired by the Director of the Indian Health Service Office of Self-Governance, with additional members including the Director of the Indian Health Service, a representative of the Office of the Secretary, a representative of the Office of the Assistant Secretary for Health, a representative of the Office of General Counsel, and two non-Federal members appointed by the Secretary representing tribes with self-governance agreements with the Department. Each non-Federal member shall serve a 1-year, nonconsecutive term, and shall be selected in such manner as to achieve geographic representation from among nominations made by tribes having agreements authorized under this title with the department. Each non-Federal member shall have voice but no voting privileges on all matters before the Self-Governance Policy Council. Complete minutes of each meeting of the Self-Governance Policy Council shall be timely distributed to all tribes having agreements authorized under this title with the Department.

Proposed Report Language

The Committee intends that any of the tribes signatory to the Southeast Alaska Self-Governance Compact in effect on the date of enactment of this legislation may, when any such tribe deems it appropriate, secure a separate, single-tribe agreement with the Interior Department. While these tribes have realized several unique accomplishments by working together in one Compact, some of the tribes have expressed from the beginning of their participation that this was to be a temporary and necessary departure from the level of maturity it had reached in its direct relationship with the U.S. federal government, including the simplicity of having a separate agreement, in this case an independent Compact and funding agreement with the Department of the Interior.

*The Committee is aware that, despite repeated congressional directives, no negotiation of Self-Governance tribal shares of BIA Central Office funds has been accomplished that is similar in procedure and scope with the Self-Governance negotiations used on BIA Area and Agency Office budgets during the past three fiscal years. Although significant transfers of funding and responsibilities have been accomplished at the Agency and Area Office levels, Central Office budgets remain largely untouched. The Committee therefore directs Interior to subject all Central Office budgets to the same negotiation process used with Area and Agency Office budgets, applying tribal share formulas and residual percentages to Central Office in a similar manner to that used in Area and Agency level negotiations.

The Committee intends this section to strengthen the existing Self-Governance Policy Council within the Department of the Interior and guide the Health and Human Services Department in establishing a similar Council. Of particular importance to participating tribes is the need to ensure that each Department makes Self-Governance decisions with dispatch, with a rational basis, and in close coordination and communication with those most affected -- the tribes themselves.*



CENTRAL COUNCIL
 tlingit and haida indian tribes of alaska
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**TESTIMONY OF
 THE HONORABLE EDWARD K. THOMAS, PRESIDENT
 CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
 BEFORE THE
 U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
 OVERSIGHT HEARING ON SELF-GOVERNANCE
 OCTOBER 20, 1993**

I. INTRODUCTION

GREETINGS FROM JUNEAU, ALASKA! My name is Edward K. Thomas. I am President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Central Council). I am honored to present testimony on Self-Governance issues to this distinguished Committee and to support making the Self-Governance program permanent. My Tribe, the Central Council of the Tlingit and Haida Indian Tribes of Alaska, has always been a strong supporter of the Self-Governance Demonstration Program. In 1986 and 1988 when Congress expressed interest in strengthening tribal government-to-government relationships with the federal government through a reduction in the bureaucracy, we were quick to jump on the "band wagon."

By reducing just one layer of the Bureau of Indian Affairs (BIA) bureaucracy, my Tribe and the other Tribes in southeast Alaska have more than doubled our program base. In 1991 our program base was \$2.7 million; currently it is \$5.5 million. This proves that Self-Governance works. We realize we have a long way to go for our people to be self-sufficient. We have, however, been put to the test at every level of implementation of this worthwhile project. I must begin by mentioning the travesty that the BIA has made of my Tribe's tribal government status in recent days.

II. BACKDROP -- THE TRAVESTY OF BIA'S MODERN-DAY TERMINATION POLICY

Last week, BIA republished a list of Tribes recognized as having general governmental powers. BIA removed my Tribe, the Central Council of Tlingit and Haida Indian Tribes of Alaska, from that list without due process or open discussion. Overnight, BIA acts as if its understanding of the nature of Central Council completely changed.

We are appalled. No one can redefine our identity as a Tribe but ourselves. As an inherent aspect of our tribal sovereignty, our governmental identity is ours alone to shape. Even so, BIA's action seriously undermines what we can do as a tribal government because it is essentially an action to terminate the federal recognition of the general governmental powers our Tribe has had for decades upon decades.

For years Congress and the federal departments have treated Central Council like a tribal government, dealt with Central Council as a tribal government, and called Central Council a tribal government with inherent and general governmental powers no less than other tribal governments organized under the Indian Reorganization Act or otherwise.

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OCTOBER 20, 1993 SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON SELF-GOVERNANCE**

Congress has declared us to be a Tribe on numerous occasions dating back to 1935. Our rules of election under our Tribal Constitution were approved by the Interior Department. The Federal courts have declared us to possess sovereign immunity as a tribal government. We have actively exercised tribal government jurisdiction in Indian child welfare cases. We have operated tribal courts as a tribal government. There are many other examples, some of which I set forth in my September 29, 1993 letter to the Interior Associate Solicitor which I have attached to this testimony.

Until last week we believed the Termination Era was embarrassing but ancient U.S. history. Termination by administrative action is as immoral and ill-advised as it was in the 1950s. It should be outlawed. We ask that you take the earliest opportunity to enact tribal restoration language for the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Despite the actions of the BIA last week, I will proceed here, as everywhere, with the understanding that I am the elected President of a tribal government with a solemn and binding Compact of Self-Governance agreement with United States government. In that Compact, the United States acknowledges the sovereign governmental powers of the Central Council as a Tribe. That is the acknowledgement I will honor, not the one issued last week.

III. CENTRAL COUNCIL AS A PIONEERING SELF-GOVERNANCE TRIBAL GOVERNMENT

My Tribe was one of the first ten Tribes to receive Self-Governance planning grants five years ago. We began operating all of our BIA-funded programs under a Self-Governance Compact on January 2, 1992. From the start, our main aim under Self-Governance was to transform BIA bureaucratic administration funds into tribal programs funds for our needy tribal members. As a result of our Compact, an entire BIA Agency Office has been abolished and some of the savings transferred to us put into direct services. BIA's termination action against us last week makes it clear that our Self-Governance goals have not made us any friends within the BIA bureaucracy.

Every step forward we have taken under Self-Governance has been thwarted by barriers BIA officials have thrown in our way. The BIA's treatment of our Southeast Alaska Tribes' Self-Governance Compact has seriously undermined the government-to-government partnership we have been trying to build with the Interior Department. Until last week, our latest and most costly BIA-caused problem had to do with us being shortchanged hundreds of thousands of dollars in 1992 contract support funding while nearly all other Tribes were fully funded. We and the other Southeast Alaska Signatory Tribes were forced to file a lawsuit against BIA simply to get treated the same as all other Tribes. Our first year negotiations were delayed because BIA would not release necessary budgetary information and would not schedule negotiations. Then BIA withheld all of our new Compact funds for the first part of our Compact year, forcing us to sue BIA just to get the money BIA agreed to transfer to us. BIA's termination action against us last week makes it clear that our unwillingness to permit BIA to thwart implementation of our Self-Governance goals has not made us any friends within the BIA bureaucracy.

Mr. Chairman and Members of this Committee, I cannot help but ask -- why is my Tribe the one to pay for such costly BIA errors? What happened to the federal accountability and trust responsibility to my people? In all fairness, my people should not be asked to pay the price of BIA mistakes.

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CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
OCTOBER 20, 1993 SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON SELF-GOVERNANCE**

IV. CENTRAL COUNCIL SUPPORTS MAKING THE PROJECT PERMANENT

Central Council strongly supports making this Project permanent. Permanency is all the more urgent for us because of BIA's efforts to terminate our governmental status last week. Unless the statute plainly sets forth precise requirements, recent events have caused us to lose faith in any coherent or consistent implementation by the BIA. BIA's inability to properly implement the Self-Governance project is the very reason Central Council and other Tribes proposed S. 550, the Self-Governance Technical Amendments bill introduced earlier this year. S. 550 details in a highly directive fashion how the federal agencies should carry out their responsibilities under Self-Governance. We think many of its provisions should be included in the permanent bill you are considering today for enactment this year, so that BIA is required to make decisions on Self-Governance openly in an informed manner and in a timely fashion. So we urge that the following S. 550 provisions be included in the proposed bill:

- vesting negotiation and other Self-Governance authority in the Director of Self-Governance;
- structuring the Self-Governance Policy Council to meet regularly, openly, and decisively;
- streamlining the funds transfer process and ensuring the full and timely funding of both direct program and indirect contract support dollars due us under our Self-Governance agreement;
- requiring BIA to negotiate tribal shares of Central Office funds, line-by-line;
- directing that all funds be subject to negotiation of tribal shares, regardless of whether the Secretary could otherwise allocate them by competitive procedure, formula, priority list, or other mechanism; and
- mandating that BIA down-size as a result of the transfer of responsibilities to Tribes under Self-Governance agreements and transfer all of the resulting savings to us Tribes.

Given our painful experience, I must high-light one of these areas. From day one of our Compact, my Tribe has had a very difficult time getting BIA to timely transfer the full amount funds it agreed to transfer to us. We have had to borrow from our own funds to keep our tribal government operations going and have had to twice sue BIA in federal court just to get what was our due. Varying amounts of funds have been sporadically transferred to us without explanation up to almost one year after they were supposed to be in our hands. Our tribal staff has had to spend countless hours figuring out what we have received against what we should have received, and then has had to hammer away at the many-layered BIA financial system for what is owed us.

The BIA financial system does not have to be as complicated as it is made out to be by BIA staff. Self-Governance was supposed to simplify things. If anything, fund transfers under Self-Governance are more complex than ever. Any private sector corporate board of directors would never accept the kind of financial management and accounting practices maintained by the BIA, whose guiding principle seems to be to maintain a perpetual state of confusion and crisis rather than

**TESTIMONY OF THE HONORABLE EDWARD K. THOMAS, PRESIDENT
CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
OCTOBER 20, 1993 SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON SELF-GOVERNANCE**

simplicity and efficiency. Here again, unless Congress acts in this legislation the BIA will continue to make unnecessary work for itself and for Tribes like Central Council.

V. CENTRAL COUNCIL SUPPORTS INCREASING THE NUMBER OF PARTICIPANT TRIBES

We believe Self-Governance is a good and worthwhile initiative and commend it to all other Tribes ready to face the challenge. For that reason we support lifting the ceiling on the number of Tribes allowed to participate. Central Council also supports the request of its sister Signatory Tribes in Southeast Alaska who have asked that Interior negotiate separate Compacts with them. Central Council invited these Signatory Tribes to participate alongside Central Council from the beginning, with the understanding that once the Self-Governance Project is made permanent, Central Council would likewise support these Signatory Tribes' request to have separate Compacts with the United States. Our multi-tribal Compact in Southeast Alaska is unique and has certain advantages and disadvantages for all concerned, but if a participating Signatory Tribe wishes to have its own Compact, Central Council will continue to support such efforts.

VI. CONCLUSION

BIA's effort last week to terminate Central Council's tribal government status was taken despite our strong protest and that of members of this Committee. We covet your continuing support in our effort to reverse this miscarriage of justice.

Likewise, we seek your support in our continuing effort to make good on the aspirations contained in our Compact of Self-Governance with the United States -- that government to government relations between my Tribe and the United States will be fostered and enhanced, that our tribal government will be strengthened, and that vital services will increase so that the life of my people will improve. We believe making the Self-Governance Project permanent, with the changes I have suggested, will go a long way toward making these goals a reality. Thank you.



CENTRAL COUNCIL
 tlingit and haida indian tribes of alaska
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September 29, 1993

Mr. Micheal Anderson
 Associate Solicitor
 Bureau of Indian Affairs
 Department of the Interior
 1849 C. St. N.W.
 Washington, DC 20240

Dear Mr. Anderson:

This letter follows up on the telephone conversation we had last week on your department's progress in developing an official list of Tribes in Alaska. You indicated that my Tribe, Central Council of the Tlingit & Haida Indian Tribes of Alaska (T&HCC), will no longer be listed as a Tribe but like any other non-profit regional corporation in Alaska. This is wrong! No other non-profit regional corporation possess the following characteristics nor have the following recognitions:

Congressional Recognition T&HCC gained federal recognition through Acts of Congress: the Jurisdiction Act of 1935 and the Judgment Act of 1965.

Tribal Enrollment The base roll of T&HCC was mandated by law to be approved and certified by the Bureau of Indian Affairs (BIA). Although other regions had to identify persons eligible for the Alaska Native Claims Settlement Act, it wasn't for Tribal purposes and the process ended December, 1971. T&H continues its enrollment today.

Tribal Elections T&HCC as a regional Tribe is required to have its Rules of Election approved by the Secretary (including amendments).

Sovereign Immunity T&HCC has successfully defended itself from suit in federal court using sovereign immunity as an argument. Non-Tribes do not have such protective rights.

Trust Account T&HCC has Tribal funds managed by the BIA. Regional non-profits, who are not Tribes, may not put money into accounts managed by the BIA.

Indian Tribal Tax Status Act T&HCC, and no other regional non-profit, is listed in the List of Tribes in the "Indian Tribal Tax Status Act."

Buy-Indian Act Contracting T&HCC was the first Tribe in Alaska to contract for the entire Southeast Agency of the BIA Juneau Area Office in 1971, prior to PL 93-638.

Indian Self-determination Grant T&HCC was awarded a PL 93-638 Grant in 1985-1986. These grants were limited to Tribal government (unlike contracts which can go to Tribal organizations).

Self-governance Legislation T&HCC is listed as one of the original 10 Tribes to participate in the Self-governance Demonstration Project pursuant to Title III of PL 100-472.

Tribal Statutes T&HCC has statutes that govern the Tribe and its members. Statutes cover essential governmental functions and activities from elections to regulating the economic policies to governmental procedures.

Judicial System Three Tribal judges are elected by the General Assembly to serve as Tribal judges. This court system is designed to be an appeals court for issues that are not resolved at a local level. We have received funding from the BIA for FY 1993 for refining court procedures.

State Legislative Recognition The Legislature for the State of Alaska passed a resolution recognizing the accomplishments of T&H, as a Tribal government, in 1985.

National Congress of American Indians T&H has been a member of the National Congress of American Indians for several decades by meeting the credentials requirement as do other members Tribes. Representatives from other regions participate through the IRA villages in their regions because they can not pass credentials as a Tribe.

Tribal Recognition Within The Region Most IRA Tribes within the Southeast Alaska region who have knowledge of our Tribal history fully recognize T&HCC as a federally recognized Tribe. Some others who confuse the "Order of Precedence" used by the BIA for PL 93-638 have been led to believe that recognizing T&HCC conflicts with local recognition. Once it is explained to them in terms they are familiar with they fully accept our recognition.

Linguistical Relationship T&HCC is the only Tribe in Alaska that is directly named for the Native language of its members: Tlingit and Haida. The moiety and clan structure of our people continue as an integral part of our people, even in modern times.

United States President Visits Being recognized by fellow Alaska Native leaders as the President of the largest Tribe in Alaska I was selected to meet with two different United States Presidents: Reagan and Bush.


United Nations Secretary General Visit I was selected by United Nations representatives to be one of eight Tribal leaders to meet with United Nations Secretary General, Boutros Boutros Ghali, on the "Year of the Indigenous People" as declared by the UN.

I realize that any one item above, by itself, is enough to say we are a Tribe. However, collectively, there is little doubt that my Tribe has conducted itself (and continues to conduct itself) as a Tribe as many other Tribes in the "Lower 48." In many ways T&HCC runs its governmental functions like the United States government.

The sovereign status of T&HCC has survived many, many Presidential administrations, Democratic and Republican, I have the utmost confidence that this administration will make a wise decision and preserve my Tribe's right to govern our own people under the constitution that has been long-suffering under countless attacks.

Your consideration of this information is appreciated as you deliberate these very difficult decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward K. Thomas". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward K. Thomas
President

TESTIMONY
BY
~~HAROLD BIRSS~~, COUNCIL MEMBER
CHEROKEE NATION TRIBAL COUNCIL
ON IMPLEMENTATION
OF
SELF-GOVERNANCE DEMONSTRATION PROJECT ACT

SENATE COMMITTEE ON INDIAN AFFAIRS

OCTOBER 20, 1993

I. INTRODUCTION

My name is Harold DeMoss, Member of the Tribal Council of the Cherokee Nation, the second largest Indian Tribe in the United States. Cherokee Nation has nearly 150,000 tribal members and its headquarters are located in Tahlequah, Oklahoma.

The Cherokee Nation is recognized by the U.S. government as the preeminent tribal government in the Cherokee territory. It has maintained a government-to-government relationship with the U.S. federal government throughout the history of the United States and was one of the first Indian tribes to enter into a Self-Governance Compact with the United States under the Indian Self-Determination and Education Assistance Act Amendments of 1988. We believe that the Self-Governance project is consistent with the spirit and intention of policy declared by the U.S. Congress on January 4, 1975, in Public Law 93-638, which acknowledges the obligation of the United States to "respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian Communities" and declares the commitment of Congress to maintain "the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

The Self-Governance project greatly enhances the probability of achieving the goals of the 1988 Act. Cherokee Nation feels that Self-Governance is not a "cure all" to make all things right; for example, implementation of Self-Governance alone will do little to dedicate a larger share of federal financial resources to meet needs that have never received adequate funding. Rather, Self-Governance is about streamlining bureaucratic processes that have heretofore absorbed a large percentage of appropriated dollars before reaching the Indian people they were intended to reach. Self-Governance is new and it is being watched—by Congress and by many executive agencies, regardless of their involvement in Indian Affairs. Accordingly, Cherokee Nation feels that before any tribe enters into Self-Governance, it must be prepared to demonstrate financial and administrative ability to manage and operate programs in a responsible fashion, without audit exceptions. We believe that Self-Governance should not be viewed as a license to be free of accountability but rather that accountability must be a cornerstone of Self-Governance.

Self-Governance, as it exists today, establishes a framework for the future of serving the needs of Indian people. The effectiveness of this project depends in part on (1) making it permanent and (2) adequately staffing the Office of Self-Governance. Although both Secretary Babbitt and Assistant Secretary Deer have expressed their

vigorous support of Self-Governance, it is our understanding that Interior Department's Office of PMB wants further study for purpose of cost-benefit analysis. Cherokee Nation agrees that analysis of the program would be prudent, but it is concerned that the Interior will postpone indefinitely needed reforms--including permanent legislation--until a protracted analysis of the program's costs and benefits has been performed. The Self-Governance project should be made permanent. Any legislation making it permanent should be simple, straightforward and not overly ambitious. If ongoing analysis indicates need for changes in the program, changes should be made as needed.

Even if the program is made permanent, the Interior Office of Self-Governance must be adequately funded and staffed. As it is now, only one person is available to handle approximately \$100 million in annual Self-Governance funding. Within the next two years, the Office might handle as much as \$500 million in annual funding. The Office must be funded and staffed to bring on sufficient staff to accommodate this increase in Self-Governance funding, especially as new Self-Governance tribes are admitted into the program. Cherokee Nation suggests that the Office be staffed at an adequate and responsible level.

Self-Governance may be compared to the building of a house. It is not reasonable to build a house upon a temporary foundation. We feel certain foundation essentials are necessary to allow the success of Self-Governance. In addition to the need for permanent legislation, the following discussion will address some of those ingredients we feel are important in order to avoid creating a foundation which will threaten the success of the Self-Governance project. My comments below address the provisions of Senate Bill 550, the "Tribal Self-Governance Demonstration Project Technical Amendments Act of 1993."

II. Section-by-Section Comments on S. 550

§311(a) All Funds and Resources Subject to Negotiation

The 1993 Tribal Self-Governance Technical Amendments bill endorses the concept that all funds and resources are available for negotiation by the Indian organization, and the Cherokee Nation likewise endorses this concept. However, many services provided by the BIA have never been placed within the Bureau's budget as clearly-identified line items with specified funding levels. Therefore, to achieve the goal of this section, some methodology must be developed to require the federal agency to identify the dollar values of these services so that they may be available to compacting tribes. This would also require the effected federal agency to fully disclose all of its financial resources rather than leaving it to the compacting tribe to discover the resources for themselves.

§311(b) Funds Otherwise Distributed By Competition or Formula Are Subject To Negotiation.

The 1993 Tribal Self-Governance Technical Amendments bill provides that, unless directed otherwise by an express statutory provision to the contrary, Interior and IHS funds which would otherwise be distributed by competition or other formula are subject to Self-Governance negotiations of tribal shares. The Cherokee Nation endorses the concept that a Self-Governance tribe should be eligible for its tribal share of all funds that become available on a competitive basis. Once funds lose their competitive designation, the Self-Governance tribes should be entitled to receive their tribal share. The Cherokee Nation also endorses the concept that the respective offices of the two Secretaries should inform the Self-Governance tribes upon the availability of any such funds.

§311(c) The Director of the Interior and IHS Offices of Self-Governance is to Be Their Department's Chief Self-Governance Negotiator.

Cherokee Nation supports the provision at §311(c) placing authority to negotiate on behalf of the Departments in the Director of the Office of Self-Governance. The Nation feels that this would simplify the negotiating process and clarify the authority of the person negotiating with the tribe. The Nation also feels that designating a negotiator outside of the administrative units affected by the outcome of negotiations would impart a much needed element of objectivity, greatly facilitating the negotiation process.

§311(d) Tribes and the BIA May Appeal Self-Governance Negotiation Decisions to the Self-Governance Policy Council for Prompt Resolution.

Cherokee Nation agrees with the goal of §311(d), an expedited appeal of decisions on the residual and tribal shares. However, Cherokee Nation feels that the timeframes may be unrealistic. Under §311(d), the appeal must be filed within 10 days and decided thereafter within 15 days. Cherokee Nation feels that the determination of residuals and tribal shares involve exceedingly complex issues and may not be susceptible to fair resolution if the appeal must be decided in only 15 days. Cherokee Nation would suggest longer time periods and adding a provision (1) authorizing the parties to identify disputed points in an attachment to the funding agreements; (2) allowing the funding agreement to be submitted to the Committee with the points of disagreement attached; (3) requiring appeals to be filed within 20 days of execution of the compact or funding agreement; (4) requiring appeals to be decided within 60 days; and (5) allowing the parties to furnish the Committee with a copy of the appeal decision prior to the end of the 90-day review period. Such a provision would accommodate a longer appeal period while the Committee is reviewing the agreed to elements of the funding agreement.

§311(e) Definitions of Tribal Shares and BIA Administrative Residual Amounts and IHS Inherently Federal responsibilities.

Cherokee Nation strongly agrees that a more accurate method of determining tribal shares and residual amounts is needed. Cherokee Nation has not only experienced difficulty in the negotiation of tribal shares and residuals, but also with the agency's methodology for determining tribal shares, residual amounts, or monies to be reserved for "inherently federal functions." Also, in regard to the compacting the operation of a BIA and/or IHS facility which serves the members of more than one tribe, we suggest that the tribe whose jurisdiction in which the facility is located should have a priority in compacting for operation of the facility without approval of other tribes whose members may happen to be served by the facility. A tribe served by a facility located outside the tribe's jurisdiction should be able to compact the facility if the tribe in whose jurisdiction the facility is located agrees in writing.

§311(f) Authorizing Base Budgets for Tribes.

Cherokee Nation supports the concept of establishing base budgets for tribes upon tribal request. This concept will allow some tribes to stabilize their funding base and provide a stable platform for the budgeting and operation of programs.

§312(a) Fully Fund Contract Support Costs Related to Self-Governance Agreements with Interior and IHS

IHS and BIA have not fully funded 638 contracts for contract support and have not fully funded Self-Governance Compacts for contract support. Cherokee Nation agrees that the affected Secretary should ensure that the contract support costs associated with a tribe's performance under its annual funding agreement with the United States should be fully funded for contract support costs. The Bureau and IHS should jointly develop a budgeting calculation and formula for the proper and more accurate estimate of future needs for correct amounts of contract support funds.

§312(b) Require Early Payment of Contract Support Funds

Contract support funds are an essential part of the Tribe's operation of programs. Contract support funds allow for the proper and adequate care and oversight for federal funds provided to the respective organizations for the operations of federal programs. We support the concept that 80% of the full amount of such tribe's estimated annual contract support cost funds should be made available to it at the beginning of its funding year and the remainder made available either at the beginning

of the second half of its funding year or when the tribe's final indirect cost rate has been approved for that funding year.

§312(c) Authorize the Negotiation of a Lump Sum of Contract Support Funds.

We agree with this concept as stated in the Bill. This lump sum would allow for better planning and budgeting for contract support purposes for both the tribe and the agency. This concept will provide for stability in the arena of contract support.

§313(a) Flexible Funding of Contracts Applies to Self-Governance Agreements.

Cherokee Nation is currently experiencing the problem with IHS addressed by this section. This section is required in order to inform IHS of the goals of Self-Governance and would allow for the avoidance of the very narrow interpretation of laws and regulations.

§313 (b) Federal Tort Claims Act Coverage Extends to Self-Governance Agreements.

Cherokee Nation supports the clarification of existing law by expressly stating that the Federal Tort Claims Act covers activities conducted under Self-Governance compacts.

§314(a) Federal Acquisition Regulations (FARs) and Self-Governance Agreements

Cherokee Nation supports this section declaring the nonapplicability of FAR's and similar rules and regulations to activities undertaken pursuant to Self-Governance compacts, and it feels that the clarification and expansion of current law in this section is necessary for Self-Governance tribes to effectively perform under their compacts.

§314(b)&(c) Expedited Procedures for Waiver of Federal Regulations.

Cherokee Nation agrees that an expedited procedure for the approval of waivers of federal regulations should be developed and implemented. Current processes and procedures are unclear and cumbersome and act as a deterrent to tribes to request waivers.

§315(a) Establishment of an Office of Self-Governance at IHS and Interior.

An Office of Self-Governance has been established in the Department of the Interior and resides in the Office of the Secretary (separate and apart from BIA). IHS has established an Office of Self-Governance within IHS. Our experience during this year's IHS Self-Governance negotiations indicates that while nothing improper occurred, we did not feel an independent presence of Self-Governance. In the Department of the Interior, the Office of Self-Governance actively supports Self-Governance concepts and acts as a champion for tribal Self-Governance rights. We are uncertain that an office of Self-Governance established within IHS can ever act in a similar manner and would recommend that the Office be lodged outside the Service as with BIA.

§315(b)&(c) Authorizing Each Department's Self-Governance Director to Set Self-Governance Policy and to Establish a Self-Governance Policy Council with Certain Duties and Responsibilities.

Cherokee Nation agrees with the intent of this section authorizing the Directors of Self-Governance to set the Departments's policies regarding implementation of Self-Governance agreements and establishing Self-Governance Councils. However, Cherokee Nation feels that the regulations should be the product of negotiation with the tribes with the affected agencies on the departmental level. Also, it appears that this section would authorize the respective Directors to promulgate Self-Governance rules and policies without the concurrence of the Secretaries. Cherokee Nation would recommend that proposed policies be formulated by the Councils, with the guidance and support of the tribes, Self-Governance Directors and their staff, and that the Directors recommend the proposed policies to the Secretaries for approval. Upon approval, the Secretaries would authorize the Directors to implement the policies.

Cherokee Nation is also concerned with the membership of the Self-Governance Policy Council. First, we feel that the number of non-federal, nonvoting members should be increased to perhaps four tribal representatives--to broaden the Self-Governance tribes' representation on the Self-Governance Policy Council. Second, the Bill should authorize appeal hearings to be held before designees of the Assistant Secretary, Associate Solicitor, etc., in that the workload of these higher level officials might make the scheduling of hearings difficult given the short timeframe for deciding appeals.

§316 Encouraging Good Faith Negotiations

Cherokee Nation agrees that the federal agencies must negotiate in good faith. However, the federal negotiators must be bound to an objective standard of some sort--a "rational basis" standard, perhaps, but not merely a subjective "good faith" standard.

§317 (a) Defining the terms Shortfall and Supplemental Funding

Cherokee Nation strongly agrees and requests that a clear definition of shortfall and its uses be developed. Because of the limited availability of shortfall monies, the Nation is concerned that improper use of shortfall leads to uncertainty in funding levels and frustrates planning under compacts. If based on clear and convincing evidence that the negotiated tribal share will have an adverse effect on other tribes served by that organizational level, then shortfall is warranted. Also, it is warranted to give the federal agency an appropriate amount of time (1 to 2 years) to restructure and downsize and to meet the ongoing, additional funding needs of tribes assuming the increased responsibilities and obligations inherent in agreements under this title. On the other hand, shortfall should not become a negotiating tool of the federal agency in determining tribal shares in the annual funding agreements.

§317(b) Restructuring and Downsizing on the Part of the Federal Agency Shall Be Accomplished in Accordance With a Plan.

If tribes are to assume roles and responsibilities formerly held by the BIA and IIS through Self-Governance, it is important that the respective agencies, within a reasonable amount of time, must reorganize and downsize accordingly. This can only be accomplished with carefully crafted, written plan prepared by the agency. Up to this time, federal agencies have encouraged the tribes to request shortfall but, for their part, the agencies appear to have done little to reorganize and/or downsize. Cherokee Nation proposes that after the "appropriate amount of time" that tribal shares are fully reprogrammed from the agencies' budget. If shortfall is still necessary, it should be requested and justified by the agency. Congress should then decide if the agency has acted appropriately and timely.

III. CONCLUSION

S. 550 proposes important amendments to the Act and will greatly facilitate the implementation of the project, but we emphasize here again that, because we feel that Self-Governance is the future of federal Indian policy, it must be made permanent. On behalf of the Cherokee Nation and its Principal Chief, Wilma P. Mankiller, I want to thank the Committee for the opportunity to comment on the bill and for the Committee's interest in our input on this important legislation.



MAKAH TRIBAL COUNCIL

P.O. BOX 115 • NEAH BAY, WA 98357 • 208-645-2201



**Testimony of
the Makah Indian Nation
Before the Senate Committee on Indian Affairs
Oversight Hearing for:
Title IV Self-Governance Process Act of 1993
Bureau of Indian Affairs
October 20, 1993**

Mr. Chairman:

The Makah Tribe supports implementation of the Title IV Tribal Self-Governance Process Act of 1993. Tribes involved in the Self-Governance Demonstration Project since 1988, initially in Bureau of Indian Affairs (BIA) and then in the Indian Health Service (IHS), have shown they are capable of managing and operating programs, activities, functions and services according to their own tribal priorities. This is certainly the case for the Makah Indian Tribe.

We do have several concerns, however, any one of which can cause delays and tribal failure. These concerns are:

1. That Congress elevate the IHS Office of Self-Governance from the Office of IHS Director to the Departmental level as it is for the BIA so that office and its staff can, in fact, be advocates for Self-Governance.
2. That adequate implementation funds, shortfall funds and start-up funds must be appropriated.
3. That Congressional language clearly spell out that Self-Governance is about a new way of doing Business with and relating to Indian Governments which will necessarily change the responsibilities of Federal employees dealing with Indian Governments.
4. That the Tribes be held to no greater evaluation standards and measurements than those of the IHS and BIA.

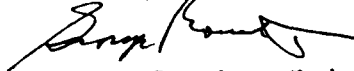
The Makah Indian Tribe prefers that there be only one Office of Self-Governance and that it be located in the Office of the President. Then we can establish a Government-to-Government relationship as originally envisioned in our Treaties. Otherwise, we, the Indian Nations will be forced to continue negotiating with the numerous Federal Agencies. A single Office of Self-Governance would eliminate duplication of effort and streamline the negotiation process there by strengthening Government-to-Government relations.

Our Self-Governance effort has strengthened our decision-making authority and management responsibilities. We have the authority to make changes in direct services of the Bureau of Indian Affairs and the Indian Health Service programs to meet the needs of our tribal members. The Makah Self-Governance Demonstration Project has allowed the Tribe to allocate funds effectively based on community priorities.

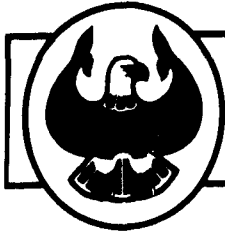
With these concerns in mind, we are confident Congress and the Clinton Administration can and will bring about the changes needed to strengthen the Self-Governance concept. We urge passage of legislation that will allow Self-Governance to become a permanent option for Tribal Governments and that the Secretary, acting through the Director of the Office of Self-Governance, may allow the number of Tribes, to sign compacts each year, subject to the limitations of the Office of Self-Governance.

Sincerely,

MAKAH TRIBAL COUNCIL



George C. Bovechop, Chairman
Makah Tribal Council



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (206) 734-8180

DEPARTMENT _____

EXT: _____

**TESTIMONY OF HENRY CAGEY,
CHAIRMAN, LUMMI INDIAN NATION
SUBMITTED FOR THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING
ON THE
SELF-GOVERNANCE DEMONSTRATION PROJECT**

OCTOBER 20, 1993

The Lummi Indian Nation appreciates the opportunity to provide testimony for the public record on our most memorable years of experience under the Self-Governance Demonstration Project and our recommendations to provide permanent authorization as an opportunity for all Tribal governments. Over the last 150 years, Indian Tribes and Indian people have suffered the indignities of societal prejudice; endured the insatiable greed of those seeking our Treaty protected resources; and, survived the political manipulations of established law allowing Federal bureaucrats to control our government operations and individual lives. Through it all, we have always known who we are as a people, as a sovereign government. Scars of the past remain as vivid reminders of the decades upon decades of misguided, short-sighted and self-serving Federal policies creating dependence, dysfunctional families and individuals affecting three generations or more of our people.

Self-Governance offers the opportunity to create meaningful change from the past; the empowerment tools for Indian Tribes to restore hope for a better future for their peoples; and, the establishment of a reality that recognizes and supports Tribal governments as the legitimate powers so unique in the American system. The Self-Governance foundation we are building today will change generations of Tribal leaders, Indian families and individual Indians for many generations to come after us. Changing traditional perspectives and perpetuating paradigms in governments and individuals will take time, patience, energy and enduring will. Therefore, the principles we establish and the processes we fashion as Self-Governance evolves has extraordinary importance for the future.

The Lummi Indian Nation urges the introduction and passage of a permanent Self-Governance authorization with the clear policy that each Indian Tribe and Alaska Native Village has the right to determine its relationship with the United States whether through direct services, Self-Determination, Self-Governance, or a combination of these options. As the Congress and Tribal governments establish permanent Self-Governance laws, there must be a crystal clear understanding that these policies establish a set of principles and protocol for future Departments and Agencies. The past practice of each Department or Agency promulgating its own separate rules forcing Tribes through a myriad of Agency-specific administrative interpretations of law must stop! The Congressional policies and negotiated procedures must recognize established principles requiring these Departments and Agencies to change and recognize the significant difference and unique nature of Tribal governments.

The provisions that Tribal governments negotiated in the original Compacts of Self-Governance are quite straight-forward and simple to comprehend. Any change to these established relationships must require bi-lateral government-to-government negotiations and mutual agreement.

These are living documents that further define our relationships as governments. Other Departments and Agencies in the Federal system must recognize and respect this change in reality.

The Lummi Nation requests your continued support and assistance in the development of the Tribal Self-Governance Legislative Authorization as a permanent way for Tribes to conduct their business. The Lummi Nation has been a part of this historic tribally- driven initiative since it's inception. On October 27, 1987, our Tribal Chairman at that time, Larry Kinley, presented testimony before the House Interior Appropriations Subcommittee regarding "Problems and Solutions in the Tribal-Federal Relationship." In that testimony the Lummi Nation stated:

"The basic issue confronting us today is a cumbersome, unwieldy bureaucracy built layer upon layer over the years being pressured by frustrated Tribal governments yearning for independence in the management of their affairs and seeking a larger share of resources allocated for their benefit.

I truly believe that American Indian Tribes and Congress over the next several years should restructure the Federal service and resource delivery system to Indian Country to efficiently and effectively address the broad spectrum of Tribal government needs from those totally dependent Tribes to Tribes desiring true self-government. The process of change is always unsettling and painful, but the new system could still provide strong trust protection and allocate a greater share of existing resource expenditures to Tribes without drastically increasing government appropriations."

With the passage of permanent legislation, we can better realize the full potential of this initiative. Without Self-Governance, as a permanent option for Tribal governments, it is likely that the Federal bureaucracy would return to the "business as usual" relationship with Tribal Governments and tie Tribal entities to the constraints of the 93-638 contracting relationship. If, this initiative were to continue as simply another one time "experiment," these Tribally-proposed principles would not be taken seriously. The Demonstration Phase of the Self-Governance initiative is a living example of the Clinton/Gore's concept of reinventing Government. We have only scratched the surface of the creative and innovative possibilities for the restructuring operations of Tribal government and effective Tribal/U. S. relationships.. The Lummi Nation supports and commends your efforts in moving forward with permanent legislation.

The Lummi Nation has helped develop and evolve this initiative for over six(6) years. We are in our fourth year of implementation with our Compact of Self-Governance with the Department of the Interior and will begin to implement our Compact with the Indian Health Service on January 1, 1994. We have also coordinated and administered the Self-Governance Communication/Education Project (since 1989), in coordination with the Jamestown S'Klallam, Quinault Indian Nation, and the Hoopa Valley Indian Tribe. In this short period of time, the Lummi Nation has realized a great deal of positive change due to Self-Governance.

Tribal Community

- **Budget Ordinance:** With the adoption of this ordinance, the Tribal community members are actively involved in the decision-making processes of their Tribal government. This has resulted in greater Tribal control and fiscal accountability of all programs and resources. In 1988, prior

to Self-Governance, only 20% of our members voted; in 1993, 58% of our eligible voters participated in our General Elections.

Tribal Government

- **Lummi Indian Business Council:** Restructuring of the Tribal Government has occurred to accommodate new responsibilities and authorities. The Council now meets weekly rather than monthly. For the first time in Lummi Nation history we have a full-time paid Tribal Chairman. The Council focus now is on planning for the future, in sharp contrast with the past of simply reacting to crisis situations.
- **Tribal Staff:** A new awareness has occurred among Tribal Staff. They have become accountable to the people and to the Business Council rather than to an outside Federal entity and/or representative.
- **Priorities:** The Business Council now establishes meaningful Tribal priorities and determines the resource allocations for those priorities. Tribal members are part of this decision-making process under the auspices of the Tribal Budget Ordinance.

Tribal Programs

- **Veteran Affairs Office:** This office was created to service Veterans in meeting their social, educational, health, employment and housing-related needs. The Lummi Nation has over 330 Lummi Veterans with unique and different needs than the general Lummi population. The Office was created in 1992 with Self-Governance monies. The program is recognized as a regional and national model Veterans program for Native Americans.
- **Culture:** A new Department was established under Self-Governance. A new Ordinance is completed for the Protection of Cultural Resources, Burial and Archaeological Sites.
- **Education:** The Johnson O'Malley program has expanded from servicing 370 students, to providing services to over 800 youth. Tribal School teacher salaries were supplemented to bring them closer to that of the Washington State teachers. Under our Scholarship program, funding has assisted over 80 students to further their education. We established a Youth Program to supplement educational services. This program has serviced over 350 youth.
- **Law & Order:** A full-time criminal investigator has been employed. We have cleared the record of many pending cases. A new drug code has resulted in drug-related and criminal arrests.
- **Court:** The staffing has stabilized and an accumulated back-log of cases have been reviewed, evaluated and processed. Tribal code revisions for Criminal, Traffic and Rules of Court are being up-dated.
- **Program Support:** Support for the following programs: Safe Streets; Senior Citizens; Education Commission; Budget Committee; and, our local volunteer Fire Department
- **Business Assistance Center:** This center, in coordination with the Northwest Indian College, provided technical assistance to 150 tribal members who own or operate small businesses.

External

- **Self-Governance Communication/Education:** Since 1989, we have accomplished the following: conducted 21 workshops across the Nation, with participation of over 250 Tribes; made over 200 presentations; wrote, edited, published and distributed over 13,550 copies of publications on the Project, the *Red Book and Workshop Manual*; currently publish and distribute a national Self-

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Permanent Self-Governance Legislation

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Governance monthly newsletter; and, we have recently completed a one-half hour documentary video on Self-Governance.

With potential permanent legislative authorization of the Self-Governance Initiative, the Lummi Nation is excited and we look forward to the future with a new vision for our Tribal community. Our vision includes: the reaffirmation and re-establishment of the government-to-government relationship with the United States; to move forward towards greater self-sufficiency, the possibility of becoming a community that is proactive rather than reactive; and, the realization of a Tribal government that is accountable and responsible to the people we are here to serve. Through Self-Governance, these visions, ideas and hopes for the future can and have become realities. Our experiences have proven that through Self-Governance, positive change can occur within our Tribal community. We know what our problems are, but most importantly, we know what the solutions are and how they can best be implemented.

We understand the need to proceed at a steady, calculated pace in the development of Self-Governance as a permanent way of implementing our government-to-government relationship. Yet, it is very difficult to explain to our people why we are self-governing in some areas, but not in others. Why we can be flexible in meeting the needs with some funding, but still restricted with others. Let us not lose sight of the need to address the inclusion of the rest of the Federal system that provides services, activities and functions to Indians in the very near future. We envision a future in which the Tribal governments can comprehensively manage services and development according to Tribally-established priorities and Tribally-oriented guidelines.

We know that Self-Governance does not answer all of our Tribal problems and that Self-Governance may not be appropriate for all Indian Nations, but for the Lummi Nation, it is our road to the future. For the first time in over 100 years, we are beginning to determine our own successes and learn from our own failures.

Bill Clinton and Al Gore said it the best with regards to, *"Putting People First"*:

"We can no longer afford to pay more for--and get less from --our government. The answer for every problem cannot always be another program or more money. It is time to radically change the way government operates--to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up. We must reward the people and ideas that work and get rid of those that don't work."

This is the Tribal Self-Governance Initiative -- the empowerment of Tribal governments to improve the quality of life of the Tribal people in our Tribal communities. Your support of legislation in making this initiative permanent is encouraged. We appreciate and commend you and your many supportive efforts on behalf of Indian people.

Thank you.

TESTIMONY OF BOYD GRAHAM, TRIBAL CHAIRMAN, DUCKWATER SHOSHONE TRIBE
SUBMITTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON TRIBAL SELF-GOVERNANCE
OCTOBER 20, 1993, WASHINGTON, D.C.

Summary

The Duckwater Shoshone Tribe has made strong self-determination progress over the past several years and has advanced that progress even further through Congressionally authorized Self-Governance. To continue its progress, the Tribe needs Congressional support for permanent Self-Governance legislation under the Bill that is being submitted by Senator McCain. This support for Self-Governance will enable the Tribe to operate programs that it has taken over under Self-Governance so far, to continue the necessary Self-Governance progress that it has made, and to continue on a permanent basis, the strong service delivery that it has established.

The Duckwater Shoshone Tribe is a Self-Governance tribe. The Tribe requests that the Congress make Self-Governance a permanent program for tribes that wish to take this responsibility. The Tribe requests Congressional action to make Self-Governance permanent and to make immediate Self-Governance improvements through FY 1994 oversight and new legislation.

The Tribe is in its second year Self-Governance Compact operations with the Bureau of Indian Affairs. Self-Governance has been a positive and natural step for the Tribe, a natural move forward on its Self-Determination path. The Tribe is small and the reservation is isolated. Any services that members receive must come from the Tribe. Self-Governance allows the Tribe to provide and take responsibility for its services to members, now with BIA funding, next with IHS.

The Tribe supports the McCain Bill for permanent Self-Governance legislation in the Department of the Interior. The Tribe requests that the permanent legislation be expanded soon to cover all federal programs, not just those under the BIA and IHS. The Tribe requests that all future legislation direct the BIA to provide Compact funding to Self-Governance tribes out of BIA budgets and that other federal agencies be directed to prepare

during FY'1994 to negotiate with Self-Governance tribes. Because federal appropriations are limited and the federal government needs to stop growing, the Tribe requests that the permanent Self-Governance legislation direct federal agencies to reduce in proportion to tribal Self-Governance take over of previously federal programs functions.

The Tribe wants the Congress to know of its past progress, of its Self-Governance progress, of its problems, and of its needs. The Tribe is not a community that "cries wolf". The Tribe is not a community that wants the BIA, the IHS, or any other federal government agency to come in and take care of it. The Tribe is pleased with its progress and wants to share the information with the Congress - that progress could not have been possible without far-sighted Congressional authorizing legislation such as Self-Governance and Self-Determination and without targeted appropriations.

The United States Congress and Indian tribes have a unique relationship. As part of that relationship, the Tribe has begun sending information about its needs and progress. And that is an important point for us, we want to tell of both our needs and our progress. The Tribe is aware of and is working on its problems and needs - those problems and needs will not be eliminated or reduced without Congressional help. The Tribe also wants to let the Congress know of its progress. With this testimony, the Tribe is giving the Congress explanations of its situation and of how the federal government impacts that situation. With this testimony, the Tribe is also describing the progress that it has made and that it wants to continue. The Tribe is pleased to have the opportunity to explain its situation and to make its requests directly to Congress.

Background

My name is Boyd Graham. I am the Tribal Chairman of the Duckwater Shoshone Tribe. Our Tribe is part of the Western Shoshone Nation. Our reservation is located in east-central Nevada. I am providing this testimony to tell you of our progress, of our needs, and to ask for your assistance. I will start with some background on our reservation and our progress.

Our land is high desert land. The land feeds our cattle, grows our crops, and takes care of our people both here and as we travel across our land to go elsewhere. The land holds springs, grows trees, and is home to the wildlife. The land will care for us as we care for it.

Our reservation is extremely isolated and rural. To eat at a cafe requires a 20 mile one way drive, a restaurant requires a 102 mile round trip. The nearest non-Indian hospital is 75 miles away and nearest IHS hospital is over 250 miles away. Our people work on the reservation, at the oil refinery and oil fields (25 to 30

miles away, when wells are working), on the highway crews (50 to 75 miles away), and in the mines (50 to 75 miles away, when mines are open). Our children attend a high school that is 51 miles away and they make that 102 mile round-trip each day. (We have our own elementary school on the reservation.) Until 1988, there were only two telephone lines that came to the reservation. Now the Tribe has a FAX line and tribal government, the school, and the health program each have their own phone line.

The services and programs that we have are those that we provide. Those programs focus on human services and on caring for land resources. We have our own school. The school serves students in preschool through grade eight. In February, 1993, our school was assessed by a Bureau of Indian Affairs monitoring team using BIA and Regional/State accreditation standards. The team found that our school provides a high quality program to our children and that our children's performance is among the highest in BIA funded schools across the country!

We have our own health and social services programs. Those programs provide emergency and immediate care and make referrals for in-depth or extended care. Those programs will soon be expanded as we take more health/medical responsibilities under Self-Governance. Our policemen patrol the reservation and work cooperatively in the non-Indian areas that border our land. We take care of our own water system. We are trying to obtain the resources to maintain our own roads. Our post office used to send out mail twice a week and receive mail three days a week - it is now open five days a week for both incoming and outgoing mail under a tribal contract.

In Duckwater, the Tribe provides health and social, education, and tribal government services to tribal members. The Tribe does and must provide these services because: the reservation is isolated; and, the BIA and IHS and other federal agencies have demonstrated that they will not serve the reservation. The Tribe has planned, delivered, and refined its services so that delivery is efficient. The Tribe has saved costs and increased service levels through consolidation and cooperation with other tribes and with the federal, State, and local governments.

Self-Governance allows the Tribe to provide services following its own plans and using its own coordinated methods. Self-Governance allows the Tribe to design its operations and doesn't require a forced fit of federal methods or goals. Our isolation forced us to progress and develop without BIA help and with minimal IHS resources. We used to protest that situation - now we see that it has helped us grow. We know and we have proved that we will provide more and better services than the Bureau or IHS. We know and we have proved that we can assess our needs, make our plans, and implement services and development better than the BIA or IHS. The Tribe's track record has proven that we would stay in legal compliance while providing strong effective services and the Tribe is continuing that record under the direct funding, Self-Governance

relationship.

The Tribe submits this testimony because of the unique relationship between you and us, the government-to-government relationship. We recognize and respect the role of Congress. We do not see the Congress as the source of all solutions. We have much more work to do ourselves. We look to the Congress to recognize our progress and needs, and we request your support with approval of administrative changes that will help us to continue our progress.

Our Tribe is small and our progress has been in small but steady steps. Over the past 16 years we have:

- * established our own, on-reservation elementary school, health and social services, administrative systems, and law enforcement, enrollment, planning, range management services (no such continuing services or programs existed on the reservation before);
- * gained federal and Congressional recognition of our unresolved Treaty of Ruby Valley Western Shoshone land rights and established a model proposal for resolving the issues;
- * begun improving our cattle herd, our livestock management, and our grazing areas;
- * remodeled an old church into a fine, small building for our grades preschool through grade eight elementary school;
- * built a community building for tribal programs, remodeled and existing structure into a Seniors Center, and started construction on a new health/social services modular unit;
- * overcome and stopped BIA efforts to close our school by showing the Congress and the Bureau our school's record of student success and achievement - a student performance record that was, and still is, stronger than all others in the Bureau's Phoenix area;
- * established a continuing tribal system for assessing/documenting needs and planning tribal services/development based on the needs because federal assessments and documentation had no credibility and provided no guidance;
- * consolidated our own health, tribal, and education programs with cost savings and service expansion before the BIA and IHS began pushing a similar strategy;
- * established cooperative law enforcement and Judicial services with savings and service expansion before BIA began pushing similar strategy; and,

- * entered into a Self-Governance Compact with the Bureau of Indian Affairs, moved into our second year of Self-Governance operations with the BIA, planned a Compact with the Indian Health Service, and negotiated our first IHS agreement.

Our Tribe has made this progress with, and sometimes despite the work of Federal agencies. Our past relationship was often negative with the BIA. The BIA did not help with our assessments and planning. Instead, Bureau staff ignored our documentation, made their own plans, and based BIA Agency budgets on their manipulations and political deals. The BIA did not help us to increase our contracting capabilities and skills. Instead, Bureau staff withheld information, misread our reports, delayed our applications, delayed our contract modifications, and resisted our attempts to make consolidation improvements in services and administration.

The Tribe now operates under Self-Governance and is able to make its own plans, budgets, changes, and requests. The Tribe now can work to negotiate its own agreements with the BIA and IHS, agreements that describe the resources and responsibilities of both the Tribe and the federal agencies. The Tribe is able to plan from and use its service and contract levels, its strong service track record, its consolidation and networking innovations, and its audited record of contract compliance. Under Self-Governance, the Tribe is able to offer suggestions on federal negotiations, requirements, and operations. Under Self-Governance, the Tribe is able to negotiate with the BIA and IHS at almost all levels. Self-Governance puts the responsibility and accountability on the Tribe and puts the Bureau and IHS in a less responsible and reduced role.

Self-Governance Request - Permanent Legislation

The Duckwater Shoshone Tribe requests positive Congressional action on permanent authorizing legislation for Self-Governance and on appropriation directives that will reinforce Self-Governance intent and progress. Self-Governance has worked very well for the Tribe. Self-Governance should be permanent. It represents the future for many tribes, a future that will offer more tribal opportunity and that will require more tribal responsibility and accountability.

The Tribe supports permanent legislation because Self-Governance works. It has given the Tribe the authority to take over federal functions and programs and to operate those within tribal government. It also have given the Tribe a means for negotiating which programs and functions it will take over, the responsibilities that it will assume under those programs and functions, and the budgets that it will have for those programs and functions. The following part of our testimony explains why the

Tribe supports permanent legislative status for Self-Governance.

The Tribe's Assessment of Self-Governance

Overall, the Duckwater Shoshone Tribe believes that Self-Governance is better. Under Self-Governance, tribal operations and administration do a better job of meeting tribal needs than did the BIA or IHS processes with '638 contracts, '638 grants, federal budgeting, and services from the Area or Agency or Service Unit. In a rough sequence of Self-Governance activities, the Tribe:

- * learned more in the working conferences from other Self-Governance tribes and the Office of Self-Governance (during the planning and negotiations stages) than the Tribe ever learned from the BIA or any other federal agency during their workshops about new programs, new regulations, new grant or contract processes, etc.;
- * received more help from the Interior Office of Self-Governance (OSG) than it anticipated during the first Self-Governance negotiations and was able to use that help to reach a reasonable first agreement (although the low year 1 levels for tribal shares and the number of programs excluded from negotiations set a precedent that still hurt the Tribe in the second and third negotiations);
- * received more help from OSG than it ever previously received from any BIA Central office program or function and used the OSG help to improve its Compact through revisions and to improve its operations through reasonable payments and answers to questions;
- * received more clear budget information from the Indian Health Service during Self-Governance planning than it ever previously received from IHS and gained more budget answers from Headquarters and the Area Office during negotiations than it previously received in over ten years of operating IHS programs;
- * moved with more distinct goals and a better sense of direction in IHS Self-Governance negotiations and now is moving with more confidence into IHS Compact operations.

In the Tribe's opinion, Self-Governance is better. It is an improvement over '638 and over federal services. Self-Governance gives the Tribe more freedom to concentrate resources on needs and plans and to make decisions and changes based on tribal priorities. Self-Governance makes decision making and accountability local, a situation that has both pluses and drawbacks. The following descriptions are provided to give further positive Self-Governance examples.

1. The Tribe has reduced its problems with the BIA because of Self-Governance. The Duckwater Shoshone Reservation has always been hard to get to so the BIA mostly hassled the Tribe from far away. BIA staff questioned or lost the Tribe's proposals, budgets, and reports. BIA staff questioned the Tribe's shared use of equipment and the Tribe's administrative procedures. BIA staff forgot to tell tribal staff about meetings or forgot to send out new information. BIA staff delayed or simply did not forward the Tribe's requests or suggestions up through the system. Because of Self-Governance, the Tribe receives timely information. The OSG people try to help solve problems and OSG is able to get more cooperation from the Agency and Area staff than Tribe ever could.

2. Under Self-Governance, the Tribe has increased its program and resource coordination. As an example, the Tribe increased coordination between the social service program, law enforcement, and the school on substance abuse prevention during its first Self-Governance budget planning and revision session. This and other budget changes improved program services and increased the efficient use of funding. And the Self-Governance authority to coordinate decreased our people's worries about monitoring hassles from the BIA.

3. The Tribe has been able to be innovative and responsive under Self-Governance. The Tribe started an agricultural improvement program that will develop an agriculture plan, then will follow with annual planned improvements that rotate from field assignment to assignment. With Wildlife funding, the Tribe started to contact environmental groups to try to gain their cooperation on a wildlife study that will cover the Tribe's grazing area. And the Tribe will continue this cooperative effort during the next Self-Governance years.

4. For the first time, the Tribal Manager and Tribal Council worked on a comprehensive budget that covers all programs. Previous budgets were always focused on individual fund sources. This year was the first where the Tribe tried to develop a comprehensive budget for the staff and Council to understand and use. This has made it easier to focus on tribal programs and services rather than to just think about the fund sources.

5. The Tribe has identified the need to improve its long range planning, its record keeping, and its internal policies and procedures. Before Self-Governance, long range tribal planning was sometimes as frustrating as it was rewarding. The Tribe would prepare its long range plan and often was able to reach its multi-year objectives. But the Tribe was unable to get the BIA or IHS to take the plans seriously. Federal Staff would not help the Tribe to gain resources that it needed to carry out the plan. That changed under Self-Governance since the Tribe could make its own planning and operation decisions.

The tribe has found a similar situation with its policies and procedures and its record keeping. The current policies and

procedures were usually developed in response to a P.L. 93-638 or other federal program administrative requirement. Tribal staff paid attention to following the policies and procedures but did not spend a lot of time thinking about what the policies were really trying to address or how to improve the policies.

Now staff are discussing the fact that Self-Governance freedom brings the potential for severe and frequent changes. And staff are worried that severe changes could hurt rather than help local services. Staff are recommending that the Council prepare to review new and revised tribal administrative and operating policies, that the Council prepare for developing an administrative code that includes strong budget and personnel controls, and that new policies tie primarily to local processes and A-128 compliance.

The Tribe knows that the BIA still keeps residual amounts that are too high and that it is going to take a lot more work to negotiate the amounts that are a fair share. Tribal staff need better ways to work with the BIA so that Bureau restructuring supports Self-Governance while being realistic for the other tribes. Still the Tribe is using its BIA Self-governance authority to run programs in ways that meet tribal needs. And the IHS headquarters staff approached Self-Governance in a much more open and realistic way than did the BIA and have given assurances that they will keep working to improve IHS self-governance. Self-governance is better for the Tribe.

Self-Governance Recommendations

The Duckwater Shoshone Tribe is now in its second year of Self-Governance operations, and the Tribe has thoughts about how to improve Self-governance now and in the future. Some recommended improvements should happen right now, some should be implemented through the McCain Bill and through subsequent, expanded permanent Self-Governance legislation. Following are the Tribe's recommendations, some with and some without descriptions.

1. Pass permanent legislation for Self-Governance, it works.
2. Grandfather the existing individual Compact/Annual Agreements/etc. language into the permanent legislation for those tribes that so wish (grandfather into all future Self-Governance).
3. Provide tribes with authority for a full range of options in Indian Health Service Self-Governance negotiations including: negotiations for tribal shares of all programs in the Service (service unit, Area, regional, national support, and headquarters); negotiations for minimum floor level package of local services and outside contracts for all other services; negotiations for IHS provided services under tribal direction; and, negotiations for all outside, contracted or third party services under tribal direction.

4. Extend Self-Governance to all federal programs that provide funds or resources to tribes. Mandate that all Interior and HHS federal programs prepare for and conduct Compact and Annual Agreement negotiations in FY'1994 (i.e. all Interior and HHS programs that provide resources, resource use, or funds to tribes, not just BIA and IHS).
5. Use BIA Self-Governance success to work toward allowing all federal funding for tribes under Self-Governance with eventually one compact, one Annual Agreement, and one OSG. Use a phased approach toward that goal that starts with individual Compacts and Annual Agreements and independent Self-Governance offices, then consolidates.
6. Open all BIA and IHS programs and functions to negotiations and include all BIA funding in the Annual Agreement. For the BIA, follow the Reorganization Task Force recommendations and make sure that at all Agency/Area functions do provide some measure of tribal support, tribal services, tribal link and that all are open to Self-Governance. For IHS and other federal agencies, follow the principles of opening all programs and functions to Self-Governance, strongly limiting residual functions and reducing administrative duplication, and transferring administrative savings into Self-Governance agreements for tribal use in providing services.
7. Only allow BIA residual functions to be included in a few BIA programs and line items, definitely not in all. Narrowly define and limit BIA residual functions using just those trust and administrative responsibilities that are required by statute or Secretarial Order. Since residual functions are not put on the table when negotiating tribal shares, strongly limit the residual functions that are allowed in the BIA and in all other federal agencies.
8. Use Self-Governance to encourage BIA and IHS restructuring, to encourage the reduction of Area and headquarters duplication and budgets and to transfer the work and resources to the Agency and Service Unit level. All tribes can make their own decisions on how best to handle federal functions when function/programs/services are concentrated at the fields level (i.e. a tribe can take almost all functions under Self-Governance, can contract for only certain functions, or can receive/redesign services and functions while still leaving these with the agency). When functions are provided at the Area or headquarters levels, the focus on serving tribes becomes blurred and tribes are not able to track, impact, and sometimes can't even access those services.
9. Develop Tribal Base Budgets that fold in all Self-Governance funding including short fall. Take tribal Self-Governance budgets out of the regular BIA and IHS budgets.

Require that the short fall funds go to the BIA and IHS and that regular budget funds staffing and resources at the field level, that reorganizes Headquarters into assistance management, and that reduces the number of Areas and changes those that remain into technical assistance operations. Use short fall funding as the BIA and IHS incentive to complete the restructuring.

10. Require that adverse impact on non-Compact tribes be proven, not just asserted.
11. Require that BIA Headquarters/Area/Agency offices and IHS Headquarters/Agency/Service Unit deliver accurate, comprehensive information to tribes prior to negotiations. Require that the Area/Agency financial information be comprehensive and that the budget information be accurate, balance, include annual reports that link budgets and expenditures, tie to other information, and show all carry over funds and funds returned to Central or the Treasury.
12. Guide tribal share development of every BIA and IHS function and program with a view of what would be the share if there was no _____ (Headquarters, Central, Area, Agency, Service Unit, Construction, etc.) and if all tribes went Self-Governance.
13. Work on BIA Area/Agency office support and IHS Area/Service Unit support for Self-Governance by involving the field and by directing it from the top (from the executive administration and Congress, then from the Assistant Secretary, the Commissioner and Director, and the Policy Council). Make a continuing effort in the field to involve, plan and educate for the actions that must be taken and the changes that must be made, and then involve the field in monitoring, correcting, and supporting those actions and changes.
14. Use the following key points in determining tribal shares: every BIA and IHS dollar is related to services to tribes and tribal shares exist in all BIA and IHS programs and functions; Tribal shares should be calculated from the total funds that are available for the programs and functions; and, Adverse Impact must be shown, not just stated.
 - a. Identify the actual non-contractual Trust Signature and Secretarial Orders activities that required.
 - b. Put time/programmatic requirements on those activities.
 - c. Compare to present field level, Area, Central budgets for staff/resources and determine % that is necessary to set aside for BIA and IHS residual activities.

- d. Analyze % of budget spent using information like Status of Obligations Reports, identify the budget areas with the highest number and amount of underspent functions, and determine significance re: tribal shares.
 - e. Look at Area functions re: duplication of Headquarters/Central. Use information, findings, use recommendations from the Joint Reorganization Task Force such as Standard Assessment Methodologies and Area/Agency models to restructure the BIA, and use limited federal residuals, decentralization and reinvent government principles to restructure other federal agencies.
 - f. Look at non-IPS and non-recurring program functions re: processing and administering projects, duplication of Central, and the long term of Compact tribes eventually taking over those responsibilities. Consider consolidation using Program Specialist/Grant Officer models that are used in most grant making agencies.
15. Establish a DHHS OSG that is separate from IHS and is at the Secretarial level.

The Tribe also recommends that multi-year agreements be provided for those tribes that choose to enter into such agreements after a base tribal budget is negotiated and established. The Tribe recommends that Self-Governance tribes be informed of and be eligible for all new programs and all funding increases in existing programs that occur during the year. And the Tribe recommends that a self-assessment process with standards be established for those Self-governance tribes that wish to use such a process in place of outside evaluation.

That concludes our Self-Governance testimony. We support the McCain Bill and support subsequent expanded permanent Self-Governance legislation that will cover all federal agencies. We look forward to the Congressional response to our requests regarding the McCain Bill and expanded Self-governance permanent legislation. Thank you for the opportunity to submit this testimony and statement directly to you.



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**Joint Statement of the Hoopa Valley Tribe
 Jamestown S'Klallam Tribe, Lummi Indian Nation,
 Quinault Indian Nation and Sac & Fox Nation
 for the Oversight Hearing Record
 of the
 Senate Committee on Indian Affairs
 on the
 Self-Governance Demonstration Project
 October 20, 1993**

Each of our Tribal Governments has provided written statements for the record regarding our individual experiences with the Self-Governance Demonstration Project and recommendations for Self-Governance permanent legislation provisions. This joint statement addresses Self-Governance in the broader context of emerging Clinton Administration policy and long-term Congressional policy considerations for Self-Governance.

The administration of Indian Affairs by the Federal Government has undergone tremendous change in the past few years including the recognition and direct involvement of Tribal Governments as a key part of the policy and management of Indian Affairs. We want to thank this Committee for its leadership role in helping to make Tribal Self-Governance a reality in Indian Country. In keeping with this revolutionary and historic milestone in the administration of Indian Affairs, we support the passage of permanent Self-Governance legislation at the earliest possible opportunity.

FEDERAL RESTRUCTURING AND THE SELF-GOVERNANCE PERSPECTIVE

Fundamental changes are now underway within the Congress and Executive Branch to re-assess the manner in which the Federal Government manages its obligations to the American people. There has recently been a renewed focus from the Administration and Congress to "re-invent" how the Federal Government is structured and evaluate the quality of service and benefits that it provides to its constituents. In a National Performance Review report, entitled Creating A Government That Works Better & Costs Less, published September 7, 1993, Vice President



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Gore identifies case after case and situation after situation where the Federal Government, entrenched in traditional practices, is reluctant to question obsolete systems and is adamantly resistant to change.

Similar to what is being proposed for all Federal agencies, there is a critical need to restructure the Federal administration of Indian Affairs. Over the past two hundred years, Indian Tribal Governments have been relegated to simply being vendors and contractors for carrying out functions that were designed by Federal officials ostensibly for the benefit of Indian people. Since the first Federal Indian Affairs office opened under the Continental Congress, agencies responsible for administering Indian Affairs have grown to unmanageable levels. Along with losing authority over their own affairs to burgeoning Federal agencies, Tribal Governments have been so overwhelmed with regulatory restrictions that in recent decades the very concept of exercising sovereign powers has been a difficult option throughout Indian Country. While Indian Tribes hold treaties and agreements that have been interpreted by Federal courts as being the supreme law of the land, it is quite typical for Federal officials responsible for the programs and services required by those treaties to diminish Indian Tribes to simply being grantees of Federal services.

Much like other branches of the U.S. Government, attempts to restructure and reform the Federal administration of Indian Affairs has been a frequent, if not continuous, effort. In their November 1989 report, the Special Committee on Investigations of the Senate Select Committee on Indian Affairs concluded that at least forty-two Congressional investigations have recommended Federal Indian Affairs reorganization and restructuring. In a single nine-year period alone, the Bureau of Indian Affairs (BIA) was actually reorganized ten times. Recently, the efforts of the Joint DOI/BIA/Tribal Task Force on Reorganization have become an annual line item in the Federal budget. Addressing the need for Federal Government-wide reform, Vice President Gore stated in his September 1993 report: "The Federal Government seems unable to abandon the obsolete. It knows how to add, but not to subtract."

The Self-Governance Demonstration Project was created by Tribes in 1988 from the necessity to change the manner in which Federal Indian policy is developed and administered. Self-Governance is fundamentally designed to provide Tribal Governments more control and decision-making authority over the Federal financial resources provided for the benefit of Indian people. More importantly, Self-Governance fosters the shaping of a "new partnership" between Indian Tribes and the United States in their government-to-government relationship. Unlike most rhetorical studies and restructuring plans of the past, this Tribally-designed Project has effectively merged the authorities of Indian Tribes, as the beneficiary of the trust relationship, with that of the United States, as administrator of the trust, to carry out Federal obligations to Indian people.

Self-Governance has proven that substantial change in the management and delivery of services is achievable, although the actual Federal down-sizing and restructuring of Indian Affairs languishes far behind. Given the extended time frames for government change and the inevitable expansion of Self-Governance to other Federal Departments and Agencies, it is logical that the

Self-Governance concept be incorporated into the proposed "Reinvent Government Labs" in other Federal institutions. Support from the Committee on this proposal to the Clinton Administration would be most helpful.

BUDGETARY PROTECTIONS FOR SELF-GOVERNANCE TRIBES

Now in its fourth year of implementation, Self-Governance has allowed Tribes to transfer over \$80 million from Federal control to Tribal Governments and, today, represents one of the most significant and continuous reforms in the history of Federal management of Indian Affairs. Unfortunately, while an Office of Self-Governance has been created in the Department of the Interior's Office of the Secretary, the administration of Self-Governance is still being managed by the inefficient systems of the Federal Government. To prevent Self-Governance from being consumed by an unrelenting Federal bureaucracy, the administration of Self-Governance must be separated and insulated from the inevitable bureaucratic entanglements. This experiment in management innovations and empowerment should be allowed to pro-actively and independently proceed.

Stable base budgets were established for the Quinault, Lummi, Hoopa Valley and Jamestown S'Klallam Tribes in FY 1993 by Congressional direction in the House Interior and Related Agencies Appropriations Subcommittee and House-Senate Interior Appropriations Conference Committee reports. Stable base budgets for the four Tribes have been incorporated in the FY 1994 BIA budget, and include base transfers for shortfall funding and contract support. To date, these base budgets do not include provisions for inflation. Unfortunately, Congressional requirement has not deterred the BIA from manipulating our budgets this past year.

The establishment of stable base budgets is an important objective for Self-Governance. The stable base budget experiment is expected to streamline negotiations; reduce fiscal adjustments currently required by the line item negotiation process; and, create a predictable financial support process over a multi-year period to facilitate Tribal planning and budgeting. In order to establish simple standards for program budget eligibility, the four Tribes recommend several basic stable base budget policies.

A Tribal Self-Governance base budget is defined as the previously-negotiated funding amounts over a series of two to three years' negotiation of a Tribe's Annual Funding Agreement. This negotiated base transfer represents the funding amounts for those programs that the Federal negotiator and Tribe agree be included in the Annual Funding Agreement. This amount may also include a negotiated total lump sum figure for contract support and previous year's shortfall and implementation costs. Upon establishment of a base budget, this amount is included in the development and submission of the Interior Department or Agency budget justification to Congress. Additionally, we propose that the OMB adopt these policies by Circular to assure that the BIA does not manipulate or reduce these base budgets, as directed by the Congress.

While the Federal Government and private sector annually make adjustments for inflation, Tribal governments' funding base have generally been excluded from this basic reality consideration.

If inflation adjustments are made, usually they are applied sporadically or at Congressional direction. We propose that the base budget be adjusted annually by an inflation amount calculated on the total Tribal budget. This inflation adjustment would be the Department of Labor, Bureau of Labor Statistics actual inflation rate for the previous Fiscal Year calculated by the Consumer Price Index-Urban (CPI-U) and represents lost purchasing power from the previous year. This inflation amount would be added to the previously-established base budget and the revised adjusted base would then be submitted in the subsequent year's budget justification.

It also should be understood that the base does not represent all the funding that may be identified as a Tribal share. Those programs and associated dollars not previously negotiated still are eligible for inclusion in the base and any specifically earmarked funds also will be available for inclusion, if applicable. The important principle is that the Tribal government must determine the appropriate time to negotiate the transfer of specific programs and responsibilities to Tribal control.

THE ADMINISTRATION OF SELF-GOVERNANCE AFFAIRS

The principles of Self-Governance must be premised on the application of the government-to-government relationship to be effectively implemented. With the accumulative transfer of over \$80 million from the BIA budget to Tribal Governments, it has become apparent that the BIA is initiating administrative attempts to undermine our efforts and regain control over Self-Governance and our separate Tribal affairs. As the BIA represents one of the oldest Federal bureaucracies, this institutional behavior is regrettable, yet understandable. To insulate Self-Governance from bureaucratic intrusion and manipulation, we propose that the Office of Self-Governance be made the administrator of Self-Governance budgets with responsibility for development and execution of Federal budgets for Self-Governance Tribes. Serving in this position, the Office of Self-Governance assumes an advocacy role for participating Tribes during the internal development and administration of the Federal Indian budgets. The Office must be strategically placed and protected in the Interior Department and appropriately staffed to carry out this responsibility. Located in the Office of the Secretary, the Office of Self-Governance will be responsible for the development and execution of budgets for Self-Governance Tribes and will have comparable authority with that of the Commissioner of Indian Affairs for the BIA budget. The Office of Self-Governance also will be responsible for Interior Department policy and administrative functions relative to Self-Governance implementation.

To further our Self-Governance goals, the Federal administration of Self-Governance must be pro-active in nature. The Interior Office of Self-Governance was purposely and strategically placed within the Office of the Secretary precisely for this reason. Unfortunately, the understaffed Office of Self-Governance is not capable of warding off the unrelenting, overbearing forces of the BIA. All too often, what is statutorily directed by Congress is administratively preempted by Federal employees that are protecting the "system." With Self-Governance, there is a real, insistent likelihood that the Federal administrative structure can smother, if not destroy, the Self-Governance initiative.

To prevent this from occurring, the Office of Self-Governance must be maintained in the Office of the Secretary. In addition, the Office of Self-Governance must be freed from the strangling Federal personnel system. Self-Governance should be authorized the freedom to explore new methods, procedures and processes in cooperation with Self-Governance Tribes. Self-Governance is not just another Federal program; it is an encompassing and evolving functional policy towards improved government-to-government relations. This freedom to improve operations should be vested with both the involved Tribes and the Federal administrative offices.

The Self-Governance Policy Council, established to give direction to the Office of Self-Governance, should also not stifle flexibility and creativity. Their role should involve broad policy oversight. A guiding rule for the Office of Self-Governance and the BIA should be: Whatever is authorized by statutes and regulations does not require concurrence by the Self-Governance Policy Council to implement.

THE NEED FOR A FUNCTIONAL REGULATORY WAIVER PROCESS

Today, in the fourth year of implementation of the Self-Governance Demonstration Project and despite clear directives from Congress, the authorized waivers of unnecessary or burdensome Federal regulations continues to be a most difficult and unexplored frontier in Self-Governance. The unfortunate reality is that waiver requests submitted by Self-Governance Tribes typically get lost in the Federal system and seem to never reappear without aggressive, persistent effort by the Tribe requesting the waiver. We believe that the fundamental problem associated with the lack of a functional waiver process is that Federal officials are not required to act on the waiver. As a result of not having the ability to obtain waivers of regulations, Self-Governance Tribes typically forego the benefits of Tribally-redesigned services and programs due to Federal indecision. The other alternative of regulation violation is certainly not an option. By indecision and inaction, the Federal bureaucracy stifles the Tribal creative process. Tribal frustration and self-administration is the result.

For example, a meeting on October 21, 1993 was held between the Interior Department's Office of Self-Governance, Office of the Solicitor, Hoopa Valley Tribe and Sac & Fox Nation regarding a two-year controversy concerning the application of the Federal Acquisition Regulations System (FARS) to Self-Governance. During that meeting, an Interior Office of the Solicitor representative explained why the Tribe's request for a waiver of the FARS should not be approved. The Solicitor's Office justification was a six-page letter from the House Appropriations Committee to the Secretary of the Interior, dated September 16, 1976, which criticized the "total disregard by the BIA for the Federal Procurement Regulations." The irony of this justification is that the criticism was on the manner in which the BIA managed its contracts and no Indian Tribe was involved. No additional justification for why waivers should not be approved was provided by the Solicitor.

In addition to the existing statutory authorization to waive regulations for facilitating the implementation of Self-Governance, most Federal regulations contain clear and workable methods for obtaining waivers. In fact, these regulations generally include language that is

intended to prevent the regulations from becoming a hinderance to developing new and innovative methods for acquiring benefits and services for Federal agencies. In his National Performance Review report, however, the Vice President stated: "Inside government, bad management stifles the morale of workers. The 'system' kills initiative."

We certainly understand that the regulations waiver procedures must have order and continuity for Tribal governments to replace established regulations with their own guidance documents. We believe an efficient, responsive regulations waiver system, relying on computer and electronic technologies, can be implemented in the very near future. Congress and the Federal system, however, need to support this vision.

In addition, while we are encouraged by the Presidential Executive Order of October 26, 1993 on "Enhancing the Intergovernmental Partnership," the limitations of that Order should not be allowed to prevent statutory requirements from being implemented. For example, while the Executive Order requires a Federal decision regarding a waiver of a regulation within 120 days, our Compacts of Self-Governance require decision within 30 days, and Title 25 of the Code of Federal Regulations requires a Federal decision in some cases within 10 days. Both Executive Orders to streamline this bureaucracy and support electronic communications will need financial support for efficient implementation in Indian Country.

SELF-GOVERNANCE IMPLEMENTATION ISSUES

We should always strive to clarify to all parties that the financial and service obligations of the United States to Indian Tribes are a result of treaties/agreements, and course of dealings by the United States with sovereign Indian Nations. We remain concerned that certain Federal programs dedicated to Indian Affairs continue to be legislatively excluded from Self-Governance in the BIA or administratively excluded by bureaucratic interpretation. We believe there continues to be a misunderstanding by many individuals regarding the concept that the relationship between the United States and Indian Tribes, in fact, involves political entities; not one based on race. Legislation intended to further Tribal self-governance prohibiting certain programs from being included in our Compacts only perpetuates this misconception. We believe that the Congress needs to express their intention to continue moving toward the policy of making all funds, including education and irrigation project funds, available to Tribes under Compacts of Self-Governance. And, no Federal "program, service, function, or activity" should be administratively excluded from potential negotiated transfer. In addition, we encourage the Congress and Administration to inform other Federal Departments and Agencies of the need to begin working with Indian Tribes to plan their orderly inclusion into Self-Governance.

We also are very troubled by the recent decision of the Indian Health Service (IHS) to open Self-Governance to all Tribes, instead of only those with established Interior Department Compacts. This is not an exclusionary or elitist position, but rather a protection against breakdowns or failures at the Tribal management level due to inexperience and lack of management structures. There is also a very real suspicion that by IHS opening Self-Governance to Tribes without Compacts at this time will only perpetuate the need to develop restrictive, bureaucratic

regulations to implement Self-Governance. One way to kill an experiment is to make it forward too quickly or to overwhelm it with too many participants. The IHS already is complaining about the additional administrative burdens caused by Self-Governance and has unofficially intimated that Self-Governance is moving too fast for the Agency's ability to control its direction. We believe that by opening Self-Governance to all Tribes nationwide, aside from violating the statutory intent of Title III, the IHS is attempting to obstruct the Self-Governance steady, progressive advancement through rapid expansion and confusion, creating the necessity to slow progress and develop restrictive regulations.

Congress has made a clear policy choice to implement Self-Governance in an incremental manner. Statutory language that expanded Self-Governance to include the IHS was, in fact, an expansion of Title III of P.L. 100-472. Title III does require that a Compact with the Department of the Interior be a prerequisite to a Compact with the IHS. The House and Senate Interior and Related Agencies Appropriations Subcommittees, since FY 1992, have expressly included only those Tribes with negotiated Compacts of Self-Governance with the Interior Department in the research, planning and negotiation stages with the IHS.

The Self-Governance Tribes also are very proud of their achievements, to date, through legislation, negotiation, justifications and perpetual endeavor to implement Self-Governance. We view the permanent Self-Governance legislation as an important step in the journey and certainly have no expectation to move backward from this point, unless by some unanticipated Congressional directive. Therefore, the provisions and processes already established -- such as our Compacts of Self-Governance, Annual Funding Agreements, quarterly pre-payments, stable base budgets and other identifiable improvements -- should be protected as integral to the Self-Governance foundation. The permanent Self-Governance legislation is considered a critical cornerstone for the Self-Governance future.

And, finally, the Congress needs to support the basic principle that the Tribal Self-Governance initiative extends beyond Department and Agency jurisdictions to the broader political framework of government-to-government relationships between Tribal Governments and the United States. There is a protocol being established at the Interior Department that must be applicable in policy and practice with other Federal institutions, where logically applicable. We do not expect to revisit issues or rejustify established procedures with other Federal entities. Where new thresholds are crossed or creative solutions negotiated on the Self-Governance frontier, these policies, procedures and the utilization of these new legal instruments (*i.e.*, Compacts) become integral to the Self-Governance foundation.

In conclusion, Tribal Government empowerment, improved management and service delivery, expanded development opportunities and meaningful government-to-government working partnerships embody the meaning of Self-Governance. This concept must be above Federal inter- and intra-Agency turfism and compartmentalized assistance mechanisms. Self-Governance places the Tribal Governments and their peoples at the focus of Federal resources transfer and on the fulcrum of change and development. American Indian Tribes and Indian peoples will no longer be victimized and manipulated by imposed systems, indifferent bureaucracies, sheer Federal ignorance or impunity against our unique place in the system of governments in America. The Federal system will take time to change, to understand the new reality, and to become a supportive element on the Self-Governance journey. With Congress' continued support and understanding, Tribal Governments have the time, energy, endurance, strength and will to achieve our Self-Governance goals.

Hoopa Valley Business Council

P.O. Box 1348 ● Hoopa, California 95546 ● (916) 625-4211

HOOPA VALLEY TRIBERegular meetings on 1st & 3rd
Thursdays of each Month**Dale Risling**

Chairman

**TESTIMONY OF DALE RISLING, SR., CHAIRMAN
HOOPA VALLEY TRIBE OF CALIFORNIA
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON THE
SELF-GOVERNANCE DEMONSTRATION PROJECT
OCTOBER 20, 1993**

Mr. Chairman, I am *Dale Risling, Sr., Chairman of the Hoopa Valley Tribe of California*. On behalf of the Hoopa Tribe, I appreciate the opportunity to present our views and experiences as a participating Tribe in the Self-Governance Demonstration Project. I would also like to express our appreciation for the support and leadership demonstrated by this Committee over the past several years in moving the Self-Governance Demonstration Project forward. I support the introduction and passage of permanent Self-Governance legislation by the Committee at the earliest possible opportunity.

BACKGROUND ON HOOPA RESERVATION AND TRIBAL SELF-GOVERNANCE

The Hoopa Valley Indian Reservation, at 90,000 acres, the largest in the State, is located in Northwestern California. The Hoopa Tribal Government operates California's only tribal court, law enforcement program, ambulance program and enforces the State's only Tribal Children's Code. Our Tribe is also one of the first to have entered into a Compact of Self-Governance with the United States. In June, 1993, we also jointly signed a single Compact of Self-Governance with the Interior Department and Indian Health Service.

Prior to 1988 and the passage of the Hoopa-Yurok Settlement Act and P.L. 100-472 Title III Self-Governance Demonstration Project, the Hoopa Reservation was mired in constant litigation and conflict involving the ownership and management of trust assets on our Reservation. Today, our Reservation fosters an environment for development and problem solving on the local, regional and national levels. Because of our progress in recent years, despite having the lowest BIA Area Office budget nationwide, our Tribal Forestry Program has produced in 1991 the second highest returns on the sale of Tribal trust timber in the Nation, second only to the Portland Area Office. Our Tribe has also worked with the Indian Health Service for the past several years to develop an alternative rural hospital model to address health care problems in rural Indian country.

Testimony by Dale Risling, Sr.
Self-Governance Demonstrated Project

Page 2
October 20, 1993

We are proud to have completed a comprehensive health care model that, through utilizing the concept of Tribal Self-Governance and the existing funding distribution formulas, allows us to expand existing services to our people and the local community. The primary factor that has enabled us to provide these expanded services is that program design, planning, development and implementation was done by the Tribe at the local level.

It is important to emphasize that the Self-Governance Demonstration Project is a Tribally driven initiative fundamentally designed to incorporate the government-to-government relationship into a meaningful partnership process between the United States and Indian Tribes; founded on our political relationship with the United States by treaties and agreements. Through the application of the government-to-government relationship, as equal partners in developing solutions and designing programs to meet the needs and priorities of the Tribe, the conflicts between the Tribe and U.S. are reduced significantly. By including Indian Tribes in the decision-making process, a strong working relationship for solving problems is fostered and Tribes gain an opportunity to develop internal expertise to maximize delivery of services and benefits to Indian people.

PROBLEMS ENCOUNTERED IN IMPLEMENTING THE PROJECT

While implementation of the Project has provided numerous benefits to Tribes and Indian people, it has also produced some significant challenges for Tribal Governments. Since the passage of the Self-Governance Project, we have struggled to bring the BIA Indian Reservation Road Program (IRRP) into the our Self-Governance Project. We estimate that we can reduce the BIA's 2-3 year design-through-construction timeframes to only 14 months under the Self-Governance Project. Also, with road construction under the control of the Tribe, we can better coordinate other reservation development efforts with transportation planning; create local employment opportunities and, increase the Tribe's administrative capabilities and technical expertise. We have, unfortunately, experienced continuous BIA bureaucratic obstacles in trying to achieve this goal.

Our negotiations to determine the Hoopa share of the Road Construction Program were completed in July, 1992. After one year of jumping through bureaucratic hoops and spending over \$190,000 of Tribal funds on engineering services and an additional \$50,000 on meetings and related expenses; the BIA finally approved our engineering plan for our project in August, 1993. In addition, despite continuous encouragement by the Office of Self-Governance and the Tribe, the BIA did not approve the construction phase of our project for three months after receiving authorization from the Federal Highway Administration to proceed.

Since beginning the effort to assume the IRRP, the BIA Sacramento Area Office and Central Office personnel have challenged our capability for performing in accordance with Federal highway construction standards; questioned the qualifications of our consulting engineer firm; and, created every conceivable obstacle in an effort to prevent us from being reimbursed for our expenses for our work on the project. Similar problems have been encountered when we have attempted to assume the Transportation planning funds under the Self-Governance Project.

We have responded to each and every challenge with documentation and verifications of our capabilities for performing the requirements associated with road construction projects. Even as late as September, 7, 1993, the Sacramento Area Office and BIA Division of Transportation attempted to stop our project by requesting that Assistant Secretary Deer remove the road construction project from our Compact. Exercising the leadership of her new responsibilities and authority, Assistant Secretary Deer maintained a firm policy position that our road construction project could, indeed, be kept in the Self-Governance Project. Needless to say, trying to gain Tribal control of the BIA road construction program has proven to be very frustrating and expensive for our Tribe.

Throughout this process to negotiate inclusion of the IRRP in our Compact, the BIA has attempted application of the Federal Acquisition Regulation System (FARS) to the Tribe. Despite our numerous efforts to secure clarification on the application of the FARS to the Tribe, the policy guidance of the various offices of the BIA has been inconsistent and arbitrarily applied. As we have pointed out to the BIA on numerous occasions, it is ironic that the Tribe can administer the vast majority of our Compact funds under Tribal Procurement Policies without problems; however, when construction funds are involved, the process becomes so bureaucratic that Tribes often forego the service and benefits for which the funds were appropriated. I have attached an issues paper that was developed by the Tribe and presented to the Office of Self-Governance on matters related to the FARS. Included in this attachment is a letter from the Office of Self-Governance which disapproves our previous proposed amendment to our Compact addressing this problem.

We believe that the Self-Governance legislation should clarify that the FARS apply to construction projects only when the Tribe does not have established procurement procedures. This policy would be consistent with Title III since a prerequisite to participating in the Self-Governance project is that Tribes must have first demonstrated their management and administrative capabilities before being accepted into the Project.

Another of our concerns is in the area of establishing and maintaining base budgets for Self-Governance Tribes. The Congressional directives for base budgets for certain Self-Governance Tribes has been included in appropriations language. The underlying

principle for Tribal base budgets is consistent, predictable funding levels. However, in another arbitrary and unilateral decision, the BIA transferred funding from our negotiated FY 1993 Annual Funding Agreement to pay for short-falls in the Education Administrative budgets. We believe that the BIA has violated the directive of Congress in transferring these funds, especially since funds that are otherwise available to be included in Self-Governance Compacts has been transferred into the Education Program where it is not accessible to Self-Governance Tribes. We believe that the Congress needs to correct this violation by directing that the BIA honor its negotiated agreements with Self-Governance Tribes by restoring and maintaining the funding to the Self-Governance Annual Funding Agreements base budgets.

Recommendations for the Permanent Legislation:

The Hoopa Tribe appreciates the work of Senator McCain in drafting the draft legislation to make Tribal Self-Governance permanent. We support the introduction of this legislation with recommended Tribal amendments and request the Committee to schedule a hearing in the most expedient manner. We would, however, like to make the following comment on the proposed bill:

1. The Tribe is concerned by the impression of continuing to legislate certain programs out of the reach of Tribal governments. We believe there continues to be a misunderstanding by many individuals regarding the concept that the relationship between the United States and Indian Tribes, in fact, involves political entities instead of one based on race. We should always strive to clarify to all parties that the financial and service obligations of the United States to Indian Tribes is a result of treaties and agreements with sovereign Indian nations. We continue to be concerned that language contained in legislation intended to further Tribal self-governance prohibits certain programs from being included in our Compacts only perpetuate this misconceived idea. We believe that the Congress needs to express their intention to continue moving toward the policy of making all funds, including education and irrigation project funds, available to Tribes under Compacts of Self-Governance.
2. There is a need for an effective, pro-active method for establishing policy for the Self-Governance Program. We believe that the primary reason that the regulation waiver provisions contained in Title III have not been implemented is because of the unwillingness of Federal officials to simply make a decision on matters beneficial to the Tribes. We want to ensure that the proposed negotiated rule-making process contained in the draft permanent Self-

Governance legislation does, in fact, create a streamlined and pro-active decision-making process. Hopefully, the Congress will make clear that the negotiated rule-making process fully respects and supports government-to-government principles.

3. We are concerned by what appears to be efforts by Federal agencies to pursue negotiation formulas and policies that minimize opportunities for Self-Governance Tribes to participate in various programs. As raised earlier, an example was when the BIA reprogrammed Indian Child Welfare funding to be used for education administration. Another example is the recent negotiations with the Indian Health Service in which various distribution factors were used, including Tribal membership, service units, service areas and national population levels, or the number of area offices. The common factor for choosing the formula to be applied seems to be based primarily on the objective of reducing the impact of negotiating Tribes on the activities of the agency. The Congress should direct the participating agencies to sufficiently justify the choice and application of such formulas and provide consistency in their applications; consistent with the flexibility necessary to honor the government-to-government relationship between the United States and Indian Tribes.

Again, I appreciate the support of the Committee in making self-governance a reality in Indian Country. I would be glad to submit any additional information or respond to any questions that you may have.

Attachments

DRAFT

**ISSUES REGARDING THE APPLICATION OF THE
OFFICE OF FEDERAL PROCUREMENT POLICY ACT
AND THE FEDERAL ACQUISITION REGULATIONS TO
SELF-GOVERNANCE TRIBES**

Developed by: The Hoopa Valley Tribe

Background: The following issues are presented in preparation of the upcoming policy meeting regarding the application of the Federal Acquisition Regulation System (FARS) and related statutes to Self-Governance Tribes. It is expected that all the appropriate federal personnel will be in attendance in order to develop policy positions for issues relating to the Self-Governance Demonstration Project.

It is the position of the Hoopa Valley Tribe that the statutory and regulatory language contained in the Office of Federal Procurement Policy Act and its subsequent regulations do not apply to the Tribe. It is the Tribe's contention that the FARS were developed for the exclusive use of agencies of the Federal Government. Because of this, trying to impose the FARS on the Hoopa Tribe creates numerous insurmountable issues for tribal and federal officials because of the seemingly arbitrary manner in which they appear to be applied. The Tribe believes that the application of the FARS on Tribes results in an undermining the spirit and intent of the Self-Determination and Self-Governance Acts. Furthermore, the Tribe contends that, absent a clear statutory mandate otherwise, under the Self-Governance Demonstration Project the Congress and Administration have authorized and directed that vague language contained in statutes and regulations be construed in favor of providing flexibility in the implementation of the Project.

The issues regarding this matter are as follows:

Issue # 1. Apparently, 25 U.S.C., Sec. 450j (1988 Self-Determination Act amendments) is the only statutory basis to impose the Federal Acquisition Regulations System (FARS) onto the Hoopa Tribe (attachment # 1). As you can see, the statutory language refers to the application of the Office of Federal Procurement Policy Act (OFPPA), 41 U.S.C., to construction contracts. However, 41 U.S.C., Sec. 401 & 403 establishes that the OFPPA applies to "executive branch[es] of the Federal Government". Sec. 403 of the Act defines an executive agencies as "specified in section 101 of Title 5" (attachment # 2). 5 U.S.C., Sections 101, 104 & 105 define an executive agency as "an Executive department, a Government corporation, and an independent establishment" (attachment # 3).

Questions:

1. Since the Tribe is not identified in any of the above statutes, where is it mandated that they be applied to the Hoopa Tribe? What legal and/or regulatory language

and specific citations mandate such application?

2. The OFPPA and FARS state that their application is to executive agencies of the Federal Government. If the application of these laws is mandated on the Hoopa Tribe, does it then follow that the Tribe becomes an executive agency, as defined by the statutes and FARS?
3. If the answer to item # 3 is yes, what rights, benefits and authorities are bestowed upon the Tribe as an executive agency? If the answer to # 3 is no, why?
4. If the Tribe becomes an executive agency with authorities and responsibilities comparable with the federal agency, should the Tribe be entitled to receive the administrative funds from the federal agency in carrying out the same authorities and responsibilities?
5. If the statutory application of 41 U.S.C (OFPPA). and 5 U.S.C. to the Tribe are not clear, can a Self-Governance Policy be developed that provides that the Tribe can apply their approved procurement policies to all projects included in their Compacts and Annual Funding Agreements? Does the proposed Hoopa Compact amendment (Attachment # 4) provide sufficient guidance for developing such a policy? If not, what changes are needed?

Issue # 2. The FARS, which are established under the authority of 41 U.S.C. (OFPPA), impose various authorities and responsibilities on the "head of the agency". Assuming that 41 U.S.C. and 5 U.S.C. do apply to the Tribe:

1. Is the "head of the agency", as defined under 48 C.F.R., Chapter 1, Subpart 2.101 (FARS, attachment 5), the Tribal Chairperson?
2. If so, what is the specific statutory and/or regulatory language that provides for that delegation?

Issue # 3. Assuming that the FARS do apply to the Tribe:

1. Why shouldn't the Advance Payment provisions contained in Subpart 1432.4 (attachment 6) apply to Tribal construction contracts?

UNITED STATES CODE ANNOTATED

Title 25

Indians

Sections 441 to End

§ 450j. Contract or grant provisions and administration

(a) Applicability of Federal contracting laws and regulations; waiver of requirements

Contracts with tribal organizations pursuant to section 450f of this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of sections 270a to 270d of Title 40: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act: *Provided further*, That, except for construction contracts (or sub-contracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.

**THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA**

**TITLE 41
PUBLIC CONTRACTS**

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

- Sec.
401. Congressional declaration of policy.
402. Congressional findings and purpose.
403. Definitions.

§ 401. Congressional declaration of policy

It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

- (1) promoting full and open competition;
- (2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;
- (3) promoting the development of simplified uniform procurement processes;

- (4) promoting the participation of small business concerns;
- (5) supporting the continuing development of a competent, professional work force;
- (6) eliminating fraud and waste in the procurement process;
- (7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;
- (8) promoting fair dealings and equitable relationships with the private sector;
- (9) ensuring that payment is made in a timely manner and only for value received;
- (10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;
- (11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract;
- (12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements; and
- (13) promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required.

§ 403. Definitions

As used in this chapter—

- (1) the term "executive agency" means—
 - (A) an executive department specified in section 101 of Title 5;
 - (B) a military department specified in section 102 of such Title;
 - (C) an independent establishment as defined in section 104(1) of such Title; and
 - (D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of Title 31;
- (2) the term "procurement" includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout;

UNITED STATES CODE ANNOTATED

Title 5

Government Organization and Employees

§§ 1 to 703

§ 101. Executive departments

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health, Education, and Welfare.
- The Department of Housing and Urban Development.
- The Department of Transportation.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 378; Pub.L. 89-670, § 10(b), Oct. 15, 1966, 80 Stat. 948; Pub.L. 91-376, § 6(c)(1), Aug. 12, 1970, 84 Stat. 776.

PART I—THE AGENCIES GENERALLY

Chapter	Sec.
1. Organization	101
3. Powers	301
5. Administrative Procedure	501
7. Judicial Review	701
9. Executive Reorganization	901

¹ Pub.L. 90-83 added section 600 to chapter 6 without making a corresponding change in Part Analysis.

CHAPTER 1—ORGANIZATION

- 101. Executive departments.
- 102. Military departments.
- 103. Government corporation.
- 104. Independent establishment.
- 105. Executive agency.

§ 105. Executive agency

For the purpose of this title, "Executive agency" means an Executive department, a Government corporation, and an independent establishment.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 379.

§ 104. Independent establishment

For the purpose of this title, "independent establishment" means—
(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

(2) the General Accounting Office.

**PROPOSED AMENDMENT TO THE COMPACT OF SELF-GOVERNANCE REGARDING
THE APPLICATION OF THE FEDERAL ACQUISITION REGULATIONS SYSTEM**

Proposal: To amend the Compact by including language that the Federal Acquisition Regulations System (FARS) do not apply to Tribal activities being conducted pursuant to a Compact of Self-Governance. This amendment provides that a Self-Governance Tribe has the option of using their Tribal written acquisition regulations or the FARS for carrying out activities under the Compact. The proposed language is as follows:

ARTICLE II, SECTION 11, NEW "(c)"

"In interpreting section 450j of the Indian Self-Determination Act, the _____ Tribe is not an "executive agency" as defined in the Federal Acquisition Regulations System, C.F.R 48, Part 1, subpart 1.1, and such regulations do not apply to services, activities, functions and programs, including construction projects, under this Compact of Self-Governance. This Compact is deemed to be an executive agreement as defined under C.F.R 48, Part 1, subpart 1.405. In carrying out services, activities, functions and programs under this Compact, the Tribe may, by written notice to the Secretary, utilize its written Tribal acquisition regulations or the Federal Acquisition Regulations System if it so chooses."

GOVERNING AUTHORITY:

Attachments:

1. 25 U.S.C., Sec. 450j Contract or grant provisions and administration; (a) Applicability of Federal contracting laws and regulations; waiver of requirements
2. 48 C.F.R, Chapter 1, Part 1, subpart 1.101 - Purpose, Authority, Issuance
3. 48 C.F.R., Chapter 1, Part 1, subpart 1.405 - Deviations pertaining to treaties and executive agreements

Title 48—Federal Acquisition Regulations System

Subpart 1.1—Purpose, Authority, Issuance

1.101 Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

PART 2—DEFINITIONS OF WORDS AND TERMS

Sec.

2.000 Scope of part.

Subpart 2.1—Definitions

2.101 Definitions.

Subpart 2.2—Definitions Clause

2.201 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42107, Sept. 19, 1983, unless otherwise noted.

2.000 Scope of part.

This part defines words and terms commonly used in this regulation. Other terms are defined in the part or subpart with which they are particularly associated (see the Index for locations).

Subpart 2.1—Definitions

2.101 Definitions.

Executive agency means an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Head of the agency (also called *agency head*) means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency; and the term *authorized representative* means any person, persons, or board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

CHAPTER 14—DEPARTMENT OF THE INTERIOR

Department of the Interior

1432.402

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311-2 Contract clause.

The clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-2, shall be modified for use in accordance with the instructions in 1452.228-7.

PART 1432—CONTRACT FINANCING

Subpart 1432.3—Loan Guarantees for Defense Production

Sec.

1432.304 Procedures.

1432.304-2 Certificate of eligibility.

Subpart 1432.4—Advance Payments

1432.402 General.

1432.404 Exclusions.

Subpart 1432.8—Assignment of Claims

1432.808 Procedure.

AUTHORITY: Sec. 206(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14265, Apr. 10, 1984, unless otherwise noted.

Subpart 1432.3—Loan Guarantees for Defense Production

1432.304 Procedures.

1432.304-2 Certificate of eligibility.

(a) The Assistant Secretary—Policy, Budget and Administration shall authorize guaranteed loan applications and transmit them to the Federal Reserve Bank as prescribed in FAR 32.304-2(h).

(b) Applications for loan guarantees (see FAR 32.304-1) and the contracting officer's certificate of eligibility (see FAR 32.304-2) shall be submitted by the head of the contracting activity to the Director, Office of Acquisition of Property Management for further action under paragraph (a) of this section.

Subpart 1432.4—Advance Payments

1432.402 General.

(a) Except for contracts excluded under paragraph (b) below and under

1432.404, the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The Assistant Secretary for Indian Affairs is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4 for—

(1) Contracts with States or similar public bodies for foster home care of Indian children for periods not in excess of 90 days;

(2) Contracts with state universities or similar public bodies for surveys of physical resources and the development of studies of social and economic factors affecting Indian tribes without specific security for periods not in excess of 90 days; or

(3) Contracts with Indian tribal contractors which are totally Indian-owned and controlled nonprofit businesses and which qualify for contracts with the Bureau of Indian Affairs. The amount of the advance payments authorized shall not exceed \$250,000.

(c) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until it is obtained from the contractor.

(d) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the head of the bureau finance office (see FAR 32.402(e)(2)) to the head of the contracting activity for transmittal to the Chief, Division of Acquisition and Grants under paragraph (a) above. Recommendations which do not contain the information required by FAR 32.409-1 or FAR 32.409-2 will not be processed by the Division of Acquisition and Grants.

(e) The Assistant Secretary for Indian Affairs is required to make a detailed report to the Assistant Secretary—Policy, Budget and Administration on all advance payments authorized under paragraphs (b)(1) and



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



AUG 16 1993

RECEIVED
AUG 26 1993

Honorable Dale Risling
Chairman
Hoopa Valley Tribe
P.O. Box 222
Hoopa, California 95546

Hoopa Valley Tribal Council

Dear Dale:

Your proposed amendment to the compact regarding the non-application of the Federal Acquisition Regulations cannot be approved.

The deviation section at 48 CFR Subpart 1.4 provides an interesting possibility to pursue. We are willing to pursue the deviation under the process identified with a proper justification.

To approve the amendment forwarded by you, it would be necessary for the Secretary to make a determination that the FAR is "not appropriate" or "inconsistent" with the purposes of the Act and that the waiver is in the best interest of the Indians. This will require justification as was indicated in the March 23, 1993, letter to you from the Assistant Secretary. You will need to give us a specific alternative with justification for us to pursue the matter. In the meantime, I recommend that you accept the amendment as drafted by the BIA in order to preserve the funds.

If you want to keep the same contractor to advise you regarding the work during construction under force account, please forward the appropriate request and justification for waiver under FAR. Likewise, if you want advance payments.

Sincerely,

Director, Office of Self-Governance

Tribal Mail: _____ COPIES TO: _____

Couper: DALE ✓

Departments: DANNY J. BIORDINI

Comm: _____

Copied by: _____ Date: _____

**SELF-GOVERNANCE TRIBES THAT HAVE ENTERED 1994
ANNUAL FUNDING AGREEMENTS WITH THE DEPARTMENT OF INTERIOR**

ALASKA

Tanana Chiefs
Kawerak, Inc.
Southeast Alaska Tribes

ARIZONA

Salt River Pima-Maricopa Indian Community

CALIFORNIA

Hoopa Valley Indian Tribes

MICHIGAN

Grand Traverse Band of Ottawa and Chippewa Indians

MINNESOTA

Mille Lacs Band of Chippewa Indians
Leech Lake Band of the Minnesota Chippewa Tribe

MONTANA

Chippewa Cree of the Rocky Boy Reservation
Confederated Tribes of Salish and Kootenai Tribes of the Flathead Reservation

NEVADA

Duck Valley - Shoshone Paiute Tribe
Ely Shoshone Tribe
Duckwater Shoshone Tribe

OKLAHOMA

Absentee-Shawnee Tribe
Cherokee Nation of Oklahoma
Chickasaw Nation
Muscogee Creek Nation
Sac and Fox Nation

OREGON

Siletz Tribe

WASHINGTON

Lummi Indian Nation
Quinault Indian Nation
Jamestown S'Klallam Indian Tribe
Port Gamble S'Klallam Tribe
Makah Tribe
Lower Elwha S'Klallam Tribe
Squaxin Island Tribe
Swinomish Tribe

WISCONSIN

Oneida Tribe of Wisconsin

28 Tribes

NEW MEXICO

*Ramah Navajo Chapter
*Pueblo of Santa Clara

*Pending 1994 Negotiations

30 Tribes

SELF-GOVERNANCE TRIBES
THAT HAVE OR WILL COMPLETE NEGOTIATIONS
WITH THE INDIAN HEALTH SERVICE

Beginning October 1, 1993

Cherokee - Oklahoma
Hoopa - California
Grand Traverse - Michigan
Mille Lacs Band - Minnesota
Flathead - Montana
Sac and Fox - Oklahoma

Beginning January 1, 1994

Port Gamble - Washington
Lummi - Washington
Jamestown S'Klallam - Washington
Makah - Washington
Siletz - Oregon
Absentee-Shawnee - Oklahoma
Duckwater Shoshone - Nevada
Ely Shoshone - Nevada

TESTIMONY OF THE HONORABLE CHRISTINE COLLISON, PRESIDENT
KETCHIKAN INDIAN CORPORATION
BEFORE THE
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
ON S. 1618

My name is Christine Collison. I am the duly-elected President of Ketchikan Indian Corporation, a tribal government organized under the Indian Reorganization Act (I.R.A.). I am pleased to be able to testify to this Committee on S. 1618, a bill that provides permanent legal authority for the Tribal Self-Governance efforts associated with the Department of the Interior and increase the number of Tribes eligible to sign Compacts and Annual Funding Agreements with the Department.

Ketchikan Indian Corporation (KIC) is a Tribe that has undergone rapid growth in its program responsibilities over the past three years. For many years prior to 1992, we administered contracts and grants under P.L. 93-638, the Indian Self-Determination Act. For the past three years we have joined with Central Council Tlingit Haida and three other Tribes as Signatories to the Southeast Alaska Compact of Self-Governance. The five Signatory Tribes to the combined Southeast Alaska Tribes' Compact of Self-Governance with Interior are KIC, Tlingit Haida Central Council, Organized Village of Kake; Sitka Tribe of Alaska, and Yakutat Native Association.

KIC strongly supports quick enactment of S. 1618. The KIC Tribal Council believes that the Self-Governance effort is one of the most important federal policies to affect Indian Tribes in the last 20 years. Self-Governance allows tribes to address issues that arise at the local level. Our KIC Tribal Council has determined that our native students are at risk - their dropout rate is 63%. We have redesigned some of our education programs to meet this need. That is just one of the many examples of the flexibility we have under Self-Governance.

Another benefit is that our Tribal Council's effectiveness and commitment has improved dramatically. Tribal Council members are now involved in developing policy that gives specific direction to program and administrative staff. Council members are more informed about the immediate needs of our membership.

In addition to expressing our strong support for the bill, KIC specifically asked to testify in order to urge this Committee to include Report language that will permit any Tribe which is a signatory to a multi-tribal Compact to negotiate a separate, single-Tribe Compact with the Interior Department.

KIC asks that you clearly indicate in the Report language that the Committee intends S. 1618 to mean that any Tribe like KIC which is now participating as a Signatory to a multi-tribal Compact shall be immediately eligible to negotiate a separate, single-Tribe Self-Governance Compact shall be immediately eligible to negotiate a separate single-Tribe Self-Governance Compact with the Interior Department if that Signatory Tribe so chooses. (We have included proposed Report language as an attachment to our testimony.) KIC understands that three other Signatory Tribes, the Organized Village of Kake, Sitka Tribe of Alaska, and the Yakutat Native Association, also seek this same authority. All of us have the full support of the fifth Signatory Tribe to our multi-tribal Compact, the Tlingit and Haida Central Council. In fact, we note here KIC's appreciation for the role that

Central Council played, as one of the original ten Self-Governance Tribes, in making it possible for KIC to be a Signatory Tribe alongside Central Council in the Southeast Alaska Tribes' Compact.

During the Demonstration phase of Self-Governance, Interior limited our opportunity to participate only through a multi-Tribe Compact with four other Signatory Tribes. But now as the number of Tribes is increased on an annual basis and the project is made into a permanent program, our Tribal Council wants the option to have a separate, single-Tribe Compact. Additionally, virtually all of the infrastructure for KIC to have a separate Self-Governance Compact is now in place. A primary example of this is our separate and distinct fund transfer system. We ask you to avoid enacting any legislative language that could be interpreted in such a way that would exclude KIC or any other Southeast Alaska Signatory Tribe from immediately entering into a single-Tribe Self-Governance Compact with the U.S. government. It would be unfair to KIC as well as an unnecessary administrative burden on the BIA and OSG if KIC was forced to revert to the BIA contracting system and wait its turn in line as an 'additional Tribe' in order to qualify to negotiate a separate Compact.

KIC began operating our BIA-funded programs under the Compact on January 2, 1992. One of our main aims was to educe a layer of BIA bureaucracy and transform the savings into tribal direct service programs. Our Compact has accomplished this - the southeast Alaska BIA Agency Office was abolished and some of the savings were transferred to our Compact.

KIC has now begun our third year of Compact administration. At each of its annual negotiations, KIC and the other Southeast Alaska Compact Signatory Tribes have pressed hard for a tribal share of the Central Office budget. Last year, BIA provided only a proportional amount (approximately \$100,000) to our multi-tribal Compact as a whole, despite the fact that there are five separate Signatory Tribes to our Compact. There is no rational basis for denying each Signatory Tribe its own Central Office share.

At the Agency and Area Office budget levels, Interior has uniformly required a tribal share to be calculated based on factors related to the program or account being divided (e.g., if a Tribe has 3% of the trust acres in an Agency Office, its tribal share is 3% of the Agency's realty funds). This same approach should be applied to Central Office. Indeed, this Committee and other committees of Congress have previously suggested that this be done. Nevertheless, to date Interior has refused all efforts to negotiate uniformly and consistently a tribal share of Central Office programs. Moreover, the negotiation of program-based tribal shares of Central Office budgets would go a long way to softening the inequity of BIA-wide funding distributions. KIC asks this Committee's special help in directing Interior in Report language to do so in F.Y. 1995 negotiations in the coming months. (We have included proposed Report language as an attachment to our testimony.)

KIC has experienced many problems with the BIA's implementation of the Self-Governance Demonstration Project. The most recent problem is in the area of contract support. It is our position that because of the added responsibility of administering all our programs, we are entitled to a larger share of contract support. To ensure that Self-Governance succeeds, we need to have the resources to do the job.

At the same time, our Tribe has experienced many positive things as a result of our participation in Self-Governance. We have realized the benefit of increased tribal program funds as a result of our Compact reducing one layer of the BIA bureaucracy. We have also had the advantage of increased flexibility in targeting funds towards economic development priorities of our Tribe. We have also been able to increase and improve services to our members in the key areas of education and social services.

We are eager to have the Tribal Self-Governance Demonstration Project given permanent authority at the Interior Department and ask that you make every effort to secure passage of S. 1618 as quickly as possible. We support the fact that the scope of the bill has been limited so that no controversial provisions will delay quick enactment this year.

Self-Governance is working as envisioned by the 1988 Act that created it. Our Tribe is becoming more reliant on our own abilities to develop solutions to our own unique problems. We highly recommend passage of S. 1618 so that this authority is made permanent. Thank you for the opportunity to present our position. I would be happy to answer any questions you might have.

Attachment.

ATTACHMENT

Proposed Report Language Permitting Any Signatory Tribe to Negotiate a Separate, Single-Tribe Compact

The Committee also intends to permit any Tribe now participating as a Signatory Tribe to a multi-Tribal Self-Governance agreement to, at that Tribe's option, separately negotiate and participate in a single-Tribal Self-Governance Compact and Annual Funding Agreement with the Department of the Interior. Because such a Tribe is already participating as a Signatory in a Self-Governance agreement, its election to go its separate way in a single Self-Governance agreement should not be constrained by the statutory ceiling on the number of new or additional Tribes permitted to begin participation each year. In particular, the Committee expects the Department of the Interior to follow the Committee's intentions with respect to any such request received from a Signatory Tribe participating in the Southeast Alaska Tribes' Compact of Self-Governance.

Proposed Report Language on Tribal Shares of BIA Central Office Funds

The Committee is aware that, despite repeated congressional directives, no negotiation of tribal shares of BIA Central Office funds has been accomplished that is similar in procedure and scope with that used on BIA Area and Agency Office budgets during the past three fiscal years. Although significant transfers of funding and responsibilities have been accomplished, Central Office budgets remain largely untouched. The Committee therefore directs the Interior Department to ensure that all Central Office budgets be subjected to the same negotiation process currently used with Area and Agency Office budgets, applying the same or similar tribal share formulas and residuals percentages used in negotiations at those levels.

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