

S. HRG. 112-713

**ADVANCING THE FEDERAL-TRIBAL RELATIONSHIP  
THROUGH SELF-GOVERNANCE AND SELF-  
DETERMINATION**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

**SECOND SESSION**

SEPTEMBER 20, 2012

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PRINTING OFFICE

78-812 PDF

WASHINGTON : 2013

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**ADVANCING THE FEDERAL-TRIBAL  
RELATIONSHIP THROUGH SELF-  
GOVERNANCE AND  
SELF-DETERMINATION**

THURSDAY, SEPTEMBER 20, 2012

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

The Committee met, pursuant to notice, at 2:44 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA,  
U.S. SENATOR FROM HAWAII**

Senator AKAKA. I call this hearing of the Committee on Indian Affairs to order.

Aloha and thank you all for being here today for the Committee's Oversight Hearing on Advancing the Federal-Tribal Relationship Through Self-Governance and Self-Determination.

Before we begin, I just want to take note that we have some new artwork in the Committee room. I hope that you took time to scan the room and see the art pieces that we have. I am so pleased with the way that new art helps us visually represent the diversity of Native peoples with whom the Federal Government has trust responsibilities and for whom this Committee works every day.

I want to offer my mahalo, my thanks, to the Smithsonian National Museum of the American Indian, the Council on Native Hawaiian Advancement, and [phrase in Native tongue] for loaning the Committee the beautiful artwork and I hope that you will take time to enjoy seeing them.

From the Constitution, it is clear our Founding Fathers understood the sovereign authority of Tribal nations and their governments. It is also clear the Tribal government came in a diversity of forms. The broad terms Indian and Tribes represented a diversity of people with unique cultures, languages and traditions indigenous to the United States. And as I mentioned yesterday, all of us here in this room and the Committee staff, all will have to continue to educate our colleagues here in the Congress to know as much as they can about our indigenous people.

From our earliest days as a Nation, we made treaties with the Indian Tribes. This Country made treaties with the Indian Tribes, just as we did with a diversity of foreign nations, governing issues

such as trade, peace and other relations. With our westward expansion during the 19th Century, Federal objectives turned to manifest destiny and Federal policies toward our Country's first peoples changed over time. The movement to remove the Native peoples began.

The United States again relied on treaties with the Tribes to facilitate the acquisition of Native lands and often promised in exchange to provide for Indian health, education, welfare and housing, and a guaranteed right to self-governance. The policy errors that developed from then through the first half of the 20th Century were marked by programs designed to force Natives to abandon their traditional ways and assimilate into mainstream American norms. These programs intended to strip Native Americans of their languages, break up Tribal bonds and land bases, and encourage Indians to focus on their identities as individuals rather than members of Tribal communities.

These policies and program strategies were applied to all indigenous peoples throughout the Country, on the continent, across the ocean and in my own home of Hawaii. And I must tell you, because of my age and, when I was a very young man, this happened to me, too, because, bless my mom and dad, I called them ma and pa, they wanted the best for us. And so, even at home, they spoke the language. But when it came to us they said, you do not speak Hawaiian. You speak English. And the reason was they wanted us to learn as much English as we could so that we could progress through our own lifetime and give service to people in the Nation.

And so for me, at that time, as I look back, they were doing that to try to help us. And yet, I know enough now, and we all do now, that I could have learned that language as well as English and not banned the use of our cultural language, in this case for English. But that happened to me, too.

So, I am passing on some history that I have gained throughout the years and through my work here in the Congress. The policy of banning Native language use in schools was adopted by the Territory of Hawaii and we were discouraged from speaking Hawaiian just as the American Indians and the Alaska Natives were punished for using their languages in school.

The policy of allotting 160-acre parcels of land to individual Indians began in 1887 with the enactment of the Dawes Act as a way to break up the reservations and communal lifestyles instead of encouraging Indians to own family farms. In 1906, this policy was expanded to Native Alaskans. And in 1921, it was applied to Native Hawaiians, I was born in 1924, with the passage of the Hawaiian Homes Commission Act.

Overall, these policies of assimilation failed to meet the Federal trust responsibility to Native peoples and, in fact, often worsened the socioeconomic conditions of Native peoples and their communities.

In 1968 and also in 1970, Presidents Johnson and Nixon respectively introduced policies supporting Tribal self-determination and called for a shift in responsibility of public programs to Tribal governments. In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act enabling Tribes to contract the BIA and IHS to administer Federal programs. Later legislation al-

lowed Tribes greater flexibility in designing and operating Indian programs and about 60 percent of the Tribes have self-governance compacts with BIA, IHS or both of them today.

Federal reaffirmation of Tribal sovereignty through self-governance programs has enabled the Tribes to generate revenues to their own business enterprises, operate court and effective law enforcement systems, and design school curricula to better meet the needs of Native students. Tribes have done this without forced assimilation to mainstream American norms.

And this Federal focus on self-determination and self-governance has proven to be the only Federal policy that has worked for Native communities. Studies show that self-determination policies have enabled Indian Tribes to build strong economies, reverse decades of language loss, and tailor programs and services to better meet the needs of their people.

So, my top legislative priority today, the Native Hawaiian Government Reorganization Act, ensures parity in policy for all federally-recognized Native people. It means the Native Hawaiian people will have full access to the prevailing policy on self-determination and finally be able to exercise their right to self-governance. It is time for the United States to give my people access to its best policies and Native peoples, not just the legacies of the worst ones.

So, I want to thank all of the witnesses in advance for being here today to share with us your perspective of self-determination and self-governance. I thought I would bring back a little history this morning to tell you about how these have come about for me as I see it in our history and to try to get to what I call a model type of self-determination and self-governance entity that will continue to help the indigenous peoples of this Country.

Thank you so much for listening. But I thought this would be the basis of our discussions today as well as hearing from our witnesses.

Now, at this I would like to ask any members for any of their opening statements on this hearing.

Senator Barrasso.

**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you, Mr. Chairman, for holding this very important hearing today. I appreciate your leadership in advancing the Federal and Tribal relationship. Your efforts have raised the level of dialogue on Native American issues and you have set the course for continued improvements in these communities.

Congress passed the Indian Self-Determination and Education Act, as we have mentioned, as you talked about so eloquently in this history, in 1975 to set forth a new dynamic in the Federal-Tribal relationship. Since then, we have seen many benefits for Indian communities. For example, Tribes can provide more effective delivery of services and programs.

But as we know, there are also improvements that can and should be made in both the Federal-Tribal relationship and in the delivery of services. So I look forward to hearing from the witnesses on where we should go from here.

I would like to mention one thing, Mr. Chairman. It comes to mind since we have a witness today on behalf of the Cherokee Nation. We all know that last Sunday four Americans were killed in Afghanistan as a result of an insider attack against our troops. One of those Americans was a young man from Claremore, Oklahoma, John Ross Townsend who, I understand, was a citizen of the Cherokee Nation.

We should not forget for a moment that the men and women of our military are serving in very dangerous parts of the world to protect the freedoms we all enjoy. Private First Class Townsend made the ultimate sacrifice for the rest of us and we owe him and his family a great, great debt.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Barrasso. We certainly want to pass on mahalo to their families for serving our Country in that way and with their lives.

Senator Udall, do you have anything to say?

Senator UDALL. No.

Senator AKAKA. Thank you very much.

As Chairman, it is my goal to ensure that we hear from all who want to contribute to the discussion. The hearing record is open for two weeks from today and I encourage everyone to submit comments through written testimony.

I want to remind the witnesses to please limit your testimony to five minutes today. Serving on our first panel is Mr. Lawrence Roberts who is the Deputy Assistant Secretary of Indian Affairs at the Department of Interior. I want to welcome you, Mr. Roberts, and ask you to proceed with your testimony.

**STATEMENT OF LAWRENCE ROBERTS, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. ROBERTS. Good afternoon, Chairman Akaka, Vice Chairman Barrasso, Senator Udall, Members of the Committee. Thank you for the opportunity to appear before you today at the Oversight Hearing on Indian Self-Determination and Self-Governance.

I am the Deputy Assistant Secretary for Indian Affairs and a member of the Oneida Nation of Wisconsin. With me today is Sharee Freeman, the Director of the Office of Self-Governance, and Ms. Hankie Ortiz, Deputy Director of Indian Services, Bureau of Indian Affairs.

President Obama recognizes that Indian Tribes are sovereign, self-governing political entities that enjoy a government-to-government relationship with the United States. Secretary Salazar, too, is a strong supporter of the principles of tribal self-determination and self-governance and is committed to working to fully enable these important policies.

This Administration believes that Tribal leadership is critical in addressing and solving issues in Indian Country and that Tribes must have a voice in programs and Government efforts which are important to the lives of Tribal citizens. In the spirit of our strong commitment, we offer our views on the tangible progress achieved under the Indian Self-Determination and Education Assistance Act.



The Bureau of Indian Affairs (BIA) has a long history of entering into contracts with Tribes to operate BIA programs. Prior to the passage of the Indian Self-Determination and Education Assistance Act, the BIA contracted with Tribes utilizing authorities provided under the Buy Indian Act. However, the Buy Indian Act did not allow the BIA to work directly with a specific Tribe to develop a contract proposal, plan the operation of a program, and negotiate the specific contractual agreements.

In 1975, Congress passed the Indian Self-Determination and Education Assistance Act, a law that has proven to be one of the most significant pieces of Federal Indian legislation. Under the Act, Tribes may choose to have the BIA provide direct services or the Tribe may operate BIA programs under a Title I Contract. From its inception in 1975 through 1988, only the BIA and the Indian Health Service were authorized to utilize the act. During this time frame, all self-determination contracts were considered procurement agreements and construction agreements were not authorized.

In 1988, the Act was amended to authorize use by all bureaus and offices within the Department. The 1988 amendment authorized construction contracts and provided that non-construction contracts were no longer to be construed as procurement contracts. Title III, the Tribal Self-Governance Demonstration Project, was also added as part of the 1988 amendments.

In 1994, Congress made additional significant amendments to the Act. Among other things, the 1994 amendments added Title IV establishing self-governance as a permanent option for Tribes. These amendments authorized Tribes that meet certain criteria to negotiate funding agreements with the department for programs, services, functions or activities administered by the bureau and within certain parameters by other bureaus in the department.

Since its enactment in 1975, Tribal participation in all aspects of self-determination contracting and self-governance continues to expand. In Fiscal Year 2012, Indian Affairs funded approximately \$800 million to over 500 Tribes through self-determination contracts. Under these agreements, Tribes provide a wide range of programs and services to their members such as law enforcement, education, road maintenance and road construction, forestry, fisheries, real estate services, appraisals and probates.

Programs once operated by a Tribe under self-determination contracts and associated funding are often rolled into self-governance funding agreements. Under self-governance, Tribes have the authority to redesign or consolidate bureau programs, services, functions or activities other than construction. As a result, those funds can be used with relative flexibility to address each Tribe's unique situation.

The number of Tribes participating in self-governance has grown from 7 Tribes in 1991 to 251 Tribes today. These 251 Tribes are currently funded through 103 self-governance funding agreements. The amount of funding transferred to Tribes through self-governance funding agreements has grown from \$27 million in 1991 to \$436 million in 2011.

Ultimately under Tribal self-governance each individual Tribe determines the number and type of programs the Tribe will oper-

ate, as well as those programs that the Federal Government will retain. Control and flexibility in the use of funds to meet Tribal needs promotes more efficient and effective governance. In fact, numerous self-governance Tribes have been accorded high honors from the Harvard Project on American Indian Economic Development for Good Governance.

We appreciate the ways that self-governance contracts and self-governance funding agreements under the act have helped to strengthen the government-to-government relationship with Tribes. Indian Tribes have been good managers of the programs they have administered under the act. In fact, many times the Indian Tribes add their own resources to the programs.

We support appropriate efforts to strengthen the existing act to make it work better for the Federal Government and for Tribes.

I appreciate the opportunity to testify before you today and I will be happy to answer any questions you may have.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF LAWRENCE ROBERTS, DEPUTY ASSISTANT SECRETARY,  
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. Thank you for the opportunity to appear before you today at this Oversight Hearing on Indian Self-Determination and Self-Governance. President Obama recognizes that federally recognized Indian tribes are sovereign, self-governing political entities with a government-to-government relationship with the United States government, as provided in the U.S. Constitution, treaties, court decisions, and federal statutes. Secretary Salazar too is a strong supporter of the principles of tribal self-determination and self-governance and is committed to enable these important policies.

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

**Background**

The ISDEAA is a historic Act because it requires the Department of the Interior and the Department of Health and Human Services to transfer various federal Indian programs to tribes, giving them the same funds the agency would have spent on those programs. In 1975, Congress passed and President Ford signed into law the ISDEAA, which is one of the most significant pieces of Indian legislation enacted into law. Under the Act, federally recognized tribes may choose to have the Bureau of Indian Affairs (BIA) provide direct services or operate BIA programs under an ISDEAA Title I Contract. The ISDEAA established a new methodology for Indian tribes and the Federal Government to work together to accomplish the intent of the President and the Congress in establishing and funding the various Indian programs administered through the Department of the Interior (DOI) and, specifically, the Bureau of Indian Affairs.

Since 1975, the ISDEAA has been amended several times; three of the most significant amendments are: P.L. 100-472 (October 5, 1988), commonly referred to as the 1988 Amendments; P.L. 103-413 (October 25, 1994), commonly referred to as the 1994 Amendments; and P.L. 106-260 (August 18, 2000), commonly referred to as the 2000 Amendments. Title I of the ISDEAA is the Indian Self-Determination Act, Title II is the Indian Education Assistance Act, Title III (which has been repealed) was the Tribal Self-Governance Demonstration Act, Title IV is the Tribal

Self-Governance Act (DOI), Title V is Tribal Self-Governance (Department of Health and Human Services [DHHS]), and Title VI is Tribal Self-Governance (DHHS—Feasibility Study).

The BIA has a long history of entering into contractual agreements with Indian tribes to operate BIA programs. Prior to the passage of the ISDEAA the BIA was contracting with Indian tribes utilizing the authorities provided through the Buy Indian Act (25 U.S.C. 47). However, the Buy Indian Act is a procurement act that did not allow the BIA to work directly with a specific Indian tribe to develop a contract proposal, plan the operation of a program, and negotiate a specific contractual agreement.

From its inception in 1975 through 1988, only the BIA within the Department and the Indian Health Service (IHS) within the Department of Health and Human Services (DHHS) were authorized to utilize the ISDEAA. During this timeframe, all Self-Determination contracts were considered procurement agreements, awarded by Warranted Contracting Officers, and construction contracts were not authorized. In 1988, P.L. 100-472 was enacted and expanded the ISDEAA to authorize its use by all Bureaus and Offices within the Department. The 1988 Amendments authorized construction contracts and provided that non-construction ISDEAA contracts were no longer to be construed as procurement contracts. Title III, the Tribal Self-Governance Demonstration Project, was also added to ISDEAA as part of the 1988 Amendments.

In 1994, P.L. 103-413 was enacted and made additional significant amendments to the Act. P.L. 103-413 made clear that all self-determination contracts, including construction contracts, were not to be construed as procurement contracts. The 1994 Amendments also added Title IV, thus establishing Self-Governance as a permanent option for tribes. These amendments, in section 403(b), authorized federally recognized tribes that meet criteria established for the Self-Governance Program to negotiate funding agreements with the Department for programs, services, functions, or activities (PSFAs) administered by the BIA and, within certain parameters, by other bureaus of the Department.

The ISDEAA allows federally recognized Indian tribes, tribal organizations, and tribal consortiums to assume programs administered by Department bureaus and offices other than the BIA, subject to negotiations, when the programs are available to Indian tribes or Indians because of their status as Indians. The ISDEAA also provides the Secretary with discretion to include other programs administered by the Secretary which are of special geographic, historical, or cultural significance to the participating self-governance tribe requesting a funding agreement. The ISDEAA was intended to strengthen the government-to-government relationship between Indian tribes and the Federal Government by putting in place a process and a procedure to ensure that Indian tribes and the Federal Government accomplish the goals and objectives of the tribes and ensure that Indian people had a voice in the planning, design, and implementation of programs and services for the benefit of Indian people.

Tribal participation in all aspects of self-determination contracting and self-governance continues to expand. In FY 2012, Indian Affairs funded approximately \$800 million to over 500 tribes through Title I ISDEAA Contracts.

These self-determination contracts and self-governance funding agreements allow federally recognized tribes to plan, conduct, consolidate, and administer federal PSFAs according to priorities established by tribal governments. Under these agreements, tribes provide a wide range of programs and services to their members such as law enforcement, education, road maintenance and road construction, forestry, fisheries, agriculture, and other natural resource programs, rights protection and trust related programs, such as real estate services, appraisals, probates, and welfare assistance and Indian child welfare assistance. Under these contracts and funding agreements, tribes have the authority to redesign or consolidate BIA PSFAs, other than construction. In addition, tribes are allowed to carry over unspent funds into the next fiscal year without Secretarial approval. As a result, funds can be used with relative flexibility to address each tribe's unique condition, provided it is for the same activity that the funds were originally contracted for. Tribes are subject to annual on-site visits by Department staff to monitor performance. Tribes are also subject to annual audits pursuant to the Single Audit Act Amendments (P.L. 104-156) and OMB Circular A-133. In addition, most tribes have included language in their contracts and funding agreements indicating that they will work with the Department to provide applicable data and information pursuant to the Government Performance and Results Act of 1993.

### **Self-Governance Compacts and Funding Agreements**

In 1988, Congress added another option to the ISDEAA by establishing a demonstration program allowing federally recognized tribes to operate BIA programs under a self-governance funding agreement. The origin of this option was an oversight hearing held in 1987 by Chairman Yates. At the hearing Chairman Yates asked if there was a better way to conduct business in Indian country. The tribal leaders attending the hearing proposed the concept of identifying and transferring the tribe's share of the federal budget to the tribe so it could govern itself without federal intervention. Chairman Yates asked the federal and tribal leaders attending the hearing to work together to suggest how to implement the tribal concept.

Congress enacted P.L. 100-472, which authorized the Secretary of the Interior to negotiate self-governance compacts with up to 20 tribes. Title III was later amended to include Indian Health Service (IHS) programs. Permanent programs were enacted as Title IV for the Department's Indian programs and Title V for IHS programs.

The number of tribes participating in the DOI self-governance program has grown from seven tribes in FY 1991 to 251 tribes in FY 2012. These 251 tribes are currently funded through 103 self-governance funding agreements. The amount of funding transferred to tribes through self-governance funding agreements has grown from \$27 million in FY 1991 to \$436 million in FY 2011. Given that the distribution of FY 2012 funding is ongoing and set on a two-year funding cycle, the total amount distributed to self-governance tribes will be better known at the end of FY 2013. In addition to BIA funds included in the funding agreements, funds from other federal programs allocated or awarded to self-governance tribes may be transferred with the ISDEAA funding agreement. This includes Indian Reservation Roads funds from the Department of Transportation and Indian employment training and related services funds pursuant to P.L. 102-477, from the Department of Health and Human Services Temporary Assistance for Needy Families (TANF), Child Care, and Native Employment Works (NEW) funds as well as Department of Labor, Workforce Investment Act (WIA) funds.

The DOI Office of Self-Governance (OSG) administers the Self-Governance Program with respect to PSFAs that would otherwise be performed by BIA. The OSG is located within the Office of the Assistant Secretary—Indian Affairs (AS/IA). The Director of OSG reports to the Deputy Assistant Secretary—Policy and Economic Development within the Office of the Assistant Secretary—Indian Affairs. OSG was organized so as not to duplicate BIA field structure and operations.

OSG administers the government-to-government relationships with a steadily increasing number of self-governance tribes, currently greater than 45 percent of all federally recognized tribes in Indian country. In recent years, there has been a steady increase of 2-3 new self-governance tribes per year. OSG has a full range of responsibilities to self-governance tribes, including the following:

- Assist in the growth of tribal self-governance by disseminating information and developing education products;
- Work with additional tribes to join the DOI tribal self-governance program;
- Select tribes to participate in the DOI tribal self-governance program;
- Negotiate self-governance compacts with new self-governance tribes;
- Conduct annual negotiations of funding agreements for BIA programs with each self-governance tribe;
- Provide financial management, budgeting, accounting, and contracting services associated with the reprogramming and transfer of funds from BIA programs and other federal programs associated or awarded to self-governance tribes;
- Schedule and reconcile fund transactions with program and account managers in BIA and other federal agencies;
- Satisfy the program accountability requirements of other federal agencies, the BIA, and OSG;
- Maintain financial integrity and accurate delivery and reporting of all funds negotiated in self-governance funding agreements;
- Work with tribes, the Assistant Secretary's Office of Internal Evaluation and Assessment, and the Department's National Business Center to review and close all outstanding A-133 audits of self-governance tribes;
- Consult with self-governance tribes to avoid and resolve policy issues through the Self-Governance Advisory Committee, which meets quarterly with the Assistant Secretary—Indian Affairs;

- Provide technical assistance on policy and program matters affecting self-governance tribes;
- Provide a central point for coordinating and resolving policy and practical self-governance issues;
- Work with self-governance tribes and federal policy officials to implement tribal self-governance and resolve issues or problems which arise;
- Process requests for waivers of BIA regulations;
- Prepare and submit an annual report to Congress with the views of self-governance tribes;
- Review legislative proposals that impact tribal programs; and
- Implement tribal self-governance by serving Indian communities, including the development and implementation of regulations, policies, and guidance in support of self-governance initiatives.

Tribal self-governance was established with the purpose of reducing the number of staff and costs needed to administer the program so that more resources can be provided and used by self-governance tribes. The OSG has worked to gain efficiencies through a number of means. For example, OSG and self-governance tribes work together to integrate the negotiation and financial management functions through the development of a self-governance data base which provides transparency, accuracy, efficiency, and effectiveness of operation in the implementation of tribal self-governance. The database allows self-governance tribes to see their federal accounts in real-time as an Internet based system and minimizes OSG resources needed to perform some financial management functions.

Another example of an initiative to gain efficiencies includes OSG working with tribes to develop a Tribal Data Exchange (TDE) system to automate the collection of information from tribes. DOI requires complex sets of data to support budget formulation, funds distribution, program management, and statutory and regulatory reporting processes. OSG and self-governance tribes often receive multiple requests for data that are repetitive, time consuming, and lack method or form of electronic collection. OSG, working with self-governance tribes on the Data Management Committee established by the Tribal Budget Advisory Committee (now called the Tribal Interior Budget Committee), reached out to contracting tribes as well as direct service tribes to develop a data collection and reporting tool that enables timely and accurate collection, analysis, reporting, and delivery of tribal data. This tool is designed to meet the internal and external data collection and reporting needs of tribes.

OSG is working with self-governance tribes on a number of other initiatives. One is the development of a training curriculum for senior managers, new tribes, and an on-line product for federal employees. Another is the development of a funding methodology matrix study that involves the review of all BIA program funding and the methodologies used by the Bureau.

Before entering into tribal self-governance, a tribe must provide authorization from its tribal governing body, complete a planning phase, and demonstrate, for the previous three fiscal years, financial stability and financial management capability as evidenced by having no material audit exceptions in its required annual audit of its self-determination contracts. As a result, programs once operated by a tribe under self-determination contracts and associated funding are often rolled into self-governance funding agreements. Under tribal self-governance, each individual tribe determines the relationship it wants to have with the Federal Government, including the number and type of programs the tribe will operate, as well as those programs that the Federal Government will retain.

Under tribal self-governance, there is authority to negotiate annual and multi-year funding agreements and receive funding which enable tribes to plan, conduct, consolidate, and administer PSFAs for tribal citizens according to priorities established by their tribal governments. Unlike tribes that contract under Title I of the ISDEAA, self-governance tribes do not report to a federal contracting officer and do not operate under a scope of work. Tribal staff report to the tribal council who in turn report to tribal citizens. Self-governance tribes have reduced reporting requirements.

Control and flexibility in the use of funds to meet tribal conditions, needs, and circumstances promotes more efficient and effective governance and is a major source of significant relative benefits of tribal self-governance. In fact, numerous self-governance tribes are award recipients who have been accorded high honors from the Harvard Project on American Indian Economic Development for Good Governance (Ak-Chin Indian Community for its Community Council Task Force; Chickasaw Nation for its Chickasaw Press; Choctaw Nation for its Domestic Violence Pre-

vention Project; Citizen Potawatomi Nation for Constitutional Reform; Makah Tribe for its Cultural Education & Revitalization Program; Muscogee (Creek) Nation for its Reintegration Program; Oneida Tribe of Indians of Wisconsin for its Oneida Nations Farms; Osage Nation for its Governmental Reform Initiative; Red Lake Band of Chippewa Indians for its Walleye Recovery Program; Confederated Salish & Kootenai Tribes of the Flathead Nation for its Trust Resources Management; Tulalip Tribes of Washington for its Quil Ceda Village developed to achieve economic diversification; and Confederated Tribes of the Umatilla Indian Reservation for its Free Transportation System).

Relative benefits of tribal self-governance are also generated by:

- Waivers of Federal regulations when not prohibited by Federal law or inconsistent with the terms of the funding agreement;
- Tribes having the authority to incorporate Title I provisions into their self-governance funding agreements;
- Tribes not being required to abide by Federal Program Guidelines, Manuals, and Policy Directives;
- Self-governance funds being treated as non-federal funds for meeting matching requirements;
- Eligibility to receive lump sum advance payments;
- Authority to invest advance payments to generate interest not accountable to DOI or a special revenue fund;
- Establishment of a tribal base budget to promote stability of funding over time;
- Eligibility to receive new funds on the same basis as other tribes;
- Eligibility to receive non-recurring funds including project, and needs based funds; and
- Eligibility to receive pass-through funds from other Agencies which are administered by BIA.

Self-governance tribes are subject to annual trust evaluations to monitor the performance of trust functions they perform to ensure that there is no imminent jeopardy to physical trust assets, natural resources, and public health and safety. They are also subject to annual audits pursuant to the Single Audit Act and OMB Circular A-133, to ensure that audit standards are met and there is financial accountability of their tribal operations. In addition, most self-governance tribes have included language in their funding agreements indicating that they will work with the BIA to provide applicable program performance data and information pursuant to the Government Performance and Results Act of 1993.

### **Conclusion**

We appreciate the ways that self-determination contracts and self-governance funding agreements under this Act have helped to strengthen the government-to-government relationship with Indian Tribes. Indian tribes have been good managers of the programs they have undertaken through contracts and funding agreements under the ISDEAA. Many times, Indian tribes add their own resources to the programs and are able to fashion programs to meet their needs and the particular needs of their members. Indian tribes are also better suited to address the changing needs of their members.

We appreciate the opportunity to provide our thoughts at this oversight hearing. On a broader note, I would like to reiterate this Administration's commitment to the government-to-government relationship with tribes. Many challenges face our Native American communities and this Administration is committed to working with this Committee and with tribes so that, together, we can create opportunities for these communities to grab hold of their future and to thrive and flourish.

This concludes my statement and I will be happy to answer any questions you may have.

Senator AKAKA. Thank you very much, Mr. Roberts, for your testimony.

Mr. Roberts, Tribes participating in self-governance programs have successfully utilized the program to meet the needs of their citizens. Other Tribes, as you know, wish to receive services directly from the BIA as bargained for in treaties. What is the department doing to balance the funding needs of both self-governance and direct service Tribes?

Mr. ROBERTS. Thank you, Chairman Akaka, for that question. The department takes a view that it is up to every Tribe to determine which programs and which services they will take on and which services and programs they want administered by the Federal Government. In terms of an allocation of funds and how those funds are distributed between direct services and self-governance Tribes, that varies from year to year depending on the agreements with Tribes.

Senator AKAKA. Thank you. Mr. Roberts, Tribes already note the chronic under-funding of contract support costs. What affect will sequestration have on these funds?

Mr. ROBERTS. Well, I think sequestration itself would have a negative impact, Mr. Chairman. I think that the next panel may be able to provide information to the Committee regarding how those impacts are felt on the ground.

Mr. AKAKA. Well, thank you for that. I know that the department is trying to give the Tribes independent decisions to make and you continue to do that.

Mr. Roberts, H.R. 2444 is a bill introduced in the House of Representatives aiming to amend the Indian Self-Determination and Education Assistance Act to impart streamlined regulations making it easier for Tribes to manage both Title IV and Title V programs. In the department's opinion, how would that bill advance the Federal-Tribal relationship through self-governance?

Mr. ROBERTS. Thank for the question, Mr. Chairman. Last fall, the department did testify in support of H.R. 2444 before the House Committee on Natural Resources. And our support there, we worked closely with Tribes to develop language that led directly to that legislation. My understanding is that the department's position with regard to that legislation has not changed and I think that legislation is intended to help streamline and make things more efficient in approving those programs and contracts.

Senator AKAKA. In your testimony, you highlighted a few initiatives being worked on between the Office of Self-Governance and self-governance Tribes, including developing a curriculum for senior managers in new Tribes and a funding matrix methodology study. Can you tell us the expected outcomes of those initiatives?

Mr. ROBERTS. Well, I know, thank you, Mr. Chairman, I know that we are working very hard on the curriculum and hoping to move that forward soon. With regard to the funding matrix itself, I would like to submit something for the record if that is okay. I am not entirely up to speed on that at this point in time.

Senator AKAKA. Thank you very much. I would certainly appreciate that.

I want to thank you very much for being here and also for your testimony and your responses to our questions. As I mentioned in my history studies, you know, things will change and will continue to change and this Government needs to continue to adjust those changes as we move along in the best interests of the people.

So, I appreciate what you folks are doing and I look forward to continuing to work with you on these matters. And if you have any recommendations to make legislatively, please let us know and we can discuss it, all for the sake of helping the indigenous peoples.

Mr. ROBERTS. Thank you, Mr. Chairman. Thank you for having me here today and thank you for your leadership to the Committee and on behalf of the Native people.

Chairman AKAKA. Well, thank you again and I wish you well. Thank you, Mr. Roberts.

I would like to invite the second panel to the witness table. Serving on our second panel is Mr. Ian Erlich who is President of the Maniilaq Native Association in Kotzebue, Alaska; Mr. Charles Head, Secretary of the State of the Cherokee Nation in Tahlequah, Oklahoma; and Ms. Noelani Kalipi, President of the TiLeaf Group in Hilo, Hawaii. Welcome to all of you. We are delighted to have you here with us.

Mr. Erlich, will you please proceed with your testimony.

**STATEMENT OF IAN ERLICH, PRESIDENT/CEO, MANIILAQ ASSOCIATION**

Mr. ERLICH. Thank you, Mr. Chairman.

My name is Ian Erlich. I am the President and Chief Executive Officer of Maniilaq Association, an Alaska Native regional non-profit organization representing 12 Tribes in Northwest Alaska. I am thankful for the opportunity to testify regarding ways to advance the Federal-Tribal relationship through self-governance and self-determination.

The Maniilaq Association has been involved with self-governance from its inception. As such, we understand the many important benefits of self-governance. We also understand the ways in which self-governance needs to be improved to provide Tribes with the best tools possible to continue to advance the essential goals of self-governance.

The Maniilaq Association has for many years carried out a range of health and social service programs in Northwest Arctic Borough on behalf of its member Alaska Native villages under the self-governance provisions of the Indian Self-Determination and Education Assistance Act, ISDEAA, including primary healthcare services, emergency treatment, mental and behavioral health services and health education, promotion and healthy lifestyle practices.

The Maniilaq Association's participation in self-governance is a true success story. The Maniilaq Association is proud to report that, because of our involvement in self-governance, there is now a functional but, as I will discuss in a few minutes, severely underfunded clinic in each of its member villages.

Most recently, the Maniilaq Association completed the construction of a long-term care facility adjacent to the health center. Completion of this project has been a long-term goal of the Maniilaq Association and was the product of many years of hard work. Final construction of the 18-bed facility was completed last year. The facility's first residents are moved in and the facility has enjoyed immense success.

The Maniilaq Association also participates in self-governance with the Department of the Interior under Title IV of the ISDEAA, including compacting of several Bureau of Indian Affairs programs, functions, services and activities such as public safety and justice, job placement and training, natural resources, agriculture, forestry, wildlife and parks.



The Maniilaq Association has also entered into a compact and funding agreement with one non-BIA agency, the National Parks Service, to perform custodial services, maintenance services and cultural education curriculum development at the Northwest Arctic Heritage Center. Maniilaq is also currently pursuing self-governance agreements with other non-BIA agencies but is still awaiting responses to requests made years ago for information regarding compactable PFSAs from these non-BIA agencies which appear reluctant to compact such programs.

While the Maniilaq Association's involvement in self-governance has resulted in significant positive developments for its Alaska Native villages and Native people, we continue to face serious funding challenges. I will briefly describe the three most pressing of these issues.

First is the chronic underfunding of contract support costs which continues to impose major hardships on Tribal healthcare providers and patients around the Nation, including Alaska. As just one example, according to IHS' own CSC Shortfall Report, Maniilaq suffered a CSC shortfall for its Title IV health care programs alone at over \$5 million for Fiscal Year 2009.

We urge the Committee to continue to press for full funding of contract support costs to allow Maniilaq and other Tribal providers to use all program funds for the purposes Congress intended.

The second pressing issue is the chronic underfunding of Village Built Clinics, known as VBCs. VBCs are essential for maintaining the IHS Community Health Aide Program, CHAP, in Alaska, which provides the only local source of healthcare for over 41,000 Alaska Native people.

Despite their having enough appropriations to fully fund leases, the amount of funds IHS transfers to the Maniilaq Association and other Tribal organizations for VBC leases is not sufficient to cover the costs of repair and renovation of the VBCs as necessary to maintain them in a safe condition. Many clinics have been closed due to the hazards to the health service employees and patients, leaving villages without a clinic or access to CHAP services.

For example, by Fiscal Year 2006 the lease rentals paid by IHS to the villages covered only 55 percent of operating costs. Maniilaq Association and other Tribal organizations in Alaska have discussed this issue with IHS on many occasions but the IHS continues to refuse to provide additional funding for the VBCs, forcing Maniilaq into a litigation posture with the agency.

The third pressing issue is change to the funding cycle for Indian Health Service appropriations. For more than a decade, Federal appropriation bills have not been enacted prior to the beginning of the Federal Fiscal Year and have included several continuing resolutions causing funding under the ISDEAA to be uncertain and to trickle in over time. This has hampered the efforts of Tribes, Tribal and IHS healthcare providers to provide healthcare services, maintain and construct facilities, recruit professionals and staff and carry out other health-related functions.

These problems could be mitigated by an advance appropriation, funding that becomes available one year or more after the year of the appropriation's act in which it is contained. Congress provides such advanced appropriations to three Veterans Administration

medical accounts to allow the VA to know its medical funding a year earlier and avoid continuing resolutions.

This provides a compelling argument for Tribes and Tribal organizations to be given equivalent status with regard to IHS funding. We thus request that legislation be introduced and enacted amending the Indian Healthcare Improvement Act to authorize IHS advance appropriations and take such other steps as are necessary to provide such advance appropriations.

Finally, two major initiatives must be mentioned when discussing the future of Tribal-Federal relationships as it relates to self-governance and self-determination.

The first is the ongoing effort to update Title IV to create consistency between Title IV self-governance and the DOI and Title V self-governance in the DHHS to create administrative efficiency for Tribes. Most recently, Tribes faced opposition to such legislation from those interests that wish to limit the scope of non-BIA programs available for self-governance compacting, including an effort to specifically exclude all water settlements as non-compactable under Title IV.

We strongly support the revisions to Title IV in order to create consistency between Title IV self-governance and the DOI and Title V self-governance in DHHS while leaving the existing provisions on the non-BIA programs as they are currently.

The proposed amendments to Title IV would significantly advance Congress' policy of strengthening Tribal self-governance, allowing Tribes to prioritize their needs and plan for the future in a way that is consistent with each Tribe's culture, traditions and institutions. The time has come to pass this legislation amending Title IV.

The second major initiative that is vital to the future of self-governance is the effort to extend Tribal self-governance to DHHS agencies other than only the Indian Health Service. In 2003, the department's own feasibility study concluded that a Title VI demonstration project was feasible and identified 11 programs that could be included in the project.

Recently, DHHS convened a self-governance Tribal-Federal work group to develop detailed recommendations on how to overcome the legal and logistical barriers to implementing self-governance in non-ISH agencies. However, Federal representatives do not appear willing to base current discussions on the department's 2003 feasibility study. Tribal representatives see a fundamental transformation of the grantor-grantee relationship in a government-to-government relationship through ISDEAA while Federal representatives cling to the former model.

At this stage it appears clear that the legislation will be necessary to bring self-governance to non-IHS program within DHHS. More specifics on each of these items I have discussed today can be found in my written testimony submitted to the Committee.

In conclusion, I thank the Committee for holding this important hearing and advancing the Federal-Tribal relationship through self-governance and self-determination. On behalf of the Maniilaq Association, including our 12 constituent villages and their members, I sincerely hope that this Congress will address the chronic underfunding of contract support costs, Village Built Clinics and

address the timing of ISH appropriations and move forward with efforts to amend Title IV of the ISDEAA to extend Title IV self-governance to non-IHS programs within the DHHS.

I am ready to respond to any questions from the Committee.  
[The prepared statement of Mr. Erlich follows:]

PREPARED STATEMENT OF IAN ERLICH, PRESIDENT/CEO, MANILAQ ASSOCIATION

### **Introduction and Brief History**

My name is Ian Erlich and I am President and Chief Executive Officer of the Maniilaq Association, an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska. I am thankful for the opportunity to testify regarding ways to advance the Federal-Tribal Relationship through Self-Governance and Self-Determination. The Maniilaq Association has been involved with Self-Governance from its inception. As such, we understand the many important benefits of Self-Governance. We also understand the ways in which Self-Governance needs to be improved to provide tribes with the best tools possible to continue to advance the essential goals of Self-Governance.

Congress, in enacting the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975, sought to encourage Indian tribes to develop self-determination by authorizing them the right to negotiate agreements with federal agencies in which funds and responsibilities for operating federal programs, services, functions and activities (hereinafter PFSAs) were transferred to tribes. In effect, through the ISDEAA, tribes step into the shoes of the Federal Government by assuming the responsibility for providing PFSAs formerly provided by federal agencies. That, in turn, builds the tribe's ability to perform essential governmental functions and allows tribes to improve the PFSAs by making them more responsive to tribal needs.

Congress significantly amended the ISDEAA three times since its enactment in 1975. 1988, 1994, and 2000, in each instance to expand the successful law. The 1994 amendments revised a number of provisions in Title I and included a new Title IV, which implemented a permanent Tribal Self-Governance program within the Department of the Interior (DOI). The 2000 amendments included a new Title V, which repealed the Title III Self-Governance demonstration project and enacted a permanent Self-Governance program within the Department of Health and Human Services (DHHS).

As stated above, the Maniilaq Association has participated in Self-Governance from its inception, both under Title V (Self-Governance compacting with the IHS) and Title IV (Self-Governance compacting with the DOI). Below I briefly describe our history and successes under each program before discussing the ways in which Self-Governance can be improved and ways in which Self-Governance can be moved forward to advance the Federal-Tribal relationship.

### **Maniilaq Association's Participation in Self-Governance: A Success Story**

#### *1. Self-Governance Under Title V of the ISDEAA (Compacting with the IHS)*

The Maniilaq Association has for many years carried out a range of health and social services programs in the Northwest Arctic Borough on behalf of its member Alaska Native villages under the Self-Governance provisions of the ISDEAA, including primary health care services, emergency treatment, mental and behavioral health services and health education, promotion and healthy lifestyle practices. The Maniilaq Association carries out these programs in accordance with the Alaska Tribal Health Compact (ATHC)—a single agreement among the Indian Health Service and all tribes and tribal organizations in the State of Alaska, and its own, individual Funding Agreement with the Indian Health Service. The ATHC authorizes the co-signers to operate their own health care programs while maintaining their autonomy with respect to determining health priorities and what services to be provided and how health policies will be carried out within their respective service areas.

The Maniilaq Association's participation in Self-Governance is a true success story. The Maniilaq Association is proud to report that because of our involvement in Self-Governance there is now a functional (but, as noted below, severely underfunded by the Indian Health Service) clinic in each of its member villages. Most recently, the Maniilaq Association completed the construction of a long term care facility adjacent to its Health Center. Completion of this project had been a long term goal of the Maniilaq Association and was the product of many years of work. Final construction of the 18-bed facility was completed last year. The facility's first residents are moved in and the facility has enjoyed immense success.

2. *Self-Governance Under Title IV of the ISDEAA (Compacting with the BIA and Non-BIA Agencies in the DOI)*

The Maniilaq Association also participates in Self-Governance with the Department of the Interior (DOI) under Title IV of the ISDEAA. Currently, Maniilaq has a Title IV Self-Governance compact and Annual Funding Agreement for several PFSAs and associated funding with the Bureau of Indian Affairs (BIA). Under that agreement, Maniilaq provides a broad range of PFSAs to its member villages, including Public Safety and Justice, Job Placement and Training, Natural Resources, Agriculture (food preservation), Forestry, Wildlife and Parks, Real Estate Services, Environmental Quality and Wildland Fire Management/Pre-Suppression.

Under Title IV a tribe or tribal organization may also compact non-BIA PFSAs, or portions of such PFSAs, with agencies other than BIA, which are of special geographic, historical, or cultural significance to a tribe or tribal organization. Under this provision, the Maniilaq Association entered into a compact and funding agreement with the National Park Service in 2011 to perform Custodial Services, Maintenance Services, and Cultural Education Curriculum Development at the Northwest Arctic Heritage Center. Maniilaq is also currently pursuing Self-Governance agreements with other non-BIA agencies including the U.S. Fish and Wildlife Service; Minerals Management Service; Bureau of Land Management; Office of Surface Mining, Reclamation and Enforcement; and the U.S. Geological Survey (hereinafter “non-BIA agencies”). The Maniilaq Association is still awaiting responses to requests made years ago for information regarding compactable PFSAs from these non-BIA agencies, which appear reluctant to compact such programs.

**Continued Financial Challenges Maniilaq Association Faces in Advancing Self-Governance**

While the Maniilaq Association’s involvement in Self-Governance has resulted in significant positive developments for its Alaska Native Villages and Native people, we continue to face serious challenges that come from chronic underfunding of compacts and critical programs, as well as uncertain funding. The three most pressing of these funding issues are described below:

1. *Chronic Contract Support Cost (CSC) Underfunding.* Underfunding of contract support costs (CSC) continues to impose major hardships on tribal health care providers and patients around the nation, including Alaska. Last year the House proposed funding IHS for contract support costs at \$574,761,000, which would have reduced the CSC shortfall dramatically. Ultimately, however, Congress appropriated \$471,437,491, requiring tribes to divert over \$100 million from health care services to fixed administrative expenses. Just within the last several years, according to the IHS’s own CSC Shortfall Report, Maniilaq suffered a CSC shortfall for its Title V health care programs alone of \$5,152,747 for FY 2009 and \$2,612,499 for FY 2010. Figures for FY 2011 are not yet released. We urge the Committee to continue to press for full funding of contract support costs. Assuming a modest increase in program funding, we estimate that a CSC appropriation of \$595,000,000 would come close to eliminating the shortfall, allowing Maniilaq and other tribal providers to use all program funds for the purposes Congress intended.
2. *Chronic Underfunding of Village Built Clinics (VBC).* Village Built Clinics are essential for maintaining the IHS Community Health Aide Program (CHAP) in Alaska. The CHAP provides the only local source of health care for over 41,000 Alaska Native people. Since the CHAP program could not operate in most of rural Alaska without the use of clinic facilities in Alaska Native villages, IHS established the “village built clinic” leasing program in 1970. Yet, the IHS has consistently under-funded the leases of the VBCs despite having available appropriations to fully fund the leases. The amount of funds IHS transfers to the Maniilaq Association and other tribal organizations for VBC leases is not sufficient to cover the cost of repair and renovation of the VBCs as necessary to maintain them in a safe condition. Many clinics have been closed due to the hazards to the health service employees and patients, leaving villages without a clinic or access to CHAP services. Lease rental amounts for VBCs have failed to keep pace with costs—the majority of leases have not increased since 1989. By FY 2006, the lease rentals paid by IHS to the villages covered only 55 percent of operating costs. The Maniilaq Association and other tribal organizations in Alaska have discussed this issue with the IHS on many occasions, but the IHS continues to refuse to provide additional funding for the VBCs. For the FY 2013 appropriations, we request that an addi-

tional \$7.8 million<sup>1</sup> be appropriated to help fully fund VBC leases in 2013. Unfortunately, the chronic underfunding of VBCs and the IHS's lack of assistance aimed at solving this crisis has forced the Maniilaq Association into a litigation posture with the IHS as we seek to restructure the VBC lease arrangements in a way that recovers the full costs of operation and maintenance.

3. *Change to Funding Cycle for Indian Health Service Appropriations.* For more than a decade, federal appropriations bills have not been enacted prior to the beginning of the federal fiscal year and have included several continuing resolutions, causing funding under the ISDEAA to be uncertain and to trickle in over time. This has hampered the efforts of tribal and IHS health care providers to provide health care services, maintain and construct facilities, recruit professionals and staff, and carry out other health-related functions. These problems could be mitigated by an advance appropriation-funding that becomes available one year or more after the year of the appropriations act in which it is contained. For example, if FY 2014 advance appropriations for the IHS were included in the FY 2013 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2013 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2014 allocation. It would also be counted against the ceiling in the FY 2014 Budget Resolution, not the FY 2013 Budget Resolution. Congress provides such advance appropriations to three Veterans Administration (VA) medical accounts to allow the VA to know its medical funding a year earlier and avoid continuing resolutions. The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system. We thus request that legislation be introduced and enacted amending the Indian Health Care Improvement Act to authorize IHS advance appropriations and take such other steps as are necessary to provide such advance appropriations.

### **Two Key Efforts to Advance the Tribal-Federal Relationship Through Self-Governance and Self-Determination**

Two major initiatives must be mentioned when discussing the future of the Tribal-Federal relationship as it relates to Self-Governance and Self-Determination: (1) the efforts to amend Title IV of the ISDEAA to create consistency between Title IV and Title V; and (2) the current work to expand Tribal Self-Governance to non-IHS agencies within the DHHS under Title VI.

1. *Current Efforts to Amend Title IV.* The first major issue for the ISDEAA moving forward is the ongoing effort to update Title IV and make it consistent with Title V. Discussions continue surrounding several different proposals to amend H.R. 2444 (i.e., the Department of the Interior Tribal Self-Governance Act of 2011 to create a new draft bill, and the Department of the Interior Tribal Self-Governance Act of 2012 for introduction in either the House of Representatives or the Senate during the current congressional session). The amendments to Title IV of the ISDEAA are important to the evolution of Self-Governance. Most significantly, these amendments would create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS and create administrative efficiency for tribes. H.R. 2444, the Department of the Interior Tribal Self-Governance Act of 2011, was introduced in the House of Representatives in July of 2011. H.R. 2444 has yet to pass in the House and no similar bill has yet been introduced in the Senate. H.R. 2444 was a re-introduction of a similar bill, H.R. 4347, the Department of the Interior Tribal Self-Governance Act of 2010, which passed the House but failed to pass the Senate due to DOI opposition to several provisions of the bill. Most recently tribes face opposition to H.R. 2444 from those interests that wish to limit the scope of non-BIA programs available for Self-Governance compacting, including an effort to specifically exclude all water settlements as

<sup>1</sup>In previous testimony Maniilaq Association requested an additional \$6.8 million, but it now believes an additional \$7.8 million is needed because rural fuel costs are inflating faster than anticipated.

non-compactable under Title IV. Tribes are currently working with staff of the Senate Committee on Indian Affairs to develop language that is mutually agreeable to both sides. We strongly support the revisions to Title IV, in order to create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS, while leaving the existing provisions on non-BIA programs as they are currently in the ISDEAA. The proposed amendments to Title IV will strengthen tribal Self-Governance, allowing tribes to prioritize their needs and plan for the future in a way that is consistent with each tribe's culture, traditions and institutions. The time has come to pass this legislation amending Title IV, which would significantly advance Congress's policy of promoting Tribal Self-Governance.

2. Efforts to Extend Title V Self-Governance to Other Agencies within the DHHS. The second major issue relating to the future of the ISDEAA is the continuing effort to extend Tribal Self-Governance to DHHS agencies other than only the Indian Health Service. Title VI of the ISDEAA mandated a feasibility study for including non-IHS agencies within the DHHS in a Self-Governance demonstration project and directed the DHHS Secretary to examine the feasibility of applying Title V to other agencies in the DHHS. As a result, the Department's 2003 Feasibility Study concluded that a Title VI demonstration project was feasible, identified eleven programs that could be included in the project, and set forth recommendations and parameters for the legal framework of the project. Since that time, however, no further progress has been made. To assist DHHS in implementing Title VI and other Self-Governance initiatives, DHHS convened a Self-Governance Tribal Federal Workgroup (SGTFW) consisting of ten tribal delegates and ten alternates from around the country, which began meetings in January of this year. The charge of the Workgroup is to develop detailed recommendations on how to overcome the legal and logistical barriers to implementing Self-Governance in non-IHS agencies. However, from the beginning the gulf between the federal and tribal visions of Title VI implementation was apparent. Federal representatives do not appear willing to base current discussions on the Department's 2003 Feasibility Study. By contrast, Tribal representatives felt strongly that the 2003 Feasibility Study should provide the foundation and starting point of the SGTFW's work so as to not be duplicative. Importantly, tribal representatives envision a program that uses funding agreements with the key substantive and procedural protections of Title V, adapted to fit the distinctiveness of the non-IHS agencies. Federal representatives, however, have urged tribal representatives to scale back their vision and consider non-ISDEAA models such as the 477 program<sup>2</sup> or inclusion of Self-Governance language in the legislative reauthorization of some single program. Thus, where tribal representatives see a fundamental transformation of the grantor-grantee relationship into a government-to-government relationship, federal representatives cling to the former model. At this point it is not clear where the Title VI initiative will go, but legislation will be necessary to bring Self-Governance to non-IHS programs within DHHS.

### Conclusion

The Indian Self-Determination Act has for 35 years provided a mechanism for many tribes to successfully develop capacity for government-building activities. I thank the Committee for holding this important hearing on advancing the Federal-Tribal relationship through Self-Governance and Self-Determination. On behalf of the Maniilaq Association, including our twelve constituent villages and their members, I sincerely hope that this Congress will address the chronic underfunding of contract support costs and village built clinics, address the timing of IHS appropriations, and move forward with efforts to amend Title IV of the ISDEAA and to extend Title V Self-Governance to non-IHS programs within the DHHS. I am ready to respond to any questions from the Committee.

Thank you.

Senator AKAKA. Thank you very much for your testimony, President Erlich.

Secretary Head, please proceed with your statement.

<sup>2</sup>P.L. 102-477, Indian Employment, Training and Related Services Act, which allows tribes to consolidate federal employment and training formula-funded grants.

**STATEMENT OF CHARLES HEAD, SECRETARY OF STATE,  
CHEROKEE NATION**

Mr. HEAD. Thank you Mr. Chairman, Ms. Murkowski. My name is Charles Head, Secretary of State for the Cherokee Nation, and I am here representing Principal Chief Bill John Baker and the Cherokee Nation. I thank you for the opportunity to share some information about Cherokee Nation and our self-governance programs.

In 1990, I was working for the Bureau of Indian Affairs and sat across the table from the Cherokee Nation as the first compact was negotiated. In Fiscal Year 1991, I went to work for the Cherokee Nation, became the Tribe's first self-governance coordinator, and participated fully in the implementation of the development of self-governance and the implementation of the program for more than 10 years.

I have looked at this program as the self-governance coordinator, as the Chief Financial Officer for the Tribe, and now as the Secretary of State and I fully support self-governance and what it brings to the Tribes.

Cherokee Nation is one of the largest Tribes in the United States. We are also one of the largest employers in Northeastern Oklahoma. We indirectly support more than 13,000 jobs. The Tribe directly is responsible for 9,000 jobs, both in our businesses and in our government operations.

Our healthcare program, last year we had, in our eight rural health clinics, completed more than 1.1 million patient visits. We operate W.W. Hastings Indian Hospital in Tahlequah, Oklahoma, a hospital designed for 30,000 to 60,000 patient visits. Last year, we had 300,000 patient visits. We are able to operate these health services with IHS funding, with third-party collections and with dollars added from our Tribal businesses.

We operate, through our Department of Interior Self-Governance Program, law enforcement, real estate services, various trust programs and education programs. We operate Sequoyah High School which was a BIA boarding school that was low performing and inadequate and now is State chartered, fully certified and we handle, we serve more than 400 students each and every year, grades 8 through 12, and from more than 30 Tribes, students from more than 30 different Tribes.

One of the two major areas of concern for the Cherokee Nation is contract support costs, inadequate funding. The Cherokee Nation has participated in, and initially filed a lawsuit against, the Indian Health Services through a Contracts Disputes Act claim which was proven by the Supreme Court and then, in later years, the Ramah Navajo case is a similar case that shows that Indian Health Service and BIA are not adequately funding the contract support costs.

Contract support costs are administrative costs that each and every business or contractor must pay to administer these programs. And when the Federal Government does not supply adequate funding, direct care dollars must be used to support the operation of these programs. Our contract support claims for this latest round, from 2005 to current for the Indian Health Service, is nearly \$50 million and it is almost \$1 million for the Department of the

Interior. Those are direct program service dollars that we were not able to provide for services to our people.

We ask for your support and help in promoting that the Indian Health Service and the Department of Interior quickly come together with Tribes and settle these claims so that we can bring in those Tribal, these dollars back into the Tribal coffers to provide services for our people.

The second area of concern is sequestration, which you mentioned earlier, Mr. Chairman. I have a report here that I would like to provide to the Committee to be put into the record. This is a report developed by our treasurer and it is providing information on what these cuts could mean to each of our program areas for each of the Federal agencies. It is an example and it is based on a 10 percent cut, not the 8.2 that it is in the law. But if it pleases the Chair, I would like to provide this information, this report, which will provide you with some real world examples for what these, for the job cuts and the cuts in services that this sequestration could have on the operation of our Tribe.

Lastly, Mr. Chairman, I would like to invite the Committee and your staff to visit the Cherokee Nation, to see what we do with our dollars that are provided in these important self-governance programs.

And lastly, I would like to say that the Cherokee Nation strongly supports self-governance for Native Hawaiians and if there is any technical assistance in the area of self-governance that we can provide, all you have to do is ask.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Head follows:]

PREPARED STATEMENT OF CHARLES HEAD, SECRETARY OF STATE, CHEROKEE NATION

### **Introduction**

Chairman Akaka, Vice Chairman Barrasso and members of the Committee, thank you for convening this hearing on "Advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination." I am Charles Head, Cherokee Nation Secretary of State and on behalf of the Cherokee Nation, I am here to ensure the United States' trust responsibility is maintained and the successful policy of Self-Governance continues to be strengthened so tribes can better and more efficiently serve their citizens.

Cherokee Nation was one of the first tribes to enter into a treaty with the United States. In that tradition, the Cherokee Nation executed a self-determination compact under Title III of the Indian Self-Determination and Education Assistance Act (ISDEA). This gave the tribe more authority to administer its own programs and essential services. In just two decades, Cherokee Nation has taken over the administration of several Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) programs.

ISDEA is a powerful mechanism that provides tribes with the opportunity to administer essential governmental services and engage in local economic and resource development that is culturally appropriate and reflects the local population's needs. The Self-Governance program is a model of efficiency for the Federal Government, reducing its costly administrative burdens. But rather than rewarding efficiency and quality services, implementation of the Budget Control Act in early 2013, specifically the sequestration provision, threatens to cut tribally administered programs by 8.2 percent.

While Self-Governance falls under discretionary funding, it must be understood that funding tribal programs is the fulfillment of treaty obligations between tribes and the United States. During this period of fiscal constraints, it is prudent to view the Self-Governance program as an effective administrative model deserving of support, rather than cutting funding to a program that is a solution to the Federal Government's current economic challenges.



Self-governance builds tribal capacity. Cherokee Nation is currently the largest employer in northeastern Oklahoma and has an economic impact of more than \$1.06 billion on the State's output level, including \$401 million in State income impacts. Cherokee Nation supports 13,527 jobs in a predominantly under-developed, rural region of Oklahoma. While 3,250 people are employed in the Nation's government, an ever-increasing number of people are employed in the Nation's diverse portfolio of businesses, which include the hospitality, healthcare, aerospace, and technology sectors.

Although the combined revenue streams from the Tribe's diverse business operations help fund essential government services that expand economic development and job growth in Oklahoma, there must also be adequate funding for IHS and BIA self-governance contracts.

#### **Indian Health Service**

Under a Self-Governance contract with the Department of Health and Human Services, the Cherokee Nation constructs and maintains waterlines and improves sanitary services throughout our region. Furthermore, the Tribe operates a sophisticated network of eight rural outpatient health centers that provide Native People with primary medical care, dental service, optometry, radiology, mammography, behavioral health promotion and disease prevention, and a public health nursing program.

In addition to these services, the Cherokee Nation operates W.W. Hastings Indian Hospital in Tahlequah, Oklahoma. Hastings is a 60-bed facility offering outpatient and ancillary services with over 300,000 outpatient visits each year and more than 335,000 prescriptions filled annually. Full funding is required to continue this successful partnership in fulfillment of the United States' trust obligations. Additionally, Cherokee Nation requests that this Committee work with all of Congress to ensure that IHS is exempt from future reductions during the appropriations process as well as sequestration that is set to go into effect in early 2013.

#### **Bureau of Indian Affairs**

Cherokee Nation also contracts with the Department of Interior to administer a wide array of federal programs serving American Indians. Full federal funding is crucial for continued administration of social services, child wellness programs, child abuse services, adult and higher education, housing improvement, law enforcement service, road and bridge construction, planning and maintenance, forestry and real estate programs, and Johnson O'Malley education programs.

#### **Self-Governance Education Services**

One of the best examples of what happens when Native People administer their own programs is Sequoyah Schools system. In 1985, Cherokee Nation gained control of Sequoyah Schools, a former underperforming BIA boarding school. After years of tribal control, Sequoyah is now regionally and state accredited, consistently meets Adequate Yearly Progress goals and is flourishing. The Campus covers over 90 acres and houses more than 400 students in grades 7-12 representing 42 Tribes. Furthermore, in the 2011 and 2012 school years, ten Sequoyah Schools' seniors were named Gates Millennium Scholars by the Bill and Melinda Gates Foundation. This honor entitles the students to one of the most prestigious scholarships in the United States, including college tuition, books, fees, and room and board for up to eight years worth of higher education.

Cherokee Nation and other tribes better understand how to educate our children and provide cultural curricula that revitalizes and protects language and tribal history. The School also creates an academic environment that mirrors college preparatory schools by utilizing an advanced curriculum and using data collection to track student progress and school performance, which allows the administrators to quickly address any deficiencies or problems that develop. In 2010, nearly 30 million dollars in tribal money went to fund Cherokee services like education programs. However, the Tribe is still reliant on federal grants and funding for many programs. Insufficient funding for contract support costs, and potentially sequestration, could force the reallocation of tribal funds, from successful services like education, to cover the shortfalls in other tribally-administered programs.

#### **Tribal Priority Allocations (TPA)**

We join other Self-Governance Tribes in requesting that this Committee guarantees funding increases for the fundamental services provided under the broad category of TPA. Of the 566 federally-recognized Tribes, 235 Tribes manage their own affairs under Self-Governance agreements with the BIA. Although these tribes account for 42 percent of the federally-recognized tribes, they received roughly only

15 percent of the BIA budget, which bears the responsibility for providing services to all federally-recognized Tribes.

The President's FY 2013 budget includes \$2.5 billion for BIA, which is \$4.6 million or 0.2 percent below the FY 2012 enacted level. While this is basically level with FY 2012's Budget, any decrease strains tribal governments. Further, the budget proposes a total of \$897.4 million in Tribal Priority Allocations and to advance the policy of Self-Governance, we ask that Congress protects these funds as the budget process proceeds.

#### **Contract Support Costs (CSC)**

CSCs for ISDEA contractors cover the independently-audited fixed overhead costs that an ISDEA contractor must incur to operate an agency activity, like annual audits and payroll administration. These costs are equivalent to "general and administrative costs" required by government procurement contractors, which are generally set by indirect cost rates issued by the Federal Government.

Because CSCs are fixed costs that a contractor must incur, tribes are required to either (1) reduce funds budgeted for critical healthcare, education and other services under contract to cover the shortfall; (2) divert tribal funds to subsidize the federal contract (when such tribal funds are available); or (3) use a combination of these two approaches. For example, every \$1 million that the Cherokee Nation must divert from direct patient care to cover a contract support costs shortfall, the Cherokee Nation health system must forego 5,800 patient visits.

While the President's FY 2013 Budget request for IHS is \$4.42 billion—an increase of \$115.9 million over the FY 2012 enacted level—IHS sees only a very modest \$5 million increase in IHS funding for contract support. The Cherokee Nation appreciates the increase, but it is less than a one percent increase over the FY 2012 enacted level. Although IHS has been reluctant to release shortfall reports, the National Tribal Contract Support Cost Coalition projects a CSC requirement of \$575.8 million for Indian Health Services. However IHS has only requested \$476.4 million, which would leave a shortfall of nearly \$100 million. This shortfall would substantially impact Cherokee Nation, which, like other tribes across the United States, operates replacement or joint-venture facilities throughout our tribal jurisdiction.

Fortunately in June of 2012, the House Appropriations Committee approved the Fiscal Year 2013 Interior-Environment Appropriations Funding Bill, which would almost fully fund contract support costs. This Appropriations Bill would increase the IHS contract support cost line by roughly \$70 million to \$546 million, and would increase the BIA line by \$8 million to \$228 million—the BIA projects a FY 2013 requirement of \$242 million. Cherokee Nation is appreciative of these substantial increases in the midst of constrained budgets and sequestration's planned implementation in early 2013.

Because CSCs are federal contractual obligations with tribes, Cherokee Nation hopes that this Committee ensures the Senate will work with the House to protect those increased IHS and BIA budgets over the President's request. Shortfalls lead to reduced services and jobs for our people and the State of Oklahoma. Therefore, Cherokee Nation supports the House Appropriations language that provides near-full funding for CSCs and requests that the Senate uphold the increases.

#### ***Ramah Navajo v. Salazar*, 132 S. Ct. 2181 (2012)**

In June of 2012, tribes achieved a huge victory for tribal self-determination and Self-Governance contracts with *Ramah v. Salazar*. In that case, the Supreme Court held that BIA had failed to fully fund CSCs between the years of 1994–2001. Previously in *Cherokee Nation v. Leavitt* (2005), the Supreme Court held that the United States is liable to pay full contract support costs where IHS failed to fully fund them. These decisions put tribal contractual agreements on the same level as all other federal contractual agreements, as they should have been all along.

Due to the ruling in *Ramah*, there will now be hundreds of tribes filing thousands of claims to recover CSC shortfall funds. Recently, Chickasaw Nation reached a roughly \$7 million settlement regarding a small portion of their filed claims. This relatively small claim took seven years. This is unacceptable. Therefore, I ask that this Committee works with the rest of Congress to ensure federal agencies are committed to adopting and utilizing a method that guarantees the fast processing of future claims.

Additionally, Congress should actively ensure that no technical barriers, such as statutes of limitation or claim presentment requirements, create agency obstructions. The claims process must also increase agency transparency. Finally, because of the lengthy claims process, the United States could more efficiently resolve the matter by simply negotiating a settlement of all CSC underpayments suffered by all tribal contractors from 1994 to present.

### **Conclusion**

In conclusion, Cherokee Nation is committed to providing federal services and direct, local-level programs, including job creation, education, health and law enforcement services. Self-Governance is an efficient model that utilizes federal dollars better than what the U.S. Government could otherwise provide to tribal citizens. The Federal Government's current fiscal situation, contract support cost shortfalls, and the pending threat of sequestration's across-the-board budget cuts should not affect Cherokee Nation's self-determination nor negate the United States' trust and treaty responsibilities. This is especially true when the program often underfunded is a shining example of better providing services without bureaucratic entanglements. Thank you for your continued support and for the opportunity to testify on "Advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination." I will happily answer any questions you may have.

### **Attachment**

## **Cherokee Nation Fiscal Year 2013 Budget Overview**

Cherokee Nation (CN) has a citizenship of 317,700 world-wide, with 120,606 living within the CN jurisdiction. The jurisdiction is an estimated 7,000 square miles and is comprised of 14 counties in northeastern Oklahoma. Currently, Cherokee Nation has a 51% rural population with a 35% unemployment rate and 27% of the population living below the poverty line.

CN's governmental comprehensive budget for FY13 is \$618.6 million. Priorities for FY13 include jobs, housing, health care, elderly advocacy and assistance, adult vocational assistance and child development. This is the first budget under the administration of Principal Chief Bill John Baker.

The CN government employs 3,506 people (not including entities) and currently administers 263 programs. CN's Health Services is our largest program, serving over 200 tribes and experiencing 1,180,107 patient visits in 2012. The effects of sequestration to our Health program, and to other federally-funded programs, would be devastating. Children not served, patients unseen, families without housing, jobs lost and not created, small businesses not given a boost in an unstable economy, and elders without proper heating and cooling are just some of the many negative consequences of drastic funding cuts.

The report herein gives an estimate of the impacts of sequestration on Cherokee Nation programs. For purposes of this exercise and to provide as timely information as possible, CN assumed a 10% reduction in funding. Although effort has been made to ensure that the information provided is as accurate as possible, some reasonable estimation has been used.

## 2013 REDUCED FUNDING IMPACT

USDA	2012 Funding	2013 Sequester	IMPACT
Food Distribution	\$ 7,811,274	\$ 6,580,147	10,492 people not receiving food; 9 clerk jobs lost; 1 distribution center closed
Food Warehouse	\$ 1,054,969	\$ 949,472	5,209 families not receiving food; 2 warehouse jobs lost
Summer EBT Food	\$ 1,172,646	\$ 1,055,381	372 children not receiving food
WIC	\$ 7,782,962	\$ 7,004,666	8,590 individuals not receiving food vouchers; 4 WIC specialist jobs lost

INDIAN HEALTH SERVICES	2012 Funding	2013 Sequester	IMPACT
IHS Health	\$ 145,000,000	\$ 130,500,000	83,000 patients not seen; 127 jobs lost; Possible closing of 1 clinic; increased wait time
IHS - Engineering & Sanitation	\$ 6,006,841	\$ 5,406,157	3.6 miles of water line not laid; 80 tribal homes not served; 4 labor jobs lost

HUD	2012 Funding	2013 Sequester	IMPACT
Housing Management	\$ 3,229,520	\$ 2,906,568	Decrease in apartments upkeep and maintenance; 4 maintenance jobs lost
Housing Rehabilitation	\$ 8,658,480	\$ 7,792,632	28 less family homes rehabilitated; 6 labor jobs lost
Land Acquisition	\$ 3,904,613	\$ 3,514,152	Less land acquired for home construction
Modernization	\$ 5,046,225	\$ 4,541,603	20 homes not updated; fewer contracts for construction workers
Mortgage Assistance	\$ 4,551,795	\$ 4,096,562	28 families not receiving mortgage assisted; 1 housing counselor job lost
Rental Assistance	\$ 4,525,390	\$ 4,072,851	136 low income families not receiving rental assistance
Self help Homeownership	\$ 1,980,161	\$ 1,782,145	16 families not assisted with owning a home; 6 construction jobs lost
Emergency Housing	\$ 1,045,799	\$ 941,219	105 families with emergency needs not served
New Home Construction	\$ 3,500,000	\$ 3,150,000	2 less homes constructed; fewer contracts for construction workers

EPA	2012 Funding	2013 Sequester	IMPACT
Environmental Protection	\$ 2,748,804	\$ 2,474,014	52 less assisted w/ community compliance issues; 3 less environmental cleanups; 7 less EPA assessments; 2 enviro specialist jobs lost
<b>FEDERAL- OTHER</b>			
Federal Transit Program	\$ 811,542	\$ 730,748	1,864 less passengers; 2 routes eliminated; fewer transportation contracts
CDFI - Community Development	\$ 725,000	\$ 652,500	Less community involvement and contributions
RTRCE- Res Targeting Rural Enforcement	\$ 656,583	\$ 590,925	Less contracts with rural enforcement agencies; more communities put at risk
<b>DEPARTMENT OF INTERIOR</b>			
JOM	\$ 1,757,165	\$ 1,581,448	2,318 students not served; each school's allocation reduced; 1 Field Specialist job lost
Marshals	\$ 1,049,098	\$ 938,788	Communities put at risk; 1 dispatcher job lost
Small Business Assistance	\$ 546,982	\$ 492,284	5 individual owned businesses not assisted; 1 admin job lost
Sequoyah High School	\$ 6,022,833	\$ 5,420,550	38 less Cherokee students served; consolidate dorms; eliminate transportation dept; bigger classrooms; 12 jobs lost
SHS Construction & Facilities	\$ 1,594,856	\$ 1,485,870	Building upkeep reduced; 4 maintenance jobs lost
Title I	\$ 1,700,000	\$ 1,530,000	73 less disadvantaged children not educated/monitored; 1 teaching job lost
Indian Child Welfare	\$ 1,018,402	\$ 916,562	48 Native American children not educated/monitored; 2 caseworker jobs lost
<b>DEPARTMENT OF TRANSPORTATION</b>			
FHWA Roads	\$ 12,500,000	\$ 11,250,000	1.2 miles of roads and/or bridges not constructed; less construction crews contracted; 3 construction jobs lost
<b>DEPARTMENT OF LABOR</b>			
Talking Leaves Job Corp	\$ 8,508,479	\$ 7,657,631	399 fewer at risk kids served, 10 advisor jobs lost
On the Job Training	\$ 625,000	\$ 562,500	8 at risk adults not trained
<b>DEPARTMENT OF EDUCATION</b>			
Vocational Rehab	\$ 672,040	\$ 604,836	15 people not trained
NACTEP	\$ 582,195	\$ 523,976	7 people not trained
<b>DOI-PL103-477</b>			
Child Care	\$ 9,000,000	\$ 8,100,000	390 less caregivers monitored; 349 children not served; close 3 daycares; 61 less contracted caregivers; 38 caregiver jobs lost
Employment & Training	\$ 1,853,108	\$ 1,672,297	76 adults not trained and/or educated; 1 training specialist job lost

DEPARTMENT OF HUMAN SERVICES	2012 Funding	2013 Sequester	IMPACT
Cancer Programs	\$ 1,571,834	\$ 1,414,651	37 clients not served and/or monitored; 1 cancer coordinator job lost
Child & Family Services	\$ 1,374,333	\$ 1,236,000	83 individuals not served and/or monitored; 2 child welfare assistant jobs lost
Child Support Enforcement	\$ 2,145,906	\$ 1,931,315	870 children not served; 4 child support specialist jobs lost
Diabetes	\$ 7,536,666	\$ 6,782,999	1,002 less patients provided equipment, medicine and monitored; 12,715 less people educated, 4 nursing jobs lost
Early Head Start	\$ 3,141,705	\$ 2,827,535	21 less children served; 12 teaching jobs lost
Family Preservation Support	\$ 1,858,184	\$ 1,672,365	3 states served eliminated; 2 caseworker jobs lost
Family Violence	\$ 1,416,547	\$ 1,274,892	8 families not monitored and/or assisted; 2 child welfare specialist jobs lost
Headstart	\$ 5,962,496	\$ 5,366,246	63 children not served; 5 teaching jobs lost
LHCAP	\$ 1,333,613	\$ 1,200,252	515 households not assisted; 2 jobs lost
Substance Abuse	\$ 1,782,601	\$ 1,604,341	13 at risk individuals not served; 3 jobs counselor jobs lost
PREP - Personal Responsibility	\$ 723,345	\$ 651,011	7 at risk individuals not served; 1 counselor job lost
Public Health	\$ 1,301,534	\$ 1,171,881	5 community groups not served
Seeking Hope - Youth Suicide	\$ 476,855	\$ 429,206	4 at risk individuals not served and/or monitored

Senator AKAKA. Thank you very much, Secretary Head, for your testimony.

Ms. Noelani Kalipi, will you please proceed with your testimony.

**STATEMENT OF D. NOELANI KALIPI, PRESIDENT, TILEAF GROUP**

Ms. KALIPI. Aloha, Chairman and Senator Murkowski.  
Senator AKAKA. Aloha.

Ms. KALIPI. Thank you for providing me with the opportunity to testify this afternoon. My name is Noelani Kalipi and I serve as the President for TiLeaf Group, a national advocacy firm that works with Native and non-Native organizations on projects, services and programs to contribute to the well-being of Native communities.

The Federal policy of self-governance and self-determination empowers Native peoples because it recognizes first in policy, and more importantly in practice, the right of Native peoples to govern themselves and their resources.

The success of these policies is evidenced by the steady growth of sustained economic development across the Nation by Native governments. This success is largely due to the accountability provided by self-rule. Native leaders making decisions about Native resources have the biggest stake in the outcomes of these decisions because the resources are theirs and because they must live with the consequences of their actions.

Many Native governments are at different points of self-rule within the Federal framework. What remains fundamental, however, is their access to the Federal policies that empower them to engage in self-governance and self-determination. As a matter of parity, Native Hawaiians who have been repeatedly recognized by the United States as Hawaii's indigenous peoples should have access to the Federal policies of self-governance and self-determination through a federally-recognized government-to-government relationship.

Thank you, Mr. Chairman and Members of this Committee, for voting to approve the substitute amendment to S. 675, the Native Hawaiian Government Reorganization Act of 2012, which provides a process for the reorganization of the Native Hawaiian government for the purposes of a federally-recognized government-to-government relationship with the United States.

As a condition of Statehood, the State of Hawaii agreed to administer the Hawaiian Homelands Trust that you referred to, Mr. Chairman, in your statement, a Federal land trust that was created by Congress in 1921 to rehabilitate Native Hawaiians. The State of Hawaii created an agency to fulfill the role of administering the trust, and this has resulted in the State agency managing lands on behalf of Native Hawaiians. In addition, in Hawaii non-profits provide a number of community services on behalf of Native Hawaiians.

The State and non-profit framework, while well-intentioned, does not allow for true self-governance and self-determination by Native Hawaiians. Instead, it has resulted in the State of Hawaii managing Native lands and resources on behalf of Native Hawaiians in drastic contrast to the self-rule afforded to other Native peoples through the Federal policy of self-governance and self-determination.

Mr. Chairman, as a Native people we want to, and we need to, manage our own resources. It is in our best interests and in the best interests of the State of Hawaii and the United States.

The State of Hawaii continues to support greater self-governance for Native Hawaiians. As recently as last year, the Hawaii State Legislature passed, and the governor enacted into law, Act 195, which established a Native Hawaiian Roll Commission. The legislation was unanimously passed by the State's House of Representatives and was approved by 23 of 25 votes in the Hawaii State Senate. Act 195 serves as clear evidence of the State of Hawaii's recognition of, and continued support for, self-governance and self-determination by Native Hawaiians.

S. 675 reaffirms the legal and political relationship between Native Hawaiians and the United States as is consistent with the recommendations made by the Departments of the Interior and Justice in 2000 as part of the reconciliation process that was committed to by the United States in Public Law 103-150, the Apology Resolution. S. 675 is important to the Federal-Tribal relationship, Mr. Chairman, because it provides parity in Federal policies addressing our Nation's indigenous peoples.

The terms Indian and Tribe are terms of art that refer to Native peoples as individuals or collectively. There are hundreds of different Native groups with different languages, cultures and traditions who are indigenous to the United States. The fact that they are from different regions of the United States and speak different languages does not change the fact that they are indigenous peoples with whom the United States has executed treaties, took lands into trust on their behalf, and has a special responsibility to promote their welfare through the Federal policy of self-governance and self-determination.

The reference to Native groups as Indians or Tribes is a reflection of their status as indigenous peoples. S. 675 provides parity by

treating Native Hawaiians equally with the same terminology under Federal law.

Mr. Chairman, thank you and your Committee for your tireless efforts over the tenure of your career in the United States Congress to support the Federal-Tribal relationship. Whether it has been through your support for the Native 8(a) Program, which is one of the few effective Federal policy working to promote economic development in Native communities, or in financial literacy and access to capital for Native peoples through new market tax credits, or helping to educate policymakers about the importance of the Federal trust responsibility and its foundation for so many Federal policies involving Native peoples, your efforts have created opportunities for sustained economic development for our Nation's first peoples.

Your mere presence as a Native Hawaiian Chairman of this distinguished Committee is a source of inspiration for our youth and great pride for all Native peoples. We thank you and pledge to ensure that your legacy will never be forgotten.

Mahalo.

[The prepared statement of Ms. Kalipi follows:]

PREPARED STATEMENT OF D. NOELANI KALIPI, PRESIDENT, TiLEAF GROUP

Aloha Chairman Akaka, Vice-Chairman Barrasso and Distinguished Members of the Senate Committee on Indian Affairs. Thank you for providing me with the opportunity to testify this afternoon.

My name is D. Noelani Kalipi and I serve as the President for TiLeaf Group, a native social enterprise that works with native and non-native companies and organizations focused on projects, services and programs that contribute to the well-being of native communities. A substantial portion of our activity is focused on community-based economic development and empowerment in native communities across the nation.

The federal policy of self-governance and self-determination empowers native peoples because it recognizes in policy and in practice the right of native peoples to govern themselves and their resources. The success of these policies is evidenced by the steady growth of sustained economic development across the nation among native governments. As described by Stephen Cornell and Joseph Kalt in reference to impoverished Indian nations:

“ . . . a growing number of those nations have broken out of the prevailing pattern of poverty. They have moved aggressively to take control of their futures and rebuild their nations, rewriting constitutions, reshaping economies, and reinvigorating Indigenous communities, cultures, and families. Today they are creating sustainable, self-determined societies that work in all dimensions—economic, social and political.”<sup>1</sup>

Accountability is a vital element in the success of the federal policy of self-governance and self-determination. When given the opportunity to self-govern, native decision makers are held accountable for their choices and their consequences—both good and bad. According to Cornell and Kalt, this accountability makes for more quality decisions and results in Native nations being “better decision makers about their own affairs, resources, and futures because they have the largest stake in the outcomes.”<sup>2</sup>

Native governments are at different points in the continuum of self-governance and self-determination. What remains fundamental, however, is their access to the federal policy that empowers them to engage in self-governance and self-determination. Mr. Chairman, thank you for your tireless effort over the past thirteen years to extend these policies to Native Hawaiians, who have been repeatedly recognized by the United States as Hawaii's indigenous peoples. S. 675, the Native Hawaiian

<sup>1</sup>Cornell, Stephen and Kalt, Joseph P., “Two Approaches to the Development of Native Nations, One Works, the Other Doesn't,” *Rebuilding Native Nations: Strategies for Governance and Development*, 2007, p.6.

<sup>2</sup>*Id.*, p. 21.



Government Reorganization Act of 2012, provides the process for the extension of the federal policy of self-governance and self-determination through a federally recognized government-to-government relationship between Native Hawaiians and the United States.

Through your leadership, many of us in Hawaii better understand and appreciate the fundamental tools that these federal policies provide. Native Hawaiians are already recognized by the United States as Hawaii's indigenous peoples, as evidenced by the 150-plus federal statutes addressing the conditions of Native Hawaiians. As our history has demonstrated, without access to the federal framework of self-governance and self-determination, however, Native Hawaiians don't have the same tools available to manage and control their resources. Enacting S. 675 provides the United States will the ability to better fulfill its responsibilities to Native Hawaiians as its indigenous peoples.

In the absence of a federally recognized government-to-government relationship between the United States and Native Hawaiians, the State of Hawaii has created mechanisms to help manage the Native Hawaiian land trusts and resources. This effort, while well-intentioned, does not allow for self-governance and self-determination by Native Hawaiians. Instead, it has resulted in the State of Hawaii managing native lands and resources on behalf of Native Hawaiians. Native Hawaiians, as a people, want to and need to manage their own resources.

The Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the U.S. Congress in 1921 and set aside 200,000 acres of land for homesteading, agricultural and pastoral use by Native Hawaiians. The Act was based on prevailing federal policies towards Native peoples at the turn of the century which focused on assimilation and allotment. The Dawes Act and Burke Act focused on providing eligible Indians with allotments of lands for residential, ranching, and agricultural purposes. The general concept behind this policy was to return Native people to the land. The Hawaiian Homes Commission Act was modeled after these Indian General Allotment Acts as it sought to "rehabilitate" the Native Hawaiian people by placing them back on their ancestral lands. Learning from tragic circumstances that resulted in American Indians losing some of their lands, the HHCA created a federal land trust that provided for 99-year leases to qualified Native Hawaiians, thereby ensuring the longevity of the trust lands to benefit the Native Hawaiian people.

In 1959, when Hawaii entered into statehood, prevailing federal policies towards Natives were to delegate authorities over Natives to state governments. As a condition of Statehood, therefore, the State of Hawaii agreed to administer the Hawaiian Home Lands trust. Section 4 of the Hawaii Admissions Act (P.L. 86-3, 73 Stat 4) specifically provides that "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State . . . subject to amendment or repeal only with the consent of the United States . . .". The Federal Government retains oversight of the Hawaiian Homes Commission Act to ensure that the original intent of the HHCA is maintained; clear evidence of its effort to retain its trust responsibility towards Hawaii's indigenous peoples.

The State of Hawaii established the Department of Hawaiian Home Lands (DHHL) in 1961 to fulfill its mandate to administer the Hawaiian Home Lands trust. DHHL is governed by nine Commissioners who are appointed by the Governor. The DHHL Director serves as the Chairman of the Hawaiian Homes Commission, and also as a member of the Governor's cabinet.

Beneficiaries of the HHCA govern themselves through the existence of beneficiary organizations called homestead community associations. These organizations, which have existed as long as homestead communities, have representative leadership through democratically elected processes for each homestead area. Homestead associations are important partners that help the State of Hawaii to fulfill its responsibilities under the HHCA because they know their communities and lands, and are best able to engage their communities and to communicate with state and federal policymakers to address issues of priority. If one were to analogize the state framework to the federal framework, DHHL is a managing agency similar to the Bureau of Indian Affairs, and the homestead community organizations are the tribes—governing entities at the community level who work to address their community's needs and resources.

The difference here is that DHHL is a state agency whose inherent responsibility is to the state rather than to the beneficiaries. The strength of the relationships between DHHL and the beneficiaries and homestead community associations are largely based on the state appointed officials who run the agency. In certain situations, there can be a conflict in terms of what is in the best interest of the State versus what is in the best interest of the beneficiaries and the administration of the

Hawaiian Home Lands trust. The current framework sometimes puts Commissioners in the awkward position of having the responsibility to make decisions in the best interest of the Hawaiian Home Lands trust while facing the reality that they are political appointees of the Governor and sometimes advised to make decisions in terms of the best interests of the State of Hawaii. These situations best illustrate the challenges faced by Native Hawaiians and the consequences of not being afforded the opportunity to federal policies that encourage and empower native peoples to manage their lands and resources within the federal framework of self-governance and self-determination.

As another condition of Statehood, the State of Hawaii took title to 1.4 million acres of land that had been ceded to the United States by the Republic of Hawaii upon annexation to the United States. Section 5(f) of the Hawaii State Admissions Act provides that revenues from these lands shall be utilized for five purposes, one of which is for the betterment of native Hawaiians. In 1978, Hawaii held a Constitutional Convention. The constitutional convention delegates voted to establish the Office of Hawaiian Affairs (OHA) as a means to utilize the portion of the said revenues from the ceded lands for the betterment of Native Hawaiians. This action was taken in support of Native Hawaiians and their lands and resources, utilizing the tools available at the state level. The Hawaii electorate ratified the delegates' decision to create OHA, reflecting the widespread view among Hawaii residents that its indigenous peoples should have a mechanism to manage Native Hawaiian resources. The agency is governed by a nine member Board of Trustees which elected statewide by all Hawaii voters.

While Native Hawaiians have been elected to govern OHA and are appointed by the Governor to serve on the Hawaiian Homes Commission, both OHA and DHHL are state agencies. While based on good intentions and best efforts, the management of Native Hawaiian resources within the state framework does not result in self-governance and self-determination by Native Hawaiians, nor does it result in Native Hawaiian control and management of resources—a fundamental element of self-rule under the federal framework. The enactment of S. 675, the Native Hawaiian Government Reorganization Act of 2012, would address this inequity and provide for Native Hawaiian control, management and accountability of native lands and resources, thereby providing parity in federal policies towards American Indians, Alaska Natives and Native Hawaiians.

The State of Hawaii continues to support greater self-governance for Native Hawaiians. As recently as 2011, the Hawaii State Legislature passed and the Governor enacted into law Act 195 which establishes a Native Hawaiian Roll Commission. Act 195 recognizes the Native Hawaiian people as the only indigenous, aboriginal population of Hawaii and expresses the State's support for the continuing development of the reorganization of the Native Hawaiian governing entity for a federally recognized government-to-government relationship with the United States. The legislation was unanimously passed by the State's House of Representatives and was approved by 23 of 25 votes in the Hawaii State Senate.

Act 195 serves as clear evidence of the State of Hawaii's recognition of and continued support for self-governance and self-determination of the Native Hawaiian people. Thank you, Members of this Committee, for modifying S. 675 last week in your consideration of the substitute amendment to S. 675, to reflect the State of Hawaii's action in establishing the Native Hawaiian Roll Commission in support of increased self-governance and self-determination for Native Hawaiians.

In 1993, President Clinton signed P.L. 103-150, commonly referred to as the "Apology Resolution" into law. The Apology Resolution apologizes to Native Hawaiians for the participation of the United States in the overthrow of the Kingdom of Hawaii and commits the United States to a process of reconciliation with Native Hawaiians. In 1999, representatives of the Departments of the Interior and Justice traveled to Hawaii to begin the reconciliation process, which is a continuing dialogue between federal representatives and Native Hawaiians to discuss longstanding issues resulting from the overthrow of the Kingdom of Hawaii.

Public meetings were held on most islands and representatives visited a number of sites including Native Hawaiian charter and language immersion schools, educational facilities, health care facilities, cultural centers, hula halau, native fish ponds and Hawaiian homestead communities and projects. Federal representatives concluded Native Hawaiians have maintained a distinct community and certain government structures since the overthrow of the Kingdom of Hawaii and that Native Hawaiians continuously tried to find ways to manage their resources and to address the needs of their communities through self-governance and self-determination.

As a result of their consultations in Hawaii, the Departments of the Interior and Justice published a report, "From Mauka to Makai: The River of Justice Must Flow Freely," in 2000, which concluded:

“that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions. As a matter of justice and equity, this Report recommends that the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, as do Native American tribes.”<sup>3</sup>

The report references actions taken by United States to recognize the rights and promote the welfare of Native Hawaiians as indigenous peoples. It recommends that in an effort to safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, Congress should enact legislation “to clarify Native Hawaiians’ political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body.”<sup>4</sup>

S. 675 reaffirms the legal and political relationship between Native Hawaiians and the United States by providing a process for the reorganization of the Native Hawaiian government for the purposes of a government-to-government relationship. The bill is consistent with the recommendations made by the Departments of the Interior and Justice as part of the reconciliation process more than a decade ago. S. 675 is important to the Federal-Tribal relationship, Mr. Chairman, because it provides parity in federal policies addressing our nation’s indigenous peoples.

The terms “Indian” and “Tribe” are terms of art that refer to native peoples as individuals, “Indian” or collectively, “Tribes.” There are hundreds of different native groups with different languages, cultures, and traditions, who are indigenous to the United States. The fact that they are from different regions of the United States and speak different languages does not change the fact that they are indigenous peoples with whom the United States executed treaties, took lands into trust on their behalf, and has a special responsibility to promote their welfare through the federal policy of self-governance and self-determination. The reference to native groups as Indians or Tribes is a reflection of their status as indigenous peoples.

S. 675 provides parity by treating Native Hawaiians equally with the same terminology under federal law, thereby ensuring that American Indians, Alaska Natives and Native Hawaiians are empowered to the same extent to preserve and perpetuate their cultures and languages and to address the needs of their communities under the federal policy of self-governance and self-determination. By extending federal recognition of a government-to-government relationship to Native Hawaiians and providing access to the same laws as other Indian Tribes, S. 675 provides the parity recommended as part of the reconciliation process.

Mr. Chairman, thank you and your Committee for your tireless efforts over the tenure of your career in the United States Congress to support the Federal-Tribal relationship through self-governance and self-determination. Whether it has been through your support for the Native 8(a) program which is one of the few effective federal policies working to promote economic development in native communities, or financial literacy and access to capital for native peoples through New Market Tax Credits, or helping to educate policymakers about the importance of the federal trust responsibility and its foundation for so many federal policies involving native peoples, your efforts have created opportunities for sustained economic development for this Nation’s First Peoples. Your mere presence as the Native Hawaiian Chairman of this distinguished committee is a source of inspiration for our youth and great pride for all native peoples. We thank you and pledge to ensure that your legacy will never be forgotten.

Senator AKAKA. Mahalo. Thank you very much for your testimony.

Mr. Erlich, President of the Maniilaq Native Association, in your testimony you stated that you have been waiting for years for responses from the DOI regarding information on compacting programs within non-BIA agencies within the Department of Interior. Have you received any kind of feedback from them during that time? And if so, what has it been?

Mr. ERLICH. We have, of course, we did work out an arrangement with the National Park Service. We were really pleased with that.

<sup>3</sup>Report published by the Department of the Interior and the Department of Justice, “Mauka to Makai: The River of Justice Must Flow Freely,” (2000) p. 4

<sup>4</sup>*Id.*

We have gotten some feedback or response from the BOM and we are actually beginning to go into pre-negotiations with them to discuss what we might be able to partner with or compact with from them. But all the other agencies, we have not even received a response from. So, no feedback.

Senator AKAKA. This information on compacting programs, when was the inquiry made?

Mr. ERLICH. The first request for PFSA's from the agencies was about three years ago.

Senator AKAKA. Oh, three years. And in some cases you have had no response?

Mr. ERLICH. Yes.

Senator AKAKA. Secretary Head, the Cherokee Nation used self-governance programs to help develop its court system, its tax code and law enforcement systems. Can you describe the impact this has had on the daily life of a Cherokee citizen?

Mr. HEAD. Law enforcement, the law enforcement program where, it has provided more safety and protection for our citizens living on Indian land scattered throughout the 14 counties. Our law enforcement program works in concert with, and we have cross-deputizations with, county and city governments throughout the 14 counties of the Cherokee Nation. We actually even have MOUs with the U.S. Marshal's Service and actually have one of our Cherokee Marshals working full-time on the U.S. Marshal's Violent Crimes Task Force. Actually, two weeks one of our marshals, our marshal on that task force single-handedly captured a murderer that was on the loose in Tulsa, Oklahoma.

Our court system has provided a sound basis for our economic development and a forum for disputes that go on throughout the Cherokee Nation. You may have heard about an election dispute this last fall and our court system worked properly. They determined that there were questions. We had another election and our processes worked. The election was concluded. Chief Baker is now seated. The controversy is behind us. We are moving down the road.

But had we not had an adequate court system, it could have been an ongoing dispute that lasted for years. So, our court system is working and we fully support it and we are thankful for the dollars that we have received from the Department of the Interior for the operation of both of those programs.

Senator AKAKA. What effect has this had on tax codes?

Mr. HEAD. We actually do operate a tax system through our enterprises that are operated on Tribal and trust properties, trust and restricted lands. Those dollars are collected through our enterprises. And we have a Tax Commission which monitors and operates our, we have a Tax Commission that actually operates the collection of taxes and ensures that smoke shops as well as our enterprises pay the appropriate taxes.

Those tax dollars are put into use. We also have a car tag system and sell automobile tags to Tribal members living within our jurisdiction. Our Tax Code and our automobile tax system are negotiated through a tax compact with the State of Oklahoma. We are currently in negotiations with the State of Oklahoma and hope to have an agreement, they have positive news and hope to have our

latest compact in place within two to three weeks. These tax dollars are put into, back into the coffers of the Tribe and are used to support Tribal programs. Some of the tax dollars go into the operation of our health programs. A lot of our car tag dollars go, each year we provide back to the school systems, the local school systems, operated by the local entities in our counties. We provide, this last year we provided almost \$4 million back to those school systems with no strings attached because a lot of our Cherokee citizens go those local schools.

So, we are using those taxes to support not only our program operations but to give back to the local and State governments of Eastern Oklahoma.

Senator AKAKA. Thank you very much.

Ms. Kalipi, President of the TiLeaf Group, can you give a few examples of how community progress and Native Hawaiian self-determination has been hampered without a government-to-government relationship?

Ms. KALIPI. Thank you, Senator. I think the bottom line in terms of community examples is the fact that within the current framework that we operate, without the Federal Government-to-government relationship, Native Hawaiians are unable to exercise self-rule and are unable to manage their resources. A clear example is, for example, the Department of Hawaiian Home Lands which, as a condition of Statehood, the State agreed to administer the Federal Hawaiian Homelands Trust. It has created a State agency, the Department of Hawaiian Home Lands. The Department commissioners are, the Hawaiian Homes Commission are appointed by our governor and have a responsibility to administer the trust. At the same time, their director, their chairman, is a member of the governor's cabinet.

While there is great intention to manage these resources on behalf of Native Hawaiians, at the end of the day the resources are being managed by the State and their loyalties are often to the State. And there are little means for the Native Hawaiians who are the beneficiaries to effectively hold these officials accountable.

That is one example. Another example is, at the community level we have a lot of services provided by non-profits and, in a similar way, there is a lack of effective coordination of services because we have a lot of different entities trying to work on behalf of Native Hawaiians and within Native Hawaiian communities.

So, the bottom line is that without a government-to-government relationship, we do not have, and we are challenged in how we coordinate our services. A government-to-government relationship would make things much more effective and would allow us to manage our resources in a way that better meets the needs of our people.

Senator AKAKA. Thank you very much for your answers here.

I would like to call now on our favorite from Alaska, Senator Murkowski, for any questions or statement she would like to make, too.

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

Senator MURKOWSKI. Well, Mr. Chairman, thank you. I appreciate the opportunity for the hearing. Good discussion.

I welcome my constituent, my friend, Ian Erlich, who, this is not his first time before the Committee as President of Maniilaq. He has been here on other occasions and I think has provided our Committee with good information. His leadership is greatly respected within the State and I think it is fair to say that when he comes back here to Washington, that respect is also accorded. So it is good to welcome him back.

I will also add that in addition to being a leader on the issues that we are talking about today with self-governance and self-determination, he has been one who has been working with us to address the issue of youth suicide, an issue that we hear about far too often in this Committee where, unfortunately, we see higher numbers, American Indians, Alaskan Natives taking their lives at an early age and unfortunately far too many of our young men. And so, this is an area that Ian has led and I appreciate all your efforts in that area.

A couple of different issues have been raised. Certainly the issue of sequestration and, Mr. Chairman, there has been a lot of discussion around the Capitol here about the impact of sequestration. And it seems that there has been a pretty coordinated effort to talk about the impact of sequestration on the defense side of the budget, I have great concerns about what that would do to us, but probably less discussion about what is happening on the discretionary side of the budget and in those areas where I think we see immediate and perhaps even dramatic negative impact, in some of the IHS, the BIA accounts. And if you are talking about an 8.2 percent cut or a 10 percent cut, it is, it potentially has dramatic negative impact.

You mentioned contract support costs and what that means, whether you are up in Alaska or part of the Cherokee Nation. I think our reality is that we have chronically underfunded contract support costs. We are starting to make a little bit of headway. I serve as the Ranking Member on the Interior Subcommittee of the Appropriations Committee and we are making a very concerted effort to increase the funding for contract support costs.

But if we move toward sequestration, or that, if the hammer comes down and sequestration is in place, not only do we not make any progress, we are going backwards here. And we cannot, we simply cannot afford to do that. It really abrogates the contracts, the terms of the deal that we have a responsibility to respect.

So, I am concerned that as we deal with the fiscal issues, as we all talk about this impending fiscal cliff that we are dealing with, we need to understand what it will mean in certain areas and certainly within IHS, BIA. I am very, very concerned about what we may see here.

Mr. Erlich, I wanted to ask you specifically about the Village Built Clinics. We have had a chance to talk about this in the past, your comments that IHS has been unresponsive to the requests to fund the VBCs. Can you give me just a little more detail in terms of what exactly IHS has said in their conversations to you? You

know, how frequent those conversations have been? It seems to me that there is just kind of a deaf ear on this issue, so I would like you to explain a little bit more for the record what you understand IHS' position has been on this.

Mr. ERLICH. Thank you, Senator Murkowski. Well, first of all in Alaska, the way we negotiate with IHS is we have a Statewide Tribal Health Compact. And all the cosigners for that compact agreement out of Alaska have been dealing with this issue at our annual negotiations with IHS for a number of years, as well as when we come here to Washington to meet with the Director for IHS. The issue is raised repeatedly because it is a real serious problem that the Alaska Tribal health organizations have to supplement with direct care dollars just to keep the village clinics operable.

The response that we have received consistently from IHS is that beyond the funding that is provided for in the hospital and clinics, there are no other funds available. And so, because this is an Alaska-specific issue, it is hard to, I imagine, find a way to fund a line item like Village Built Clinics while it is sitting under hospital on clinics.

So, we have suggested several times that we put a line item in the budget for Village Built Clinics, but we have not gotten a response back from the IHS.

Senator MURKOWSKI. Is it fair to say that they, that IHS, recognizes that in Alaska you have a got a different situation up there and that it is important to recognize that there is a distinction and that it might be appropriate to allow for a line item there? I know that we are not in the days of earmarks anymore, but again, you have got one-half of the Tribes in the Country located in the State of Alaska and we have got a situation here that is unique to one State. I guess I am asking if you believe that they understand that there needs to be a different approach.

Mr. ERLICH. I think they understand the issue and I think you hit the, you got it right on when you talked about earmarks. I think the agency does not want to appear to be requesting for something that would be looked on as an earmark.

And so we find ourselves kind of in a Catch 22 where the agency says you have to go to Congress to get an appropriation and then, well, oftentimes Congress says we cannot do an earmark. And so, we are kind of going back and forth and not making any progress on this issue.

Senator MURKOWSKI. Mr. Chairman, I probably do not need to tell you about it but not only do we have half the Tribes in the Country in Alaska, we are a State that is one-fifth the size of the United States of America. So, it would be as if you are telling the, I guess it is the Seminoles in Florida, you are going to be dealing with Tribes out in California and you are saying well, we cannot do anything because it is an earmark here.

We are pretty big and our issues are oftentimes a little bit distinct. And it makes it very difficult when our system does not allow for us to address from a budget perspective some of the issues. And I think what we are running up against within the Village Built Clinics is just further example of that.

I recognize that these are difficult budget times, but I think we also need to recognize that we have got to be working a little bit creatively here. And I am frustrated that we have not had the folks within the Administration willing to work a little more creatively on this one.

So, we are not going to give up on it, as I hope that you will not. But it is a little bit discouraging.

Mr. Chairman, again I thank you for the panel today, for what they have contributed to us. And I will also note that this will probably be our last Indian Affairs Committee meeting. Is that correct, before the end?

And your Chairmanship, sir, has been greatly appreciated. I appreciate your leadership not only on the Committee but on so many different issues whether it relates to our indigenous peoples from Hawaii, Alaska, the American Indians around the Country, but also all that you do for Federal employees, for all that you do for our veterans. Your leadership has been greatly, greatly appreciated and certainly admired. So, thank you.

Senator AKAKA. Thank you very much, Senator Murkowski. It certainly has been a pleasure for me to work with you for all these years. And not only with you, but with your family and your dad as well when he was Senator preceding her. And the Murkowskis have been such close friends to Millie and me and we cherish that. And we will always do that. So, please carry my aloha and love to your family, please. Thank you.

I have just three questions, one for each of you. Mr. Head, Secretary, you mentioned a recent Supreme Court victory for Tribes in the Ramah case and how this victory will likely lead to hundreds of Tribes, and I am asking you this because you mentioned that recent Supreme Court victory on that Ramah case and how this victory will likely lead to hundreds of Tribes filing thousands of claims. In your opinion, would a negotiated settlement be in the best interests of all parties?

Mr. HEAD. Absolutely. The process of filing claims, some Tribes, the Cherokee Nation is a sizeable organization. It would be easier for us to go back and restructure and pull out information to adequately support our claims. Other Tribes are not as large and do not have the capacity that we do and might have a harder problem being able to do, to go back in time and recreate that information to support a claim.

Therefore, it would be simpler, less time consuming and more efficient for a negotiated settlement for all, including the United States.

Senator AKAKA. Well thank you. Thank you for that response.

Ms. Kalipi, can you describe, describe how the existence of a Native Hawaiian government might facilitate consultation and enhance ability of everyone to comply with laws like the Native American Graves Protection and Repatriation Act, or to develop better programming for the benefit of Native Hawaiian people?

Ms. KALIPI. Thank you, Senator. A Native Hawaiian government would improve efficiency through coordination of resources and services. I like to think of it kind of a like a one-stop shop. Right now, we have a number of different organizations and as I have re-



ferred to State agencies doing the best that they can for Native Hawaiians under the framework that we have.

But, in processes such as, for example, the Native American Graves Repatriation Act, it is difficult for the agencies to seek input from the community because they have to go to so many different places. And it is difficult for Native Hawaiians themselves to figure out how to provide input as well.

When we have a Native Hawaiian government and a place to coordinate these programs, services and consultations, then everyone will know how to communicate. So, it improves the ability to have consultations and it increases efficiency and coordination of services.

Senator AKAKA. Well, thank you very much. Mahalo for your response. Thank your very much.

I would like to ask the panel this last question. Can you please discuss the role culture plays when administering essential government services to Tribal citizens and Native communities? How important is culture to the exercise of self-governance?

So, that is my question and you can feel free to expound on this because I have always felt that culture should be playing a huge part in what happens to the groups. So, I just want your , your thoughts on this. Mr. Erlich?

Mr. ERLICH. Thank you, Mr. Chairman.

Well, I think that probably the easiest way to summarize, in my estimation, the importance of culture in administering Federal programs in place of the Federal Government for Tribal members is about getting the most bang for your buck. Any time that programs that are intended to benefit recipients can be tailored to those recipients specifically you are more likely to have positive outcomes.

And so, as culture is applied in considering what techniques to apply to certain programs or what kinds of benefits, as the culture is applied, it brings about a greater sense of well-being for the recipients that are receiving those dollars and it reduces a lot of hard feelings that could come from maybe some requirements that a program applies towards its recipients that make little sense to those who are intended to be receiving assistance.

And so, culture is a way to promote well-being and as you can apply it to programs and services for the Tribal members, it promotes a more efficient and effective way of using those Federal dollars.

Senator AKAKA. Thank you very much. Secretary Head?

Mr. HEAD. Looking at it from a slightly different angle, Native peoples, at least in our part of the Country, are kind of shy. And when you and I go out into the local bureaucracy to take care some business, we run into some hardships and some difficulties, we stick to it, we stick to our guns and we stay with it until get an answer.

Native peoples often are rebuffed. When they go to the State, DHS or different organizations, they run into the bureaucracy, they will turn around and leave and they might not go back and they will miss out on very important services.

Native peoples, at least in our part of the Country, do not have that prohibition when they are dealing with their own Tribe. They will come in and give me the dickens when they want me to know

about something. So, that is a benefit that our culture provides is that our Tribal members like to deal with their own Tribe, with their own peoples. And that improves the services.

The other part is strict democracy that makes programs work is that in culture is that our elected officials, if our elected officials do not cause programs to be run efficiently to provide services, they do not get reelected. So, that is another benefit that democracy at the local level provides to improve services. And that is another reason to support self-governance.

Senator AKAKA. Thank you very much. Ms. Kalipi?

Ms. KALIPI. I think culture is vitally important and underscores the necessity of self-rule and self-governance. In order to manage resources and coordinate services appropriately, you need to be able to understand your people. Understanding the language, the customs and the traditions of the people that we serve in their language, in their way, helps us to assess what their needs are.

It is very difficult to coordinate services and programs if we do not know how to reach the people that we are trying to work with and if we do not have effective avenues of them being able to provide input and decision makers being held accountable for the way resources are managed and services are provided.

So, in addition, in the actual provision of the services, culture plays a vital role in how best to, again, meet the needs. For example, in healthcare, in some cultures we do things with our family and so if we go to the doctor we want our family with us, whereas in other systems you go as an individual and there is privacy laws. Recognizing the holistic nature, for example, of having your family with you can help with the healing process and recognizing Native customs and alternative forms of healing, for example, like La'au Lapa'au in Hawaii, can better help that as well.

So culture, if you have a Native government that understands that and sees the value of that, then the culture and tradition, language and customs are considered in the management of the resources and the coordination of services, and we can better serve our people.

Senator AKAKA. Well, thank you very much. You have been great in responding to all questions and it certainly will be helpful in the way we approach the future of all our Tribes in this great Country and in the best interest of the people.

So, I want to thank you very much for your contributions today and to tell you that this will be helpful to the Committee.

And I want to take the time to thank our staffs for the hard work that they do here in the U.S. Senate to bring about all activities that we have had in the Committee on Indian Affairs. And I must tell you I am really grateful to all of the members of the staff and their leaders in bringing this about.

We have made efforts here to listen to the Tribes and to hear them and hear especially their needs so that we can begin to help them from that angle. And, of course, I always believe as you do, that to me culture is like a tree. If you cut the tree from the roots, which is a culture, you know, there is a huge loss of something. And that culture or the roots is what makes it thrive.

And so, we can handle that in different ways as times change. But it is basic. And I am so glad that we are moving along as we

are and refining the courses that we are taking so that we can properly help the people we serve.

I want to thank our witnesses for participating in today's hearing. And as you know, today we discussed the importance of respecting the inherent sovereignty of Tribes and their ability to be self-governing and how parity in Federal policy is key. We have learned that great things can happen when the Federal Government embraces the Native right of self-determination and implements programs that empower Native peoples to deliver Federal service and manage their own affairs.

So please remember the hearing record is open for written testimony for two weeks to give the opportunity to other members of this Committee to send any questions they may have for a hearing like this.

So again, mahalo nui loa, thank you very, very much for your time and your care and your willingness to help all people and its great future that there is ahead.

This hearing is adjourned.

[Whereupon, at 4:12 p.m., the Committee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. W. RON ALLEN, TRIBAL CHAIRMAN/CEO, JAMESTOWN S'KLALLAM TRIBE AND CHAIRMAN, SELF-GOVERNANCE ADVISORY COMMITTEE, DEPARTMENT OF THE INTERIOR

On behalf of the Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC), I appreciate the opportunity to submit written testimony for the record. The focus of this testimony is to provide comments on a very important priority issue for the over 260 DOI Self-Governance Tribes regarding the historical impacts and calculation of Pay Costs under the Indian Self-Determination and Education Assistance Act (ISDEAA).

### **Background on Pay Costs**

Under the ISDEAA, Tribes have the authority to assume programs previously operated and carried out by Federal employees. Most Federal agencies receive annual increases for Fixed Costs to address inflationary costs associated with Fringe Benefits and Pay Costs. The Congress has regularly encouraged the Administration to fully fund Fixed Costs and to treat and calculate Pay Costs for Tribes operating under ISDEAA Self-Determination contracts and Self-Governance Compacts in the same manner as Federal employees.

However, guidance within the Department of the Interior—Indian Affairs on how Tribal Pay Costs are calculated and which programs are eligible has not been effectively communicated to the Tribes and is inconsistent across the Bureau of Indian Affairs (BIA) Regions. Further, concerns have been expressed by the SGAC about the way Pay Cost information is collected.

### **Failure to Fully Fund Pay Costs Severely Impacts Self-Governance Tribes**

Historically, Tribes have been disadvantaged because they have never received full Pay Cost adjustments provided to BIA programs because the BIA excludes many types of Tribal salaries from their Pay Cost calculations. Further, since FY 2002, the Administrations' annual budgets have fully funded Pay Costs just one time (FY 2008). For Tribes, the impact from the failure to fully fund Pay Costs has been the loss of critically needed jobs. SGAC estimates that over 900 Tribal jobs have been lost and approximately 300 more jobs will be permanently lost on an annual basis if 100 percent Pay Costs are not provided. In addition, the reduced ability of Tribes to provide competitive salaries and benefits results in excessive costs of training and frequent staff turnover. These Tribal losses are being further exacerbated by recent projections of Pay Cost needs that have been significantly underestimated.

The SGAC believes that it is inequitable to expect Self-Governance Tribes to be able to perform compacted functions while receiving less funding for Fixed and Pay Cost increases than provided to the BIA and other Federal agencies. Unless these costs are fully funded for all compacted Tribal salaries, Tribes are forced to reduce services, or absorb these cuts and eliminate more jobs.

As an example of the financial impact to Tribes from the failure to fully fund Pay Costs, the Red Lake Band of Chippewa Indians testified before this Committee in 2006. At that time, they estimated these Pay Cost cuts resulted in permanent recurring funding reductions of approximately \$600,000–\$800,000 annually. Today, their loss stands at greater than \$900,000 each year, and a total loss of \$6.6 million since FY 2001. For all Tribes, the impact of these Pay Cost reductions over the past 10 years has resulted in severe loss of funding for critical Self-Governance programs such as law enforcement, housing, education, natural resources and social and family services to Tribal citizens.

### **Recommendations to Restore Equitable and Fair Treatment of Pay Costs for Tribes**

Full funding of Tribal Pay Costs has been identified as a top Self-Governance budget priority for the over 260 Self-Governance Tribes and has been included in

our *Annual National Tribal Self-Governance Strategic Plan* for many years. Self-Governance Tribes have worked actively with other National and Regional organizations as well as with the Indian Affairs' Tribal Interior Budget Council (TIBC) to advance this priority.

#### **Conclusion**

Pay Cost increases are essential to advance Self-Governance. We respectfully request this Committee to strongly urge the BIA to calculate Pay Costs for all compacted Tribal salaries in a consistent manner across the BIA Regions to include guidance, timeframes, and methodologies for data collection. There should be coordination between BIA and the Tribes to identify whom at the Tribal level the data request should be sent, and adequate time should be provided for data submissions. Finally, we urge that the Indian Affairs budget submission should include equitable and full Pay Cost increases for Self-Governance Tribes and include an Appendix that provides a Tribal breakout of the Pay Cost request.

In closing, we thank the Committee for the opportunity to provide testimony on this very important issue for Self-Governance Tribes. We appreciate the inclusion of the testimony and recommendations in the record for this hearing. Thank you.

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PREPARED STATEMENT OF HON. LEONARD MASTEN, CHAIRMAN, HOOPA VALLEY TRIBE

The Hoopa Valley Tribe currently has 3,006 tribal members and the largest reservation in California, covering approximately 144 square miles. We were among the first tier of self-governance tribes, having participated in the demonstration project, and the first in the nation to have its compact with the United States signed. Through Self-Governance we have been able to leverage federal dollars to fund our programs, all of which serve as a means to exercise our sovereignty, preserve, protect and manage our trust assets, and provide services and benefits to our members.

We are grateful for the opportunity to provide our views for the record on advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination. Our testimony focuses on the successes of Self-Governance and next steps to further its objectives.

#### **Self-Governance**

##### *Background*

In setting forth the policy of self-determination, President Nixon stated:

[We] have turned from the question of whether the Federal Government has a responsibility to Indians to the question of how that responsibility can best be fulfilled. We have concluded that the Indians will get better programs and that public monies will be more effectively expended if the people who are most affected by these programs are responsible for operating them.

President Nixon, Special Message on Indian Affairs, July 8, 1970. He also said that "The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions" and that ". . . the Federal Government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life." Nixon Special Message.

The Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 et seq., allows tribes to contract with the United States to take over administration of programs carried out by the Federal Government, facilitating tribes' planning and administering of programs to govern their lands and provide for their members. The Tribal Self-Governance Act of 1994, 25 U.S.C. § 458aa et seq., allows a tribe to enter into a compact with the United States for all programs the tribe assumes. Self-Governance allows tribes more flexibility in the administration, design and consolidation of programs and in the allocation of funding among programs. A correct tenet of Self-Governance is that tribes, themselves, are best-suited to know their needs and the needs of their members and how best to address them.

Through Self-Governance, Indian Country has experienced many dynamic and pioneering changes over the last few decades. Self-Governance tribes have progressively moved to stabilize funding bases, improve and expand services at the reservation level, and increase staffing and technical capabilities. Tribes have been able to strengthen tribal government and establish administrative capability. Through Self-Governance, tribes have become effective partners with the United States, working together to positively address and resolve decades of backlogged trust management issues.

Self-Governance spurred an important transition from bureaucratic one-size-fits-all, federally-dominated programs to flexible tribally-designed and administered programs. Tribes are in the best position to determine what is needed by, and how to provide for, their governments and members. Prior to Self-Governance, there was a lack of tribal participation in designing programs and setting agendas. Instead, there was a reliance on federal-project planning and the federally-developed programs were not only chronically under-funded, they did not meet the on-the-ground needs of Indian people. Self-Governance affords tribes the opportunity to take over the planning and development of these programs, and since the programs become based on the priorities and needs of Indian communities as determined by the tribes, they work.

*Self-Governance Does Not Diminish the United States' Trust Responsibility*

The United States' trust responsibility is not diminished in any way in the context of self-governance,

Nothing in this subchapter shall be construed to diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

25 U.S.C. § 458ff(b)<sup>1</sup>

To the contrary, the trust responsibility is carried out in part by supporting and promoting tribal self-governance. The Secretary encourages tribal self-governance by entering into funding agreements with tribes "consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people." 25 U.S.C. § 458cc. As Cohen's Handbook explains:

. . . the law reaffirms Congress's "commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to individual Indian tribes and to the Indian people as a whole." This commitment is expressed by support for Indian "planning, conduct, and administration" of "quality programs" for Indians.

Felix S. Cohen, Handbook on Federal Indian Law, 1387 (2012 Edition).

**The Hoopa Valley Tribe and Self-Governance**

Self-Governance has allowed our Tribe the flexibility to design and manage our own programs. It has been a success for us. This is not to say that Self-Governance is easy. Self-Governance is government, and performing the functions of government is hard work. Before Self-Governance, we contracted most BIA programs under the Indian Self-Determination Act. Yet, we were frustrated with the short-comings of 93-638 contracting, the inflexibility of BIA-designed programs and the reality that needs on the ground were still not being met. With this, we embarked on Self-Governance and have not looked back. In the beginning, it was hard work to develop our governmental and administrative structure, but we did, adopting more than seventy ordinances, stabilizing our funding base, improving our governmental capabilities and charting a course for our future.

Currently, we manage more than 50 programs which cover the entire spectrum of issues. Early on, we compacted forestry management and have been managing our forest lands independently under a forest management plan that exceeds environmental standards required by federal law and incorporates our values and priorities. Our Forestry Department has received exemplary trust evaluations from the BIA's Pacific Regional Office (PRO). We also own and operate our own logging company and nursery, and, as a part of our forestry management, we created our own Wildland Fire Protection Program through which we assumed the Federal Government's wildland fire functions and services. Our tribal firefighters meet the same qualification requirements of the United States Forest Service and the California Division of Forestry. In fact, our tribal firefighters are dispatched across the country to fight fire on state, federal and tribal lands. Our program is considered by the BIA and other tribes to be a model for Indian Country. Additionally, when we assumed forestry management, we also took over the BIA roads department, a successful program through which we have been able to leverage monies from our timber sales, aggregate plant and other sources with our federal funding to pay for road maintenance and upgrading.

We have our own Fisheries Department that monitors in-stream habitat and salmon populations in the Trinity River basin. This is a well-respected program that

<sup>1</sup> 25 U.S.C. 458aaa-14(b)(Nothing in this subchapter shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians that exists under treaties, Executive Orders or other laws and court decisions.)

contracts with the Bureau of Reclamation and the Fish and Wildlife Service to carry out river restoration functions. We are also proud of the fact that Hoopa was the first to compact health care with the Indian Health Service (IHS) in California, and now has a hospital, a dental clinic, and the only ambulance service and emergency room within about 80 miles of the Reservation and the next nearest hospital. Further, we have a Police Department which entered into an historic cross-deputization agreement with Humboldt County to provide comprehensive police protection and law enforcement on our Reservation. While additional funding is desperately needed, particularly given the unique situations we face with combating illegal marijuana cartels on our lands, we are carrying out law enforcement services.

We also compacted realty from the BIA regional office. Further, we created a Public Utilities Department that has worked on a Reservation-wide water system and continues to work on Reservation-wide irrigation and sewer systems which are needed to serve our community. We also have our own Tribal Environmental Protection Agency (TEPA) which ensures that our resource management programs perform in compliance with Federal EPA regulations. TEPA monitors and enforces air and water quality standards set by the Tribal Council and is also responsible for enforcing the Tribe's solid waste ordinance. We also have a housing authority, a human services department and an education department that covers preschool to a junior college branch campus.

### **Benefits of Self-Governance**

#### *Programs*

Through Self-Governance we provide a range of services to our people, have spurred economic development on our Reservation, and ensure quality management of our trust resources. We have been able to successfully administer our many programs by establishing a solid governmental and administrative structure. We are a government of laws, ordinances and procedures. We believe this is essential for Self-Governance and successful program administration. However, it must be recognized that the ISDEAA includes opportunities for all tribes to plan programs or portions thereof. With this, a tribe that does not want to assume carrying out the program itself can nevertheless participate in the planning and design of the program so that its values and priorities are incorporated into the program. We believe that programs are stronger and better-suited to meet the needs of a tribe and its members, lands and assets when the tribe is involved in the development and design of those programs.

#### *Economic Development*

Self-Governance also sets a foundation for economic development. It requires advanced governmental and administrative structures which are also needed for conducting business on the Reservation and attracting business to the Reservation. As part of our governmental structure, we have a comprehensive business code which tells potential business partners that we are a government of laws that is interested in and open to business. Further, Self-Governance allows tribes to be flexible in their programs, which can spur economic development. For example, our Forestry Department operates its own logging company, which creates employment and our forest management plan allows our timber to be "Smart Wood" certified which allows lumber products produced from our timber to be exportable overseas, creating increased value and revenue from our timber sales. Notably, Stephen Cornell and Joseph Kalt, co-founders and co-directors of the Harvard Project on American Indian Economic Development, cited a 1994 Krepps and Caves study that found for every timber-related job that moved from BIA forestry to tribal forestry, prices received and productivity in the tribe's timber operations rose; this underscored their point that "Native nations do a better job of managing their forests because these are their forests."<sup>2</sup> They went on to conclude that the premier programs and projects in Indian Country are initiatives of self-government that put tribes in control of major community and economic development decisions.<sup>3</sup> They said that after twenty years of research they could not find "a single case of sustained economic development in which an entity other than the Native nation is making the major decisions about development strategy, resources use, or internal organization."<sup>4</sup> They stated that practical sovereignty or self-rule, meaning decisionmaking authority or self-gov-

<sup>2</sup>Stephen Cornell and Joseph P. Kalt, *Two Approaches to Development of Native Nations, One Works, the Other Doesn't*, in REBUILDING NATIVE NATIONS, 21–22 (Miriam Jorgensen ed. 2007).

<sup>3</sup>*Id.* at 22.

<sup>4</sup>*Id.*



ernance, appears to be a necessary condition for a Native nation's economic development.<sup>5</sup>

*Leveraging of Funds which Helps Tribes and the United States*

Benefits of Self-governance flow not only to tribes and their members, but to the United States as well. Tribes are superb partners for the United States. A benefit of major importance in Self-Governance that gets little attention is how it has helped to generate additional funding for carrying out underfunded federal programs. The chronically underfunded Indian programs within the BIA and IHS budgets have been well-documented over the past several decades. Many tribes hesitate to assume federal programs under Self-Governance because they understand there is not adequate money to support the tribe in carrying out the functions of the programs that the tribes want to administer. However, while Self-Governance is an authorizing law—not an appropriations law—it gives tribes the ability to generate significant additional dollars to help offset the cost of carrying out trust activities. At Hoopa, we can show that the Tribe matches \$3.00 from other sources for each \$1.00 compacted from the BIA that is used for trust management programs. This is a significant benefit not only for our programs and tribal members we serve, but for the United States too which carries, per the federal trust responsibility, an ultimate responsibility of providing for and protecting the Tribe. A part of the United States' trust responsibility in the context of Self-governance is to support tribal programs and facilitate compacting with tribes. We believe Self-Governance results in more robust, better-funded and more tailored programs than what the United States could design or administer on its own. The United States should recognize the economic benefit of Self-Governance and seek ways to work with tribes to further and foster Self-Governance.

We emphasize, however, that the United States still has a responsibility to ensure adequate funding for programs that serve tribes and Indian people. Most of these programs, if not all, are woefully underfunded. Again, Self-Governance does not diminish the federal trust responsibility in any way. With this, Self-Governance and its ability to facilitate leveraging of funds does not relieve the United States from adhering to its trust responsibility to provide sufficient funding levels for programs. When developing its annual budgets, the Federal Government must ensure that the funding needs of Self-Governance tribes are met and that as needs increase, such as for infrastructure development necessary to carry out programs, that funding levels increase as well. Self-Governance should be seen as the springboard for economic development that it is and should be fully supported and funded by the Federal Government.

**Advancing the Federal-to-Tribal Relationship through Self-Governance**

Another benefit of Self-Governance is the ability to redefine the working relationships between tribes and the Federal Government. The Hoopa Tribe has enjoyed a solid working relationship with the BIA PRO for more than a decade. In 1997, Hoopa and six other California tribes established the California Trust Reform Consortium. It was created to work with the PRO to address the trust resource management issues from which many of the claims made in the *Cobell* litigation were based. In 1998, the Consortium and the PRO entered into an agreement that established the terms, conditions and operating procedures for the Consortium. The ability to develop a new working relationship with the PRO was made possible by the flexibility created by Self-Governance. The agreement defines the management roles and responsibilities of the PRO and the tribes. It includes provisions for a funding process through the PRO; a joint oversight advisory council; a process for developing "measurable and quantifiable trust management standards;" methods for resolving disagreements and disputes; and finally, a participatory process for annual trust evaluations. This unique working relationship has worked well for years. It advanced the Federal-Tribal relationship for us and Consortium member tribes.

When the Department of Interior launched its trust reform initiatives in the early 2000s, we took action on the foundation that what was working in Indian Country regarding trust resource management should not be changed, it should be preserved. We created the Section 139 Trust Reform Demonstration Project with the Consortium, the Salt River-Pima Maricopa Indian Community, the Confederated Salish and Kootenai Tribes and the Chippewa Cree Tribe of the Rocky Boy's Reservation. The Demonstration Project authorized the tribes' successful trust asset management systems to operate separate and apart from Interior's trust reform reorganization, and prevented Interior from imposing its trust management infrastructure upon or altering the tribes' existing trust resource management systems. The tribes

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<sup>5</sup>*Id.*

had to carry out their responsibilities under the same fiduciary standards as those to which the Interior Secretary was held and had to demonstrate to the Secretary's satisfaction that they had the capability to do so.

We, along with the other Section 139 tribes, underwent an evaluation by the Office of Special Trustee and received a determination that we had the capability to perform compacted trust functions under the same fiduciary standards to which the Secretary is held. Hoopa was cited as "an excellent example of trust administration, in furtherance of tribal self-determination." Section 139 confirmed that local tribal decisionmaking and cooperation from the Federal Government can result in significant trust management improvements and that tribes can properly implement trust management even though they may use different practices and methods than Interior. Key to our success in this regard is our self-governance. It allowed us to advance the Federal-Tribal relationship to a different level, one where our systems were recognized as an example of excellent trust administration and the Federal Government's new structures were not needed to improve them.

Preserving what is working in Indian Country is our mission along with a forward-looking approach to improving Self-Governance to advance and fulfill its objectives.

#### **Next Steps for Advancing the Federal-Tribal Relationship through Self-Governance**

The United States should acknowledge that tribal governments are great partners and that Self-Governance has provided myriad benefits to tribes, tribal members and the United States, itself. We are pleased with Deputy Assistant Secretary Larry Roberts' testimony in this hearing which states that this Administration supports tribal self-determination and that it believes that "tribal leadership is critical in facing and solving the problems of today, and that Native Americans must have a voice in programs and government efforts which are important to their lives." We appreciate the support and agree with the statement. However, more must be done to further Self-Governance as we reflect on past successes and look ahead on how to create the future. Non-BIA mandatory programs, the Indian Trust Asset Management Demonstration Project, and extending Title V Self-Governance to other agencies within the Department of Health and Human Services would advance the Federal-Tribal relationship in the correct and necessary direction.

#### *Non-BIA Mandatory Programs*

An area of major interest for our Tribe is compacting non-BIA programs. Title IV of the ISDEAA (the Tribal Self-Governance Act, 25 U.S.C. § 458aa et seq.) should ensure that non-BIA programs are mandatory for compacting. The trust responsibility is an obligation of the United States not just the BIA. All federal agencies that perform functions that impact trust resources or tribal rights have a trust obligation to protect those resources and rights. Self-Governance affords tribes the ability to ensure trust resources and tribal rights are protected through compacting. We strongly feel that this ability should be extended to other federal agencies on a mandatory basis without the discretion of the Secretary.

The Tribal Self-Governance Act provides for compacting non-BIA functions in § 403(b)(2) and (c) of Pub. L. 93-638. Mandatory compacting is required only as to services "otherwise available to Indian tribes or Indians," while discretionary compacting extends also to programs of special geographical, historical, or cultural significance to the tribe. The courts have limited mandatory compacting to programs specifically targeted to Indians. Thus, Interior has interpreted programs directed to improving trust resources, such as fish harvests, as falling outside of '638 compacts because they have collateral benefits to non-Indian fishing interests unless the non-BIA agency, in its discretion, chooses to include them.

A primary and important example of the problem concerns our federally-reserved fishing rights in the Trinity River which flows through the Hoopa Reservation. The Bureau of Reclamation operates the Trinity River Division of the Central Valley Project. The Trinity Dam, completed in 1964, was the primary reason for 80 percent declines in the Trinity River fishery resources, and has been the subject of numerous congressional and court actions associated with violations of the United States' trust obligations to the Tribe. To correct the declines in fishery resources, Congress passed various federal laws that mandated restoration of the Trinity River fishery resources as part of the Federal trust obligations to the Tribe.

The problem is that funding and management for Trinity River habitat restoration may jeopardize a trust resource and threaten our federally-reserved fishing rights. The Hoopa Tribe is recognized by law as a co-manager of the Trinity River Fishery. We have worked tirelessly for years to obtain congressional action to address inadequate funding levels for the Trinity River Restoration Program. We have

also sought to carry out more functions related to river restoration. Reclamation, however, determined that the programs that are mandated by Congress to fulfill the trust obligations of the United States to our Tribe are not "Indian Programs" under the Self-Governance Act. Reclamation does not perceive the trust responsibility as an obligation that gives tribal water and fishing rights any priority. Absent an acknowledgement that a trust duty is owed, protection of our rights takes a back seat to other projects, even new or newly proposed projects.

The Title IV legislation, now H.R. 2444, at one time included specific language that would enable tribes to compact to perform programs, or portions of programs, that "restore, maintain or preserve a resource (for example, fisheries, wildlife, water or minerals) in which an Indian tribe has a federally reserved right, as quantified by a Federal court." Proposed § 405(b)(2) of H.R. 3994, 110th Cong. 1st Sess. Such language is important to our Tribe; it would resolve problems we face with Reclamation over the management of Trinity River programs. These problems include delays in executing contracts which result in a significant financial burden for the Tribe and administrative, programmatic and staffing nightmares for our programs.

Another example involves realty. As previously mentioned, we compact realty and, this gives rise to another example of the need for compacting on a mandatory basis with agencies outside the BIA. We struggle with the underfunding of the realty program in general. We also struggle with the fact that surveys are done through the Bureau of Land Management with federal monies transferred from the BIA to the BLM. When we first compacted with BIA, the BIA would transfer monies allocated to it for surveys to the BLM where BLM would designate a BLM surveyor for surveys needed on the Reservation. BIA's position was that, technically, it did not have funding for surveyors since such monies were transferred to BLM. Now, there is one BLM position, identified as American Indian Surveyor, in each of the BIA Regions. With this, there is one such position in the BIA Pacific Region to serve 115 tribes. Not only is this inadequate for the workload, but the position does not do actual surveys. It reviews documents submitted in relation to fee-to-trust applications. Our realty functions are hindered due to the lack of funding for surveys and the inability to obtain adequate and timely surveys. We believe it would be helpful to compact directly with the BLM for survey activities. Further, more funding is required for such functions to be carried out effectively.

Again, the trust responsibility is the trust responsibility of the United States and it is owed to tribes by all federal agencies. This must be put into practice to ensure proper management of trust resources. Tribes signed treaties with the Federal Government; their relationship is with the United States overall. We had no part in creating the structure of the Federal Government which is divided into several agencies. If an agency is part of the Federal Government, it must carry out the trust responsibility. There is no reason for a different policy to exist with respect to an agency that carries out a trust function just because it exists outside of the BIA. Significantly, for BIA programs to develop law enforcement, the presence of benefits to non-tribal members does not remove the program from mandatory compacting. Likewise, programs directed to restoring and protecting trust resources, such as Indian water rights or fisheries resources, should not be excluded from mandatory compacting simply because those programs are administered by non-BIA agencies.

We believe the time has come for tribes to exercise their self-governance in other areas and in a more expansive way. With this, we ask the Committee to focus on the non-BIA compacting issue as a means of furthering Self-Governance to where it needs to be, advancing the Federal-Tribal relationship to the next level and ensuring the United States fulfills its trust responsibility.

*TITLE III of S. 1439, the Indian Trust Asset Management Demonstration Act*

We also request that the Committee introduce Title III of the S. 1439, the Indian Trust Reform Act of 2005. Hoopa worked with several tribes in the Northwest and the Committee staff to develop this proposal. It would further the objectives of tribal self-governance.

Title III of S. 1439 would create the Indian Trust Asset Management Demonstration Project, which would allow tribes to develop and operate their own tribally-developed trust asset management plans and manage their assets in a manner different than the Secretary as long as the tribe's plan is consistent with tribal and federal law applicable to the trust assets, or the management of the assets, and the federal trust responsibility, and satisfies certain standards. We are already doing this with our forestry program, which is acknowledged nationally as a model program. Further, we were one of the Section 139 (131) tribes which would be grandfathered into the Demonstration Project under the terms of Title III of S. 1439. Title III encourages local decisionmaking and cooperation between tribal governments and the United States. It acknowledges that the United States' fulfillment of its

trust responsibility does not require day-to-day management, but facilitation of tribal self-governance and self-sufficiency.

We believe Title III would provide another useful model for tribes to exercise self-governance and self-determination, assist the United States with proper trust assets management, and create an understanding, on the part of the United States, of tribal values and expectations when managing trust assets within our territories. Self-Governance plays an integral role in our management of our trust resources and assets. Yet, we believe that all tribal governments should be a part in the management of trust resources within their jurisdictions. Tribes' active participation in the management of trust assets creates beneficial results, advances the Federal-Tribal relationship and reduces chances of conflict between tribes and the United States. Enacting Title III would result in positive practices and trust management improvements. We support the concept of Title III of S. 1439 and would look forward to working with the Committee to enact such a provision.

*Self-Governance with Other Agencies within the Department of Health and Human Services*

The Department of Health and Human Services (DHHS) conducted a feasibility study in 2003 to examine the feasibility of including non-Indian Health Service (IHS) agency programs within DHHS in a Self-Governance demonstration project. Unfortunately, while the study set forth eleven programs that could be included in such a demonstration project little progress has been made since that time. Further, the tribal delegates in the Self-Governance Tribal-Federal Workgroup, which was created to work on how such non-IHS programs could be included in a self-governance demonstration project, are finding that the federal delegates are curbing the concept and encouraging tribes to use non-ISDEAA models or to include self-governance language in reauthorization legislation for single programs. We believe programs of non-IHS agencies should be included in a demonstration project under the auspices and procedural protections of Title V.

**Conclusion**

We appreciate the opportunity to submit our views for the record on this important topic. Self-Governance has been a success for the Hoopa Valley Tribe, admittedly through our own hard work. It has laid a foundation for tribal economic development, allowed us flexibility in carrying out our programs for our members, ensured flexibility in our management of our trust resources and has advanced our relationship with the Federal Government. Certain steps must be taken, however, to bring Self-Governance to the next stage and carry out the full effects intended when the law was passed decades ago.

Thank you for your consideration, and please do not hesitate to contact us if you have questions or need additional information.

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PREPARED STATEMENT OF HON. ALVIN MOYLE, CHAIRMAN, FALLON PAIUTE  
SHOSHONE TRIBE

Honorable Chairman Akaka and Honorable Vice-Chairman Barrasso:

We, the Fallon Paiute Shoshone Tribe come to you today as a Tribe united and hereby express the following:

When Columbus reached the Americas there were hundreds of tribal nations. Each one of us had our own unique culture and way of governance. Five European governments crossed the ocean to claim our which they called the new world. New to them, but not new at all, this is our homelands . . . invaded.

The European Nations had an unwritten Agreement with one another, that whatever land the nation claimed that Nation had the right to settle the land rights *with the aboriginal inhabitants*. The Agreement allowed each exploring nation to define its' relationship with the *aboriginal people*. That Agreement is the *Doctrine of Discovery*. The international root of federal Indian law, as we know it.

For the first 250 years after Columbus arrived it was not clear which European country would win the power to colonize the land . . . our land. Although, treaties were sometimes negotiated with the Indians conflicts over the demand for land began a long pattern of removing Indians from their homelands creating tragic hardships and strained relationships between the settler and the original people.

We, tribal communities, could not have even imagined how many problems the arrival of the Europeans would bring. The invisible invaders of disease, new wars, loss of land, the introduction of alcohol, the challenge still faces Indian Country today and our way of life.

In 1763 the British issued a *Royal Proclamation* as an attempt to improve relations between the colonies and the original people. This was the first time that any

European government used or coined the term “Indian Country” and it described all the country west of the Appalachians essentially that was defined by a series of treaties negotiated by the British Crown with the individual Indian tribes; and that country was where the laws of the Indian applied. In fact, the Proclamation so says “the laws of the Indian apply and the laws of Great Britain do not.” If you went into Indian Country you were subject to the laws of the Indian tribe.

The *Proclamation of 1763* like a lot of laws probably did just the exact opposite of what it was intended to do. If it was intended to improve relationships between the colonies and the Indians it seemed to do just the opposite, because it along with other English enactments became the reason for the American Revolution. It in fact, prohibited colonists from going into Indian Country and trying to acquire Indian land or to speculate in Indian land . . . and that did not please the Colonists.

Honorable Senate Committee on Indians affairs this was the beginning of the abuse the Native Americans have endured for centuries. The Government made us dependent on them and have had the trust responsibility, as it is now called, back then it was a guardian/ward relationship. Congress has the plenary power over Native Americans. We all know how the pendulum swings for the Native Americans . . . back and forth. The policies have been both harmful and helpful.

We, the Fallon Paiute Shoshone Tribe, are very grateful for President Obama’s *Executive Order 13175* to respect the government-to-government relationship we share. The feeling we have in Indian Country is not a feeling of loss, but a feeling of revival and an optimistic look towards the future.

The Federal Government has maintained this guardian/ward (trust) responsibility.

The times have changed, but some things are still the same for the Native Americans. We still have the insecurity of the rug being pulled out from under us, so to speak. Our funding, we depend on, is constantly in jeopardy, because we are seen as discretionary. The Native Americans are not discretionary and should NOT be seen as such.

Native Americans have inherently had our own governments, as proven when the Colonists defeated the British in the American Revolutionary War and declared independence to form a new country in 1776. Ben Franklin and the other colonial leaders looked to the “Great Law of Peace” of the Iroquois Confederacy for ideas on how to set-up a union among state sovereigns *balancing* power in government.

The Merriam Report informed Congress of the deplorable conditions the original people were now faced with, yet nothing was done.

Again the feeling in Indian Country is not a feeling of loss, but a feeling of revival and an optimistic look towards the future.

We have formed the National Congress of American Indians and believe the two Congress’ need to work hand in hand in consultation. Due to our limited tribal budgets travel is not an option, for some of us. We are all members of the National Congress of American Indians and they are our voice on all of the issues we, the Fallon Paiute Shoshone Tribe face:

1. Budget
2. Land
3. Water
4. Education
5. Economic Development
6. Law Enforcement

We are not *discretionary* and request that we NOT be seen as such. The National Congress of American Indians has submitted the *Indian Budget* and the Fallon Paiute Shoshone Tribe fully supports it and submits a copy with our Statement.

During Tribal Unity Impact Week we, the Fallon Paiute Shoshone Tribe, are calling on members of Congress to stand with Indian Country in support of:

- LAND RESTORATION—The Department of the Interior’s authority to restore land into trust for Indian tribes is under attack. The Supreme Court’s decision in *Carcieri v. Salazar* was the first broad stroke challenging DOI’s land into trust authority by reinterpreting the language of the Indian Reorganization Act of 1934. Recently, the Supreme Court’s decision in *Match-E-Be-Nash-She-Wish Band v. Patchak* held that the Quiet Title Act does not protect Indian lands held in trust, and any disgruntled neighbor may retroactively challenge the trust status of tribal lands. We must urge Congress to restore and protect DOI’s authority to take land into trust for all federally recognized Indian tribes.
- PROTECT NATIVE WOMEN—Urge Congress to stand with tribal nations to halt the epidemic of violence against women in tribal communities. Congress has come to a decision point on the reauthorization of the Violence Against

Women Act (VAWA). The Senate bill, S. 1925, contains Section 904, which would restore tribal jurisdiction over non-Indians for certain crimes of domestic violence and dating violence committed in Indian country. Section 904 is broadly supported by Indian tribes across the country; however, the House version, H.R. 4970, does not include the tribal criminal jurisdiction provisions, and some members of Congress have stated objections to it along with other sections of the legislation. Now is the time for tribes to urge Congress to pass a VAWA reauthorization right away that keeps the key tribal provisions intact!

- **EMERGENCY RESPONSE ACTION**—Congress should pass legislation to provide Indian tribes the authority to submit direct requests for a federal emergency or disaster declaration. Both S. 2283 and H.R. 2903 seek to amend the “Stafford” Act to provide Indian tribes the authority to submit direct requests to the President for a federal emergency or disaster declaration. Currently, tribes must request a declaration through the office of the state governor. The amendments are critical tools to equip tribal governments to act swiftly to protect their people and homelands during emergencies.
- **THE INDIAN BUDGET**—The federal trust responsibility is not a line item. Congress will soon debate how to avoid the “fiscal cliff,” the term for a series of deadlines at the end of 2012 when tax cuts expire and automatic spending cuts—or sequestration—will take effect. Experts warn if Congress does nothing, it could lead to another recession. But any deal that makes more harmful cuts to Indian programs also threatens the health and welfare of Indian people. Under the Budget Control Act, most federal programs face a destructive across-the-board cut in January 2013 if Congress fails to enact a plan before then to reduce the national debt by \$1.2 trillion. The federal trust obligation to Indian tribes must be honored and vital tribal programs must be sustained in any deal to reduce the national debt. Please join tribal leaders and advocates in supporting the Indian budget for 2013 and beyond.
- **CONFIRMATION OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS**—Dean Kevin Washburn of the University of New Mexico Law School has been nominated to be the Assistant Secretary for Indian Affairs. Tribes are urging the Senate to take quick action to confirm this nomination because of vacancies at the Bureau of Indian Affairs that threaten to create a leadership void. The Assistant Secretary is the senior decision maker on important issues of public safety on Indian reservations across the country. The leader of the BIA is frequently faced with decisions that directly affect human lives, and the position should not be left unfilled for a period of many months until after the next election. Dean Washburn is well-qualified to serve as Assistant Secretary. He is a former federal prosecutor, a pre-eminent scholar on law enforcement in Indian country, and has management experience.

Again the feeling in Indian Country is not a feeling of loss, but a feeling of revival and an optimistic look towards the future.

Honorable Chairman Akaka and Vice-Chairman Barrasso, we thank you for the opportunity to speak with you on the importance of our government to government relationship and to work together for our betterment and survival in a good way. We, the original people, have always had the utmost respect for our Mother Earth and she now cries for all of the pain the Colonists have caused.

We ask that the Indian Budget *not* be considered discretionary.

