

**TESTIMONY
OF
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ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON
TRIBAL SELF GOVERNANCE**

May 13, 2008

Good afternoon, Chairman Dorgan, Vice Chairman Murkowski, and Members of the Committee. I am pleased to be here today to discuss the Department of the Interior's Tribal Self Governance program.

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

While the hearing today is an oversight hearing on Tribal Self Government, the Department of the Interior is aware of the House of Representatives' legislation that would extend the provisions of Title V of the Indian Self-Determination and Education Assistance Act, which governs the programs of the Indian Health Service, to the programs of the Department of the Interior. Within the Department, except the Bureau of Indian Affairs and specific instances with other bureaus, there are functions and responsibilities that do not lend themselves to compacting or funding agreements under provisions like those in Title V of the Indian Self-Determination and Education Assistance Act. Therefore, consistent with the Department's statement to the House Natural Resources Committee, where the Department expressed its opposition to H.R. 3994, the Department again, before this Committee, expresses its opposition to any extension of the provisions of Title V of the Indian Self-Determination and Education Assistance Act to the non-BIA bureaus of the Department of the Interior.

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

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

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

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. ... The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.... Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered...

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

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

Background

In 1988, Congress amended the Indian Self-Determination and Education Assistance Act (the Act) by adding Title III, which authorized the Self-Governance demonstration project. In 1994, Congress again amended the Act by adding Title IV, establishing a program within the Department of the Interior to be known as Tribal Self-Governance. The addition of Title IV made Self-Governance a permanent option for tribes. These amendments, in section 403(b), authorize federally recognized tribes to negotiate funding agreements with the Department of the Interior (Department) for programs, services, functions or activities administered by the Bureau of Indian Affairs (BIA) and, within certain parameters, authorized such funding agreements with other bureaus of the Department. In the year 2000, the Act was amended again to include Titles V and VI, making Self-Governance a permanent option for tribes to negotiate compacts with the Indian Health Service (IHS) within the Department of Health and Human Services and providing for a now-completed study to determine the feasibility of conducting a Self-Governance Demonstration Project in other programs of that Department.

The law allows federally recognized Tribes to assume programs administered by the Department's bureaus and offices other than the BIA subject to negotiations and as long as the programs are available to Indian Tribes or Indians. The law also authorizes the Secretary to include other programs administered by the Secretary which are of special

geographic, historical, or cultural significance to the participating Tribe requesting a compact.

In 1990, the first seven funding agreements with the Department were negotiated for about \$27 million in total funding. For FY 2007, there are 94 agreements that include 234 federally recognized tribes and approximately \$380 million in total funding. Some of these agreements are with tribal consortia, which account for the number of such tribes exceeding the number of agreements. These Department funding agreements allow federally recognized tribes to provide a wide range of programs and services to their members such as law enforcement, education, and welfare assistance. Many of the funding agreements include trust related programs such as real estate services, appraisals, probates and natural resource programs such as forestry, fisheries, and agriculture. What makes these funding agreements unique is that Title IV allows tribal governments to re-design programs for their members and set their own priorities consistent with Federal laws and regulations. This authority allows tribal leaders the ability to respond to the unique needs of their tribal members without seeking approval by Departmental officials.

Successes

Many Tribes have been successful implementing Self-Governance programs to meet their tribal needs. For example, the Chickasaw Nation accomplishments in 2006 included providing education services to 7,209 students. 945 students participated in remedial education and tutoring and 82% of the students receiving tutoring gained one grade level or more. Scholarships were provided to 181 undergraduate students and 43 graduate students. The Tribe's tribal district court heard 1,118 cases. It collected almost \$50,000 in court fees and over \$32,000 for restitution and child support. In January 2006, the Tribe's Supreme Court and district court were audited by a team from the BIA central office and received excellent ratings. The Tribe also provided career counseling, skills assessment, aptitude testing, and other employment readying services to 1,320 clients. The Tribe coordinated a job fair that attracted 53 vendors and over 500 job seekers. The Tribe's police department implemented a new computer system which has aided in multiple dispatching methods and improved data collection, investigation, and crime analysis and reporting. This example is just one of many where Tribes have been successful in directly administering federal programs.

Section 403(b)(2) of Title IV authorizes other bureaus within the Department of the Interior to enter into funding agreements with Tribes subject to such terms as may be negotiated between the parties. The Council of Athabascan Tribal Governments (CATG) has successfully implemented Annual Funding Agreements (AFAs) since 2004 to perform activities in the Yukon Flats National Wildlife Refuge in Interior Alaska. The CATG represents the Tribal governments of Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Gwichyaa Zhee Gwich'in Tribal Government of Fort Yukon, Rampart, Stevens Village, and Venetie. Members of these Tribes live near or within the Yukon Flats National Wildlife Refuge, the third largest of the more than 540 conservation units in the National Wildlife Refuge System. The Refuge was established in 1980, and includes more than 8.5 million acres of wetland and boreal forest habitat

along 300 miles of the Yukon River, north of Fairbanks, Alaska. It is internationally noted for its abundance of migratory birds.

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

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

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

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

Extension of Title V

Non-BIA bureau programs, that have both Indian and non-Indian stakeholders, would be the subject of funding agreements at the Tribe's discretion if Title V were extended to the Department. If extended, the non-BIA bureaus of Interior would have no negotiating rights with regard to what would be authorized under those agreements.

We understand some of the impetus for extending Title V to the Department at this time stems from the agreement between the U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation regarding the National Bison Range Complex in Montana. While there has been considerable controversy over the 2006 AFA between the Service and the CSKT, through this process the Department is gaining a better understanding of what each party needs to make a

successful agreement with a non-BIA bureau work well. We believe that ultimately the process will grow stronger as a result of our efforts.

We are opposed to simply providing the receiving party unilateral power to determine the terms and length of the agreement as well as the disposition of the funds, which would occur if Title V were unilaterally extended to non-BIA bureaus within the Department. This is particularly true where non-BIA bureaus have other statutory mandates with which they must comply. We believe the authority provided to the Secretary for the Self-Governance program is sufficient to protect the interests of Indian Tribes in non-BIA programs.

Conclusion

As the Department moves forward with the current Title IV, we have gained valuable insight into working in partnership with non-BIA bureaus and Tribes. We look forward to continuing to work with the tribes on ways to expand compacting opportunities and improve our program.

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