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TRIBAL SELF-GOVERNANCE

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
SECOND SESSION
ON
OVERSIGHT HEARING ON TRIBAL SELF-GOVERNANCE: OBSTACLES AND IMPEDIMENTS TO EXPANSION OF SELF-GOVERNANCE
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The committee met, pursuant to notice, at 9:38 a.m. in room 485, Russell Senate Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, and Murkowski.

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

The CHAIRMAN. Good morning. This morning the committee will receive testimony on the Department of the Interior’s management of the Tribal Self-Governance Program. For many, it is hard to imagine that just a little over 30 years ago, the Federal Government was the sole provider of all or nearly all essential governmental services to Indian tribes and their members, including police, fire, education, and health care services in Indian country.

In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act, Public Law 93–638. Since then, Congress has increasingly authorized Indian tribes to manage Federal programs and assume control over their own affairs. Tribal self-governance aims to foster strong tribal governments and healthy reservation economies as mechanisms to further tribal government.

Encouraged by the opportunities available under the act to operate and shape BIA programs to be more responsive to their community needs, Indian tribes across the country actively sought to contract and compact with the BIA. As more tribes assumed control over their own affairs, there has been a corresponding reduction in the Federal bureaucracy and an improvement in the quality of services delivered to tribal members.

Recently, however, many tribes have been reluctant to enter into new contracts or to expand their current contracts and compacts. Some tribes have even begun to retrocede contracts as authorized under the act. This hearing will provide an opportunity for the department and invited tribal witnesses to offer their views and comments on these trends, and possible suggestions for resolving these challenges.

The CHAIRMAN. Vice Chairman Dorgan is at a leadership meeting. He will be a few minutes late. In the meantime, Senator Murkowski?
STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator Murkowski. Thank you, Mr. Chairman, and good morning.

There is little dispute within Indian country that the policy of self-determination first enunciated by President Nixon is probably one of the best, if not the single best thing that this Federal Government has ever done to help our Native people. Alaska tribes are 100 percent self-governance for Indian Health Services program and they compact BIA program. Although none of the witnesses today are from Alaska, so many of the concerns they are going to discuss are shared by Alaska self-governance tribes.

The premise of self-determination is that Native people are stronger when they deliver Federal programs and services to their people, rather than rely on the Federal Government for service delivery. The quality of service delivery is higher when the people who deliver those services are directly accountable to tribal members. The opportunities for Native employment are greater.

Before self-governance came to Alaska, there were very few opportunities for our Native institutions to employ returning graduates from college and post-graduate programs. The self-governance institutions in Alaska have emerged as employers of choice for our Native young people.

This committee wonders with good reason why self-governance is not more popular around the country, and we need look no further than the tribes which have enthusiastically taken on Federal responsibilities under their self-governance compacts, but have then discovered that the Federal Government is unwilling to live up to its responsibilities under those compacts.

The lack of funding for contract support costs, which have been promised under the Indian Self-Determination Act and self-governance compacts leads the list of concerns that I frequently hear from Alaska tribes. I would hope this morning each of the witnesses will address themselves to the question of whether inadequate contract support costs deterred tribes from entering into self-governance compacts.

Now, we hear that BIA is giving their employees cost of living increases, but will not fund cost of living increases for tribal employees who perform the same functions under the self-governance compacts. While it is true that tribes can ask the Federal Government to take back the responsibility for delivering programs and services, self-governance is truly a matter of pride. Self-governance tribes will squeeze as much as they can out of a dollar, but more and more I am hearing that there is less and less to squeeze.

I am pleased that the committee is turning its attention to the issues of self-governance tribes today. I am hopeful that this hearing will lay the groundwork for continued dialog, the 110th Congress and I appreciate your initiative on this, Mr. Chairman.

Thank you.

The CHAIRMAN. Thank you.

Mr. Skibine, please come sit down, the Acting Deputy Assistant Secretary of Policy and Economic Development for Indian Affairs at the U.S. Department of the Interior, and old friend of the committee. He is accompanied by?
Mr. SKIBINE. Thank you very much, Mr. Chairman, Senator Murkowski. I am pleased to be here today to present testimony on the oversight hearing on tribal self-governance.

Essentially, I think my comments have been furnished to the committee and my statement will be made part of the record.

The CHAIRMAN. Without objection.

Mr. SKIBINE. Okay, thank you.

The self-governance program started in 1991 with seven tribes for about approximately $27 million. In 2006, there were 91 funding agreements providing services to 231 tribes for $300 million. So the program has been extremely successful since its inception and the department strongly supports self-governance as an exercise of tribal sovereignty and self-determination.

Its framework is one of administrative flexibility, which allows tribes to determine for themselves what are their program priorities. We have been essentially one of the success stories, I think, for the Administration since its inception.

Indian tribes, of course, may negotiate a non-BIA funding agreements for programs which are of special geographical, cultural and historical significance to the tribe, and they are first negotiating funding agreements with the BIA or other Interior agencies for programs which are available to Indians because of their status as Indians. Each year, the department publishes a list of available programs for inclusion in funding agreements to be negotiated by Interior bureaus other than the BIA. Currently, there are funding agreements with the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, the U.S. Fish and Wildlife Service, and the Office of Special Trustee. Overall, approximately 14 agreements.

In addition, one of the policies of the Assistant Secretary for Indian Affairs is to hold quarterly meetings with the Self-Governance Advisory Committee to discuss and resolve issues of mutual interest. We participate in yearly self-governance conferences at the tribes' invitation. So we are essentially involved with self-governance tribes on a consultation basis pretty much year-round, so that we are well aware to feel the pulse of the tribes when it comes to issues facing those tribes in the self-governance program.

Finally, we are currently working with the title IV tribal self-governance task force to explore the need for amendments to title IV. The Secretary's office asked me this year to lead the department's team in this effort because there was some frustration on the parts of tribes and within our Administration over the length of time it was taking the department to move forward on the negotiations. So at this point, I hope that progress can be made in reaching mutually acceptable solutions to the issues raised by the proposed
amendments. I am sure some of the tribal witnesses will testify on that issue.

We did submit a list of issues we have with the proposed amendments. The tribes have responded and we are now looking forward to starting a negotiation meeting with the Tribal Advisory Committee and hopefully we can resolve most, if not all, of the issues that are of concern.

Finally, I point out in my testimony that the department this year issued a national policy on contract support costs, and hopefully that policy will help alleviate some of the issues regarding contract support funding and having the money accessible to tribes.

With that, I will complete my comments, and I am pleased to answer any questions you may have.

Thank you.

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

The CHAIRMAN. How many years have you been dealing with these issues?

Mr. SKIBINE. Excuse me?

The CHAIRMAN. How many years have you been dealing with Native American issues?

Mr. SKIBINE. With Native American issues, myself? About 29 years.

The CHAIRMAN. About 29 years. And we saw when self-determination and self-governance began that it was a great success, in 1975. Right? We saw more and more tribes taking advantage of self-governance contracting, because that is the whole theory of our treatment of Indian tribes, to allow them to self-govern as much as possible. By weaning themselves away from the BIA, IHS, and others, they were able to exercise much more self-governance. Right?

Mr. SKIBINE. That is correct.

The CHAIRMAN. How do you account for what appears to be a retrograde of tribes exercising self-governance and the lack of additional tribes seeking the ability to do so? It seems to fly in the face of everything that tribes seek and what we as a Nation want tribes to be able to do?

Mr. SKIBINE. Mr. Chairman, I am, and I stand to be corrected by my acting director, but I am not aware that we are having a regression in the number of tribes that participate in the self-governance program. It is true that the number of tribes seeking self-governance contracts has slowed progressively down because ultimately we have reached a certain plateau and we are certainly open to have more tribes participate in self-governance. I think ultimately tribes, it is their decision of whether to enter into self-governance compacts or not.

The CHAIRMAN. In the 1980’s when I first started getting involved in Native American issues from a legislative standpoint, self-governance seemed to be the way that we thought all tribes were going to go. And now, many of the major, largest tribes have not done so. Would you like to comment?

Mr. REINFELD. Self-governance began in 1991. You are talking about, since 1975, the contracting, the 638 contracting.

The CHAIRMAN. Yes.

Mr. REINFELD. One of the requirements to get into self-governance is to have been operating successfully a contract for 3 years.
So contracting has diminished because some of these tribes, all of these tribes have come into self-governance.

The CHAIRMAN. So we don't have any problems?

Mr. REINFELD. I didn't say that.

Mr. SKIBINE. I guess maybe we are not having, in the self-governance, under title IV, we have seen a steady increase and no reduction in the number of tribes. There has been a leveling off of the number of tribes entering into self-governance compacts because many tribes, at their option, may decide that they want to continue having 638 contracts under title I of the act, or want direct services for whatever reason. It is really their decision.

If we have a problem with tribes wanting to enter into self-governance and not doing so, then we need to hear from tribes that that is the case. I think we have not heard that.

The CHAIRMAN. Okay. Here is what we are going to hear from the witnesses, that there are bureaucratic obstacles, and there are other impediments that discourage tribes. For example, the committee has been informed that the BIA is not releasing the full amount of funding appropriated for self-governance and that these administrative hold-backs account for as much as 5 to 10 percent of the funds authorized. The Ak Chin people tell us that, and others.

Why is that occurring? Why would we hold back 5 to 10 percent of the funding?

Mr. SKIBINE. I think that there may have been a hold-back because of congressional rescissions that were essentially held back against all of our budgets, whether central office of tribes, pending knowing exactly whether there was going to be some rescission. I am not all that familiar with the inner working of the budget-area issues. If you want, we can look and ask our Office of Administration to look into that.

The CHAIRMAN. Well, we are also told the BIA sometimes doesn't distribute funding in a timely fashion. Is that legitimate?

Mr. REINFELD. Do you have any comments on that?

Mr. SKIBINE. Yes; there are certain funds that do get to our office late in the fiscal year and don't get to the tribes.

Mr. REINFELD. But why is that?

Mr. REINFELD. Well, it depends on the particular program. Federal Highway funds is one of those. The methodology for contract support and welfare assistance gets to the tribe in two installments, so some of it gets later in the year when there is a better knowledge of the needs, the full need level that could be funded. Those are capped appropriations, so the tribe does not get 100 percent, but there is a pro-rata reduction to keep it within the appropriation limit.

The CHAIRMAN. Let me get this straight. The tribe enters into a contract with somebody to provide a certain service and they agree to pay that contract to that organization, whatever it may be, only they don't get the full amount of money to pay it. Now, if I were a tribe, I would say to heck with that. I will just let the Government pay it.

Mr. REINFELD. The appropriation language does limit the amount that can be spent for the contract support and for the welfare as-
sistance. So to keep within that appropriated level or ceiling, it is pro-rata reduced for all the tribes.

The CHAIRMAN. The IHS tells us that approximately one-half of its budget goes to tribes through self-governance contracts and compacts. I think that in your written testimony, you tell us tribes have only contracted for $300 million in the BIA programs. It seems to me IHS has been more successful than the BIA. Is that a legitimate comment?

Mr. SKIBINE. I am not familiar with the IHS program and funding, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you.

I don’t know if I heard an answer there in the exchange with the Chairman, but in my opening statement I asked for the witnesses to address the question of whether or not inadequate contract support costs are deterring tribes from entering into self-governance compacts. I am not sure if you acknowledge that you agree there is a deterrent effect, if we are not adequately funding the contract support costs.

Mr. SKIBINE. I am not sure if there is a deterrent for the tribe. They can address that better than I can. I think that what we have done this year to try to ameliorate the situation with contract support is adopt this national policy, for which we have the following objectives. It will stabilize funding to each tribe from year to year. It will expedite payments for each tribe, and it will respect the Act's prohibition against reducing contract amounts from one year to the next.

The policy accomplishes these goals by requiring that, subject to appropriations, a tribe be paid the same amount it was paid in the preceding year. It allows the payment to be made very early in the fiscal year, and the only restriction is that the BIA must ensure that tribes do not receive more than 100 percent of its total requirements.

So the adoption of this policy certainly represents forward progress in the area of self-governance. We believe that it will significantly improve administrative flexibility and fiscal stability for tribes with funding agreements. To implement the funding aspect of the policy, the President’s 2007 budget included a 14-percent increase for contract support costs.

Senator MURKOWSKI. So do you consider this full funding for contract support?

Mr. SKIBINE. I am not sure that it is or not.

Do you have any comment on that?

Mr. REINFELD. It remains to be seen, according to what the needs are. It may not be. I do want to add that self-governance tribes receive contract support on the same basis as contracting tribes.

Senator MURKOWSKI. Did you mention, Mr. Skibine, in your initial comments, that there is a report due out on the contract support costs? You mentioned the national policy.

Mr. SKIBINE. Yes; the national policy that we have adopted.

Senator MURKOWSKI. Okay. And that policy was adopted how long ago?

Mr. SKIBINE. It was adopted this year.
Senator Murkowski. So this next fiscal year will be the first time that it is actually in place?

Mr. Skibine. That is correct.

Senator Murkowski. Let me ask you about the PART requirement. OMB requires that Federal agencies justify their programs using the program assessment review tool. One of the concerns that we have heard from our tribes is that, well, self-governance is working for them. They have concerns that BIA is not collecting the data necessary to justify the program. Can you give me your thoughts on this? What are we doing to address this concern?

Mr. Reinfield. I think that the department is changing its strategic plan so that the data that is to be measured in that process, in the Government Performance and Results Act process [GPRA], is going to be more relevant to the tribes' activities.

Senator Murkowski. It is not my understanding that it is relevancy so much as just the data is not being collected. Is there going to be an effort to step that up to make sure that we have the data that is needed for this review or required by this review?

Mr. Reinfield. We have put in the funding agreements provisions which tribes are agreeing to provide the Government Performance and Results Act, which is one of the first steps in the PART process. So yes, we have moved forward on that.

Senator Murkowski. Thank you, Mr. Chairman.

The Chairman. Let me just get this straight. The tribe enters into a contract for a certain service for a certain amount of money. But because of budgetary constraints or acts by the Appropriations Committee, there is not enough money, so they don't pay them as much as they originally contracted to pay. Is that correct?

Mr. Skibine. Yes.

The Chairman. Okay. So they enter into that contract and they say they will pay them a certain amount of money to perform that service, but then because of appropriations cutbacks, you may not have sufficient money to allow them to pay the commitments under that contract. Is that correct?

Mr. Skibine. Yes.

The Chairman. Well, I wonder what would happen if we did that with the defense contractors? I mean, that would be interesting. It would be a fascinating experience.

Mr. Reinfield. We do have a provision in the funding agreements. We negotiate off the President's budget.
The CHAIRMAN. Excuse me. But the tribes are negotiating off of what their needs are. They are contracting-out a certain service. Right?
Mr. REINFELD. We do adjust according to the appropriation, and that is a provision.
The CHAIRMAN. Have you ever adjusted up?
Mr. REINFELD. Yes.
The CHAIRMAN. You have?
Mr. REINFELD. If Congress appropriates more dollars for a program, yes, they get more dollars.
The CHAIRMAN. So again, suppose that our defense contractors were dependent upon how much money the Appropriations Committee appropriates for a certain program, and I am sorry we didn’t have enough, so we are not going to pay you completely. I mean, that doesn’t make any sense.
Mr. REINFELD. We roll up their base funding into one number and then adjust it. There is also not only if the President’s budget is greater than the appropriated amount, then we reduce it to the appropriation. But we also add the pay costs to it, so any increases. One time, there was TPA increase, tribal priority allocation increases, that were also added. So I mean, tribes are not only getting reductions, but they are getting increases just by the nature of how it is formulated.
The CHAIRMAN. But is it true that some contracts are not given sufficient amount of money to fulfill the obligation under that contract? Is that true?
Mr. REINFELD. We have pro rata reduced contract support and that is true for that.
The CHAIRMAN. For contract support?
Mr. REINFELD. Yes.
The CHAIRMAN. If I were the guy doing the contracting, I would say, I am not sure I want to get into this contract if I could be paid 5 or 10 percent less than what I entered into. In fact, I think I would see you in court.
Senator Dorgan has just arrived. Do you have anything?
Senator DORGAN. Mr. Chairman, let me offer my regret that I was detained at another meeting, but thank you both for being here. I will defer questions.
The CHAIRMAN. Well, thank you. We will get more into this, but really, Mr. Skibine, we have known each other for a long time. It just doesn’t seem appropriate to me that as we encourage tribes to contract out for certain services, and they are making the decision to do it, and then they obviously should have guidance as to how much money they can contract out for. I am sure that that is the case. But if they can’t pay their bills, then it seems to me that that is not a very attractive way of doing business, where if they would just rely on the Federal Government to do the contracting, the Federal Government very rarely does not pay its bills. So I can see why this might be a disincentive.
Do you see my point?
Mr. SKIBINE. Yes; I see your point. We will certainly look into that.
The CHAIRMAN. All right. I would appreciate it. Thank you. It is good to see you all again. Thanks for coming.
Mr. SKIBINE. Thank you very much.

The CHAIRMAN. Our next panel is Delia M. Carlyle, chairwoman of the Ak Chin Indian Community; Floyd Jourdain, chairman of the Red Lake Band of Chippewas; Melanie Benjamin, chairwoman of the Mille Lacs Band Assembly; and Ron Allen, chairman of the Jamestown S'Klallam Tribe, an old friend of the committee.

We will begin with Delia M. Carlyle, since she hails from the great State of Arizona, a prerogative of the Chair. [Laughter.]

STATEMENT OF DELIA M. CARLYLE, CHAIRWOMAN, AK CHIN INDIAN COMMUNITY COUNCIL

Ms. CARLYLE. Good morning, Mr. Chairman, Mr. Vice Chairman, and Senator Murkowski.

My name is Delia Carlyle and I am currently the chairman of the Ak Chin Indian Community.

The CHAIRMAN. Located?

Ms. CARLYLE. Okay. I have that coming up, sir.

The CHAIRMAN. Okay.

Ms. CARLYLE. Our reservation was established in May 1912 and was originally comprised of over 47,000 acres. In the same year, 3 months later, our reservation was reduced by more than one-half, to its present-day size of just under 22,000 acres. My community is located approximately 35 miles south of Phoenix, AZ, and near my sister tribe of the Gila River Indian Reservation. We are a small, but proud tribe, of 767 enrolled members.

Today, my community is being significantly impacted by hypergrowth in our area. We were once a small rural farming village, but today my area is one of the fastest growing suburbs of Phoenix, if not also in the United States. The explosive growth has also brought big-city problems to my community, which adversely affect our air, water, land, culture, traditions and our own tribal members.

Thus the need for timely and full-funded self-governance programs is more important than ever to assist my community in providing necessary services for our tribal members. I am here today to speak about self-governance programs as they pertain to my community.

At Ak Chin, we have social services, criminal investigator, education, roads maintenance and other consolidated tribal government programs which includes the courts, enrollment, adult education, Band adult education in our self-governance compact. In theory, self-governance was intended to allow an Indian tribe to consolidate all its BIA 638 program funds and reporting requirements into one self-governance compact. The primary objective of self-governance programs is to enable the tribe, not the BIA, to operate its own tribal programs.

Unfortunately, self-governance programs have strayed away from their original intent to strengthen Indian self-determination and self-sufficiency.

One of our biggest problems for my tribe's self-governance program is that the BIA's Office of Self-Governance has become an additional layer of BIA bureaucracy. The problem is that our negotiator is not a local person. The individual is located over 1,000
miles away and three States away in Vancouver, WA. Thus, they do not know the local resources of our area.

Another example is that my tribe may need a social worker, teacher, nurse, therapist, or police officer to help implement a self-governance program. Because there are no local resources through the OSG, my tribe has to turn to the BIA agency and/or regional office for administrative and technical support to implement and operate our self-governance programs. This creates several problems.

First, there is no local BIA support because of the BIA’s agency or regional office lost their technical support person, who was let go or reassigned when OSG took over the program administration. Furthermore, tribes may be stuck in the middle of an OSG and agency regional office turf battle. At times, tribes pay the price for BIA internal strife when an agency office loses personnel and funding to the OSG. The result is that the tribe gets the bureaucratic runaround instead of its questions answered.

In addition, technical assistance funding is practically gone. This hurts tribal program development because of the lack of BIA program technical assistance and support. This is especially true for navigating through the complex funding formula process.

Besides a lack of adequate funding for tribal programs, a huge problem is getting the available self-governance funding drawn down to my tribe. These funds are already authorized and appropriated, but my tribe gets excuse after excuse from OSG that the BIA central office has not forwarded the funds.

For example, in my case, my tribe has not yet received our fiscal year 2004 reservation roads funding. Because of my area’s hyper-growth, roadway infrastructure is a major need. From 2004 to the present, we were promised almost $200,000 for road construction from OSG. Based on that information, we planned and negotiated, along with State and local county officials, for a joint roadway project to help alleviate the mass congestion of traffic going through the main road in my village. The road was built, but the funding has yet to come.

Therefore, my tribe had to cover the funding gap, which meant that other tribal programs such as meals services to our elders, as well as budget cuts to early childhood development programs, as examples, were used to make up for the self-governance shortfall.

Finally, we have recently been informed by OSG that the funding should be available soon, but the amount is less than originally promised.

Another glaring problem is the expanded use of administrative hold-backs by the BIA. In short, the BIA central office is not releasing the full amount of authorized and appropriated funds for tribes, and holding back about 5 percent to 10 percent of tribally earmarked funds. This is a direct violation of section 405 of the Interior Appropriations Act, which requires any hold-backs to be approved by the Appropriations Committee. To this date, there has been no such approval.

In some cases, the BIA claims that hurricane relief or Cobell litigation fees consumed the funds. In addition, at times we have also been told by staff within the BIA that instead of the funds going to the tribes, those funds were returned to the Treasury. In any
case, the funds are not going to tribal programs. As a result, tribes have to cut other much-needed tribal programs to make up for the hold-backs.

We offer the following recommendations to hopefully resolve some of these problems. First, positive impact comes simply from the BIA following Federal law and not enabling administrative hold-backs. It seems that streamlining the funding process would be another good start. There are still too many bureaucratic layers involved. It should not take over 2 years to have funds drawn down to my tribe or any other tribe. We rely on the promised self-governance funding and incorporate those funds into our annual budgets. If we do not receive those funds, we have to make cuts from other important tribal programs, which impact our elders, youth, and all our tribal members.

In addition, we respectfully recommend having local negotiators, limiting the number of tribes per negotiator, and rewarding good negotiators, while getting rid of the ineffective ones.

In conclusion, Mr. Chairman and committee members, I would like to thank all of you for this opportunity. Our community has high hopes that this committee will address the problems of self-governance and we look forward to working with you toward solutions.

Thank you.

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

The CHAIRMAN. Thank you very much.

Mr. JOURDAIN. Yes.

The CHAIRMAN. Thank you. Welcome.

Mr. JOURDAIN. And I agree, Arizona is a beautiful State. [Laughter.]

The CHAIRMAN. Thank you.

STATEMENT OF FLOYD JOURDAIN, JR., CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA

Mr. JOURDAIN. Mr. Chairman, Mr. Vice Chairman, members of the committee, good morning. Thank you for this opportunity to present our issue today and provide the testimony on behalf of the Red Lake Band of Chippewa Indians in Northwestern Minnesota.

I will focus my remarks on the harsh impacts on my tribe and on other tribes that have been caused by the failure of the BIA, the OMB and the Congress to fully fund pay cost increases for self-governance programs. As an aside, I want to add that the Red Lake Band supports the bootstrap amendment that Chief Executive Benjamin and Chairman Allen have testified upon, and having title V authority applied to our title IV agreement would help Red Lake in our ongoing negotiations with the BIA.

To my main point, under Public Law 93–638, tribal employees do what Federal employees previously did for tribes. Congress has regularly encouraged the Administration to treat 93–638 tribal employees the same as BIA employees are treated with respect to pay cost increases and other fixed costs. Because Congress and the Administration have failed to fully fund these costs, Indian tribes have been forced to either absorb the pay cost increases by reduc-
ing services, or to deny tribal employees the pay cost increases received by their Federal colleagues.

As a result, the House Appropriations Subcommittee wrote in its fiscal year 2005 Interior report:

Absorption of costs associated with the Federal pay increases and other unfunded fixed costs cannot continue indefinitely without further eroding core program capabilities.

Over the past 3 years, the Indian programs have absorbed over $500 million in unfunded costs. Reducing Indian services by $500 million every 3 years in order to pay our tribal employees their basic cost of living increases is not a choice tribes like Red Lake can live with.

My written testimony sets out in detail the painful funding cuts that the Red Lake Band has endured in the past 5 years. I will briefly summarize these cuts. For fiscal year 2006, we timely submitted our pay cost worksheet to BIA. If fully funded, that would have given us an increase of over $260,000. The President requested and the Congress enacted fully funded pay costs for the Department of the Interior in fiscal year 2006, but BIA gave us only $97,000.

Why was Red Lake shortchanged $153,000? It turns out BIA did not collect some pay cost worksheets from other tribes when OMB was calculating a totally funded Interior need. So BIA decided to distribute erroneously smaller amounts pro rata among other tribes. Once again, tribes like Red Lake had to pay for BIA’s mistakes.

For fiscal year 2002, there apparently was such acrimony between the BIA budget office and Interior’s Office of Self-Governance that when OSG missed a deadline for submitting pay cost information on self-governance tribes to BIA, $3.3 million was not included in the request that went to OMB and the Congress. When we learned about this mistake, we pleaded with the Congress to correct it. The House added $3.3 million, but at conference with the Senate, that amount was halved. So BIA pro-rated the shortfall to all tribes. Once again, tribes like Red Lake had to pay for Interior’s mistakes.

For fiscal year 2003, 2004, and 2005, Red Lake believes the BIA has miscalculated Red Lake’s proper share of the limited pay cost funding that was requested and appropriated. We have repeatedly asked BIA to report to us how it calculated our share for those years. They have repeatedly failed to give us the report. We even made BIA promise in our legally binding self-governance funding agreement last year to provide us with this information by April 1 of this year. The date has come and gone without the BIA report.

Mr. Chairman, the BIA’s neglect and disinterest in self-governance borders on hostility because we insist on being dealt with fairly and honestly. Must a tribe like Red Lake sue the Secretary just to get something done? This year marks Red Lake’s 10th anniversary under self-governance, but is there cause for celebration?

Certainly, there have been some good things that have come under self-governance, and I describe a few of them in my written testimony. Yet the fact is that prior to fiscal year 1996, the Red Lake Band enjoyed relatively stable funding for our tribal priority
programs, and even saw an occasional increase for the cost of inflation.

Then, beginning with the devastating $100 million cut to the TPA in fiscal year 1996 when Senator Gorton was an Appropriations Chairman, Red Lake saw in that year alone a sudden reduction of 16 percent to 18 percent in funding for our core service programs, including law enforcement, fire protection, social services and natural resources. That was the year we began self-governance and we have never recovered, what with the mandatory and targeted rescissions and pay cost cuts.

No matter how efficient we have become at spending our funds as a result of self-governance authority, we have gone backward because of all the funding cuts and BIA miscalculations of our pay cost increases. Core service funding is less today than 1 decade ago. Contract support has been chronically inadequate and uncontrollable fixed costs have not been funded.

It might seem easiest for some tribes to simply revert back to BIA direct service. At least the BIA service providers would get their annual and step pay increases. But is that really in our best interest? Red Lake does not think so. We want to continue on the self-governance path, but we will need your continued help, Mr. Chairman, and that of this committee, to ensure that self-governance tribes are treated fairly by the BIA, by Interior’s Budget Office, by OMB and by the appropriators.

To that end, we have a couple of requests we have outlined in my written testimony. We suggest a series of questions for you to consider asking the department, and some of them you have asked today; a letter to trigger a GAO investigation of the pay cost debacles at Interior; and a request that you demand that the department immediately provide the Red Lake Band with the pay cost report promised to us by April 1, 2006; and provide us with the funds that should have been given us in prior years and add them to our base funding in future years. We need your help and we need the help of this committee.

In closing, Mr. Chairman, the failure to fully fund tribes’ uncontrollable costs, especially pay costs, during the last 5 fiscal years, has caused serious and irreparable harm to tribal core service programs. Errors, omissions, and miscalculations on the part of the BIA have compounded this problem. These matters are clearly a disincentive for tribes to continue participating in or to expand their participation in self-governance.

On behalf of the Red Lake Band and tribes across the country, thank you for asking me to testify today. I appreciate the opportunity and for your assistance in drawing attention to the matters that I have presented today.

Thank you.

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

The CHAIRMAN. Thank you very much.

Chairwoman Benjamin, welcome.
STATEMENT OF MELANIE BENJAMIN, CHAIRWOMAN, MILLE LACS BAND ASSEMBLY

Ms. BENJAMIN. Good morning, Mr. Chairman and members of the committee. You have my written statement, so I will be brief. I also want to say Arizona is a beautiful State. [Laughter.]

The CHAIRMAN. Thank you.

Ms. BENJAMIN. The Mille Lacs Band of Ojibwe has been among a handful of Indian tribes that have——

The CHAIRMAN. Senator Dorgan says that is not a requirement for witnesses. [Laughter.]

Ms. BENJAMIN. The Mille Lacs Band of Ojibwe has been among a handful of Indian tribes that have devoted countless hours over the past 18 years to the task of shaping Federal-tribal self-governance laws, regulations, and practice. Our former tribal Chairman Arthur Gahbow was among the 10 tribal leaders who met in Kansas City under the name of the Alliance of American Indian Leaders in 1988. They were led by Roger Jourdain and Wendell Chino. As a group, they first proposed the concept of self-governance.

Our goal has always been to expand tribal participation in self-governance. But to do that, we must remove the obstacles. It is no secret that generally speaking the Federal bureaucracies are threatened by any expansion of tribal self-governance because it results in a shift of power, money and job away from the Federal agencies and into tribal government employees.

From the beginning, our tribal allies in Congress such as you, Mr. Chairman, have had to push self-governance laws without support from the Administration. Today, we are here to report that after 6 years, we have been unable to persuade the Department of the Interior to support detailed reform legislation. We only want to bring the title IV BIA self-governance statute into conformity with the title V Indian Health Service self-governance statute.

So we ask that, as an interim measure, the Congress pass a simple technical bootstrap amendment. We realize that these are the closing days of Congress, yet this amendment is so important. It will provide interim relief to expand tribal self-governance at BIA. The bootstrap amendment would simply capture the improvements made by Congress in 2000 regarding Indian Health Service and extend them to the BIA and Interior at the option of the tribes.

Put another way, it would allow self-governance tribes to apply other provisions of Public Law 93–638, especially title V, to their BIA self-governance agreement. The bootstrap would immediately make self-governance more attractive to tribes because it will, first, increase tribal flexibility in the administration of our programs; second, produce cost savings by allowing tribes to conform our BIA-funded administrative practices to our Indian Health Service-funded administrative practices; third, expand eligibility and simplify the application process; fourth, shorten negotiations by applying time lines for decisions in dispute resolution; and fifth, expand investment authority over advanced funds.

It is a very cautious approach to reform because it would apply to only existing law and authority from title V to Interior self-governance agreements. This is a law that has been working well for the past 6 years at Indian Health Service. It is time to allow tribes
and BIA self-governance compacts to take advantage of these improvements.

From its beginning days, the goal of tribal self-governance has been to allow Indian tribes to redesign programs to better meet the needs of our people and to allow us to prioritize the funds ourselves to address the needs with administrative efficiency. The bootstrap amendment would help us achieve these goals.

On behalf of the Mille Lacs Band of Ojibwe, I thank you, Mr. Chairman, for considering it and urge its swift passage.

Thank you.

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

The CHAIRMAN. Thank you very much.

Ron Allen, welcome back.

STATEMENT OF W. RON ALLEN, CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Mr. Allen. Thank you, Mr. Chairman. It is always an honor to be here before you and this distinguished body, so I am very honored to be here. So I thank you and the vice chairman for inviting me.

For the record, I am Ron Allen, chairman for the Jamestown S'Klallam Tribe. You have my testimony, and I am submitting it for the record.

The CHAIRMAN. The written statement of all the witnesses will be made a part of the record.

Mr. Allen. Thank you, sir.

Senator Dorgan. Mr. Allen, would you like to tell us your thoughts about Arizona? [Laughter.]

The CHAIRMAN. Or North Dakota.

Mr. Allen. It is hot. [Laughter.]

I am from the Northwest. We like it a little cooler up there, but not as cool as it gets in North Dakota in the wintertime, mind you.

Anyhow, I am very honored to be here with my colleagues with regard to self-governance. Self-governance, as Melanie had pointed out, has been advancing since 1988. I am very honored to have been a part of that process. I remember Chairman Roger Jourdain, Chairman Art Gahbow, and Joe DeLaCruz from the Quinault Nation, Wendell Chino and Alex Lindeman from the Rosebud, and Ed Thomas from Tlingit-Haida.

There were 10 of us who wanted to move this agenda forward. I am very, very delighted that we have been moving forward, but we are here before you to talk about why it has slowed down, why we are now entering a new phase of struggles with the Administration and with the advancement of this very progressive concept of empowering tribes. That is what self-governance and self-determination is all about. It is empowering tribes to take care of ourselves, because we can be more efficient with the limited Federal dollars that are made available for our people than any other system that exists. We have shown that.

We have written books and have countless examples of how efficient that we can be. You have seen it move forward from 1988 to the enactment of title IV in 1994 and enactment of title V in 2000. As Melanie Benjamin has advocated, we are looking forward to another step progressively forward.
You have asked some interesting questions earlier with the Administration. Why are we slowing down? What is going on? What is the problem? Chairwoman Carlyle talked about her experiences down in Arizona. Quite frankly, you have an Administration who is digging in their heels. Self-governance moved forward very progressively and it has been shown to be quite successful. But now you have a bureaucracy that really does not want to let go. And that has been always the historical challenge, to let go of Indian affairs, to let us control our own destiny. And they don’t want to let go.

So you have a concept out there called inherent Federal function. You have a concept called residual funding that goes with inherent Federal function, that only the Federal Government can do, that quote/unquote, the tribes cannot do. The question is, now, is that starting to grow? The answer is yes. They are starting to come up with new ways of couching what they can do and only they can do, and we can’t do, and they need more resources.

So when you look at available dollars that are made available to the tribe, they are becoming less and less and less. So consequently, tribes who are interested are looking at this picture and saying, there is a problem with this picture because you are not letting go of the system. The way it was conceptually back when we began this process in the 1990’s was that as we took over more of the Federal system, you should see a marked diminishment of the Federal system because their role has changed in terms of their liaison with the Congress, with regard to what the tribe is doing with those dollars. So those dollars should reciprocate as the system adjusts down, and the tribes grow in their strength, and we report to you the successes of what we are achieving.

That was what was happening, and now it is starting to slow down. We came before you after 1994 and advocated an adjustment to title IV when title V got enacted. We were opposing some significant comprehensive adjustment to move it forward beyond the BIA and into the Department of the Interior, all agencies into the Department of the Interior.

Remember back when this thing started in 1988 when you did your investigation. You said, well, we made a big mistake. We are doing a terrible job. Let’s talk about a whole new Federalism concepts. Let’s take our Federal dollars and turn it over to the tribe. We said we liked the concept, but we want to do it on our own terms. We want to make sure that you are not relinquishing your legal liabilities and obligations to Indian country, so it had to be on our terms.

If we are going to move that concept forward, there has to be continuity. There has to be consistency on how these Federal Governments and agencies are administering this concept. You don’t have consistency. So when you look at the BIA, 231 tribes, $300 million, well, what is that? You have about a $2-billion BIA budget. That is about 15 percent, if my math is right. If you looked at the IHS, you have around 306 tribes and you probably have around $900 million. So we figure that it is somewhere in the neighborhood of 40 percent of its budget. I think the number is around $2.4 billion, something like that.
The issue is, why is it working over there? Well, you have more flexibility. They have empowered tribes. Congress has made it clear what tribes' discretion and authority is. So we have more authority, so they have less ability legally to try to restrict the tribes. We still have problems over there. You do need to know we have some issues over there. Why is it we only have 40 percent of that money? We should have a whole lot more of that money. More tribes should be taking over those resources. Under BIA, you have talked about a number of issues that are out there.

So we think that the bootstrap proposal for title V into title IV helps us move and break the logjams. We want a more comprehensive piece of legislation, but we need a progressive first step to send a clear message from the Congress to the Administration.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Thank you very much.

Just briefly, Chairwoman Carlyle, because I think this is a concrete example of what we are wrestling here, unless I am missing something. You made an agreement with the State of Arizona to have a road through the reservation. Is that right?

Ms. CARLYLE. There is a road. It is called Ralston Road, which borders the county and our side. It borders Ak Chin.

The CHAIRMAN. So this road was an agreement between you and the county?

Ms. CARLYLE. Right.

The CHAIRMAN. And did you seek permission or inform the BIA that you were going to enter into this contract?

Ms. CARLYLE. Yes; we did, Mr. Chairman.

The CHAIRMAN. And were you assured that you would get the money for it?

Ms. CARLYLE. We were told that the dollar amount given for those years is what we would be getting, the projections. I have to admit one was a projection. And so based on that, we moved forward with the road, again, to alleviate the congestion going through what is known as Farrell Road, which is the main road through the village area.

The CHAIRMAN. So did you have that in writing?

Ms. CARLYLE. Yes; we have documents. We have an agreement about the moneys to be received.

The CHAIRMAN. Send a copy of those documents to the committee, would you?

Ms. CARLYLE. I sure will.

The CHAIRMAN. And then when it came time to pay?

Ms. CARLYLE. We are still waiting to get paid.

The CHAIRMAN. But you had to go ahead and pay, along with the county, for the construction of the road, so you had to take it out of tribal funds?

Ms. CARLYLE. Yes; we did. It was a commitment. It was on schedule, which apparently the funding cycle for the bureau does not meet the schedule, obviously, with our budget. So we went under the promise that we would be reimbursed for those costs.

The CHAIRMAN. And how long has that been?

Ms. CARLYLE. We are still waiting 2004. We got our first dollar numbers for the roads project, and just recently as of yesterday I
called back home to see what the status was and the remark was still the same. It is at the area office waiting for a draw-down. I said, well, we would have withdrawn those moneys 2 years ago, and we are still waiting. That is the excuse we are getting. It is there in the central office. All it needs is a signature, but we are just not able to draw down the funds.

The Chairman. Well, then if I were you and the tribal council, I would say next time to the county, deal directly with the BIA. Maybe you will get all your money that way.

Ms. Carlyle. Well, hopefully the full amount, because we were notified that what we were told we were going to receive was less than what now they say we will be getting.

The Chairman. So even if you receive the money, it is going to be less than what you were told.

Ms. Carlyle. Exactly.

The Chairman. Senator Dorgan.

Senator Dorgan. Mr. Chairman, we decided to hold this hearing because we wanted to understand why the tribal self-governance program was not working particularly well, why tribes were not coming to this program and making themselves available to participate.

I think when I hear the testimony today, I think I understand why that is the case. I don't think this is a mystery. Nobody is going to want to sign up to a program that puts you in this position, where you have certain requirements, contractual expectations that are not met.

So I think we have learned what we intended to learn or what we had hoped to learn today. What is going on here? Why are more tribes not coming to this program? I think I now know, and I think it gives us some responsibility here on the committee, and opportunity as well to begin to address these issues. Because I think the program, if run properly, can hold out some real promise. I think self-governance for many tribes is attractive, makes a lot of sense, gives them opportunities to make their own decisions about their own priorities. All of that makes great sense. But it doesn't make sense to sign up to something that won't work.

So I think this has been very helpful to me to hear the testimony that you all have submitted. I appreciate very much your coming to Washington, DC, and Arizona is a wonderful place. [Laughter.] And so is North Dakota. I am sorry, Mr. Chairman.

The Chairman. North Dakota is wonderful. [Laughter.]

Could I ask you all, since you are on the receiving end, if you would correspond with us to tell us what you think the fix is. Is it legislative? Is it a mandate from Congress that full compliance with contracts that were freely entered into with the approval of the BIA have to be honored? Is that one of the answers, Ron?

Mr. Allen. We believe that if we are going to move it forward like we did in the 1990's, Congress has to send a clear message back to the Administration that we intended for the tribes to be empowered, to address their own affairs. You are slowing it down. So get back to work and re-empower the tribes. That message has to come from the Congress.

The Chairman. Chairwoman Benjamin, do you communicate with the BIA these concerns that you have?
Ms. BENJAMIN. Yes; we have ongoing dialog. When we have our regional meetings and we have the regional reps in the meetings, we have discussions. I think Mille Lacs is in a different position because the funding is short. We are shortchanged and we are in a position where we use our other revenue streams to kind of balance that out, but that still doesn't make it right. And also, there are a lot of other tribes across the country that are not in that same situation.

The CHAIRMAN. Chairman Jourdain, overall do you still support strongly the concept of self-governance?

Mr. JOURDAIN. Yes; we do. We feel self-governance is a very positive thing, and the tribe would like to continue on with self-governance. We are hurting as a result of the cuts and the pay cost is really an issue for us. It is hard for us to compete when, say, for instance our law enforcement officers are being paid one-third less than BIA cops. They go train. They get whatever credentials they need, and then they leave to go somewhere else to work for higher pay.

We want to carryout those programs. And us, just like the other bands represented here, have to pull money from other areas in order to cover those shortfalls. We do not have a lot of resources tribally to do that.

The CHAIRMAN. Could I end by asking a question unrelated to this hearing, that continues to be of great concern to all Americans and to you. I begin with you, Chairwoman Benjamin. How serious is the methamphetamine problem?

Ms. BENJAMIN. We are starting to see that rise on our reservation. We are about 100 miles from the Minneapolis-St. Paul area, and we are the southern-most Ojibwe Tribe in the State of Minnesota. There area those entities that are in the cities, we call it the cities, Minneapolis-St. Paul, that then travel north. We understand that there is a strategic plan from some of the drug cartels to come to the reservations, and even to marry tribal members so they have a foot in there to be able to start that new clientele, if you will.

For the Mille Lacs Band, we are working very hard to make sure that we get a hold of this. Law enforcement is one issue that is very important, but also the other important issue is why are people turning to this as their escape. We know that we have a lot of depressed people in our reservations, based on generations of oppression. So we want to go from that, and find that peace, and help our members find the peace within themselves so they don't turn to those kinds of releases.

So we do that in terms of making sure that we really enhance our cultural opportunity for them, to bring them back to the ceremonies and make sure that we have adequate housing, education, and find jobs. One of the things that we did just recently is that there are a lot of folks who for some reason are not able to work in the economic development normal sense of work. So they are unemployed and look at some of the welfare benefits.

So what we did is we now have what we call a cultural labor pool, where we are allowing our tribal members to go out and do cultural related things for their families, for instance fishing, wild rice, harvesting maple syrup, and that would be their job. We will
pay them to do this job, because it does help their families. Any of those harvesting activities that they do, and they have enough for their families and they want to sell the other portion of that, we allow them to do that to enhance that income for their families.

So we are trying to look at new ways and innovative ways to make sure that our tribal members have the opportunity to be successful. So we look at that in new ways, and hopefully educate our youth of the dangers of that meth.

The Chairman. Chairman Jourdain.

Mr. Jourdain. We are one of the more remote tribes in Minnesota, so we don’t have a lot of exposure to the methamphetamine, although it does exist on our reservation. We are battling a crack cocaine epidemic on our reservation. But because minimally we have not seen a lot of the methamphetamine abuse on the reservation, at this point even one instance we take very, very seriously. We are concerned about methamphetamine in Indian country and the State of Minnesota, and we are talking to the other tribes as much as we possibly can to network, along with local and State and Federal authorities to see what we can do to curb drug trafficking and methamphetamine abuse in Indian country.

The Chairman. Chairwoman Carlyle.

Ms. Carlyle. Senator, you know, I talked about hyper-growth in our area. We were just that small little rural community of about 1,000 people or so, including the town of Maricopa. I believe we are up to 18,000 plus currently, and in a few more years they are projecting 100,000 to 130,000 residents in our area.

Chairman Ron Allen was just out in our area and saw the hyper-growth happening around us. Because of that, we feel that the meth issue is there. However, unfortunately, it seems to be well hidden in our small community. Our law enforcement people have taken steps to combat this, along with council members and other community members.

Unfortunately again, too, is that we seem to be a traffic stop area from the south. Those who are drug-trafficking from the south, and Maricopa seems to be for some reason the local stop. We are still far enough from Phoenix, but still close by, if you can see what I mean about exchanges in that area to off to different ways. The O’Odham reservation has also expressed that concern about their boundaries, the border issue.

Meth, unfortunately, as we all know, is a growing problem and its effects, however, have been real devastating. We are not sure if meth was related to the suicide of three beautiful young ladies, two were 13 and one was 14, all within a span of three months. They killed themselves. So we do what we have to do and we are coming together as a community because it is not the council’s problem. It not the PD’s. It is not the housing. It is all our problem to find a solution to do away with this horrible, horrible, I refer it to as a disease.

The Chairman. Thank you very much.

Chairman Allen.

Mr. Allen. Mr. Chairman, in my community meth is a serious problem. It is a serious problem in Indian country. Our president at NCAI has declared war on meth in Indian country because it is
so devastating to our people and to our families and to our community.

We are experiencing it in my small community. The thing that is most disturbing is the limited amount of resources available to fight it, to educate our people like my colleagues have commented, and to provide them better opportunities. There are very little dollars, and so we have to use precious hard dollars to fight that fight. But it is out there. It is the ugliest drug I have ever known, and we have a lot of people getting exposed to it. Worse yet is the devastation it causes their families and our communities.

The CHAIRMAN. I thank the witnesses. We will continue to make that one of the highest priorities that we can, and our sympathy to the families, Chairman Carlyle, of that tragic incident.

I thank you all very much. This hearing is adjourned.

[Whereupon, at 10:40 a.m. the committee was adjourned, to reconvene at the call of the Chair.]
APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF THE ASSOCIATION OF ALASKA HOUSING AUTHORITIES

The Association of Alaska Housing Authorities [AAHA] is pleased to have this opportunity to submit testimony for the record at this important hearing.

AAHA’s membership consists of the 13 statutorily created Alaska Native regional housing authorities which collectively provide services on behalf of approximately two-thirds of the tribes in the State, with combined annual budgets of just over $100 million. Alaska’s regional housing authorities (in partnership with the Alaska Housing Finance Corporation which also holds a seat on the AAHA Board) serve residents in every part of Alaska—in larger urban cities, in small towns and in Alaska’s rural, “bush” communities. The regional housing authorities have built well over 6,000 housing units since their inception in 1971 and are the primary builders of new housing in rural Alaska.

Although we realize your focus is primarily on tribal self-governance programs administered pursuant to titles IV and V of the Indian Self-Determination and Education Assistance Act of 1975 [ISDEAA] [Public Law 93–638, as amended], we know the committee is well aware of the fact that housing is a critical—and sadly lacking—basic need throughout Indian country and that the policies and issues under consideration by the committee have direct cross-over implications and application to the programs AAHA and other tribes and tribal organizations administer through HUD pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 [Public Law 104–330, as amended] [NAHASDA].

As the committee members consider the future of tribal self-governance and the testimony presented by the various tribal leaders presenting at this hearing, we respectfully request that a brief look backward to the genesis of self-determination and its evolution into self-governance may be instructive.

In 1970, President Nixon gave his historic “Special Message to the Congress on Indian Affairs.” In his message he stated:

For years we talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a Federal agency. [Emphasis added.]

In response, Congress passed the ISDEAAM in 1975, giving tribes at least a limited level of the decisionmaking authority President Nixon had advocated for. Tribal self-governance, which was passed as a demonstration project in 1988 and made permanent in 1994, was of course an extension, or evolution, of this self-determination philosophy.
It is well to remember however, that as tribal leaders formulated and advanced the tribal governance concept, from its infancy through the successful passage of the concept into law, tribal leaders and many Members of Congress had a much broader vision of self-governance than that which has been realized to date.

When self-governance was made permanent in 1994 [12 years ago!], the House report which accompanied the legislation contained a discussion of concerns held by the House Resources Committee over resistance within the Indian Health Service to certain aspects of self-Governance implementation. As the report stated:

"This resistance is due in large part to the misapprehension that tribal self-governance is a temporary project. Tribal self-governance, as reflected in this legislation, will be a permanent program and it is the committee’s intent to expand tribal self-governance to include each Department of the Federal Government. [Emphasis added.]


AAHA is hopeful that the Senate Indian Affairs Committee shares the views expressed by the House Resources Committee. We contend that expanding the Self-Governance model to HUD and the Indian/Alaska Native programs which it administers pursuant to NAHASDA is a logical and much overdue next step in this evolutionary process.

In fact, it should be noted that Congress has already expressed its intent to move in this direction by passing the NAHASDA amendments of 2002 [Public Law 107–292], which included the following new provision:


(8) SELF-DETERMINATION ACT DEMONSTRATION PROJECT.—(A) IN GENERAL.—Consistent with the provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes and tribal organizations are authorized to receive assistance in a manner that maximizes tribal authority and decisionmaking in the design and implementation of Federal housing and related activity funding. (B) STUDY.—Not later than 1 year after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

AAHA is not aware of any attempt by HUD to comply with this mandate. The mandated report was supposed to be submitted to this Committee over 3 years ago! Again, we are aware of no effort by HUD to comply, and if it did, to our knowledge this information has never been shared with Indian country.

The critical issue at this point in history, at least from AAHA’s perspective, is that we are no longer interested in a study. Tribal Self-Governance has been aggressively pursued and implemented in Alaska now for over 15 years. Alaska has a higher concentration of Tribal Self-Governance Compacts than any region or State in the country. Most of the BIA funding and almost all of the IHS funding is already administered under Tribal Self-Governance Compacts. AAHA does not see “a study” as providing any value or benefit in terms of the ultimate objective—the improvement in the delivery of housing programs and services to our beneficiaries. To the contrary, a study would simply be an unnecessary diversion and an unfortunate waste of scarce resources.

Administering Federal Indian/Alaska Native programs and services within the framework of Tribal Self-Governance should no longer be considered novel, unique or something that needs to be done in a "demonstration" mode. The reality is that Tribal Self-Governance is now a proven, “mainstream” model for the successful administration of Federal programs and services. It is time the model be extended to housing programs administered within HUD and that those Indian housing service providers who choose to exercise self-determination and self-governance rights by adopting a self-Governance model be allowed this option.

AAHA assumes the committee is well aware that NAHASDA is up for re-authorization in 2007. While NAHASDA was a much needed improvement relative to the pre-NAHASDA administration of programs under the Housing Act of 1937, the act has significant defects and numerous substantive amendments are needed—starting with provisions that remove the necessity for some of the oppressive, bloated bureaucracy that stifles tribal innovation and drains much needed resources away from direct services in favor of meeting administrative/regulatory requirements that add little or nothing in terms of accountability or actual improved services. BIA’s
(and perhaps to a lesser extent IHS’s) programmatic oversight pales in comparison relative to that currently exercised by HUD.

As an example of just one gross inefficiency, funding under NAHASDA is provided and required to be tracked by the recipient on a separate grant year basis, with a lengthy “Indian Housing Plan” (much of which is needless boilerplate) to be submitted each fiscal year. This necessitates that recipients administer complex financial systems that have to spread the expenditures across multiple grants and submit a separate Annual Performance Report for each grant year that remains open, even though the goals and objective for each successive year are likely to be very similar if not identical. Under the Tribal Self-Governance model, funds are simply rolled over from year to year and accounted for through the Federal Single Audit process until expended, a system which saves considerable administrative expense.

In closing, AAHA respectfully requests that the committee exercise its jurisdiction to the fullest extent possible, and that members exercise their individual influence to assist tribes and tribal organizations to expand the tribal self-governance model—a model which has proven to be so successful in the BIA and IHS service delivery arena—into the delivery of HUD housing programs and services. In short, if Congress wants more and better services per dollar of funding provided, this is the clear path toward achieving that objective.

Thank you for this opportunity to express our concerns and positive recommendations for how we can provide the highest quality services to the tribal members we serve, with the with the least amount of administrative bureaucracy, while maintaining the highest level of accountability to all interested parties.
Thank you for the opportunity to be here today. My name is W. Ron Allen and I am the Chairman and Executive Director of the Jamestown S'Klallam Tribe located in Washington State. I am also the Chairman of the Title IV Self Governance Amendments Tribal Task Force and offer my testimony today in both capacities.

Almost three years ago – on October 23, 2003 - I testified before this Committee in strong support of S.1715, a bill that would have amended Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638 as amended). I understand that my time is limited today so I do not plan to use my time to discuss why Self-Governance works and why so many Tribes are opting to enter into a Compact of Self-Governance in both the Department of the Interior, as well as in the Indian Health Service. In my October 23rd testimony I spoke of the incredible success of Self-Governance and all of the points I made then are still very much valid today.

Instead, today I would like to focus my comments on three issues: first, I will very briefly discuss the background to S. 1715 and what the bill sought to accomplish; second I will briefly bring you up to date on discussions between the Department of the Interior (Department) and the Tribal Task Force; and third I would like to ask you to consider enacting legislation that will immediately make Title V’s provisions available for inclusion in Title IV agreements and help narrow the issues that the Tribal Task Force and the Department will need to address in the future.

Background to S.1715 and What the Bill Sought to Accomplish

Title IV was originally enacted in 1994. Shortly after the Act was passed the Department initiated a rulemaking process to promulgate regulations. Five years after the rulemaking process began, DOI published regulations that, from the Tribal perspective, failed to implement Congress’ intent when Title IV was enacted. Instead of moving Self-Governance forward, the regulations moved it backwards.
In 2000 Congress enacted Title V of the ISDEAA, which permanently authorized Self-Governance within the Department of Health and Human Services. Among other things, Title V directly addressed many of the flaws that were in Title IV, which the Interior officials used to impede the full implementation of Self-Governance within the Department of the Interior. Almost immediately after the passage of Title V Tribal leaders decided that Title IV needed to be amended to incorporate these beneficial provisions from Title V and they assigned the task to develop a package of amendments to a Tribal Task Force.

After two years of work Tribal leaders approved amendments prepared by the Tribal Task Force that were ultimately included in S. 1715. In addition to incorporating into Title IV all of the beneficial provisions that were included by Congress in Title V the amendments had two other important objectives: first, address problems in Title IV specific to construction programs and projects; and second, modify provisions in the bill relating to the assumption of non-BIA programs.

Efforts were made to meet with Department officials to discuss the draft amendments before and after they were included in S. 1715 and the bill was introduced, but after initial discussions it became very clear that some individuals within the Department completely opposed the idea of any amendments to Title IV. In fact, if those folks had their way, Title IV would be amended to strip away Tribal rights and flexibility rather than add any. Ultimately the Administration did not support S. 1715 and, although the bill was reported out of this Committee, it did not make it to the Senate floor for a vote and it died at the end of the session.

**Events Since the Demise of S. 1715**

The demise of S. 1715 did not temper the desire of Tribal leaders to see the bill enacted. To the contrary, as Tribes developed more experience carrying out responsibilities included in the agreements negotiated under Titles V and IV, it became even more obvious that the differences between the two titles made no sense and needed to be corrected. After months of badgering and some key personnel changes within the Department, discussions between the Tribal Task Force and Department representatives were finally rekindled.

Over the past two years the Tribal Task Force has met several times with representatives from the Department in an effort to understand the nature of the Department’s concerns with the proposed Title IV amendments. Both sides have also exchanged correspondence detailing their differing views on the bill’s provisions. Most recently a chart was developed that sets out the areas of known agreements and disagreements. See the attached memorandum and enclosures that I sent to Mr. James Cason, Associate Deputy Secretary and Acting Assistant Secretary, Indian Affairs that summarize the status of our discussions.
Progress in these discussions has been very slow – so slow that only in the last few months has the Department provided us with long promised explanations of its concerns with many of the proposed provisions. The Department has raised numerous concerns with provisions in the bill and many of those concerns are troubling. Particularly troubling is the Department’s resistance to the inclusion of all Title V provisions in Title IV. These Title V provisions have been in place since 2000 and have a track record of helping Tribes implement Self-Governance and carry out programs better and more efficiently. Moreover, Congress has already agreed with them and included them in Title V, so there is simply no reason from a public policy standpoint why they should not apply to Title IV programs as well.

The bottom line is that there are some very fundamental differences between the Tribal and departmental positions on a range of issues that will require many more months and (at the present pace) likely years of discussion before it becomes clear if compromise language will ever be achievable. I am hopeful that our continued discussions will result in a joint Tribal and departmental legislative proposal sometime in the future. But until that time comes, Tribes should not suffer by being forced to carry out programs under Title IV without all of the benefits that are presently only available under Title V.

An Immediate Legislative Solution

My most fervent wish is that Congress enacts a comprehensive piece of legislation that will address all pending issues. I am a realist, however, and understand that the prospects for developing a comprehensive version of the Title IV amendments that Tribal and Departmental representatives will agree on in the near term are not good. Until a comprehensive bill can be developed, I urge you to consider enacting a very short piece of legislation in this session that will authorize as a matter of right any Tribe with a Title IV Compact or Funding Agreement to incorporate any provision of Title V that the Tribe chooses. This idea is not new – in 1996, Senator McCain sponsored a very similar amendment that allowed Tribes in Self-Governance under Titles III and IV to incorporate as a matter of right any provision from Title I of the ISDEAA into agreements negotiated under Titles III and IV.

Enacting such an amendment will result in some important benefits. Most importantly, it will allow Tribes to incorporate into existing Title IV compacts and funding agreements provisions from Title V that Tribes know work and will help them streamline the delivery of services to their people and carry out their governmental responsibilities in an efficient and coordinated manner. Passage of the amendments will also help reinforce to the Department that Congress agrees that Title V provisions should apply to Title IV agreements as a matter of Tribal right and this should help move forward discussions with the Department over a more comprehensive set of amendments.

The office of legislative Counsel in 2002 previously prepared a version of such an amendment that reads as follows:
INTEGRATION OF SELF-DETERMINATION PROVISIONS.—Section 403 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458cc) is amended by striking subsection (i) and inserting the following:

“(i) INTEGRATION OF SELF-DETERMINATION PROVISIONS.—

“(1) IN GENERAL.—At the option of any participating Indian tribe, any or all of the provisions of Title I or V shall be incorporated in compact or funding agreement entered into under this title.

“(2) FORCE AND EFFECT.—A provision incorporated under the foregoing paragraph (1) shall—

“(A) have the same force and effect as if included in this title; and

“(B) be deemed to:

(i) supplant any related provision in this title, as appropriate; and

(ii) apply to any agency subject to this Title.

“(3) TIMING.—In any case in which an Indian tribe requests incorporation of a provision under paragraph (1) during the negotiation stage of a compact or funding agreement described in that paragraph, the incorporation shall—

“(A) be considered to be effective immediately; and

“(B) control the negotiation and any resulting compact or funding agreement.”

The only change to existing law that this amendment would implement is the addition of the words “or V” to 25 U.S.C. 458cc(i).

Conclusion

In conclusion, as you know, Self-Governance has proven to be one of the most successful options for Tribes to assume and manage programs, services, functions and activities at the local level that Congress has ever enacted for Indian people. I know first hand of this success with my experience at Jamestown. While we have had our challenges to address, Self-Governance has given us the flexibility to provide services to our people in the most efficient and effective way possible. My deepest wish is that this Congress would enact a comprehensive package of amendments to Title IV like those in S. 1715 so that we can build on the successes of the past 15 years and further enhance the ability of Tribes to achieve their dreams and goals.

I understand that a comprehensive package of amendments like those in S. 1715 will likely not be enacted this session, however, and I am committed to continuing the work we are engaged in with the Department to come up with a joint package of amendments in the future. In the meantime I urge you to seriously consider enacting the short piece of legislation discussed above which gives Tribes the right to incorporate any provision from Title V into a Title IV compact or funding agreement.

Thank you very much for the opportunity you have extended to me to express my thoughts on these critically important issues. I also want to personally take this opportunity to thank you for your years of support to Self-Governance.
September 8, 2006

James E. Cason, Associate Deputy Secretary
Office of the Secretary
Department of the Interior
Room 5117, Main Interior Building
1849 C Street, NW
Washington, DC 20240

Re: Title IV Self-Governance Amendments – Tribal Response to May 8, 2006 DOI Comments

Dear Mr. Cason:

The Title IV Tribal Task Force is in receipt of and has had an opportunity to review the comments by the Department of Interior (DOI) Federal Team dated May 8, 2006, to the Tribal Draft of the Title IV Amendments dated March 3, 2005. We appreciate the time and effort the Federal Team has spent reviewing the draft amendments and remain confident that our concerns and differences will be resolved through further discussion.

Along with this memorandum, we enclose a chart that expands on the one provided by DOI on May 8, 2006. Specifically, we note the following:

1. We have condensed the multiple charts provided by DOI into one chart.
2. We have eliminated from the chart all provisions that the DOI and Tribal Team agree on, and created a separate one page summary noting those provisions (see attached Appendix to Comparison of Proposed Title IV Amendments to Title V – September 7, 2006);
3. We have added a column for Tribal comments that addresses outstanding issues which need further discussion and resolution; and,
4. We have added a section at the end of the chart that summarizes concerns raised by DOI in its June 15, 2005 letter regarding specific Tribally proposed provisions, together with a summary of the Tribal Task Force responses to those concerns.

We look forward to meeting you and other DOI staff on Wednesday, September 20, 2006 at 9:30 a.m. to continue our discussion about these issues. If you have any question about these matters please contact me at 360/861-4621 or call C. Juliet Pittman at 202/620-1151 or email at pittj@ose.ihs.gov and she will locate me. Thank you.

Sincerely,

W. Ron Allen, Chairman/Executive Director
Jamestown S’Klallam Tribe and
Chairman, Title IV Tribal Task Force

cc: George Skibine, Deputy Assistant Secretary, Policy and Economic Development, BIA
Ken Reinfeld, Acting Director, Office of Self-Governance
Title IV Tribal Task Force
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<thead>
<tr>
<th>Section</th>
<th>Proposed changes to Title 11 (G)</th>
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<th>Table 17</th>
<th>Department comment</th>
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<td>413(2)</td>
<td>The term “LICENSEE” means a catching permittee.</td>
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<td>413(2)</td>
<td>The term “transportation” means the movement of any fish or shellfish by water, air, land, or any other method.</td>
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### Comparison of Proposed Amendments of Tribal Workgroup (83-3260) to Title IV and Title V with Department Comments

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<tr>
<th>Section</th>
<th>Proposed Amendments (83-3260)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
<th>Tribal Comments</th>
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<td>411(d)</td>
<td>The term &quot;construction project&quot; means a tribal undertaking that constructs or on-reserve roads, bridges, buildings, services, facilities, or on-reserve facilities, including, but not limited to, water supply, sanitation, sewage systems, waste water, recreation, education, administration, community health, irrigation, agriculture investments, flood control, and on-reserve facilities or on-reserve facilities.</td>
<td>No provision in Title IV. Has definitions of &quot;construction programs&quot; in Title IV and in the Title IV regulations, as those above.</td>
<td>The term &quot;construction project&quot; means any federal or tribal undertaking that constructs or on-reserve roads, bridges, buildings, services, facilities, or on-reserve facilities, including, but not limited to, water supply, sanitation, sewage systems, waste water, recreation, education, administration, community health, irrigation, agriculture investments, flood control, and on-reserve facilities or on-reserve facilities.</td>
<td>Definition of construction project: The 411(d) definition of &quot;construction project&quot; should be expanded to include the term &quot;construction program&quot; and &quot;construction projects.&quot; The term raised by 411(d) can be defined in the context of 411(e) because the two terms are nearly the same.</td>
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Tribal Comments:
- Not all comments are included, but they focus on the need for a clear definition of "construction program" in the context of Title IV regulations.
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<th>Section</th>
<th>Proposed amendments (see 263)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Tribal Comments</th>
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<tr>
<td>401(3)...</td>
<td>The term &quot;funding agreement&quot; means a funding agreement under section 401(3).</td>
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<td>Title IV does not have a definition section, but the Title IV regulations use the term &quot;funding agreement&quot; as defined at 25 USC 453.</td>
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<td>The term is defined at section 401(3). More details about the contents of a funding agreement appear in the Title V regulations.</td>
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<td>401(4)...</td>
<td>The term &quot;green infrastructure&quot; means significant initiatives, shown by States and communities through the adoption of programs, funding agreements, or activities, as appropriate, that are applicable to and based on solid waste, manure, fish waste, or other waste materials, that result in a significant reduction of hazardous waste or a significant reduction of hazardous waste generation.</td>
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<td>401(7)...</td>
<td>The term &quot;33&quot; means a program.</td>
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Comparison of Proposed Amendments of Title VI, Part D (401-404) to Title IV and Title V with Department Comments

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<tr>
<th>Section</th>
<th>Proposed amendments (see 263)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Tribal Comments</th>
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<td>401(4)...</td>
<td>The term &quot;green infrastructure&quot; means significant initiatives, shown by States and communities through the adoption of programs, funding agreements, or activities, as appropriate, that are applicable to and based on solid waste, manure, fish waste, or other waste materials, that result in a significant reduction of hazardous waste or a significant reduction of hazardous waste generation.</td>
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We accept the proposal.
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<th>Title IV</th>
<th>Title V</th>
<th>Department comment</th>
<th>Tribal Comment</th>
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<td><strong>40.01</strong></td>
<td>The term &quot;Indian tribe&quot; is a term in which an Indian tribe, an Indian organization, or an Indian organization, or in any combination of the two.</td>
<td>In the context of Indian tribes, the term &quot;Indian tribe&quot; is used to refer to any Indian tribe, an Indian organization, or a combination of the two.</td>
<td>We disagree. The context in which the term &quot;Indian tribe&quot; is used is not clear. The term should be defined and used consistently.</td>
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<td>The term &quot;Indian tribe&quot; means a tribe as defined by any law, regulation, or tribal organization.</td>
<td>The term &quot;Indian tribe&quot; means a tribe as defined by any law, regulation, or tribal organization.</td>
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<td>Definition of Indian tribe as including persons and tribal organizations.</td>
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We agree that the definition of "Indian tribe" in this context is not necessary. We recommend that the definition of "Indian tribe" in this context be removed from the proposed amendments.
### Comparison of Proposed Amendments of Tribal Way/Agreements (9-7-2006) to Title IV and Title V with Department Comments

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<tr>
<th>Section</th>
<th>Proposed changes June 2006</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
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<tr>
<td>440/01</td>
<td>The term “tribal corporation” means a collection of two or more separate Indian tribes that join together for the purpose of participating in self-governance.</td>
<td>The term “tribal corporation” means a collection of two or more separate Indian tribes that join together for the purpose of participating in self-governance. (20 USC § 4654a(a)(1)(A))</td>
<td>We propose to delete the definition and use of this term “tribal corporation” throughout the UL.</td>
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### Notes
- There is probably a typographical error in the definition of “tribal corporation.”
- The term “tribal corporation” means a collection of two or more separate Indian tribes that join together for the purpose of participating in self-governance. (20 USC § 4654a(a)(1)(A))
- The Secretary is directed, upon the request of any Indian tribe, to establish procedures to register an organization of Indians organized by the tribe or the Tribes and the Indian community concerned (42 USC § 265).
- The term “tribal corporation” means a collection of two or more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations (20 USC § 4654a(a)(1)(A)).

Section 440/01 should be deleted. Title 4 should add a definition of “tribal corporation.” The Department of the Interior should also clarify the role of tribal corporations in tribal agreements.
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<td>Data 83</td>
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<td>Data 85</td>
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<td>Data 99</td>
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<thead>
<tr>
<th>Section</th>
<th>Proposed amendments (para. 10)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>4(b)(3)</td>
<td>If an Indian tribe unable from participation in certain tribal activities or certain organizations, the Indian tribe shall be eligible to an equal share of funds and assistance specified in the table below: the Indian tribe is not eligible for eligibility.</td>
<td>Four in connection with tribal organization to participate in self-governance the tribe is eligible for self-governance.</td>
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<td>Title V should be eligible for participation in Title V.</td>
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<td>4(b)(4)</td>
<td>The withdrawal of an Indian tribe from an inter-tribal corporation or the withdrawal of an Indian tribe from the withdrawal of an Indian tribe from self-governance.</td>
<td>Title V should be eligible for participation in Title V.</td>
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<td></td>
<td>“Title V should be eligible for participation in Title V.”</td>
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Comments on the proposed changes to the definitions of the terms “tribal organization” throughout the bill: We agree with the proposed changes.
<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (May 2020)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>4500.01</td>
<td>An Indian tribe may fail to</td>
<td>No provision</td>
<td>No provision</td>
<td>Today's right to withdraw</td>
<td>We disagree with the proposal to</td>
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<td>fully comply with its obligations under a</td>
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<td>in whole or in part</td>
<td>change the definition of</td>
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<td>funding or administrative agreement</td>
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<td>under clauses in the</td>
<td>&quot;tribal organization.&quot; As</td>
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<td>with respect to any tribal organization</td>
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<td></td>
<td>Department’s funding</td>
<td>mentioned above, we propose</td>
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<td>to whom it is obligated in its</td>
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<td>agreement.</td>
<td>included in the definition</td>
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<td>agreement to the extent of its</td>
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<td>the term &quot;tribal organization.&quot;</td>
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<td></td>
<td>obligations under the agreement.</td>
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<tr>
<td>4500.02</td>
<td>Last paragraph of this section</td>
<td>No provision</td>
<td>No provision</td>
<td>The references to &quot;Tribal</td>
<td>We disagree with the proposal to</td>
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<td></td>
<td>shall be revised to state:</td>
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<td>organization&quot; in</td>
<td>change the definition of &quot;tribal</td>
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<td>The withdrawal of a tribal organization shall be</td>
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<td>the definition of</td>
<td>organization.&quot; As mentioned in</td>
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<td>effective on the date the withdrawal notice is</td>
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<td>&quot;tribal organization.&quot; As</td>
<td>the Department’s funding agreement</td>
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<td></td>
<td>delivered to the tribal organization.</td>
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<td>mentioned above, we propose</td>
<td>(4500(3)(F)), the Department</td>
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<td>included in the definition</td>
<td>is required to conduct a</td>
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<td>of &quot;tribal organization.&quot;</td>
<td>Tribal organization to ensure</td>
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</table>

We disagree with the proposal to change the definition of "tribal organization." As mentioned above, we propose included the phrase "Tribal organization" in the definition.
<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendment (May 2006)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Departmental comments</th>
<th>Tribal comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>40A0502</td>
<td>(30) If an Indian tribe or tribal organization elects to enter into a written contract or funding agreement under this title, the tribe or organization shall be allowed to retain funds for programs and activities that are specifically identified in the contract or agreement.</td>
<td>No provision.</td>
<td>If an Indian tribe or tribal organization elects to enter into a written contract or funding agreement under this title, the tribe or organization shall be allowed to retain funds for programs and activities that are specifically identified in the contract or agreement.</td>
<td></td>
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</tr>
</tbody>
</table>

Note: The text provided is a natural reading of the content on the page.
<table>
<thead>
<tr>
<th>State</th>
<th>Government</th>
<th>Industry</th>
<th>Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
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</tbody>
</table>

**Note:** The table contains information about the government, industry, and environment in various states. The specific details are not visible in the image.
### Comparison of Provisions: Amendments to tribal workgroup (9-3-2006) vs. Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed amendments (9-3-2006)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>408(2) &amp; 408(3)</td>
<td>A compact shall— (2) include both terms in the parties' initial compact (408(2)) A compact may be amended only by agreement of the parties. (408(3))</td>
<td>No provision.</td>
<td>Each compact shall set forth the general terms of the government-to-government relationship between the tribes and the state. The compact terms shall be in the parties' initial compact if that compact is amended. Each compact shall only be amended by mutual agreement of the parties. (21 USC 3486(a))</td>
<td>The Department comments that the compact &quot;affirms the government-to-government relationship.&quot; (23 CFR 150-4)</td>
</tr>
<tr>
<td>408(4) &amp; 408(5)</td>
<td>No provision.</td>
<td>Each compact shall set forth the general terms of the government-to-government relationship between the tribes and the state. The compact terms shall be in the parties' initial compact if that compact is amended. Each compact shall only be amended by mutual agreement of the parties. (21 USC 3486(a))</td>
<td>Section 408(4) &amp; 408(5) shall be retained. However, Section 408(4) and 408(5) should provide for funding agreements. If the tribes are intended to continue after one year, then they can be negotiated in subsequent funding.</td>
<td>We disagree. Both provisions set forth in these sections are fundamental and should be clearly addressed in the statutes.</td>
</tr>
<tr>
<td>408(6) &amp; 408(7)</td>
<td>The effective date of a compact shall be the date the agreement is signed by the Indian tribe, or (2) the date the agreement is signed by the Indian tribe, or (2) the date the agreement is signed by the state. A compact under subsection (b) shall remain in effect for as long as provided in Federal law or until terminated by written agreement of the parties. (408(6))</td>
<td>No provision.</td>
<td>The effective date of a compact shall be the date the agreement is signed by the Indian tribe, or (2) the date the agreement is signed by the state. A compact under subsection (b) shall remain in effect for as long as provided in Federal law or until terminated by written agreement of the parties. (21 USC 3486(b))</td>
<td>Effective date and duration of compact. The language, &quot;termination, or cancellation,&quot; in (408(6) should be retained because a compact may be cancelled. It should not be allowed to cancel even if the parties agree. (21 USC 3486(b))</td>
</tr>
<tr>
<td>408(8)</td>
<td>Each funding agreement shall— (1) include the criteria for plan, design, construction, and administration of programs, revision,</td>
<td>No provision.</td>
<td>Each funding agreement shall— (1) include the criteria for plan, design, construction, and administration of programs, revision,</td>
<td>The concept of &quot;tribal share&quot; is not developed and is not entirely a concept of tribal sharing and negotiation. (21 USC 3486(a))</td>
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</tbody>
</table>
Comparison of Proposed Amendments to Tribal Workgroup (P-3-2006) in Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed amendments (Jan 1990)</th>
<th>Title IV</th>
<th>Title V</th>
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<tbody>
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<tr>
<th>Programs described or referenced (9)</th>
<th>Programs described or referenced (9)</th>
<th>No note</th>
<th>4505(11)</th>
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<tbody>
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<td>such programs, services, functions, and activities (or portion thereof) include all programs, services, and activities for which the Secretary determines, through the Department’s appropriations, that they are available to Indian tribes or Indians of which appropriations are made in order other than the Department of the Interior (25 U.S.C. 488a-4(a)(11))</td>
<td>Notice</td>
<td>Notice</td>
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</table>

Title V amendments even though applicable language in Title IV. "If that tribe's programs are not competitive, the Secretary could also award grants for the operation of the program" (25 U.S.C. 450j-1(a)(2). "The wording of Title IV and Title V is not identical."

Department comments: Between Title IV and Title V representative does not specify how to fairly and accurately calculate the amount of funds that should not be reserved in the event that it reserves specific Title V. There are no changes to the word in Title V and there is no reason why they overlap with Title V in the CDBG/Indian reservation.
<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (June 995)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
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<tbody>
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<td>Tribal functions to be administered under the authority of [a] (revise this (a) (a) only if other Act of Congress authorizes any similar function)</td>
<td>Title V allows for the establishment of programs, services, facilities, or activities to carry out the functions described in this section for the benefit of Indians because of their status as Indians, or if the functions of Congress authorizing such a program, service, facility, or activity are not specifically identified.</td>
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<tr>
<td>Section</td>
<td>Proposed Amendments (June 2006)</td>
<td>Title IV</td>
<td>Title V</td>
<td>Department Comments</td>
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<td>405(b)(1) (A)</td>
<td>A funding agreement with contractors or retailers shall be determined by the Indian tribe, subject to the requirements of this section. Each funding agreement shall include administrative, technical, and contract-related items, including reports on progress and performance, and the results of the contract, in accordance with the procedures provided for in this section.</td>
<td>Each funding agreement shall be subject to such terms as may be negotiated, subject to the terms and conditions of the contract, in accordance with the requirements of this section.</td>
<td>Note</td>
<td>See comments above related to the Department's review of the IEP. Our position is that the Department should have no discretion over a tribe's decision to exclude certain entities from the tribe's program. In addition, we believe that the tribe's decision to exclude certain entities from the tribe's program should be made in accordance with the procedures provided for in this section.</td>
<td>We disagree. See comments above related to the Department's review of the IEP. Our position is that the Department should have no discretion over a tribe's decision to exclude certain entities from the tribe's program. In addition, we believe that the tribe's decision to exclude certain entities from the tribe's program should be made in accordance with the procedures provided for in this section.</td>
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<tr>
<td>Section</td>
<td>Proposed amendment (see 1932)</td>
<td>Title IV</td>
<td>Title V</td>
<td>Department comments</td>
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<td>4(h)(3)</td>
<td>Programs described in subparagraph (c)(1) shall include, at a minimum, one or more projects (referred to as &quot;partnership programs&quot;) that involve a non-Federal partner or a non-Federal entity (for example, businesses, non-profit organizations, or universities) which will provide a substantial share of the funds for projects which are subject to Federal oversight. The provisions of this section shall be implemented in a manner that is consistent with the Department's internal policies.</td>
<td>None</td>
<td>None</td>
<td>We believe that federally reserved rights should be managed by the beneficiaries. We think that effective management of resources would best be accomplished if a single framework were used for all of the resources. The Compact and FA can ensure provisions that ensure effective and consistent management of the resources if it is necessary. We believe that the Department's management plan should be consistent with the Department's internal management plan.</td>
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<td>4(i)(j)</td>
<td>Nothing in this section—(i) is intended to preclude an Indian Tribe from entering into agreements with non-Federal entities for competitive bidding of TBA programs. (ii) prohibits the inclusion of a TBA program in a contract agreement if it is the subject of a competitive bidding process.</td>
<td>None</td>
<td>None</td>
<td>We believe that contracts programs that involve Indian Tribes or in competitive bidding requirements. However, the contract may include provisions that are necessary to protect the contract and the Indian Tribe's interest.</td>
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</tbody>
</table>

We disagree. The Department's agreements are consistent with the Department's policies. This provision is consistent with the Department's policy on competitive bidding. The Department believes that the agreements are consistent with the Department's policies.
Comparison of Proposed Amendments to Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (June 2002)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>480(a)(5)</td>
<td>A funding agreement shall not authorize or require the Tribal to provide or fund: (A) any educationally related services to Indian students under an alternative Tribal or Indian education program; (B) any educational service providing related services to students under an alternative Tribal or Indian education program; or (C) any educational service providing related services to students under an alternative Tribal or Indian education program; all to the extent that the Tribal or Indian education program is otherwise under the Federal government's control.</td>
<td>None</td>
<td>Types of funding excluded from funding agreements, services and educational programs</td>
<td>We would agree with retaining the language in Title IV with the exception of the language in section 400. The Committee disagrees and would like the option of including a program or all of the Federal education program.</td>
<td></td>
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<tr>
<td>480(a)(7)</td>
<td>A funding agreement shall authorize or require the Tribal or Indian education program to provide or fund: (A) any educationally related services to Indian students under an alternative Tribal or Indian education program; (B) any educational service providing related services to students under an alternative Tribal or Indian education program; or (C) any educational service providing related services to students under an alternative Tribal or Indian education program; all to the extent that the Tribal or Indian education program is otherwise under the Federal government's control.</td>
<td>None</td>
<td>Types of funding excluded from funding agreements, services and educational programs</td>
<td>We would agree with retaining the language in Title IV with the exception of the language in section 400. The Committee disagrees and would like the option of including a program or all of the Federal education program.</td>
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</tbody>
</table>

(The Department's interpretation of the terms behind this provision is unclear. Tribal organizations are concerned that the term 'authorizes' could mean that the Tribal or Indian education program could be authorized to receive funds under Title II programs that are intended to be carried out by the Indian organization.)
### Comparison of Proposed Amendments of Tribal Workgroup (95-1066) in Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed amendment (Act 1066)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
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</thead>
<tbody>
<tr>
<td>4910(a)</td>
<td>The Secretary shall not review, cancel, or modify additional items in a reserve or subsequent funding agreement without the consent of the Indian tribe.</td>
<td>None</td>
<td>None</td>
<td>Tribal consent required for terms in funding agreements. Section 4910(a) should be deleted. Otherwise, the Secretary would have authority to modify the terms of subsequent funding agreements that are required by statute, regulation, or in case law or required for compliance with the Secretary’s trust responsibility.</td>
<td>We disagree. Funding agreements are inherently negotiated agreements and Indian parties should have the right to unilaterally modify them.</td>
</tr>
<tr>
<td>4910(b)</td>
<td>Where and when funds from an Indian tribe that is withdrawing or returning the operation of a project or more included programs identified in a funding agreement, or whose Secretary is agreed to by the parties to the funding agreement, and the Secretary fails to request the funds to be returned within the time frame for the request for funds, and (B) the terms of the subsequent funding agreement is renewed, and (C) the terms of the subsequent funding agreement shall be consistent with the terms of the previous funding agreement.</td>
<td>None</td>
<td>None</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Notes
- Mentions of federalism and Indian tribes are highlighted.
- The proposed amendments affect funding agreements between the federal government and Indian tribes.
- The amendments propose changes to how funding agreements are reviewed and modified.
- The Department of the Interior's comments suggest the need for tribal consent in modifying funding agreements.
- The tribal comments express disagreement with the proposed amendments.

---

19
## Comparison of Proposed Amendments of Tribal Workgroup (6/7/1986) to Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (June 1986)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>406(a)</td>
<td>An Indian tribe participating in self-governance shall ensure that normal measures are in place to address conflicts of interest in the administration of any federal program.</td>
<td></td>
<td></td>
<td>We believe the proposed language is sufficiently clear to convey that employers and agree, as required by 21 C.F.R. § 80.404 at the tribal level.</td>
</tr>
</tbody>
</table>

Note: text on 21 C.F.R. § 500.60 – 500.61 on conflicts of interest
### Comparative of Proposed Amendments of Tribal Workgroup (5-7-2000) to Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (June 2000)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>490(a)</td>
<td>(1) In general—Unless as follows: specific reference in the compact or funding agreement, records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder shall be maintained in accordance with the Compact Act of 1968 (25 U.S.C. 1681 et seq.).</td>
<td>(1) In general—Unless as follows: specific reference in the compact or funding agreement, records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder shall be maintained in accordance with the Compact Act of 1968 (25 U.S.C. 1681 et seq.).</td>
<td>Records relating to Indian gaming systems and other systems under section 1671c and 1671g of the Indian Gaming Regulatory Act (18 U.S.C. 1671c and 1671g) shall be maintained in accordance with the Compact Act of 1968.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) When deemed to be in the compact or funding agreement, records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder shall be maintained in accordance with the Compact Act of 1968 (25 U.S.C. 1681 et seq.).</td>
<td></td>
<td>Note: see Title IV, subparts B and C. The compact or funding agreement may require the Department to maintain records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder.</td>
<td></td>
</tr>
<tr>
<td>490(b)</td>
<td>(1) In general—Unless as follows: specific reference in the compact or funding agreement, records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder shall be maintained in accordance with the Compact Act of 1968 (25 U.S.C. 1681 et seq.).</td>
<td>(1) In general—Unless as follows: specific reference in the compact or funding agreement, records of an Indian tribe that are in records or agencies subject to the Compact Act of 1968 (25 U.S.C. 1681 et seq.) and regulations issued thereunder shall be maintained in accordance with the Compact Act of 1968 (25 U.S.C. 1681 et seq.).</td>
<td>Records relating to Indian gaming systems and other systems under section 1671c and 1671g of the Indian Gaming Regulatory Act (18 U.S.C. 1671c and 1671g) shall be maintained in accordance with the Compact Act of 1968.</td>
<td></td>
</tr>
</tbody>
</table>

We agree with both Title IV comments.
<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed amendments (June 2000)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
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</tr>
</thead>
<tbody>
<tr>
<td>4700XX</td>
<td>(5) Proposed the Secretary requires satisfaction of the initial trigger under subparagraph (A), the Secretary shall provide the tribe with a hearing on the record not later than 30 days after the date of the request.</td>
<td>provision to require that the Secretary provide the tribe with a hearing on the record not later than 30 days after the date of the request.</td>
<td>needs to be added in the section to require the Secretary to provide the tribe with a hearing on the record not later than 30 days after the date of the request.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

We disagree. We believe that this issue should be addressed in the section. If the Department were to add the language to clarify our position, we would be satisfied with the wording as it appears in the proposed rules.
<table>
<thead>
<tr>
<th>Year</th>
<th>Commission Information</th>
<th>Description of Commission Activities</th>
<th>Budget Summary</th>
<th>JUSTIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>Office The members of the Commission would hold a meeting to discuss the budget and allocate funds as outlined in the budget summary. The budget would be allocated to support the Commission's activities outlined in the description of Commission activities.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JUSTIFICATION</td>
<td>The allocation of funds is necessary to support the Commission's activities and ensure the effectiveness of the Commission's work.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Proposed amendments (See 2000)</td>
<td>Title IV</td>
<td>Title V</td>
<td>Department statement</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------------------</td>
</tr>
<tr>
<td>409(j)</td>
<td>A funding agreement shall contain a statement that the Indian tribe will establish and maintain procedures designed to ensure that projects that it funds are consistent with applicable federal, state, and local laws. The procedures must include prudent use of the funds and the monitoring of the projects to ensure that they are being implemented in accordance with the funding agreement. (40 C.F.R. § 496.360(d))</td>
<td>by the Title IV</td>
<td>(4) The AEA must comply with applicable Federal laws, program rules, and regulations. (5) The AEA must submit to the Tribal today’s [Title IV] the information or documentation submitted to the Tribal today’s [Title V]. At a minimum, the information or documentation must include: (6) A statement of the work accomplished; (7) The percentage of work completed; (8) A report of the work accomplished; and (9) Any other information required under this section.</td>
<td></td>
</tr>
</tbody>
</table>

Building codes and health and safety standards. Section 4903(d) should be deleted as unnecessary and inconsistent with the building codes and standards applicable to Indian housing. Section 4903(d) should be necessary to ensure that Indian housing meets minimum health and safety standards. Section 4903(d) should also be necessary for Indian housing projects to be eligible for funding under this section. A funding agreement shall contain a statement that the Indian tribe will establish and maintain procedures designed to ensure that projects that it funds are consistent with applicable federal, state, and local laws. The procedures must include prudent use of the funds and the monitoring of the projects to ensure that they are being implemented in accordance with the funding agreement. (40 C.F.R. § 496.360(d)) | by the Title IV | (4) The AEA must comply with applicable Federal laws, program rules, and regulations. (5) The AEA must submit to the Tribal today’s [Title IV] the information or documentation submitted to the Tribal today’s [Title V]. At a minimum, the information or documentation must include: (6) A statement of the work accomplished; (7) The percentage of work completed; (8) A report of the work accomplished; and (9) Any other information required under this section. | | |

Matching requirements. The Indian tribe shall agree upon and certify to the Secretary that it is capable of funding and administering any costs that it must fund under this section and that the costs that it must fund are consistent with the requirements of this section. The costs that the Indian tribe must fund under this section include the costs of construction of structures, the costs of land acquisition, and the costs of any other expenses that are necessary to carry out the purposes of this section. (40 C.F.R. § 496.360(d)) | by the Title IV | (4) The AEA must comply with applicable Federal laws, program rules, and regulations. (5) The AEA must submit to the Tribal today’s [Title IV] the information or documentation submitted to the Tribal today’s [Title V]. At a minimum, the information or documentation must include: (6) A statement of the work accomplished; (7) The percentage of work completed; (8) A report of the work accomplished; and (9) Any other information required under this section. | | |

Indian-tribal code and health and safety standards. Section 4903(d) should be necessary to ensure that Indian housing meets minimum health and safety standards. Section 4903(d) should also be necessary for Indian housing projects to be eligible for funding under this section. A funding agreement shall contain a statement that the Indian tribe will establish and maintain procedures designed to ensure that projects that it funds are consistent with applicable federal, state, and local laws. The procedures must include prudent use of the funds and the monitoring of the projects to ensure that they are being implemented in accordance with the funding agreement. (40 C.F.R. § 496.360(d)) | by the Title IV | (4) The AEA must comply with applicable Federal laws, program rules, and regulations. (5) The AEA must submit to the Tribal today’s [Title IV] the information or documentation submitted to the Tribal today’s [Title V]. At a minimum, the information or documentation must include: (6) A statement of the work accomplished; (7) The percentage of work completed; (8) A report of the work accomplished; and (9) Any other information required under this section. | | |

Building codes and health and safety standards. Section 4903(d) should be necessary to ensure that Indian housing meets minimum health and safety standards. Section 4903(d) should also be necessary for Indian housing projects to be eligible for funding under this section. A funding agreement shall contain a statement that the Indian tribe will establish and maintain procedures designed to ensure that projects that it funds are consistent with applicable federal, state, and local laws. The procedures must include prudent use of the funds and the monitoring of the projects to ensure that they are being implemented in accordance with the funding agreement. (40 C.F.R. § 496.360(d)) | by the Title IV | (4) The AEA must comply with applicable Federal laws, program rules, and regulations. (5) The AEA must submit to the Tribal today’s [Title IV] the information or documentation submitted to the Tribal today’s [Title V]. At a minimum, the information or documentation must include: (6) A statement of the work accomplished; (7) The percentage of work completed; (8) A report of the work accomplished; and (9) Any other information required under this section. | | |
<table>
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<tr>
<th>Section</th>
<th>Proposed Amendments to Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>409(a)</td>
<td>The Indian tribe shall ensure compliance of the construction project in accordance with the funding agreement. Note: The regulations under the Act, the Indian Tribes/Corporations, and the project agreements must be included in the funding agreement as an addendum.</td>
<td>The Indian tribe shall ensure compliance of the construction project in accordance with the regulations under the Act, the Indian Tribes/Corporations, and the project agreements must be included in the funding agreement as an addendum.</td>
<td>Tribal responsibility for completion of construction project. Although 25 CFR 100 is consistent with Title IV (see 25 U.S.C. 414, 416), it can be construed to mean that the tribe must ensure that the construction project is completed in accordance with the regulations.</td>
<td></td>
</tr>
<tr>
<td>409(4)</td>
<td>At the option of the Indian tribe, full funding for a construction project or construction project phase may be included in the funding agreement as an advance payment. Note: In Title IV or in 25 C.F.R. Part 1000, provisions specifically to construction projects or construction project phases, funding for construction projects or construction project phases shall be included in the funding agreement as an advance payment.</td>
<td>Funding for construction projects or construction project phases shall be included in the funding agreement as an advance payment.</td>
<td>No change. Where necessary in order to ensure the tribe fulfills its obligations, additional requirements may be added by regulation contrary to the statute.</td>
<td></td>
</tr>
</tbody>
</table>

For a federal governmental unit in a tribe.

Given the federal nature, the tribe may need to add the following section at the end of proposed 409(a): "The tribe shall ensure that all construction plans and specifications and activities, and in both cases, are certified by a licensed professional engineer and that all work is in compliance with the regulations and criteria that have been established."
<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed amendments (June 2006)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comment</th>
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</tr>
</thead>
<tbody>
<tr>
<td>610d</td>
<td>Includes a provision for 610 days after the Department appoints a new apt as required by § 490b.</td>
<td>Any business where a funding agreement requires an annual review of the department in the beginning of the fiscal year, the first such transfer shall be made not later than 15 days after the appointment of an apt for the Department to be sent to the Department, unless the Department provides otherwise. (25 U.S.C. § 490b-2(a)).</td>
<td>Funding of payments. The Department to continue the Federal funds can be transferred to any business within 60 days after appointment of apt, as required by § 490b.</td>
<td>The 60 days has no problem complying with the requirement. The Department cannot do so as well.</td>
<td></td>
</tr>
<tr>
<td>812</td>
<td>(a) Corrected. (b) Corrected.</td>
<td>The language used above should also be corrected because it would conflict with 25 C.F.R. § 490b-2(a) which allows any apt for the Department to be sent to the Department within 60 days after appointment of apt, as required by § 490b.</td>
<td>The 60 days has no problem complying with the requirement. The Department cannot do so as well.</td>
<td>We agree.</td>
<td></td>
</tr>
<tr>
<td>Table</td>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
<td>Column 5</td>
</tr>
<tr>
<td>-------</td>
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<td>----------</td>
</tr>
<tr>
<td>Data 1</td>
<td>Value 1</td>
<td>Value 2</td>
<td>Value 3</td>
<td>Value 4</td>
<td>Value 5</td>
</tr>
<tr>
<td>Data 2</td>
<td>Value 1</td>
<td>Value 2</td>
<td>Value 3</td>
<td>Value 4</td>
<td>Value 5</td>
</tr>
<tr>
<td>Data 3</td>
<td>Value 1</td>
<td>Value 2</td>
<td>Value 3</td>
<td>Value 4</td>
<td>Value 5</td>
</tr>
</tbody>
</table>

Notes:
- Table 1: Description of data used in the table.
- Table 2: Additional notes on the data sources.
- Table 3: Cross-references to related tables.

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<table>
<thead>
<tr>
<th>Section</th>
<th>Proponent's comments (June 1980)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>214(b)</td>
<td>(1) In general. - The President shall identify in the annual budget request submitted to Congress under section 105 of Title 31, and in any supplementary budget requests, the amounts necessary to fully fund all funding agreements authorized under this title. (2) Duty of Secretary. - The Secretary of the Treasury shall ensure that amounts that are insufficient for planning and administrative grants and salaries to carry out any eligible Federal funding agreement are available to the Secretary for disbursement. (3) Reporting. - All funds included within funding agreements shall be reported in the Office of Self-Governance not later than 15 days after the date on which such funds are appropriated. The Secretary shall report the amounts in the Office of Self-Governance shall be responsible for distribution of the amounts identified in the annual budget request. (4) The President shall identify in the annual budget request submitted to Congress under section 105 of Title 31, and in any supplementary budget requests, the amounts necessary to fully fund all funding agreements authorized under this title. (5) The Secretary shall report in the Office of Self-Governance which shall be responsible for distribution of funds provided under section 101 of Title 31, and in any supplementary budget requests, the amounts necessary to fully fund all funding agreements authorized under this title. (6) Funding in this subsection shall be accounted for as additional funds to the Secretary to fund the Indian Health Service to reduce the amount of funds due to self-governance tribes in reference to the provision of services to members of such tribes, and such funds, to the extent available, shall be used to reduce any applicable tax, whether or not such funds are appropriated to the Budget request. Section 402(a). Should be added. Section 402(b) (Under Title IV) Language should probably require the Secretary to identify the amount of funds included within funding agreements and, therefore, guarantee the President's budget requests to the Congress. Section 402(b). Whether or not this is necessary is not desirable because the Department's internal organizational processes should not be decided by statute. Section 402(c), even though it is Title IV language, should be deleted for the same reasons.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Comparison of Proposed Amendments of Tribal Workforce (92-196) to Title IV and Title V with Department Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (92-196)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department Comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>6(4)</td>
<td>Project funding shortfall; all</td>
<td>Office of Tribal Self-Governance under this section (21 U.S.C. § 431aa 131(c))</td>
<td>None</td>
<td>Budget request; Section 4(1)(b) should be clarified because GNI is not consistent in identifying funding shortfalls in the President's budget.</td>
<td>We disagree. This provision is consistent with Title V.</td>
</tr>
<tr>
<td>6(1)(A)</td>
<td>The report under subsection (a)</td>
<td>The report shall (1) identify the relative costs and benefits of Tribal Self-Governance; (2) identify (a) the relative costs and benefits of Tribal Self-Governance and benefits of self-governance; (b) the aggregate of benefits of Tribal Office funds; (c) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds for Indian tribes; (d) the relative costs and benefits of Tribal Self-Governance; (e) the total of aggregate of benefits of Tribal Office funds; (f) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds; (g) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds for Indian tribes listed in section 4(1)(B) and under subsection (B) of this section.</td>
<td>The report must (1) identify (a) the relative costs and benefits of Tribal Self-Governance; (b) identify (a) the relative costs and benefits of Tribal Self-Governance and benefits of self-governance; (b) the aggregate of benefits of Tribal Office funds; (c) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds; (d) the relative costs and benefits of Tribal Self-Governance; (e) the total of aggregate of benefits of Tribal Office funds; (f) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds; (g) the costs of Tribal Self-Governance and the aggregate of benefits of Tribal Office funds for Indian tribes listed in section 4(1)(B) and under subsection (B) of this section.</td>
<td>We disagree. This provision is consistent with Title V.</td>
<td></td>
</tr>
</tbody>
</table>

### Notes
- The proposed amendments to Title IV and Title V are compared with the Department's comments and tribal comments. The amendments focus on the relative costs and benefits of Tribal Self-Governance and Tribal Office funds. The Department's comments include suggestions for clarity and consistency in identifying funding shortfalls. Tribal comments are not provided for this section.
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### Table: Comparison of Proposed Amendments of Tribal Workgroup (9-7-2006) in Title IV and Title V with Important Changes

<table>
<thead>
<tr>
<th>Section</th>
<th>Proposed Amendments (June 2006)</th>
<th>Title IV</th>
<th>Title V</th>
<th>Department comments</th>
<th>Tribal Comments</th>
</tr>
</thead>
</table>
| (1) the validity of the grounds for the decision, and | (i) the decision is fully consistent with provisions of Title V | (ii) the decision is fully consistent with provisions of Title V and the standards of practice that apply to
| (2) the consistency of the decision with the provisions and policies of this title | which should be stated in such language as is necessary to protect the어서 | | |
| | | | | |

**Concorntes raised by DOI in correspondence dated June 18, 2005.**

1. A tribal program in order to receive or more advanced funds under the "Substitute investment standard" is unacceptable to DOI. DOI views such investments as an unacceptable risk to the security of governmental funds for construction programs, activities, or agreements. If the tribe agrees to advance funds to private developers and experiment a loss, the Secretary is unable to replace those funds, and, should a tribal entity exercise an agreement with a developer, the Secretary must report on the program's volume of

This section discusses the proposed amendment to Title IV related to the Secretary's authority to issue an advance to a tribe under its proposed language. The amendment clarifies the conditions under which the Secretary can advance funds to a tribe, emphasizing the need for the Secretary to ensure that the tribe has a solid plan for the development and that the Secretary can recover in the event of a loss.

2. The Director's proposal to say that the proposed provisions in the amendment that would allow contracting of adaptive PSSA's that are carried out by tribes and others than the Secretary.

The amendment proposes to allow the Secretary to contract with other parties to carry out certain functions related to the PSSA. This clarifies the Secretary's authority to delegate responsibilities and allows for greater flexibility in implementing the program.

We disagree with the Director's concerns. The proposed amendment to Title IV will work if there are amendments not proposed. The proposed provisions do not stipulate that the Secretary would have to contract with others for the purposes of the PSSA. The Director's concerns are unfounded. The amendment proposes to allow the Secretary to contract with other parties, but it does not mandate such actions. We believe that the amendment is necessary to ensure that the Secretary has the flexibility to carry out the PSSA's requirements effectively. In the end, the Secretary will have the discretion to decide whether to contract with others or perform the functions directly.

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3. The Director's proposal to provide a general overview of the provisions that are currently included in the amendment that are applicable to all programs or policies in the Indian Country or significant Indian interests.

The amendment proposes to provide a general overview of the provisions applicable to all programs or policies in the Indian Country or significant Indian interests. This is necessary to ensure that the Secretary has a clear understanding of the requirements and obligations under the PSSA.

We disagree with the Director's concerns. The proposed amendment to Title IV does not stipulate that the Secretary would have to provide a general overview of the provisions applicable to all programs or policies. The Secretary's role is to review and approve the agreements. The Director's concerns are unfounded. The amendment proposes to allow the Secretary to provide a general overview of the provisions applicable to all programs or policies, but it does not mandate such actions. We believe that the amendment is necessary to ensure that the Secretary has a clear understanding of the requirements and obligations under the PSSA. In the end, the Secretary will have the discretion to decide whether to provide a general overview or perform the function directly.

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Title IV

Title V

Department comments

Tribal comments

satisfactorily.

The Tribal Town believes that the provisions of Title V.

4. The DOI believes that under Title V, the Secretary's inability to assure the availability of funds for non-Indian projects in a timely manner would increase the difficulty for DOI to ensure the availability of funds for non-Indian projects.

The Tribal Town believes that the provisions of Title V are inadequate to ensure that the Secretary has the ability to assure the availability of funds for non-Indian projects in a timely manner.

5. The DOI believes that the provisions of Title V are inadequate to ensure the availability of funds for non-Indian projects in a timely manner.

The Tribal Town believes that the provisions of Title V are inadequate to ensure the availability of funds for non-Indian projects in a timely manner.

6. The DOI believes that the provisions of Title V are inadequate to ensure the availability of funds for non-Indian projects in a timely manner.

The Tribal Town believes that the provisions of Title V are inadequate to ensure the availability of funds for non-Indian projects in a timely manner.

We understand that the budgetary and financial management systems of non-Indian entities and agencies may vary, so as the present time, we agree with the position of the Secretary's inability to assure the availability of funds for non-Indian projects in a timely manner.

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Melanie Benjamin

Office of the Chief Executive

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

September 20, 2006
Before the Senate Committee on Indian Affairs
Oversight Hearing on Tribal Self-Governance

Good morning, Mr. Chairman, Mr. Vice Chairman, and members of the Committee. My name is Melanie Benjamin. I am the elected Chief Executive of the Mille Lacs Band of Ojibwe.

I have two points to make in my testimony today. First, I will identify what hinders the widespread tribal desire to expand self-governance authority and participation levels among tribes. And second, I will suggest a practical step that the Congress can take to remove obstacles to greater tribal self-governance. But first, I will give a brief background.

BACKGROUND

A. Mille Lacs Band History and Structure

A century ago, after our lands were stripped away from us by both law and lawlessness, the U.S. Congress referred to us as the "homeless nonremoval Mille Lacs Indians" and restored to us a small fraction of our original lands. That land today comprises the center of the Mille Lacs Indian Reservation in central Minnesota about two hours drive from Minneapolis. Most of our approximately 3,800 tribal members live on or near our checker-boarded Reservation and its three separate Reservation Districts.

In the 1980s we organized our constitutional government into three branches of government, with an Executive, a unicameral Legislature, and an independent judiciary. Over the past two decades, through a combination of self-governance authority and the exercise of lawful governmental gaming, our Band has been transformed from the darkest of nights into a bright new day.

Mille Lacs
Band of
Ojibwe
42408 Oweena Dr.
Onamia, MN
56359
Testimony of Melanie Benjamin, Chief Executive
Mille Lacs Band of Ojibwe – September 20, 2006
Page 2 of 7

B. Leadership in Self-Governance

I am proud to say that the Mille Lacs Band has been a leader among other Tribes in seeking greater tribal self-governance authority and in putting it into practice. The Band was among the first ten Indian Tribes to participate in self-governance with the Bureau of Indian Affairs (BIA) in the late 1980s and the first Tribe to negotiate an agreement with the Indian Health Service (IHS) in the early 1990s.

We will always be grateful to you, Chairman McCain, and to a handful of your colleagues, for having been responsive, time and time again, to tribal calls for writing into federal statute greater tribal self-governance authority that curbs the federal bureaucracy’s insatiable appetite to dominate tribal operations. Congress, at your behest, has repeatedly had to step in with statutory changes to correct the tendency of federal agencies to place a strait-jacket on tribal authority, priorities, administration, and programs. Today, we urge you to step in again and change the law to remove more obstacles to tribal self-governance.

OBSTACLES TO TRIBAL SELF-GOVERNANCE

As you know, Mr. Chairman, it was the scandal of a corrupt and wasteful BIA, uncovered by the Arizona Republic newspaper in 1987, that led the Congress to impose by law upon the BIA a “demonstration” project for tribal self-governance in 1988. Congress expanded that authority in 1991 to IHS, made it permanent for Interior in 1994 and, in 2000, made it permanent for IHS. In each of these enactments, Congress made specific changes to the law to remove obstacles to greater self-governance. In each case, Congress had to amend the statute to correct what the federal agencies either had distorted by regulation and practice or had balked at implementing.

A. Over-Reach by Federal Agencies

Each of the previous four congressional reform efforts was embraced in rhetoric but opposed in practice by the Administration, regardless of political party or leadership. The message of the federal agencies has always been – 'we cannot trust the tribes to do better for themselves than we are able to do for them.' This is not a position rooted in partisan ideology. It is instead pure paternalism, fed by an institutional desire to preserve itself, its power, its prerogatives, and its personnel at all.
Of course there will be mistakes made by tribes in the exercise of self-governance authority. But there are built-in correctives. First, the people closest to the action – the tribal member constituents and beneficiaries – hold the power to correct tribal leaders through the ballot box and other political restraints available in tightly-knit Reservation communities. Second, stringent audits and corrective actions are required. Third, federal criminal sanctions against misappropriation of funds apply. And fourth, the tribal self-governance movement is very protective of its reputation and encourages inter-tribal cooperation and assistance.

B. Involuntary Transfer of Power

Federal agencies do not give up power easily or willingly. Whether a transfer of power is required by a President or a Secretary or by an Act of Congress, those involved in implementation have many opportunities to blunt, curb, avoid or undermine directives to transfer authority to tribes. The resistance to change is great in an entrenched bureaucracy whose primary reason for existence is to exercise authority over others. The more precise the statute, the less latitude is left to the bureaucrats to resist the change intended by Congress.

Congress has had to amend the self-governance statute four times. Each time, it has done so to correct distortions that have been made to the statute by the federal agencies. We are again at such a point with Title IV and its application to the BIA.

C. Stifling Policies and Procedures

Federal agencies want to impose uniformity that is inflexible and unresponsive to local needs and priorities. One size does not fit all. There are many ways to a common objective. The specifics of what works in Window Rock may not work as well in Onamia.

The rationale for detailed policies and procedures, for program manuals, negotiation guidelines, and regulations, is that a tribe won’t get it right without using the bureaucracy’s cookie cutter. It is at its root a fundamental lack of trust in tribes to seek their own best interests and an unwillingness to let go of control so that leaders closer to the people served may govern their own people.

D. Conflicting BIA and IHS Requirements
contain provisions that differ from each other and thus require self-
governance tribes to operate separate administrative structures and systems
for programs funded by IHS and BIA. Congress expanded tribal authority
and flexibility when it enacted Title V governing IHS-funded programs.
But the same tribes still labor under the more restrictive authority of Title
IV governing BIA-funded programs. These dual requirements are an
administrative and cost burden that weighs against more tribes assuming
more federal program administration under self-governance authority.

THE BOOTSTRAP AMENDMENT — A PRACTICAL WAY
TO EXPAND SELF-GOVERNANCE PARTICIPATION

A. The Last Six Years: Stalemate at Interior

In 1994, Congress enacted Title IV, which at the time was landmark
permanent authority for tribal self-governance related to BIA. It was
enacted over the objections of the Administration. The negotiated
rulemaking that followed was contentious, concluding in late 2000 when
Interior over-rode tribal interpretations of Title IV and published a rule that
construed the statute to limit tribal authority in many key areas.
Meanwhile, on a dual track in the late 1990s and informed by their difficult
experience with Interior-BIA, the tribes worked with Hill allies and this
Committee to reform IHS-related tribal self-governance authority. The
result in 2000 was enactment of a detailed new Title V that expanded
specific tribal authorities over IHS programs. The ensuing negotiated
rulemaking process with IHS on this new Title V concluded quickly with
the support of the tribes.

In 2001, the tribes began an effort to develop legislation to
completely overhaul Title IV (BIA-Interior) modeled after the expanded
tribal authority enacted in Title V (IHS) in 2000. The draft bill mandated
strict timeframes, clarified appeal rights, and expanded tribal flexibility in
administration. Many other ambiguities in Title IV were clarified so that,
like with Title V, there would be little left to argue about in the regulations.
Negotiations between tribal leaders and a succession of Interior Department
officials on the tribal draft bill over the last five years have been protracted
and unsuccessful.

B. A Simple Solution — “Bootstrap” Title V Authority Into Title IV

Given the complications arising from a detailed bill, the tribes
crafted an alternative “bootstrap” amendment that simply would allow any
Indian tribe to elect to apply existing Title V authority to its BIA-Interior
self-governance activity. Several Senate (e.g., May 12, 2004, S. 1715) and
House hearings were held on the larger and bootstrap alternatives, and the
larger bill was reported at the end of 2004 but was not acted upon by the Senate.

The attempt to gain Interior support for the detailed tribal bill to conform Title IV to Title V is basically at a stalemate today, and has been for years. Bureaucratic opposition has stalled all progress. So the tribes now ask that the Committee support enactment this year of a simple alternative statutory amendment that borrows from something the Congress did a decade ago – authorize any self-governance tribe to apply the same flexible authorities to its Interior-funded programs that Title V permits a tribe to apply to its IHS-funded programs. We ask that the Committee secure enactment of this technical amendment before adjournment.

In 1996, Congress adopted a similar “bootstrap” amendment you sponsored, Sen. McCain, that applied the latest reforms of Title I (self-determination) to Title III and IV (self-governance) administration. The bootstrap amendment we ask you to consider would, in substance, simply add the phrase “Title V” to the bootstrap provision in existing law, at 25 U.S.C. 458cc(l) so that Title V reforms, like Title I reforms, may be applied by any tribe to its Title IV program authorities.

The rationale for this is plain and simple -- if the IHS has survived the application of Title V provisions over the past five years, so too can Interior. Having the same rules apply to all tribal self-governance operations of a tribe like Mille Lacs will enable us to run a more efficient tribal administration with less duplication of effort and greater cost sharing. Timeframes, reporting requirements, control structures, systems architecture, fiscal management and investment, and other activities can be made more congruent. Such bootstrap authority would offer the Mille Lacs Band and other tribes a greater potential to better coordinate all our federal programs at the tribal level and thereby increase the program benefits to our people.

C. The Specific Benefits of “Bootstrap” Authority

The “bootstrap” would allow an Indian tribe, at its discretion, to apply any provision of enacted Title V authority to its negotiation and administration of BIA-Interior funds. This would capture the improvements made by Congress in 2000 regarding IHS and extend them to BIA-Interior. Some examples of the added authority include: (a) greater eligibility to participate; (b) simplification of the application process; (c) strict timeframes for application, negotiation, decision-making, and dispute resolution; (d) more flexible tribal administrative authority; (e) expanded tribal investment authority over advanced funds; and (f) cost savings and efficiencies realized from allowing a tribe to conform its administrative
practife regarding BIA-funded programs to that of its IHS-funded programs.

The bootstrap amendment is the kind of simple, house-keeping legislative reform that can have lasting positive impact. It would adopt the extensive work done by Congress in 2000 on Title V and apply it to Title IV at tribal option. Its enactment would remove many of the known federal obstacles to full tribal participation in self-governance at BIA-Interior. Presumably BIA-Interior would take no position on or oppose the bootstrap amendment, but their grounds for any opposition would likely not be very compelling.

Attached is a copy of the bootstrap bill language previously prepared by the Senate Office of Legislative Counsel and considered by the Committee in 2002. The only substantive change to existing law it would make is to add the words "Title V" to 25 U.S.C. 458cc(t).

CONCLUSION

For six years we have tried to negotiate with Interior to gain its agreement to add to Title IV (BIA) the reforms made by Congress to Title V (IHS). We have not succeeded. A simpler approach is for Congress to enact legislative "bootstrap" authority this year, patterned after what it did in 1996, which would allow a self-governance tribe to apply Title V authority to its Title IV agreements with Interior.

The broader Title V self-governance authority has worked well at IHS where there is widespread participation by tribes in self-governance. We believe tribal participation would expand if Title V was applied, at tribal option, to Interior-BIA agreements. More efficient and responsive tribal program administration is not the only product of expanded tribal self-governance authority. Broad-based and sustained economic development and growth also follows where a tribal government exercises self-governance, according to research conducted by Harvard University's Kennedy School of Government.

From our first days in tribal self-governance, the vision of the Mille Lacs Band has been to move closer to a large, comprehensive block-grant program that includes all of the federal dollars we are eligible to receive. We do not want to have to go through the State of Minnesota for any federal flow-through dollars, and we want the flexibility to determine our own priorities and to reprogram federal funds at all levels of the federal government. We would propose a new demonstration project, similar to the "New Federalism" proposed years ago, that is rooted in the federal trust responsibility and includes a Department of Indian Affairs that administers all Indian programs. And we would be pleased to work with you and this Committee to that end. However, as a very interim step, we need quick enactment of this "bootstrap" Title V authority for Title IV. And so we ask the Committee to marshal its energies and persuade Congress to enact this "bootstrap" amendment in the closing days of this Congress.

Thank you for this opportunity to express the views of the Mille Lacs Band of Ojibwe, and for your work, Mr. Chairman, and the work of this Committee over the years in supporting tribal self-governance at the request of tribal governments and in the face of resistance from the federal agencies.

Miigwetch.

Attachment: "Bootstrap" amendment language
(B) Description of claim.—A claim described in this subparagraph is—

(i) a claim by a person for a fee for services relating to an appeal described in paragraph (1) that are performed on or after March 29, 1986; or

(ii) a claim by a person for a fee for services that—

(I) is asserted on or after March 29, 1996; but

(II) is for a fee for services relating to an appeal described in paragraph (1) performed before that date.

(b) Incorporation of Self-Determination Provisions.—Section 403 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458e) is amended by striking subsection (l) and inserting the following:

'(1) Incorporation of Self-Determination Provisions.—

'(1) In general.—At the option of any participating Indian tribe, any or all of the provisions of title I or V shall be incorporated in a compact or funding agreement entered into under this title.
(2) FORCE AND EFFECT.—A provision incorporated under paragraph (1) shall—

(A) have the same force and effect as if included in this title; and

(B) be deemed to—

(i) supplement or supplant any related provision in this title, as appropriate; and

(ii) apply to any agency subject to this title.

(3) TIMING.—In any case in which an Indian tribe requests incorporation of a provision under paragraph (1) during the negotiation stage of a compact or funding agreement described in that paragraph, the incorporation shall—

(A) be considered to be effective immediately; and

(B) control the negotiation and any resulting compact or funding agreement.

Subtitle D—Indian Arts and Crafts

SEC. 1061. INDIAN ARTS AND CRAFTS ACT AMENDMENTS. Section 2(g) of the Act of August 27, 1935 (25 U.S.C. 305a(g)), is amended—

(1) in paragraph (1), by inserting “and trademarks for” after “products and”;

October 18, 2002
TESTIMONY OF
CHAIRMAN DELIA CARLYLE
ON BEHALF OF THE
AK-CHIN INDIAN COMMUNITY

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

September 20, 2006

Introduction

Good Morning, Mr. Chairman, Mr. Vice-Chairman and other distinguished members of this Committee.

My name is Delia Carlyle and I am the Chairman of the Ak-Chin Indian Community.

The Ak-Chin Indian Community Reservation was established in May 1912 and comprised 47,600 acres. A few months later, the Reservation was reduced by more than half to its present day size of 21,840 acres. The Community is located approximately 35 miles south of Phoenix, Arizona, near the Gila River Indian Reservation. We are a small tribe with 767 enrolled members.

Ak-Chin is an O’odham word which means “people of the wash.” The term refers to a type of farming that depends on the area's washes where our ancestral people planted beans, corn and squash which were irrigated from the wash runoff from storms.

Today, the Ak-Chin Indian Community (“Community” or “Tribe”) is being impacted by hyper-growth in our area. We were once a small, rural farming village. Today, however, the area is one of the fastest growing suburbs of Phoenix. In the year 2000 there were about 1000 people in the adjacent town of Maricopa.1 In 2004, the town had grown to over 5000 people.2 Last year the population swelled to approximately 18,000, and in a few years the population is projected to exceed 100,000 people.3 The explosive growth has also brought big-city problems to the Community which adversely affect our air, water, land, culture and traditions. These problems, such as an increase in traffic, congestion, crime, drugs, pollution and other effects of rapid urban expansion - directly impact our children, elders, and our way of life. Thus, the need for timely and fully-funded self-governance programs is more important than ever to assist the Community in providing necessary services for our tribal members.

On behalf of the Ak-Chin Indian Community I would like to thank the Chairman, Vice Chair, and the other members of this Committee for holding this hearing on Indian self-governance programs.
Self-Governance

I am here today to speak about self-governance programs as they pertain to the Ak-Chin Indian Community. At Ak-Chin we have our Social Services, Criminal Investigator, Education, Roads Maintenance and other Consolidated Tribal Government Programs which include courts, enrollment and adult education in our self-governance compact.

In theory, self-governance was intended to allow an Indian tribe to consolidate all of its Bureau of Indian Affairs (“BIA”) 638 programs, funds and reporting requirements into one self-governance compact. The primary objective of self-governance programs is to enable the tribe - not the BIA - to operate its own tribal programs. The tribe, therefore, delivers local, day-to-day services directly to its tribal members. Unfortunately, self-governance programs have strayed from their original intent to strengthen Indian self-determination and self-sufficiency.

Problems

One of the biggest problems for our Tribe’s self-governance programs is that the BIA’s Office of Self-Governance (“OSG”) has become an additional layer of BIA bureaucracy. The OSG negotiator acts as a liaison between the Tribe and the BIA and Indian Health Services (“IHS”) programs. The problem is that the negotiator is not a local person. In our case, our OSG negotiator is located over 1000 miles and three states away in Vancouver, Washington. Thus, they do not usually know the available or previously utilized local resources.

For example, my Tribe may need a social worker, teacher, nurse, therapist or police officer to help implement a self-governance program. Because there are no local resources through the OSG, my Tribe has to turn to the BIA Agency and/or Regional Office for administrative and technical support to implement and operate our self-governance programs. This creates several problems. First, there is no local BIA support because the BIA’s Agency or Regional Office lost their technical support person who was let go or reassigned when OSG took over the program administration. Consequently, when that person left, all the local institutional knowledge and experience left as well.

Furthermore, tribes may be stuck in the middle of an OSG and Agency/Regional Office turf battle. At times, tribes pay the price for BIA internal strife when an Agency Office loses personnel and funding to the OSG, and the result is that the Tribe gets the bureaucratic runaround instead of its questions answered.

In addition, technical assistance funding is practically gone. This hurts tribal program development because of the lack of BIA program technical assistance and support. This is especially true for navigating through the complex funding formula process.

A significant problem is getting the available funding drawn down to the Tribe. It seems that streamlining the funding process would be another good start. There are still too
many bureaucratic layers involved. It should not take over two years to have funds drawn
down to my Tribe.

The draw down process must be streamlined. We deal constantly with different people in
multiple BIA departments giving us their different interpretations of how and when the
funding will be sent to the Tribe. In the end, we still have not received our roads funding.

For example, in our case, we are still waiting for our fiscal year 2004 reservation roads
funding. Because of the hypergrowth in our area, roadway infrastructure is a major need.
From 2004 to the present, we were promised almost $200,000 for road construction from
OSG. Consequently, we planned and negotiated with the County and State for a shared
roadway to alleviate the massive traffic congestion. The road was built, but the funding
did not come in. My Tribe, therefore, had to cover the funding gap which meant that
other Tribal programs, such as meals and services to the elderly were cut, as well as
budget cuts to early childhood development programs to make up for the self-governance
shortfall. Finally, we have recently been informed by OSG that the funding should be
available soon but the amount is less than originally promised.

Again, these funds are already authorized and appropriated, but my Tribe gets excuse
after excuse from OSG that the BIA Central Office has not forwarded the funds. Even
when funds are received, they are generally not for the entire amount. When asked where
the remainder went, the Tribe usually gets a bureaucratic explanation that is lost in
funding formula doublespeak. At a minimum, it would be nice to know where the Tribe’s
funds went.

Another glaring problem is the expanded use of "administrative holdbacks" by the BIA.
In short, the BIA Central Office is not releasing the full amount of authorized and
appropriated funds for tribes and holding back about 5-10% of tribally earmarked funds.
This is a direct violation of Section 405 of the Interior Appropriations Act which requires
any holdbacks to be approved by the Appropriations Committee. In this case, there has
been no such approval. (Exhibit A).

In some cases, the BIA claimed that hurricane relief or Cobell litigation fees consumed
the funds. (Exhibit B). In addition, at times, we have been told by staff within the BIA,
that instead of the funds going to tribes, those funds are returned to the Treasury. In any
case, the funds are not going to tribal programs. As a result, tribes have to cut other much
needed tribal programs to make up for the holdbacks.

Recommendations

Positive impact would come simply from the BIA following federal law and not enabling
administrative holdbacks. Section 405 of the Interior Appropriations Act prohibits
administrative holdbacks and requires the BIA to send the full amount of authorized and
appropriated funds directly to tribes unless the holdbacks were approved by the
Appropriations Committee.
It seems that streamlining the funding process would be another good start. There are still too many bureaucratic layers involved which breed confusion and uncertainty. In addition, we respectfully recommend limiting the number of tribes per negotiator and rewarding good negotiators while getting rid of the ineffective ones.

Tribes also want a collaborative and cooperative partnership with the BIA and OSG. Moreover, there needs to be better coordination between the OSG and the Local BIA Office to actually deliver administrative, technical, and support assistance to tribes.

In conclusion, Mr. Chairman and Committee members, I would like to thank all of you for this opportunity. Our Community has high hopes that this Committee will address the problems of self-governance and we look forward to working with you toward solutions.

Thank you.

1 2000 U.S. Census
2 2005 U.S. Census Bureau, Special Census
3 City of Maricopa Planning Department
117 STAT. 1318 Public Law 108-108, Title III, section 343  "Estimated overhead charges, deductions, reserves or holdbacks from programs, projects and activities to support government-wide, departmental, agency or bureau administrative functions or headquarters, regional or central office operations shall be presented in annual budget justifications. Changes to such estimates shall be presented to the Committees on Appropriations for approval."

**Bureau of Indian Affairs Reserves or Holdbacks**

The Bureau of Indian Affairs (Bureau) allocates funds for regional and headquarters overhead, administrative services and personnel services through separate program sub-elements within all of the Activities. It is not standard practice to routinely hold funding allocations in reserve for any of these administrative functions.

However, if unplanned, high priority Departmental and Bureau projects require additional funding, the Bureau may hold back a percentage of Operation of Indian Programs and Construction FY 2006 allocations. For example, in 2003 the Bureau held back 0.4% of OIP and construction to fund unplanned the Activity Based Costing deployment project and the expanded trust fund audit. At this time, no holdbacks are planned for 2006.

**Bureau of Indian Affairs to Department of the Interior charges and deductions**

Two tables are attached that reflect data for collections under the Working Capital Fund (WCF) centralized and direct billings.
Dear Tribal Leader:

This letter is to inform you about activities in the Cadiz v. Morton case that have had an effect upon the financial resources available to carry out Indian programs.

In response to plaintiff's motion for attorney fees pursuant to the Equal Access to Justice Act, for activities through the Phase 1.0 Proceedings, the U.S. District Court issued an Order requiring the prompt payment of a "total interim fee award" in the amount of $7,066,471.05. The components of the fee award include:

FEES:

- Dennis Dingess
  - $2,007,032.16
- Thaddeus Hall
  - $490,679.40
- Mark Brown
  - $79,947.77
- Christopher Stockton
  - $406,097.60
- Native American Rights Fund
  - $1,609,111.84
- Geoffrey Kespel
  - $40,274.60
- Stacy Dingess Bear
  - $7,925.00

TOTAL FEES: $4,534,278.97

EXPENSES:

- PriceWaterhouseCoopers
  - $2,531,839.40
- Thaddeus Hall
  - $350.68

TOTAL EXPENSES: $2,582,189.08

TOTAL FEES & EXPENSES: $7,066,472.05

As this interim fee award was not a planned expense, the Department considered a range of options to comply with the Court's Order for prompt payment which was sent to plaintiff's counsel on January 18, 2006.

We utilized several sources of funds to pay the fee award. Please be advised that the Bureau of Indian Affairs contributed $10 million of funds from an account used to reimburse tribal attorneys' fees and about $1 million generated by a 0.1% across-the-board reduction of program funds, with some exceptions, the Office of Historical Trust Accounting obligated $2 million from funds that were targeted to reimburse the ownership of Special Deposit Account funds, the Office of Special Trusts for American Indians contributed $568,000 of funds planned for trust improvement activities and the Department of the Treasury contributed the balance of...
$1,766,471.06. To the extent that these funds have been redirected to comply with the Court's Order, these funds are no longer available thus associated program activities will not be undertaken. Please ensure that care is taken to understand whether these financial changes affect your planned program activities.

Should you have questions about these financial matters, please feel free to contact Mary Jane Miller, Director, Office of Management and Budget, (202) 208-6342, for further information.

Thank you for your patience and understanding.

Sincerely,

[Signature]

James E. Cases
Associate Deputy Secretary
Red Lake Band of Chippewa Indians
Red Lake, MN 56671
Phone: 218-679-3341
Fax: 218-679-3378

TESTIMONY OF THE HONORABLE FLOYD JOURDAIN, JR.
CHAIRMAN, RED LAKE BAND OF CHIPEWHA INDIANS

Before the Senate Committee on Indian Affairs
Oversight Hearing on Tribal Self Governance and Pay Costs
September 20, 2006

Mr. Chairman, I thank you and the other distinguished members of the Committee for this opportunity to provide testimony on behalf of the Red Lake Band of Chippewa Indians. The focus of my testimony will be on the impacts upon Indian tribes of the inequitable and partial funding of uncontrollable fixed costs (particularly Pay Costs) to Indian Self Determination and Self Governance.

As you know, many Indian tribes have assumed, under the Indian Self-Determination Act ("ISDA"), the administration of core service programs and salaried positions previously carried out and filled by federal employees. As a matter of equity and fairness, the Congress regularly has encouraged the Administration to treat ISDA tribal employees the same as Bureau of Indian Affairs ("BIA") employees are treated with respect to pay cost increases and other fixed costs.

Without increased funds for fixed costs like pay cost adjustments, Indian tribes must either “absorb” pay cost increases by reducing their core program service delivery budgets or deny tribal employees the pay cost increases enjoyed by their federal colleagues. The result is an accumulating series of reductions in program service delivery year upon year. As the House Subcommittee on Interior Appropriations noted at page 6 of its FY 2005 Interior and Related Agencies report (House Rept. 108-542), “Absorption of costs associated with Federal pay increases … and other unfunded fixed costs cannot continue indefinitely without further eroding core program capabilities. Over the past three years, … Indian programs have absorbed over $500 million in unfunded costs.”

I now will discuss several ways in which tribes have been shortchanged in their pay cost allocations. Some of these are unique to tribes, resulting in tribes being even more severely affected than other federal agencies.
1. In FY 2003-2005, and again in FY 2007, the President requested that only a portion of pay costs be actually funded, resulting in a permanent pay cost reduction for all tribes.

The failure to fully fund fixed costs over the last several years has resulted in a real, $1.2 billion cut to just the Department of Interior agencies. For tribes, these cuts have been particularly crippling, even exceeding the devastating cut to Tribal Priority Allocations (TPA) back in FY 1996. At Red Lake, we estimate these pay cost cuts have resulted in our core, recurring service funding levels being permanently reduced by $600,000 - $800,000 each year.

We believe it is much more difficult for tribes to absorb these cuts than for a large federal agency to absorb them. Salaries for tribal employees have quickly fallen far behind their federal counterparts. At Red Lake, we try to provide annual cost of living increases to our employees, but this must come from a reduction in core services. Step and grade increases, which federal employees are guaranteed, are the exception not the rule at Red Lake. As an example, we know our law enforcement and detention officers are paid less than BIA officers. As I speak, we are engaged in discussion with the BIA over this very issue. The BIA wants us to increase our officer salaries. We likewise want to increase our officer salaries. But this is an extremely difficult and frustrating process in light of the federal government’s chronic failure to fully fund pay costs.

The House Interior Subcommittee language accompanying each of the last four Interior Appropriations bills was highly critical of the practice of the Administration requesting only partial pay cost increases, citing an inability of programs to absorb these uncontrollable costs leading to inevitable declines in services to the American people. The Subcommittee also “urged” the President to request full funding of uncontrollable costs (including pay costs) in all future budget submissions.

2. In FY 2006, the President requested, and Congress enacted, full pay cost funding. Nevertheless, when Interior distributed the appropriation, the Indian tribes received far less than full pay cost funding.

With the enactment of full fixed cost funding in the FY 2006 Interior Appropriations bill, we were hopeful we would see some relief from the pay cost cuts of previous years. To our dismay, when we received our pay cost allocation, we found it was less than 40% of our reported pay costs for FY 2006. The intent of Congress to fully fund these costs was thwarted by the BIA.

Only after many meetings with the BIA were we able to figure out how this happened. Red Lake submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was $7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of approximately $262,500. Instead, BIA allocated only $97,262 to the Tribe.

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September 20, 2006
We knew $97,262 was far less than we should have received. In FY 2000 for example, Red Lake received $153,895 in pay costs, and this was before the Tribe’s new detention facility opened with more than 30 FTEs, which were new positions eligible for additional pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA was consistent with BIA’s uniform reporting requirements as our pay costs for FY 2006. The $262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 $7.5 million in payroll salaries.

When the Tribe inquired of BIA’s Office of Self Governance (OSG) why Red Lake received such a small amount of the FY 2006 pay cost funds, we were told that some other tribes failed to submit any pay cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay cost data or not. That means the “full funding” of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objected to BIA’s redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different from the way they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we diligently reported and supplied to the BIA for FY 2006, and which Congress subsequently enacted. Each year we are shortchanged in mandatory pay costs, and this loss is compounded annually because every year thereafter that money is missing from our recurring base budget.

3. In FY 2002, the OSG and BIA failed to include pay costs for Self Governance tribes in the President’s budget, resulting in a permanent pay cost reduction for all tribes.

Each year, as part of the Interior budget process, tribes are required to report their pay cost data to the BIA. Prior to FY 2003, Self Governance tribes reported their data to OSG, who then supplied this data to the BIA. For FY 2002, Red Lake and other Self Governance tribes timely reported their pay cost data to OSG. But because OSG missed a deadline for submission of pay cost data to BIA, and because of apparent acrimony between BIA and OSG, the BIA did not include $3,350,000 in Self Governance tribes’ pay costs in the President’s FY 2002 budget request.

Red Lake was the first tribe to learn of this egregious activity, and we took action. In July of 2001, we wrote to the Chairmen of the Senate and House Appropriations Committees, notified them of BIA’s failure to include Self Governance tribes’ pay costs in the President’s FY 2002 budget request, and asked them to add back these funds. The House agreed to our request, and fully restored the $3,350,000. The Senate failed to do
so. In the final FY 2002 Interior Appropriations bill, only one-half ($1,675,000) of Self Governance tribes' $3,350,000 in pay costs was restored.

To partially address this problem, the BIA pro-rated tribal pay costs in FY 2002, spreading the shortfall to all tribes, with the net effect that all tribes received only 75% of their legitimately due pay costs. No federal agencies were shorted in FY 2002, only tribes were shorted.

4. In FY 2003, and possibly other years, the BIA miscalculated Red Lake's share of pay costs, resulting in questions about BIA’s pay cost allocation methodology.

Because of the unfair pay cost shortage in FY 2002 described above, Red Lake has scrutinized all subsequent pay cost allocations. Since that time, our annual allocations have dropped dramatically. Certainly part of the problem was the Administration’s decision to request only partial funding of pay costs in FY 2003-2005. However, in FY 2003 we received only about 15% of the pay cost amount we estimated we should have received. We complained about this problem to the BIA for three years. Finally, this year the BIA admitted it miscalculated Red Lake’s share of pay costs in FY 2003, and they did restore some of those funds.

The actions described above have caused us to question the BIA’s ability to accurately account for scarce pay cost dollars. We believe there were errors in our pay cost allocations in FY 2005 and 2006 as well, but the BIA insists they only erred in FY 2003. In our FY 2006 Self Governance agreement, the BIA contractually agreed to provide the Tribe by April 1, 2006, a detailed analysis of pay cost allocations for FY 2002-2006. This was to include detail on methodology, to assist the Tribe in determining for ourselves the true story on pay cost allocations. As of today, the BIA has failed to honor their contractual obligations by providing the promised analysis.

Self Determination or Self Termination
This year marks Red Lake’s 10th anniversary under Self Governance. But is there cause for celebration? Certainly there have been some good things that have come under Self Governance. We have gained increased flexibility, which has allowed us to shift program dollars to high priority areas. One example is Law Enforcement. Because of inadequate BIA Law Enforcement funding, Self Governance has enabled us to reprogram funds from other core service programs to cover our Law Enforcement annual shortfall of about $500,000 (albeit at the expense of those other programs).

Self Governance has given us the means to undertake some bold initiatives. As an example, during our first year as a Self Governance tribe, Red Lake initiated an effort to rehabilitate its commercial fishing industry. The Red Lake commercial fishery was the largest and longest continuously operated freshwater fishery in America. And it was the only Indian fishery regulated by the Secretary of Interior. Due in part to the failure of the Secretary to manage the fishery according to sound biological principals, populations of walleye, the principal economic species, collapsed by 1996. Red Lake teamed up with the State of Minnesota and the BIA, and we restored Red Lake walleye populations to

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record levels. This effort has been hailed as the largest freshwater fish species recovery in modern day America, and it was conducted in record time. This represents a true Self Governance success story.

Unfortunately, impediments to Self Governance have been severe, especially when it comes to funding for core programs. Prior to FY 1996, tribes enjoyed relatively stable funding for their TPA programs, and even saw occasional inflationary adjustments. But tribes have never recovered from the devastating, $100 million cut to the TPA in FY 1996. That year, Red Lake saw an instant reduction of 16-18% to its core service programs including law enforcement, fire protection, social services, and natural resources. Recognizing the damage this caused, Congress provided a small, General Increase to the TPA in FY 1998. This was the last one we have seen.

During this, our 10th anniversary year as a Self Governance tribe, we find that the accumulation of 10 years of mandatory and targeted rescissions have now exceeded the TPA General Increase provided in FY 1998. This means we have gone backwards to where we were a decade ago, when the FY 1996 TPA cut was implemented. The only funding increase we could count on was pay costs. Therefore, our concern about pay cost shortfalls should be understood.

Self Governance and the Future
Currently, there is little financial incentive to encourage tribes newly contemplating Self Governance, or even for existing Self Governance tribes to maintain their status. Core service funding is less today than a decade ago, contract support has been chronically inadequate, and uncontrollable fixed costs have not been funded. It might seem easiest for some tribes to simply revert back to BIA Direct Service. At least, the BIA service providers would get their annual and step pay increases. But is that really in our best interest?

Instead of throwing in the towel, the Red Lake Band, and we believe other tribes, wish to continue on the Self Governance path. But to do so Mr. Chairman, we need your help. With regard to pay costs, there are several things that could be done.

Fixing the Pay Cost Problems
We ask the Committee to do the following:

1. Immediately engage the BIA about the process it used to collect and report FY 2006 pay cost data, to determine why tribes received such a small amount of pay costs in a year in which Congress enacted full fixed cost funding. A list of sample questions is attached to this testimony. Emphasis should also be placed on ensuring the BIA requests the full amount of FY 2008 pay costs tribes are eligible to receive. This emphasis is time critical as the Administration is in the final stages of preparing its FY 2008 request.

2. Request the Government Accountability Office (GAO) to investigate the methodology by which the BIA has distributed so-called "pay cost increases" within the "fixed-cost" FY 2006 accounts which the President’s FY 2006 budget request described as "fully-
funded" and which the Congress funded as requested. This request should be designated as a high priority, as findings could have utility in shaping the FY 2008 appropriation. A sample letter to GAO is attached to this testimony.

3. Direct the BIA to provide the pay cost analysis to Red Lake, which it contractually agreed to do by April 1, 2006. The actual CY 2006 pay cost footnote language describing this analysis is attached to this testimony.

4. Communicate to the President and Appropriations Committees that, in FY 2008, nothing short of full fixed cost funding is acceptable. Although we appreciate the fact that Congress has asked the President to include full fixed cost funding in all future budget submissions, Congress needs to ensure this actually happens.

5. Conduct an oversight hearing, or request the GAO conduct an investigation, on the matter of pay for tribal workers under Self Determination contracts and Self Governance compacts. Although we are confident that such an investigation will reveal dramatic disparity in compensation between tribal workers and their federal counterparts, tribes have limited ability to conduct such an analysis on their own.

In closing Mr. Chairman, the failure to fully fund tribes' uncontrollable costs (especially Pay Costs) during the last 5 fiscal years has caused serious and irreparable harm to tribal core service programs. Errors, omissions, and miscalculations on the part of the BIA have compounded this problem. These matters are clearly disincentives for tribes to continue participating in or to expand their participation in Self Governance.

On behalf of the Red Lake Band of Chippewa Indians, and tribes across the country, I thank you for asking me to testify today, and for your assistance in drawing attention to the matters I've presented.

I have attached several documents to this testimony which will support some of my statements today.

Miigwetch
Attachment A

Footnote to Red Lake's CY 2006 Funding Agreement, Prepared by the Tribe, BIA, and OSG, and Agreed to By All Parties.

Line Item: 638 Pay Costs
This amount to be determined by Congressional appropriation. The BIA will make every effort to treat Red Lake Tribal employees the same as all other Tribal and Federal employees for purposes of pay cost adjustments in FY 2006. The BIA and OSG agree to make every possible effort to recover for the Tribe all 638 Pay Cost shortages for FY 2003-2005, which were legitimately due to the Tribe, but which were not received because of Administration oversight and/or internal errors or omissions. Further, the BIA and OSG agree to provide to the Tribe by April 1, 2006, a detailed Pay Cost analysis for the years 2003-2006, showing what the Tribe was eligible to receive each year based upon Pay Cost data the Tribe provided, the actual amount received, and the shortfall or unfunded amount. This analysis will include Law Enforcement. The analysis will separately show the total amounts received each year for Self Governance tribes, contracting tribes, and BIA programs, as well as the total amounts the BIA was eligible to receive for these programs based upon data it compiled. The above information has been requested by the Tribe to verify whether Red Lake, other Self Governance tribes, contracting tribes, and BIA programs were treated the same way with regard to the distribution of Pay Costs for the years 2003-2006. It is noted that the Tribe has proposed the above footnote language be applied to CY 2002. The BIA Midwest Region Director is trying to get more Pay Cost information on CY 2002, and agrees to provide this information to the Tribe if it is available. The BIA agrees it failed to provide $30,900 in base eligible Pay Costs to the Tribe in CY 2003. The BIA agrees to restore the full amount due, plus interest at the current Prompt Pay rate of 4.3%, to the Tribes CY 2006 AFA. The estimated restoration amounts are $34,465 (2003), $33,236 (2004), $31,424 (2005), and $29,651 (2006). The BIA further agrees these amounts shall be base transferred in CY 2006.
Attachment B

Sample Questions for BIA Regarding Pay Cost Data Collection, Reporting, and Allocation Procedures

1. Last year (FY 2006) the President requested, and the Congress fully funded, pay costs for tribal employees under P.L. 93-638 agreements at the same level as pay costs requested and provided for federal employees. Does the President's FY 2007 budget request fully-funded pay costs for such tribal employees at the same level as the pay costs it seeks for federal employees? If not, why not?

2. What dollar amount of fixed pay costs was requested in FY 2006? What amount is requested for FY 2007? Please explain what is the reason for any difference in these amounts.

3. After having timely and uniformly filed their pay cost data with BIA, some Indian tribes have reported that they nevertheless received less than 40% of the pay cost increases they were to receive for FY 2006. Are you aware of these complaints of inequitable distribution and if so, how will you resolve them?

4. Explain in detail what methodology was used by BIA to distribute the fully-funded pay cost increases in FY 2006?

5. Explain in detail the relationship between the pay cost data provided by tribes in response to the BIA data call for FY 2006, and the actual pay cost increase distribution decisions made for FY 2006.

6. If an Indian tribe failed to submit timely and uniform pay cost data in response to the BIA data call for FY 2006, did such an Indian tribe nevertheless receive pay cost increases in FY 2006? If so, what was the impact on the amount of pay cost increases received by an Indian tribe that did submit timely and uniform pay cost data?

7. Please provide the Committee with a report of the pay cost data the BIA has compiled for FY 2007, which data should reveal, region by region, the total amount of tribal salaries.

8. Detail the procedures BIA used to collect, report, and allocate pay costs for tribal and BIA employees for FY 2006. Include copies of actual memos, emails, worksheets, and other paperwork used to notify and collect the pay cost data.

9. Identify, by BIA Region, which tribes and BIA programs actually provided FY 2006 Pay Cost data, and which ones did not, if any. If some tribes and BIA programs did not submit FY 2006 Pay Cost data, describe any follow-up procedures BIA used to ensure due diligence in the collection and reporting of the Pay Cost data.

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10. Identify which BIA Regions had Budget Officers vacant or non-existent at the time of the FY 2006 Pay Cost data call.

11. Describe in detail the process used to compile Pay Cost data received from tribes and BIA programs, and how the data was reported for the FY 2006 budget request.

12. Describe, and provide copies of, any instructions and directives from OMB and offices of the Department of the Interior on how FY 2006 Pay Cost requests were to be determined and reported.

13. Describe in detail the process BIA used to allocate FY 2006 Pay Costs received, to tribes and BIA programs. Include baseline statistics such as the total of salary data for tribes, the total of salary data for BIA programs, the respective totals of Pay Cost funds requested, the grand total of Pay Cost funds received, the total amount of Pay Cost funds allocated to tribes, and the total amount of Pay Cost funds allocated to BIA programs.

14. Of the total amount of FY 2006 Pay Cost funds the BIA received, what amount, if any, was provided to tribes and BIA programs which did not report FY 2006 Pay Cost data.

15. What procedures does BIA intend to implement for the FY 2008 budget process to ensure that Pay Cost data is fully, fairly, and accurately collected and reported for all tribes and BIA programs?

16. If the BIA failed to collect and report all eligible Pay Cost data for FY 2006 and FY 2007, does the BIA plan to collect the remaining amounts and request them in the FY 2008 budget request?

17. Is the BIA aware of any errors it made in the allocation of Pay Cost funds to any tribes and BIA programs during the last 5 fiscal years? If so, describe the errors found, how they were found, steps taken to check for additional errors, and steps taken to rectify the errors.
Attachment C

**DRAFT LETTER TO GENERAL ACCOUNTABILITY OFFICE (GAO) re BIA FAILURE TO REQUEST ACCURATE TRIBAL PAY COSTS**

Hon. David M. Walker  
Comptroller General  
General Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear General Walker:

As you know, many Indian tribes have assumed, under the Indian Self-Determination Act ("ISDA"), the administration of core service programs and salaried positions previously carried out and filled by federal employees. As a matter of equity and fairness, the Congress regularly has encouraged the Administration to treat ISDA tribal employees the same as Bureau of Indian Affairs ("BIA") employees are treated with respect to pay cost increases and other fixed costs.

Without increased funds for fixed costs like pay cost adjustments, Indian tribes must either "absorb" pay cost increases by reducing their core program service delivery budgets or deny tribal employees the pay cost increases enjoyed by their federal colleagues. The result is an accumulating series of reductions in program service delivery year upon year. As the House Subcommittee on Interior Appropriations noted at page 6 of its FY 2005 Interior and Related Agencies report (House Rept. 108-542), "Absorption of costs associated with Federal pay increases ... and other unfunded fixed costs cannot continue indefinitely without further eroding core program capabilities. Over the past three years, ... Indian programs have absorbed over $500 million in unfunded costs."

In order for OMB and the Congress to provide pay cost increases, BIA must provide accurate and timely information on pay cost data. But there is evidence that in the past decade the BIA has failed to provide OMB and the Congress with accurate reports of the pay cost adjustment requirements of ISDA tribal programs, on par with those reported for federal programs, and that as a result, there has been a significant erosion in the funding of core tribal program capabilities.

Accordingly, the Committee requests that you investigate the methodology by which the BIA has distributed so-called "pay cost increases" within the "fixed-cost" FY 2006 accounts which the President's FY 2006 budget request described as "fully-funded" and which the Congress funded as requested.

For example, there are reports from certain Indian tribes, including the Red Lake Band of Chippewa Indians, that tribes who timely and fully reported their FY 2006 salary pay cost
data to BIA subsequently were shortchanged by BIA when BIA distributed pay cost funds for FY 2006. Please investigate whether this was in fact the case, and if so, why.

It appears that this problem may have been caused by a BIA decision to use incomplete data for purposes of its FY 2006 budget request despite BIA’s assertion that it was a fully funded request, and then a subsequent decision by BIA to add belatedly discovered or erroneously compiled need data or estimates of need data after the FY 2006 budget request was submitted and funded but before distribution.

In light of your findings as to the FY 2006 distribution, we ask that you examine the basis for and completeness of the President’s FY 2007 budget request for pay cost increases for tribal employees. In order for this investigation to have some utility to the Congress in shaping the FY 2007 appropriation, we ask that you give this investigation your priority attention.

Please contact __________________________ at 202-224-2251 if you have any questions.

Sincerely,

John McCain
Chairman

Byron Dorgan
Vice Chairman
Attachment D

Various Documents Follow Which Provide Background in Support of Testimony

RED LAKE BAND
of CHIPPEWA INDIANS

Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-8378

DIVISION:

The Honorable Robert C. Byrd, Chairman
Committee on Appropriations
S-128 Capitol
Washington, D.C. 20510

July 16, 2001

Dear Chairman Byrd:

I request your assistance to provide $3,350,000 for Self Governance Compacts Fixed Costs in the Tribal Priority Allocations (TPA) account of the final FY 2002 Interior Appropriations bill. Because of a technical oversight by the Department of Interior, these uncontrollable fixed costs were not included in the President’s FY 2002 budget request to Congress. The House of Representatives included this amount in its version of the FY 2002 Interior Appropriations bill, but the Senate did not.

These fixed costs represent uncontrollable pay cost adjustments for self governance tribes. These costs were included for federal agencies and contracting tribes, but again, because of an oversight self governance tribes were left out of the FY 2002 budget request. The tribes had nothing to do with this oversight.

As it is, tribes generally must manage their TPA programs with fewer staff (at lower wages) and with fewer dollars than their state and federal counterparts. The inclusion of uncontrollable fixed costs is a requisite component of tribes’ budgets, just as it is for federal agencies.

In conclusion, the omission of $3,350,000 for Self Governance Compacts Fixed Costs in the TPA account of the FY 2002 Interior Appropriations bill was a technical oversight not of the tribes’ making. The House of Representatives sought to correct this oversight when it included these funds in its version of the Interior bill. I ask that the final version of the FY 2002 Interior Appropriations bill include the requisite, and critically needed, $3,350,000 for Self Governance Compacts Fixed Costs.

Thank you.

Sincerely,

[Signature]

Bobby Whitefeather
Chairman
Red Lake Band of Chippewa Indians
September 4, 2003

Honorable Terrence Virten
Director
Bureau of Indian Affairs
1849 C Street NW
Washington, D.C. 20240

RE: Urgent Request For Pay Cost Investigation

Dear Director Virten:

I am requesting your assistance to resolve a critical funding issue for the Red Lake Band of Chippewa Indians. We recently discovered that our CY 2003 Pay Cost funds (PBS Cost Code 39902) may not be increased above the $31,000 received to date. We originally suspected this was a just a partial release of funds, with the remainder to be forthcoming. Now we suspect there is a serious problem.

At our CY 2004 Self-Governance negotiations on August 4, 2003, we asked BIA Midwest Region Director Larry Morris, and OSG Policy Analyst Ken Reinfeld, to determine why we were shorted in Pay Cost funding, prior to our finalizing our CY 2004 Agreement. To date, they have been unable to provide an answer.

To put things in perspective, recent Pay Cost allocations for Red Lake are as follows:

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You will recall, because of a technical oversight by the Department of Interior (the tribes had nothing to do with this oversight), Pay Costs for Self-Governance tribes were not included in the President's FY 2002 budget request to Congress. Congress only partially rectified this problem, with the result that the BIA gave us only 75% of what we should have received in CY 2002. For CY 2003, it appears we have received only 20% of what we are due.
Honorable Terrence Virden  
September 4, 2003  
Page 2  

The Pay Cost funds received by the Band represent the only increase we receive for our TPA programs. As it is, we must manage our TPA programs with fewer staff (at lower wages) and with fewer dollars than our state and federal counterparts. The inclusion of full Pay Costs is absolutely vital.

I ask that you look into this matter immediately, and call me or Roger Head, Executive Administrator, as soon as possible. Thank you.

Sincerely,

George W. King  
Chairman  
Red Lake Band of Chippewa Indians

cc: Judy Roy, Secretary  
Darrell Seld, Treasurer  
Roger Head, Executive Administrator  
Francis Brun, Tribal Administrator
NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-03-005

TITLE: Tribal Pay Cost Shortages

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the largest component of the Bureau of Indian Affairs (BIA) budget, the Tribal Priority Allocations (TPA) account, provides direct funding for tribes to provide vital governmental services to Indian people, including law enforcement, justice, fire protection, education, social services, and resource management; and

WHEREAS, tribes are locked in a desperate struggle to protect the funding levels provided for these services, especially since the crippling, nearly $100 million cut in the TPA in FY 1996, with only one minor, general increase in the TPA since that time (FY 1998), and with the result that each tribe's TPA funding is less today than it was a decade ago; and

WHEREAS, the only general increase tribes could count on each year was a cost of living increase, known as the 638 Pay Cost account, and which is similar to what the Administration and Congress provide for federal workers employed by federal agencies each year; and

WHEREAS, due to federal administrative oversight and through no fault of the tribes, tribes received only 75% of their 638 Pay Cost funding in FY 2002; and

WHEREAS, due to an Administration decision, tribes received only 15% of their 638 Pay Cost funding in FY 2003, and are slated to receive only a small portion of their 638 Pay Costs in FY 2004; and
WHEREAS, because there have been no general TPA increases (except the minor one in FY 1998), tribes cannot absorb this repeated loss of pay cost increases without drastically cutting already inferior services to Indian people; and

WHEREAS, Title 25 of the Federal Code of Regulations, Part 12, Section 34 mandates that a tribal government which assumes the federal functions of law enforcement must pay its tribal law enforcement officers at least the same salary as a BIA officer performing the same duties ("Any contract or compact with the BIA to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a BIA officer performing the same duties." 25 CFR 12.34); and

WHEREAS, it is grossly inequitable and irresponsible for federal agencies like the BIA and OMB to fail to request from or defend before Congress parity in pay cost funding between federal and tribal employees; and

WHEREAS, it is grossly inequitable and irresponsible for the federal government to withhold Pay Cost increases to tribal programs but provide Pay Cost increases to federally-administered programs while at the same time the federal regulations require tribes to meet pay parity requirements; and

WHEREAS, the failure of the BIA, OMB and the Congress to ensure that Pay Cost parity between federal and tribal employees is protected seriously undermines the federal Indian policy that favors, pursuant to Public Law 93-638, as amended, the assumption by tribes of programs, functions, services and activities formerly carried out by federal employees.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby strongly urge the Administration and Congress to immediately restore full 638 Pay Cost funding for tribes in FY 2004 and in future years, and to consider restoring 638 Pay Cost funding not received in FY 2002 and FY 2003 through a special appropriations equitable adjustment.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.
CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.

President

ATTEST:

Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.
United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 24 2003

Honorable George W. King
Chairman, Red Lake Band of Chippewa Indians
P.O. Box 550
Red Lake, Minnesota 56671

Dear Mr. King:

Thank you for your letter of September 4, 2003, expressing your concerns about the Fiscal Year 2003 Pay Cost funding allocations. We apologize for the delay of our response to you.

During Fiscal Year (FY) 2003, the Department received only 15 percent of the identified Pay Cost for both Federal and tribal employees. The portion of the Pay Cost not funded must be absorbed by the Federal Government or tribe for their respective employees. We assure you the Pay Cost shortfall was shared equally by the Bureau of Indian Affairs and tribal governments.

We know this created a hardship for your Tribe, as well as all tribes entitled to receive Pay Cost funding. However, we will continue to work through the Department of the Interior, Office of Management and Budget and Congress to ensure they are aware of the impact these funding shortfalls have on Native American communities.

We distributed the same share of Pay Cost funding, including allocations for Self-Governance Tribes. We were unable to request the total amount needed to fund the full cost of the FY 2003 pay raise for Federal or tribal employees. We obligated only 15 percent and had to absorb the remaining $7.2M for federal pay costs and $3.9M for the tribal pay costs.

If you have further questions please feel free to contact me at (202) 208-7163.

Sincerely,

[Signature]

[Title: Acting Principal Deputy Assistant Secretary – Indian Affairs]
October 7, 2004

Honorable Dave Anderson  
Assistant Secretary - Indian Affairs  
1849 C Street NW  
Washington, D.C. 20240

Dear Assistant Secretary Anderson:

I write to you for two purposes. The first is to transmit the Red Lake Band of Chippewa Indians FY 2004 Pay Cost data to be used in the FY 2006 budget process. The Office of Self-Governance and Self Determination (OSG&SD) informed us that the BIA Central Office has a deadline of October 15, 2004 to receive all Pay Cost data by tribe and Region. We contacted BIA Midwest Region, who could provide us with no information on the subject, so there appears to be inadequate coordination with the Central office. In the past it has been the responsibility of the Regional Budget Officer to ensure Pay Cost data is submitted to Central Office on time. The problem appears to be that BIA Central Office made a decision not to fill the vacant Midwest Region Budget Officer position. This comes to the second purpose of this letter, which is to request you reverse the decision not to fill this key position. Concerns about this issue were raised by several regions at the most recent BIA Tribal Budget Advisory Council meeting.

Red Lake is particularly concerned about the Pay Cost issue. Pay Costs represent the only source of critical core service funding which receives an annual upward adjustment. Although these increases have themselves been sharply reduced the last three years, to preserve our ability to receive future adjustments it is essential that the Pay Cost data be compiled and submitted timely. At least one time (FY 2002 to be exact), tribes received only 75% of their Pay Cost funds specifically because the OSG&SD and BIA failed to meet their obligations to protect tribes interests.

The Regional Budget Officer plays a crucial role in ensuring tribes' receive all of the financial resources due them - a critical part of the Federal Indian trust responsibility. Meeting this trust responsibility requires substantial effort and focus at the Regional level, and includes but is not limited to budget preparation, justification and monitoring for several fiscal years at one time.

TRIBAL COUNCIL  Organized April 16, 1916  Charter Congressman S. Ty Cobb, January 4, 1923
and gathering and processing requisite, time-sensitive data from tribes including budget justifications, unmet needs, pay costs, and recently mandated increases in financial reporting to the Office of Management and Budget. The need to fill the Midwest Region Budget Officer position is clear. Thank you.

Sincerely,

[Signature]

Floyd Jourdain, Jr.
Chairman
Red Lake Band of Chippewa Indians

cc: Michael Olsen, Principal Deputy Assistant Secretary for Indian Affairs
    Brian Pogue, BIA Director
    Debbie Clark, BIA Chief Financial Officer
    Terry Virden, BIA Midwest Region Director
    Ken Reinfield, Office of Self Governance and Self Determination
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<td>Svcs to Children, Elderly &amp; Fam</td>
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<td><em>PUBLIC SAFETY &amp; JUSTICE</em></td>
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<td>*COMMUNITY DEVELOPMENT</td>
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<td>Minerals/Mining</td>
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<td><em>RESOURCES MANAGEMENT</em></td>
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### PAY COST WORKSHEET

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<th>Item</th>
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<tr>
<td>39710</td>
<td>Trust Svcs., General</td>
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<td>Other Rights Protection</td>
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<td>39770</td>
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<td>Probate</td>
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<td>39740</td>
<td>Environ. Quality Svcs.</td>
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<td>39760</td>
<td>ANCSA</td>
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<td>&quot;TRUST SERVICES&quot;</td>
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<th>Item</th>
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<td><strong>TOTAL TPA</strong></td>
<td>4,328,440.00</td>
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### NON TPA OTHER-RECURRING

<table>
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<th>Program Title</th>
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<tr>
<td>ISEP (Formula Funds)</td>
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<td>ISEP (Program Adjustments)</td>
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<tr>
<td>Early Childhood Development</td>
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<tr>
<td>Student Transportation</td>
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<td>Institutionalized Disabled</td>
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<tr>
<td>Facilities Operations</td>
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<tr>
<td>Area/Agency Technical Support</td>
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<tr>
<td>Operating Grants</td>
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<td>Technical Assistance</td>
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<td>Endowment Grants</td>
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<td><em>EDUCATION</em></td>
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</tr>
<tr>
<td>Irrigation C&amp;M</td>
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</tr>
<tr>
<td>Western Washington (Bold)</td>
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<tr>
<td>Columbia River</td>
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<td>Klamath Conservation Program</td>
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<td>Great Lakes Area Res. Mgmt.</td>
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<td>US/Canada Pacific salmon</td>
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<tr>
<td>Upper Columbia United Tribes</td>
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<td>Lake Roosevelt Management</td>
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<td>Fish Hatchery Operations</td>
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<tr>
<td>Fish Hatchery Maintenance</td>
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<tr>
<td>Tribal Mgmt. Development Program</td>
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<tr>
<td><em>RESOURCE MANAGEMENT</em></td>
<td>135,680.00</td>
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**TOTAL - ORP**                                      | 135,680.00
## PAY COST WORKSHEET

### NON-RECURRING: ($IN THOUSANDS)

<table>
<thead>
<tr>
<th>Description</th>
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<tr>
<td>Noxious Weed Eradication</td>
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<td>Gila River Farms Project</td>
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<td>Unresolved Hunting &amp; Fishing Rights</td>
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<tr>
<td>Minerals &amp; Mining</td>
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<tr>
<td>Endangered Species</td>
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<tr>
<td>&quot;RESOURCE MANAGEMENT&quot;</td>
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<tr>
<td>Water Rights Negotiations/Litigation</td>
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<td>Real Estate Services</td>
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<td>Environmental Management</td>
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<td>Navaho/Hopi Settlement</td>
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<td>&quot;TRUST SERVICES&quot;</td>
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### SPECIAL PROGRAMS/POOLED OVERHEAD

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<td>Substance Abuse</td>
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<tr>
<td>Law Enforcement Initiative</td>
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<td>&quot;PUBLIC SAFETY &amp; JUSTICE&quot;</td>
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<tr>
<td>&quot;COMMUNITY DEVELOPMENT&quot;</td>
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<tr>
<td>United Tribes Technical College</td>
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<tr>
<td>Facilities Operations</td>
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<td>Facilities Maintenance</td>
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<tr>
<td>&quot;GENERAL ADMINISTRATION&quot;</td>
<td>194,939.00</td>
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<tr>
<td><strong>TOTAL PROGRAMS/POOLED</strong></td>
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### FEDERAL HIGHWAY TRUST FUND

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**TOTAL TPA**                                  | 4,326,640.00 |
**TOTAL ORP**                                  | 136,682.00 |
**TOTAL NRP**                                  | 606,074.00 |
**TOTAL SPECIAL PROM/POOL**                     | 2,017,248.00 |
TOTAL IRR                                      | 405,310.00 |
GRAND TOTAL                                    | 7,490,752.00 |
RESOLUTION OF THE BIA/TRIBAL BUDGET ADVISORY COUNCIL CALLING FOR A PAY COST ANALYSIS AND REPORT AND REIMBURSEMENT TO TRIBES FOR ANY PAY COST SHORTFALL

WHEREAS, the BIA Budget Advisory Council was established in 1999 to facilitate tribal government participation in the planning of the BIA budget and includes two tribal representatives from each of the 12 BIA regions; and

WHEREAS, self-rule by American Indians and Alaska Natives within the United States as separate sovereign governments predates the formation of the United States and these governments are acknowledged to be separate sovereign governments in Article I, Section 8 of the United States constitution; and

WHEREAS, through treaties and other agreements, and in exchange for appropriating from American Indians and Alaska Natives for its use vast tracts of land and the resources of those lands, the United States has accepted certain fundamental trust obligations to American Indians and Alaska Natives, including providing health care, education, housing, social welfare, law and order, transportation, and many other services to American Indians and Alaska Natives; and also has accepted the role of trustee and manager of resources owned in trust by the United States for the benefit of American Indians and Alaska Natives; and

WHEREAS, the Snyder Act, 25 U.S.C. Section 13, and other sections of law enunciate these obligations to American Indians and Alaska Natives, and the Indian Reorganization Act of 1934, 25 U.S.C. Sections 450 et seq., requires the Secretary of the Interior to consult with tribal governments on Federal funding concerning programs for American Indians and Alaska Natives; and

WHEREAS, the largest component of the Bureau of Indian Affairs (BIA) budget, the Tribal Priority Allocations (TPA) account, provides direct funding for tribes to provide vital governmental services to Indian people, including law enforcement, justice, fire protection, education, social services, and resource management; and

WHEREAS, tribes are locked in a desperate struggle to protect the funding levels provided for these services, especially since the crippling nearly $100 million cut in the TPA in FY 1996, with only one minor, general increase in the TPA since that time (FY 1999), and with the result that each tribe's TPA funding is less today than it was a decade ago; and

WHEREAS, the only general increase tribes could count on each year was a cost of living increase, known as the 638 Pay Cost account, and which is similar to what the Administration and Congress provide for federal workers employed by federal agencies each year, and

WHEREAS, due to federal administrative oversight and through no fault of the tribes, tribes received only 75% of their 638 Pay Cost funding in FY 2002; and

WHEREAS, due to an Administration decision, tribes received only 15% of their 638 Pay Cost funding in FY 2003, and are slated to receive only a small portion of their 638 Pay Costs in FY 2004; and
WHEREAS, because there have been no general TPA increases (except the minor one in FY 1998), tribes cannot absorb this repeated loss of pay cost increases without drastically cutting already inferior services to Indian people; and

WHEREAS, Title 25 of the Federal Code of Regulations, Part 12, Section 34 mandates that a tribal government which assumes the federal functions of law enforcement must pay its tribal law enforcement officers at least the same salary as a BIA officer performing the same duties ("Any contract or compact with the BIA to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a BIA officer performing the same duties." 25 CFR 12.34); and

WHEREAS, it is grossly inequitable and irresponsible for federal agencies like the BIA and OMB to fail to request from or defend before Congress parity in pay cost funding between federal and tribal employees; and

WHEREAS, it is grossly inequitable and irresponsible for the federal government to withhold Pay Cost increases to tribal programs but provide Pay Cost increases to federally-administered programs while at the same time the federal regulations require tribes to meet pay parity requirements; and

WHEREAS, the failure of the BIA, OMB and the Congress to ensure that Pay Cost parity between federal and tribal employees is protected seriously undermines the federal Indian policy that favors, pursuant to Public Law 93-638, as amended, the assumption by tribes of programs, functions, services and activities formerly carried out by federal employees.

NOW THEREFORE BE IT RESOLVED, that the Pay Cost analysis and report, in the format as proposed by the Red Lake Band of Chippewa Indians in its January 6, 2005 letter to Assistant Secretary Dave Anderson, be completed as soon as possible, and be distributed to the tribes.

THEREFORE BE IT FINALLY RESOLVED, if any tribe received less Pay Cost dollars in 2002 through 2005 than the percentage distribution to the BIA dictates, then the Bureau of Indian Affairs shall reimburse those tribes who were shorted.

CERTIFICATION

The foregoing resolution was adopted at a meeting of the BIA/Tribal Budget Advisory Council at San Marcos Resort in Chandler, Arizona on February 17, 2005 with a quorum present.

Jim Gray, Co-Chair
BIA/Tribal Budget Advisory Council

Tex G. Hall, Co-Chair
BIA/Tribal Budget Advisory Council
February 22, 2005

Debbie Clark
Deputy Assistant Secretary for Budget
Bureau of Indian Affairs
1800 C Street NW
Washington, D.C. 20240

Dear Debbie:

As you requested, attached is a letter dated December 24, 2003, from Acting Principal Deputy Assistant Secretary Woodrow Hopper. As we informed you at the budget meeting last Friday, Mr. Hopper stated in this letter that Red Lake received only 15% of its Pay Costs in FY 2003. This letter was in response to our letter to BIA Director Terry Virden dated September 4, 2003 (copy also attached). It should be clear from examining these two letters, that there is a major discrepancy in the Pay Cost figures we received in CY 2003, versus the percentages you spoke of at the meeting.

You indicated that upon receipt of Mr. Hopper’s letter, you would investigate Red Lake’s Pay Cost allocations to determine if Red Lake received less than it should have in FY 2002 - 2005, and what adjustments may be due. In conducting this investigation, please bear in mind that Red Lake is a calendar year tribe, and usually receives one Pay Cost allocation each year from the Office of Self Governance and Self Determination. Per the terms of our Self Governance Agreement, this allocation should represent the distribution for the calendar year.

As you investigate the Pay Cost discrepancies, I ask that you send me the following information as soon as possible (please fax to me at 218/679-3378):

1.) For each of the years FY 2002-2005, what was the actual percentage allocation of calculated Pay Costs that the BIA received, as well as the dollar amount;

2.) What is the exact formula the BIA used when calculating its Pay Cost requests for each of the years FY 2002-2005;
3.) From the formulas and calculations identified in Item (2) above, what were the resultant dollar amounts for Pay Costs attributable to Red Lake before any reductions, for each of the years FY 2002-2005; and,

4.) What is the allocation methodology for Self Governance tribes like Red Lake, whose agreements are based on the calendar year.

I thank you in advance for your assistance with the above.

Sincerely,

[Signature]

Darrrell Sehi
Treasurer
Red Lake Tribal Council

cc: Chairman Floyd Jourdain, Jr.
Secretary Judy Roy
Red Lake Tribal Council District Representatives
Terry Virden, BIA Midwest Region Director
Bill Sinclair, Director of Self Governance and Self Determination
February 16, 2006

Honorable Coulard Burns, Chairman
Honorable Byrum Dorgan, Ranking Member
Senate Appropriations Subcommittee on Interior and Related Agencies
SD-131
Washington, D.C. 20510

Re: Pay Costs in FY 2006 Interior Appropriations Act

Dear Chairman Burns and Ranking Member Dorgan:

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you, however, that the BIA has once again thwarted your intention and paid the Red Lake Band of Chippewa Indians (the "Tribe") less than 40% of the Tribe's reported pay costs for FY 2006.

The Tribe submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was $7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of $262,500. Instead, BIA allocated only $97,262 to the Tribe.

We know $97,262 is far less than we should have received. In FY 2000 for example, Red Lake received $153,895 in Pay Costs, and this was before the Tribe's new detention facility opened with more than 30 FTEs, which were eligible for pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA consistent with BIA's uniform reporting requirements as our pay costs for FY 2006. The $262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 $7.5 million in payroll salaries.

When the Tribe inquired last week of BIA's Office of Self Governance why Red Lake received such a small amount of the FY 2006 Pay Cost funds, we were told that some other tribes failed to submit any Pay Cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay...
cost data or not. That means the "full funding" of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objects to BIA's redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different than they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we reported and supplied to the BIA, and which Congress subsequently enacted. We have already suffered serious and irreparable harm from pay cost shortfalls going back to FY 2002.

We know you are concerned about the damaged caused when fixed costs are not fully funded. The Red Lake Band was diligent in supplying the requisite FY 2006 pay cost data to the BIA. We now ask for your assistance to ensure Red Lake gets our full amount of pay cost funding in FY 2006 and following years, consistent with the intent of Congress.

I thank you in advance for your assistance with my request.

Sincerely,

Floyd Jourdain, Jr.
Chairman
Red Lake Band of Chippewa Indians

Cc:  Honorable Jim Cason, Associate Deputy Secretary
     Honorable Norm Coleman, United States Senator
     Honorable Mark Dayton, United States Senator
     Honorable Collin Peterson, United States Representative
     Honorable Richard Pombo, Chairman, House Committee on Resources
     Honorable Nick Rahall, Ranking Member, House Committee on Resources
     Honorable John McCain, Chairman, Senate Committee on Indian Affairs
     Honorable Byron Dorgan, Vice-Chairman, Senate Committee on Indian Affairs
February 16, 2006

Honorable Charles Taylor, Chairman
Honorable Norman Dicks, Ranking Member
House Subcommittee on Interior, Environment and Related Agencies
B-308 Rayburn House Office Building
Washington, D.C. 20515

Re: Pay Costs in FY 2006 Interior Appropriations Act

Dear Chairman Taylor and Ranking Member Dicks:

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you, however, that the BIA has once again thwarted your intention and paid the Red Lake Band of Chippewa Indians (the "Tribe") less than 40% of the Tribe's reported pay costs for FY 2006.

The Tribe submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was $7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of $262,500. Instead, BIA allocated only $97,262 to the Tribe.

We know $97,262 is far less than we should have received. In FY 2000 for example, Red Lake received $153,895 in Pay Costs, and this was before the Tribe’s new detention facility opened with more than 30 FTEs, which were eligible for pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA consistent with BIA’s uniform reporting requirements as our pay costs for FY 2006. The $262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 $7.5 million in payroll salaries.

When the Tribe inquired last week of BIA’s Office of Self Governance why Red Lake received such a small amount of the FY 2006 Pay Cost funds, we were told that some other tribes failed to submit any Pay Cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay...
Honorables Charles Taylor, Chairman
Honorables Norman Dicks, Ranking Member
February 16, 2006
Page 2

cost data or not. That means the “full funding” of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objects to BIA’s redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different than they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we reported and supplied to the BIA, and which Congress subsequently enacted. We have already suffered serious and irreparable harm from pay cost shortfalls going back to FY 2002.

We know, and greatly appreciate, the fact that in each of the last three Interior Appropriations bills, you expressed the Subcommittee’s concerns about providing less than full fixed cost funding. The Red Lake Band was diligent in supplying the requisite FY 2006 pay cost data to the BIA. We now ask for your assistance to ensure Red Lake gets our full amount of pay cost funding in FY 2006 and following years, consistent with the intent of Congress.

I thank you in advance for your assistance with my request.

Sincerely,

[Signature]

Floyd Jourdain, Jr.,
Chairman
Red Lake Band of Chippewa Indians

Cc: Honorables Jim Cason, Associate Deputy Secretary
Honorables Norm Coleman, United States Senator
Honorables Mark Dayton, United States Senator
Honorables Collin Peterson, United States Representative
Honorables Richard Pombo, Chairman, House Committee on Resources
Honorables Nick Rahall, Ranking Member, House Committee on Resources
Honorables John McCain, Chairman, Senate Committee on Indian Affairs
Honorables Byron Dorgan, Vice-Chairman, Senate Committee on Indian Affairs
TESTIMONY OF THE HONORABLE FLOYD JOURDAN JR.
CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

Before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies Regarding the FY 2007 BIA, IHS, and EPA Budgets, March 30, 2006

Mr. Chairman, I thank you and the other distinguished members of the Committee for this opportunity to provide testimony on behalf of the Red Lake Band of Chippewa Indians. On behalf of the people of Red Lake, who reside on our reservation in northern Minnesota, we respectfully submit that the budget appropriation process represents for us the major avenue through which the United States government fulfills its trust responsibility and honors its obligations to Indian tribes. We must depend on you to uphold the trust responsibility which forms the basis of the government to government relationship between our tribe and the federal government. The Red Lake Band of Chippewa Indians requests $2.8 million in additional FY 2007 funding from the Department of Interior for Red Lake’s programs.

Red Lake is a fairly large tribe with 10,000 members. Our $40,000 acre reservation is held in trust for the tribe by the United States. While it has been diminished in size, our reservation has never been broken apart or allotted to individuals. Nor has our reservation been subjected to the criminal or civil jurisdiction of the State of Minnesota. Thus, we have a large land area over which we exercise full governmental authority and control, in conjunction with the United States.

At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our reservation. While the unemployment rate in Minnesota is about 4%, ours remains at an outrageously high level of more than 50%. The lack of good roads, communications, and other necessary infrastructure continues to hold back economic development and job opportunities.

The President’s FY 2007 budget request for Indian programs falls far short of what tribes throughout Indian Country actually need. It especially falls short for tribes, like Red Lake, who are located in remote areas far from major markets. The following testimony highlights some of the most critical needs of the Red Lake Band of Chippewa Indians in FY 2007.

Tribal Priority Allocations (TPA)

Tribal governments have suffered terrible and unprecedented erosion in federal funding for their critical core governmental services in the last decade. These services, including law enforcement, fire protection, courts, road maintenance, resource protection, and education and social services, affect the very day lives of people in Indian communities.

The erosion in federal funding has led us to a desperate struggle to protect the funding levels provided for these services, especially since the crippling, nearly $100 million cut in the TPA in FY 1996. Although the President’s budget has occasionally requested an increase in the TPA, in fact, except for a few targeted exceptions, none of these increases ever go to tribes’ existing TPA programs to offset inflation. Instead, these increases go to fund new tribes and for certain internal transfers and uncontrollable costs. There has been only one small General Increase in the TPA over the past decade— and that occurred in FY 1998.

Further exacerbating the situation, tribes’ core service funding has been subjected to permanent, across-the-board reductions each year, as well as permanent, targeted reductions such as the following.

Testimony of Hon. Floyd Jourdain Jr. on President’s Budget Request for FY 2007

TRIBAL COUNCIL
Organized April 28, 1916

CHIEF COUNCIL OF 3000
Red Lake Reservation, Red Lake, Minnesota

119
as the FY 2004 reduction in tribal funding used to finance the BIA bureaucracy’s Information Technology upgrades. Additional, steep TPA cuts are proposed in FY 2007 for BIA Welfare Assistant crisis, Johnson O’Malley, Community Fire Protection, Roads Maintenance, and other BIA-funded programs. It has become a major task each year just to count up the number of ways the TPA is being cut. We strongly oppose these cuts and ask the Committee to restore them.

As a result of the above, tribes’ core service funding is far less, in real terms, than a decade ago. Critical services continue to be eroded, seriously undermining our ability to provide minimal public safety, security, and well-being for people who already struggle to survive under some of the worst living standards in America. It may be the case that some federal agencies can absorb all of these cuts, but tribes like Red Lake cannot - we have reached the breaking point.

Let me provide an example of how real the funding crisis for basic services is at Red Lake. Below is a table showing TPA funding versus actual expenditures for just two of our critical service programs, Community Fire Protection and Tribal Courts.

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Protection</td>
<td>$425,500</td>
<td>$374,448</td>
<td>($51,098)</td>
<td>$399,979</td>
<td>$399,979</td>
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<tr>
<td>Tribal Courts</td>
<td>$246,900</td>
<td>$579,341</td>
<td>($331,441)</td>
<td>$1,077,441</td>
<td>$1,077,441</td>
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<tr>
<td>Totals</td>
<td>$672,400</td>
<td>$953,789</td>
<td>($664,389)</td>
<td>$1,477,418</td>
<td>$1,477,418</td>
</tr>
</tbody>
</table>

* The actual shortfall, $664,389 for just these two programs, had to be taken from other Tribal programs, sharply reducing services provided by those programs.

** The Unmet Need for Fire Protection is primarily to renovate two fire station buildings due to age and deterioration. The Unmet Need for Tribal Courts is primarily for additional staff to resolve a tremendous backlog of more than 1,000 cases.

The above example illustrates the damage caused by the cuts to the TPA. The only solution to the problem is a General Increase in the TPA, to be distributed to all tribes. The increase should be no less than 5% ($39 million) over the FY 2006 enacted level. This amount will not come close to replacing funds lost to inflation and budget cuts, but will provide a good start. We also concur with the Committee that the BIA’s budget restructuring makes it difficult for tribes to track changes to the TPA, and we request better transparency in future budget submissions.

P.L. 93-638 Pay Costs

The failure to fully fund tribes’ uncontrollable costs (especially Pay Costs) during the last 5 fiscal years has caused serious harm to tribal core service programs. Due entirely to an error made by the Interior Department, tribes got only 75% of their Pay Costs in FY 2002. Due to an Administration decision, tribes received only about 30% of their Pay Cost funding in FY 2003-2005, and we’re slated for yet another cut in FY 2007. When combined with the cuts to the TPA described above, our desperation should be understood. We greatly appreciate the Committee’s efforts to the last three Interior Appropriations bills, about providing less than full fixed cost funding, and the Committee’s urging the President to request full funding of uncontrollable costs in all future budget submissions.

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you however, that the BIA has once again thwarted your intention and paid the Red Lake Band less than 40% of our reported pay costs for FY 2006. We understand the reason for this was that BIA failed to collect and report Pay Cost data from all tribes, in part due to a conscious decision of BIA not to fill several of its regional budget officer positions. The fact that BIA failed in its responsibility to completely report our Pay Cost needs in FY 2002, and now FY 2006 (and very possibly other years), is unacceptable.

Tribes have been dealt a double blow with regard to Pay Costs. First, we’ve been subjected to Testimony of Hon. Floyd Jourdain Jr. on President’s Budget Request for FY 2007
partial funding of Pay Costs going back to FY 2002. Second, the BIA has failed to properly report the full amount of Pay Costs we were due. Red Lake has studied these Pay Cost shortages carefully, and we have briefed Committee staff about them. We have proposed the following: 1) Direct the BIA to immediately review the FY 2007 Pay Cost data it submitted, to determine if BIA yet again requested less Pay Cost funding for tribes than it should have; 2) Provide a specific earmark to Red Lake in the amount of $165,238, representing the amount of FY 2006 Pay Costs we believe were unjustly shorted; and 3) Provide full fixed cost funding in FY 2007, and tell the Administration that shorting fixed costs will no longer be tolerated.

Contract Support Costs

Contract Support Cost (CSC) funds are critical for tribes to successfully operate programs under self-determination policy. The Administration and Congress have historically underead tribes’ CSC. The CSC account is presently funded at less than 90% of need. No other entity the federal government contracts with is charged on its overhead costs. We support the President’s decision to request an increase of $19 million for contract support in FY 2007.

Health Services

The President’s FY 2007 IHS request is $4 billion, an increase of $124 million over FY 2006. This includes anticipated offsets from insurance collections of $678 million and diabetes grants of $150 million, leaving a net request for budget authority of $3.2 billion. This modest increase is in actual fact a painfully sharp funding cut in real dollars.

In just the last five years, the IHS service population has risen by about 11.5% (with at least 30,000 new patients each year), while medical costs have risen by about 15% each year. We’re falling further and further behind, and this is reflected in diminished health and well-being of our people. I am sure you are familiar with some of the American Indian health statistics, such as our rates being the highest in the nation for cardiovascular disease, diabetes, tuberculosis, Sudden Infant Death Syndrome, obesity, and tobacco use. Our average life span is 6 years less than other Americans. Our infant mortality and unintentional death rates are two-times, teen suicide rate three-times, and alcoholism five-times that of the rest of America. These statistics can be directly tied to chronically inadequate federal funding.

Health care expenditures for Indian people are far below 50% of the per capita health care expenditure for mainstream America, and only 50% of per capita expenditures for federal prisoners. As the Administration and Congress continue to cut health services to Indian people by not providing funding levels even remotely in line with inflation, the rates of illness and death from disease will grow worse each year. The FY 2006 IHS “Needs Based Budget” is $19.7 billion. We ask that the Committee reallocate funding priorities so as to significantly address this deficiency with substantial funding increases this year. In no case should the FY 2007 increase be less than the $200 million. We strongly oppose the President’s request to eliminate the Urban Indian Health Program. There was no justification provided for this request, and this program is critical for tribal members residing in urban areas. Finally, we ask for the Committee’s support to reauthorize the Indian Healthcare Improvement Act.

Circle of Flight Program

The Circle of Flight Tribal Wetland & Waterfowl Enhancement Initiative, under the BIA’s Other Recurring Programs category, was again eliminated by the President in his FY 2007 budget request. The Circle of Flight has been one of Interior’s top trust resource programs for 15 years. Elimination of the Circle of Flight would cripple Great Lakes tribes’ ability to continue successful partnerships which have benefited a diverse array of wildlife and associated habitats. We greatly appreciate the Committee’s recognition of the importance of the Circle of Flight by restoring funding in FY 2003-06. We again ask that you restore this program to the BIA’s FY 2007 budget to at least the FY 2006 level of $600,000, and to consider providing the FY 2007

Testimony of Hon. Floyd Jourdain Jr. on President’s Budget Request for FY 2007
requested amount of $1.1 million.

**Housing Improvement Program (HIP)**

Housing is one of the most basic needs of every American. Funding for BIA’s HIP program is terribly inadequate and has remained flat at about $19 million each year. Red Lake recently submitted its 2003 HIP Work Plan Report to the BIA documenting 188 families in need of housing upgrades or replacement, for which the BIA is responsible to assist with. The total need documented for just BIA’s share of housing repair and new housing at Red Lake was $1.2 million, yet Red Lake received less than $1,000 in each of the last two years from HIP. We ask the Committee for a specific earmark of $1.2 million for Red Lake in FY 2007, and that the BIA HIP budget be increased to at least $32 million.

**Law Enforcement and Community Fire Protection**

The President’s FY 2007 budget for Indian Country Law Enforcement requested $8.1 million for repair of dilapidated detention facilities, $2.7 million for new detention facility operations, and $1.8 million for high crime areas. While we support these increases, they do not begin to address Law Enforcement base shortfalls, which grow worse each year due to inflation, annual rescissions, and Pay Cost cuts. On top of this, most COPS grants, which provided critical sworn officer positions, have expired or will expire by the end of this year. At the same time, crime rates in Indian Country are rising, drug problems have become epidemic, tribes have increased homeland security responsibilities, and court case backlogs are monumental. Tribes simply do not have the resources, at current levels, to combat these problems.

Law enforcement expenditures at Red Lake in FY 2005 were about $2.1 million, with BIA funding levels at about $1.6 million. The shortfall of about $500,000 had to be taken from other programs. It’s been difficult for us to hire and keep good cops on the street because funding shortages prevent us from being able to offer competitive wages. We request additional law enforcement funding of $500,000 in FY 2007 to make up this shortfall.

We are very concerned about the President’s FY 2007 intent to eliminate funding for Community Fire Protection. Our tribe is solely responsible for fighting fires on our reservation and protecting peoples’ lives, on an annual BIA funded budget of $42,500. As cited above, the hazardous necessity for BIA funding and actual expenditures for Community Fire Protection at Red Lake. We ask the Committee for a specific earmark for Red Lake in FY 2007 of $900,000.

**EPA Programs**

Water, wetlands, and the fish and wildlife which rely on them are precious to us. Red Lake is home to the sixth largest natural, freshwater lake in the United States and it is truly a national treasure. Red Lake is larger even than Lake Champlain, which as you know temporarily held the title of the “6th Great Lake” a few years ago. Two programs which are critical in our efforts to protect the environment at Red Lake are the Indian General Assistance Program (GAP) and Section 106 Pollution Control grants (Section 106). The President’s FY 2007 budget continues a $4.5 million cut to GAP begun in FY 2006, despite an Adequate PART rating. We ask that you fund GAP in FY 2007 at no less than the FY 2005 enacted level of $52 million. The President’s request for FY 2007 Section 106 grants is $5.5 million over the FY 2006 level. However, the amount allocated to tribes like Red Lake has sharply decreased. The reason is each year more tribes become eligible for and receive this funding, but the tribal allocation formula stays the same. Thus less dollars go to tribes to conduct pollution control activities. We ask that in FY 2007, you include language recommending no less than 15% of the Section 106 funds be made available to tribes.

Thank you for allowing me to present, for the record, some of the most immediate needs of the Red Lake Band of Chippewa Indians in FY 2007, and for your consideration of these needs.
STATEMENT OF GEORGE T. SKIBINE
ACTING DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
AT THE OVERSIGHT HEARING
ON TRIBAL SELF-GOVERNANCE
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SEPTEMBER 20, 2006

Good morning Mr. Chairman, Mr. Vice-Chairman, and members of the Committee. My name is George T. Skibine, and I am acting Deputy Assistant Secretary Indian Affairs – Policy and Economic Development at the Department of the Interior (Department). I am pleased to appear before you this morning to present testimony on Tribal Self-Governance.

In 1988, Congress amended the Indian Self-Determination and Education Assistance Act (the Act) by adding Title III, which authorized the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) to enter into self-governance compacts for the first time under a demonstration project. Congress again amended the Act in 1994, adding Title IV, which established the permanent Tribal Self-Governance program within the Department. The 1994 amendments authorized federally recognized tribes to negotiate funding agreements with the Department for programs, services, functions or activities administered by the Bureau of Indian Affairs (BIA), and in certain circumstances, with other Bureaus of the Department. In 2000, the Act was again amended to include Titles V, which established permanent self-governance authority for the IHS within the Department of Health and Human Services. The 2000 amendments also included a new Title VI that provided for a study to determine the feasibility of conducting a Self-Governance Demonstration Project in other programs of the Department of Health and Human Services, which has since been completed.

The Department strongly supports self-governance as an exercise of tribal sovereignty and self-determination. Tribal self-governance is a framework for progress because it empowers tribes to prioritize their needs and plan their futures at their own pace, consistent with their own distinct cultures, traditions, and institutions. Many tribes have made this choice, which is demonstrated by the fact that in 2006, the BIA has 91 funding agreements providing services to 231 tribes, for a total of $300 million, which is a significant increase from a total of $27 million for the funding agreements with seven tribes made in 1991, the year the program began.

1 By BIA region, the number of funding agreements is as follows: Alaska, 26; Eastern, 1; Eastern Oklahoma, 11; Midwest, 9; Northwest, 20; Rocky Mountain, 1; Southern Plains, 8; Southwest, 1; Western, 6; Pacific, 8. Neither the Navajo Region nor the Great Plains Region has self-governance funding agreements.

2 The seven tribes that signed funding agreements in 1991 are the Absentee Shawnee Tribe of Oklahoma, Cherokee Nation, Hoopa Valley Tribe, Jamestown S’Kallam Tribe, Lummi Nation, Mille Lacs Band of Ojibwe, and the Quinault Indian Nation.
In addition to administering BIA programs, tribes have successfully negotiated funding agreements with the following agencies within the Department: the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, the U.S. Fish and Wildlife Service, and the Office of the Special Trustee for American Indians. Tribes are typically successful in obtaining these agreements where a compacted program is of special geographical, cultural, or historical significance to them, such as the agreement between the U.S. Fish and Wildlife Service and the Council of Athabaskan Tribal Governments (Council). This agreement allowed the Council to perform certain functions within the Yukon Flats National Wildlife Refuge, an area of special significance to it, during FY 2004-2005.

As to non-Department programs, we understand that questions have been raised as to whether our self-governance policies should be made more consistent with the self-governance provisions governing IHS programs. In fact, the Department has been working with the Title IV Tribal Task Force to explore the need for amendments to Title IV. At this time, the approach embodied in the self-governance provisions applicable to Department programs should be evaluated carefully.

At the Department, Tribal Self-Governance for BIA programs is administered by the Office of Self-Governance (OSG) in Washington, D.C. The OSG has eight permanent staff positions and operates annually on a budget of $1.1 million, and was organized so as not to duplicate BIA field structure and operations. The OSG Director reports to the Deputy Assistant Secretary – Policy and Economic Development within the Office of the Assistant Secretary – Indian Affairs. The responsibilities of the OSG include approving tribes to participate in self-governance; negotiating annual funding agreements; ensuring audit compliance; providing financial management, budgeting, and accounting services associated with self-governance funding; processing waivers of BIA regulations; preparing an annual report to Congress on the costs and benefits of self-governance; and developing and implementing regulations, policies and guidance regarding self-governance programs. In addition, we support the activities of the Self-Governance Communication and Education Tribal Consortium, and the Assistant Secretary – Indian Affairs holds quarterly meetings with the Self-Governance Advisory Committee to discuss and resolve issues of mutual interest and concern.

One issue of recurring concern among compacting and contracting tribes has been contract support costs. The Department recently participated in the formulation of a

\[2\] Council of Athabaskan Tribal Governments.
\[4\] Gila River Indian Community, Karuk Tribe of California, Duckwater Shoshone Tribe, and the Yurok Tribe.
\[6\] Council of Athabaskan Tribal Governments and the Confederated Salish and Kootenai Tribes of the Flathead Reservation.
\[7\] Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the Wyandotte Tribe of Oklahoma.
national policy in order to provide tribes, the BIA, and the OSG with guidance regarding this issue. The goals of the policy are threefold: 1) to stabilize funding to each tribe from year to year; 2) to expedite payment for each tribe; and 3) to respect the Act’s prohibition against reducing contract amounts from one year to the next. The policy accomplishes these goals by requiring that, subject to appropriations, a tribe be paid the same amount it was paid in the preceding year. The policy allows the payment to be made very early in the fiscal year, and the only restriction is that the BIA must ensure the tribe does not receive more than 100% of its total requirements. The completion of this policy certainly represents forward progress in the area of self-governance, and we believe that it will significantly improve administrative flexibility and fiscal stability for tribes with funding agreements. To implement the funding aspect of this policy, the President’s 2007 Budget included a 14% increase for contract support costs.

The Department believes the national policy on contract support costs will encourage non-participating tribes to think about exercising their option to take over BIA programs or portions of programs to promote self-governance on their reservations. For the last few years, the percentage of participating tribes has remained relatively flat, at about 50 percent. The Department would like to get the percentage up and in BIA discussions with tribes, tribes have indicated that they would increase their overall participation if the issue of contract support cost funding was resolved.

The Department looks forward to working with the Committee in order to make continued progress in Tribal Self-Governance. I would be happy to answer any questions the Committee may have.