

TRIBAL SELF-GOVERNANCE ACT OF 1993

HEARING
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 3508/S. 1618

A BILL TO PROVIDE FOR TRIBAL SELF-GOVERNANCE, AND FOR OTHER
PURPOSES

FEBRUARY 25, 1994

Serial No. 103-70

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**H.R. 3508/S. 1618, THE TRIBAL SELF-
GOVERNANCE ACT OF 1993**

FRIDAY, FEBRUARY 25, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 10:43 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA

Mr. FALEOMAVAEGA [presiding]. The committee will come to order.

Today we are holding this hearing on H.R. 3508 and S. 1618, the Tribal Self-Governance Act.

The Tribal Self-Governance Act is one of the most important, innovative ideas we have seen in Indian affairs in several years. The concept of tribes entering into solemn compacts with the Secretary of Interior brings us back to the very beginning of Indian affairs when we negotiated treaties on a government-to-government basis. This started as a demonstration project in 1988. Today we will discuss whether this should be made permanent.

We have many witnesses today with many different views. I respectfully ask that you summarize your statements. Your full written statement will be made part of the record, which will stay open for two weeks.

At this time I ask unanimous consent that the bills, backgrounds and section-by-section analyses be made part of the record.

[The information follows:]

103D CONGRESS
1ST SESSION

H. R. 3508

To provide for tribal self-governance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 1993

Mr. RICHARDSON introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To provide for tribal self-governance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Tribal Self-Governance
5 Act of 1993".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the tribal right of self-government flows
9 from the inherent sovereignty of Indian tribes and
10 nations;

11 (2) the United States recognizes a special gov-
12 ernment-to-government relationship with Indian

1 tribes, including the right of the tribes to self-gov-
2 ernance, as reflected in the Constitution, treaties,
3 Federal statutes, and the course of dealings of the
4 United States with Indian tribes;

5 (3) although progress has been made, the Fed-
6 eral bureaucracy, with its centralized rules and regu-
7 lations, has eroded tribal self-governance and domi-
8 nates tribal affairs;

9 (4) the Tribal Self-Governance Demonstration
10 Project was designed to improve and perpetuate the
11 government-to-government relationship between In-
12 dian tribes and the United States and to strengthen
13 tribal control over Federal funding and program
14 management; and

15 (5) Congress has reviewed the results of the
16 Tribal Self-Governance Demonstration Project and
17 finds that—

18 (A) transferring control to tribal govern-
19 ments, upon tribal request, over funding and
20 decisionmaking for Federal programs, services,
21 functions, and activities intended to benefit In-
22 dians is an effective way to implement the Fed-
23 eral policy of government-to-government rela-
24 tions with Indian tribes; and

1 (B) transferring control to tribal govern-
2 ments, upon tribal request, over funding and
3 decisionmaking for Federal programs, services,
4 functions, and activities strengthens the Fed-
5 eral policy of Indian self-determination.

6 **SEC. 3. DECLARATION OF POLICY.**

7 It is the policy of this Act to permanently establish
8 and implement tribal self-governance—

9 (1) to enable the United States to maintain and
10 improve its unique and continuing relationship with,
11 and responsibility to, Indian tribes;

12 (2) to permit each Indian tribe to choose the
13 extent of the participation of such tribe in self-
14 governance;

15 (3) to coexist with the provisions of the Indian
16 Self-Determination Act relating to the provision of
17 Indian services by designated Federal agencies;

18 (4) to ensure the continuation of the trust re-
19 sponsibility of the United States to Indian tribes and
20 Indian individuals;

21 (5) to permit an orderly transition from Federal
22 domination of programs and services to provide In-
23 dian tribes with meaningful authority to plan, con-
24 duct, redesign, and administer programs, services,

1 functions, and activities that meet the needs of the
2 individual tribal communities; and

3 (6) to provide for an orderly transition through
4 a planned and measurable parallel reduction in the
5 Federal bureaucracy.

6 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

7 The Indian Self-Determination and Education Assist-
8 ance Act is amended by adding at the end the following
9 new title:

10 **“TITLE IV—TRIBAL SELF-**
11 **GOVERNANCE**

12 **“SEC. 401. ESTABLISHMENT.**

13 “The Secretary of the Interior (hereinafter in this
14 title referred to as the ‘Secretary’) shall establish and
15 carry out a program within the Department of the Interior
16 to be known as Tribal Self-Governance (hereinafter in this
17 title referred to as ‘Self-Governance’) in accordance with
18 this title.

19 **“SEC. 402. SELECTION OF PARTICIPATING INDIAN TRIBES.**

20 “(a) CONTINUING PARTICIPATION.—Each Indian
21 tribe that is participating in the Tribal Self-Governance
22 Demonstration Project at the Department of the Interior
23 under title III on the date of enactment of this title shall
24 thereafter participate in Self-Governance under this title
25 and cease participation in the Tribal Self-Governance

1 Demonstration Project under title III with respect to the
2 Department of the Interior.

3 “(b) **ADDITIONAL PARTICIPANTS.**—In addition to
4 those Indian tribes participating in Self-Governance under
5 subsection (a), the Secretary, acting through the Director
6 of the Office of Self-Governance, may select up to 20 new
7 tribes per year from the applicant pool described in sub-
8 section (c) to participate in Self-Governance.

9 “(c) **APPLICANT POOL.**—The qualified applicant pool
10 for Self-Governance shall consist of each tribe that—

11 “(1) successfully completes the planning phase
12 described in subsection (d);

13 “(2) has requested participation in Self-Govern-
14 ance; and

15 “(3) has demonstrated, for the previous three
16 fiscal years, financial stability and financial manage-
17 ment capability as evidenced by the tribe having no
18 material audit exceptions in the required annual
19 audit of the self-determination contracts of the tribe.

20 “(d) **PLANNING PHASE.**—Each Indian tribe seeking
21 to begin participation in Self-Governance shall complete
22 a planning phase in accordance with this subsection. The
23 tribe shall be eligible for a grant to plan and negotiate
24 participation in Self-Governance. The planning phase shall
25 include—

- 1 “(1) legal and budgetary research; and
2 “(2) internal tribal government planning and
3 organizational preparation.

4 **“SEC. 403. FUNDING AGREEMENTS.**

5 “(a) **AUTHORIZATION.**—The Secretary shall nego-
6 tiate and enter into an annual written funding agreement
7 with the governing body of each participating tribal
8 government.

9 “(b) **CONTENTS.**—Each funding agreement shall—

10 “(1) authorize the tribe to plan, conduct, con-
11 solidate, and administer programs, services, func-
12 tions, and activities administered by the Department
13 of the Interior that are otherwise available to Indian
14 tribes or Indians, including (but not limited to)—

15 “(A) the Act of April 16, 1934 (25 U.S.C.
16 452 et seq.); and

17 “(B) the Act of November 2, 1921 (25
18 U.S.C. 13);

19 “(2) subject to the terms of the agreement, au-
20 thorize the tribe to redesign programs, services,
21 functions, or activities and to reallocate funds for
22 such programs, services, functions, or activities;

23 “(3) prohibit the inclusion of funds provided—

1 “(A) pursuant to the Tribally Controlled
2 Community College Assistance Act of 1978 (25
3 U.S.C. 1801 et seq.);

4 “(B) for elementary and secondary schools
5 under the formula developed pursuant to sec-
6 tion 1128 of the Education Amendments of
7 1978 (25 U.S.C. 2008); and

8 “(C) the Flathead Agency Irrigation Divi-
9 sion or the Flathead Agency Power Division,
10 except that nothing in this section shall affect
11 the contract authority of such divisions under
12 section 102;

13 “(4) specify the services to be provided, the
14 functions to be performed, and the responsibilities of
15 the tribe and the Secretary pursuant to the agree-
16 ment;

17 “(5) authorize the tribe and the Secretary to
18 reallocate funds or modify budget allocations within
19 any year, and specify the procedures to be used;

20 “(6) allow for retrocession of programs or por-
21 tions of programs pursuant to section 105(e);

22 “(7) provide that, for the year for which, and
23 to the extent to which, funding is provided to a tribe
24 under this section, the tribe—

1 “(A) shall not be entitled to contract with
2 the Secretary for such funds under section 102,
3 except that such tribe shall be eligible for new
4 programs on the same basis as other tribes; and

5 “(B) shall be responsible for the adminis-
6 tration of programs, services, functions, and ac-
7 tivities pursuant to agreements entered into
8 under this section; and

9 “(8) prohibit the Secretary from waiving, modi-
10 fying, or diminishing in any way the trust respon-
11 sibility of the United States with respect to Indian
12 tribes and individual Indians that exists under trea-
13 ties, Executive orders, and other laws.

14 “(c) SUBMISSION FOR REVIEW.—Not later than 90
15 days before the proposed effective date of an agreement
16 entered into under this section, the Secretary shall submit
17 a copy of such agreement to—

18 “(1) each Indian tribe that is served by the
19 Agency that is serving the tribe that is a party to
20 the funding agreement;

21 “(2) the Committee on Indian Affairs of the
22 Senate; and

23 “(3) the Subcommittee on Native American Af-
24 fairs of the Committee on Natural Resources of the
25 House of Representatives.

1 “(d) PAYMENT.—

2 “(1) IN GENERAL.—At the request of the gov-
3 erning body of the tribe and under the terms of an
4 agreement entered into under this section, the Sec-
5 retary shall provide funding to the tribe to carry out
6 the agreement.

7 “(2) AMOUNT.—Subject to paragraph (3) of
8 this subsection and paragraphs (1) and (3) of sub-
9 section (b), the Secretary shall provide funds to the
10 tribe for one or more programs, services, functions,
11 or activities in an amount equal to the amount that
12 the tribe would have been eligible to receive under
13 contracts and grants under this Act, including direct
14 program costs, and for any funds that are specifi-
15 cally or functionally related to the provision by the
16 Secretary of services and benefits to the tribe and its
17 members.

18 “(3) TRUST SERVICES.—Funds for trust serv-
19 ices to individual Indians shall be available under an
20 agreement entered into under this section only to the
21 extent that the same services that would have been
22 provided by the Secretary are provided to individual
23 Indians by the tribe.

24 “(e) CIVIL ACTIONS.—

1 “(1) DEFINITION OF CONTRACT.—Except as
2 provided in paragraph (2), for the purposes of sec-
3 tion 110, the term ‘contract’ shall include agree-
4 ments entered into under this title.

5 “(2) PROFESSIONAL CONTRACTS.—For the pe-
6 riod that an agreement entered into under this title
7 is in effect, the provisions of section 2103 of the Re-
8 vised Statutes of the United States (25 U.S.C. 81),
9 and section 16 of the Act of June 18, 1934 (25
10 U.S.C. 476), shall not apply to attorney and other
11 professional contracts by Indian tribal governments
12 participating in Self-Governance under this title.

13 “(f) FACILITATION.—

14 “(1) INTERPRETATION.—Except as otherwise
15 provided by law, the Secretary shall interpret each
16 Federal law and regulation in a manner that will
17 facilitate—

18 “(A) the inclusion of programs, services,
19 functions, and activities in the agreements en-
20 tered into under this section; and

21 “(B) the implementation of agreements en-
22 tered into under this section.

23 “(2) WAIVER.—

24 “(A) REQUEST.—A tribe may submit a
25 written request for a waiver to the Secretary

1 identifying the regulation sought to be waived
2 and the basis for the request.

3 “(B) DECISION.—Not later than 60 days
4 after receipt by the Secretary of a written re-
5 quest by a tribe to waive application of a Fed-
6 eral regulation for an agreement entered into
7 under this section, the Secretary shall either ap-
8 prove or deny the requested waiver in writing to
9 the tribe. A denial may be made only upon a
10 specific finding by the Secretary that identified
11 language in the regulation may not be waived
12 because that regulation is expressly required by
13 Federal law.

14 “(C) APPEAL.—Not later than 60 days
15 after denial of a waiver request, the Secretary
16 shall at the request of the tribe, provide the
17 tribe with a hearing on the record and an op-
18 portunity for an appeal.

19 **“SEC. 404. BUDGET REQUEST.**

20 “The Secretary shall identify, in the annual budget
21 request of the President to the Congress under section
22 1105 of title 31, United States Code, any funds proposed
23 to be included in Self-Governance.

1 **“SEC. 405. REPORTS.**

2 “(a) REQUIREMENT.—The Secretary shall submit to
3 Congress a written report on January 1 of each year fol-
4 lowing the date of enactment of this title regarding the
5 administration of this title.

6 “(b) CONTENTS.—The report shall contain—

7 “(1) the relative costs and benefit of Self-Gov-
8 ernance;

9 “(2) identification of all funds that are specifi-
10 cally and functionally related to the provision of
11 services and benefits to the tribe and its members
12 and the corresponding reduction in the Federal bu-
13 reaucracy; and

14 “(3) the separate views of the tribes.

15 **“SEC. 406. EFFECT ON OTHER AGREEMENTS AND LAWS.**

16 “Nothing in this title shall be construed to limit or
17 reduce in any way the services, contracts, or funds that
18 any other Indian tribe or tribal organization is eligible to
19 receive under section 102 or any other applicable Federal
20 law.

21 **“SEC. 407. NEGOTIATED RULEMAKING.**

22 “(a) IN GENERAL.—Not later than 90 days after the
23 date of enactment of this title, at the request of a majority
24 of the Indian tribes with agreements under this title, the
25 Secretary shall initiate procedures under subchapter III
26 of chapter 5 of title 5, United States Code, to negotiate

1 and promulgate such regulations as are necessary to carry
2 out this title.

3 “(b) COMMITTEE.—A negotiated rulemaking commit-
4 tee established pursuant to section 565 of title 5, United
5 States Code, to carry out this section, shall have as a ma-
6 jority of its members representatives of Indian tribes with
7 agreements under this title.

8 “(c) ADAPTATION OF PROCEDURES.—The Secretary
9 shall adapt the negotiated rulemaking procedures to the
10 unique context of Self-Governance and the government-to-
11 government relationship between the United States and
12 the Indian tribes.

13 “(d) EFFECT.—The lack of promulgated regulations
14 shall not limit the effect of this title.

15 **“SEC. 408. AUTHORIZATION OF APPROPRIATIONS.**

16 ““There are authorized to be appropriated such sums
17 as may be necessary to carry out this title.”.

103^D CONGRESS
2^D SESSION

S. 1618

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1994

Referred to the Committee on Natural Resources

AN ACT

To establish Tribal Self-Governance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Tribal Self-Governance
3 Act of 1993”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the tribal right of self-governance flows
7 from the inherent sovereignty of Indian tribes and
8 nations;

9 (2) the United States recognizes a special gov-
10 ernment-to-government relationship with Indian
11 tribes, including the right of the tribes to self-gov-
12 ernance, as reflected in the Constitution, treaties,
13 Federal statutes, and the course of dealings of the
14 United States Government with Indian tribes;

15 (3) although progress has been made, the Fed-
16 eral bureaucracy, with its centralized rules and regu-
17 lations, has eroded tribal self-governance and domi-
18 nates tribal affairs;

19 (4) the Tribal Self-Governance Demonstration
20 Project was designed to improve and perpetuate the
21 government-to-government relationship between In-
22 dian tribes and the United States, and to strengthen
23 tribal control over Federal funding and program
24 management; and

1 (5) Congress has reviewed the results of the
2 Tribal Self-Governance Demonstration Project and
3 finds that—

4 (A) transferring control to tribal govern-
5 ments, upon tribal request, over funding and
6 decisionmaking for Federal programs, services,
7 functions, and activities intended to benefit In-
8 dians, is an effective way to implement the Fed-
9 eral policy of government-to-government rela-
10 tions with Indian tribes; and

11 (B) transferring control to tribal govern-
12 ments, upon tribal request, over funding and
13 decisionmaking for Federal programs, services,
14 functions, and activities strengthens the Fed-
15 eral policy of Indian self-determination.

16 **SEC. 3. DECLARATION OF POLICY.**

17 It is the policy of this Act to permanently establish
18 and implement Self-Governance—

19 (1) to enable the United States to maintain and
20 improve its unique and continuing relationship with,
21 and responsibility to, Indian tribes;

22 (2) to permit each Indian tribe to choose the
23 extent of the participation of such tribe in Self-Gov-
24 ernance;

1 (3) to co-exist with the provisions of the Indian
2 Self-Determination Act relating to provision of In-
3 dian services by designated Federal agencies;

4 (4) to ensure the continuation of the trust re-
5 sponsibility of the United States to Indian tribes and
6 Indian individuals;

7 (5) to permit an orderly transition from Federal
8 domination of programs and services to provide In-
9 dian tribes with meaningful authority to plan, con-
10 duct, redesign, and administer programs, services,
11 functions, and activities that meet the needs of the
12 individual tribal communities; and

13 (6) to provide for an orderly transition through
14 a planned and measurable parallel reduction in the
15 Federal bureaucracy.

16 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

17 The Indian Self-Determination and Education Assist-
18 ance Act (25 U.S.C. 450 et seq.) is amended by adding
19 at the end the following new title:

20 **“TITLE IV—TRIBAL SELF-**
21 **GOVERNANCE**

22 **“SEC. 401. ESTABLISHMENT.**

23 “The Secretary of the Interior (referred to in this
24 title as the ‘Secretary’) shall establish and carry out a pro-
25 gram within the Department of the Interior to be known

1 as Tribal Self-Governance (referred to in this title as ‘Self-
2 Governance’) in accordance with this title.

3 **“SEC. 402. SELECTION OF TRIBES.**

4 “(a) CONTINUING PARTICIPATION.—Each tribe that
5 is participating in the Tribal Self-Governance Demonstra-
6 tion Project at the Department of the Interior under title
7 III on the date of enactment of this title shall thereafter
8 participate in Self-Governance under this title and cease
9 participation in the Tribal Self-Governance Demonstration
10 Project under title III with respect to the Department of
11 the Interior.

12 “(b) ADDITIONAL TRIBES.—In addition to those
13 tribes participating in Self-Governance under subsection
14 (a), the Secretary, acting through the Director of the Of-
15 fice of Self-Governance, may select up to 20 new tribes
16 per year, from the applicant pool described in subsection
17 (c), to participate in Self-Governance.

18 “(c) APPLICANT POOL.—The qualified applicant pool
19 for Self-Governance shall consist of each tribe that—

20 “(1) successfully completes the planning phase
21 described in subsection (d);

22 “(2) has requested participation in Self-Govern-
23 ance; and

24 “(3) has demonstrated, for the previous 3 fiscal
25 years, financial stability and financial management

1 capability as evidenced by the tribe having no mate-
 2 rial audit exceptions in the required annual audit of
 3 the self-determination contracts of the tribe.

4 “(d) PLANNING PHASE.—Each tribe seeking to begin
 5 participation in Self-Governance shall complete a planning
 6 phase in accordance with this subsection. The tribe shall
 7 be eligible for a grant to plan and negotiate participation
 8 in Self-Governance. The planning phase shall include—

9 “(1) legal and budgetary research; and

10 “(2) internal tribal government planning and
 11 organizational preparation.

12 **“SEC. 403. FUNDING AGREEMENTS.**

13 “(a) AUTHORIZATION.—The Secretary shall nego-
 14 tiate and enter into an annual written funding agreement
 15 with the governing body of each participating tribal gov-
 16 ernment.

17 “(b) CONTENTS.—Each funding agreement shall—

18 “(1) authorize the tribe to plan, conduct, con-
 19 solidate, and administer programs, services, func-
 20 tions, and activities administered by the Department
 21 of the Interior that are otherwise available to Indian
 22 tribes or Indians, including—

23 “(A) the Act of April 16, 1934 (popularly
 24 known as the ‘Johnson-O’Malley Act’) (48 Stat.
 25 596, chapter 147; 25 U.S.C. 452 et seq.); and

1 “(B) the Act of November 2, 1921 (popu-
2 larly known as the ‘Snyder Act’) (42 Stat. 208,
3 chapter 115; 25 U.S.C. 13);

4 “(2) subject to the terms of the agreement, au-
5 thorize the tribe to redesign programs, services,
6 functions, or activities, and to reallocate funds for
7 such programs, services, functions, or activities;

8 “(3) prohibit the inclusion of funds provided—

9 “(A) pursuant to the Tribally Controlled
10 Community College Assistance Act of 1978 (25
11 U.S.C. 1801 et seq.);

12 “(B) for elementary and secondary schools
13 under the formula developed pursuant to sec-
14 tion 1128 of the Education Amendments of
15 1978 (25 U.S.C. 2008); and

16 “(C) to the Flathead Agency Irrigation Di-
17 vision or the Flathead Agency Power Division,
18 except that nothing in this section shall affect
19 the contract authority of such divisions under
20 section 102;

21 “(4) specify the services to be provided, the
22 functions to be performed, and the responsibilities of
23 the tribe and the Secretary pursuant to the agree-
24 ment;

1 “(5) authorize the tribe and the Secretary to
2 reallocate funds or modify budget allocations within
3 any year, and specify the procedures to be used;

4 “(6) provide for retrocession of programs or
5 portions of programs pursuant to section 105(e);

6 “(7) provide that, for the year for which, and
7 to the extent to which, funding is provided to a tribe
8 under this section, the tribe—

9 “(A) shall not be entitled to contract with
10 the Secretary for such funds under section 102,
11 except that such tribe shall be eligible for new
12 programs on the same basis as other tribes; and

13 “(B) shall be responsible for the adminis-
14 tration of programs, services, functions, and ac-
15 tivities pursuant to agreements entered into
16 under this section; and

17 “(8) prohibit the Secretary from waiving, modi-
18 fying, or diminishing in any way the trust respon-
19 sibility of the United States with respect to Indian
20 tribes and individual Indians that exists under trea-
21 ties, Executive orders, and other laws.

22 “(c) SUBMISSION FOR REVIEW.—Not later than 90
23 days before the proposed effective date of an agreement
24 entered into under this section, the Secretary shall submit
25 a copy of such agreement to—

1 “(1) each tribe that is served by the Agency
2 that is serving the tribe that is a party to the fund-
3 ing agreement;

4 “(2) the Committee on Indian Affairs of the
5 Senate; and

6 “(3) the Committee on Natural Resources of
7 the House of Representatives.

8 “(d) PAYMENT.—

9 “(1) IN GENERAL.—At the request of the gov-
10 erning body of the tribe and under the terms of an
11 agreement entered into under this section, the Sec-
12 retary shall provide funding to the tribe to carry out
13 the agreement.

14 “(2) AMOUNT.—Subject to paragraph (3) of
15 this subsection and paragraphs (1) and (3) of sub-
16 section (b), the Secretary shall provide funds to the
17 tribe for one or more programs, services, functions,
18 or activities in an amount equal to the amount that
19 the tribe would have been eligible to receive under
20 contracts and grants under this Act, including direct
21 program costs and indirect costs, and for any funds
22 that are specifically or functionally related to the
23 provision by the Secretary of services and benefits to
24 the tribe and its members.

1 “(3) TRUST SERVICES.—Funds for trust serv-
2 ices to individual Indians shall be available under an
3 agreement entered into under this section only to the
4 extent that the same services that would have been
5 provided by the Secretary are provided to individual
6 Indians by the tribe.

7 “(e) CIVIL ACTIONS.—

8 “(1) DEFINITION OF ‘CONTRACT’.—Except as
9 provided in paragraph (2), for the purposes of sec-
10 tion 110, the term ‘contract’ shall include agree-
11 ments entered into under this title.

12 “(2) PROFESSIONAL CONTRACTS.—For the pe-
13 riod that an agreement entered into under this title
14 is in effect, the provisions of section 2103 of the Re-
15 vised Statutes of the United States (25 U.S.C. 81),
16 and section 16 of the Act of June 18, 1934 (48
17 Stat. 987, chapter 576; 25 U.S.C. 476), shall not
18 apply to attorney and other professional contracts by
19 Indian tribal governments participating in Self-Gov-
20 ernance under this title.

21 “(f) FACILITATION.—

22 “(1) INTERPRETATION.—Except as otherwise
23 provided by law, the Secretary shall interpret each
24 Federal law and regulation in a manner that will
25 facilitate—

1 “(A) the inclusion of programs, services,
2 functions, and activities in the agreements en-
3 tered into under this section; and

4 “(B) the implementation of agreements en-
5 tered into under this section.

6 “(2) WAIVER.—

7 “(A) REQUEST.—A tribe may submit a
8 written request for a waiver to the Secretary
9 identifying the regulation sought to be waived
10 and the basis for the request.

11 “(B) DECISION.—Not later than 60 days
12 after receipt by the Secretary of a written re-
13 quest by a tribe to waive application of a Fed-
14 eral regulation for an agreement entered into
15 under this section, the Secretary shall either ap-
16 prove or deny the requested waiver in writing to
17 the tribe. A denial may be made only upon a
18 specific finding by the Secretary that identified
19 language in the regulation may not be waived
20 because such waiver is prohibited by Federal
21 law.

22 “(C) APPEAL.—Not later than 60 days
23 after denial of a waiver request, the Secretary
24 shall, at the request of a tribe, provide the tribe

1 with a hearing on the record and opportunity
2 for an appeal.

3 **“SEC. 404. BUDGET REQUEST.**

4 “The Secretary shall identify, in the annual budget
5 request of the President to the Congress, any funds pro-
6 posed to be included in Self-Governance.

7 **“SEC. 405. REPORTS.**

8 “(a) REQUIREMENT.—Not later than January 1 of
9 each year after the date of enactment of this title, the Sec-
10 retary shall submit to Congress a report regarding the ad-
11 ministration of this title.

12 “(b) CONTENTS.—The report shall—

13 “(1) identify the relative costs and benefits of
14 Self-Governance;

15 “(2) identify, with particularity, all funds that
16 are specifically or functionally related to the provi-
17 sion by the Secretary of services and benefits to
18 Self-Governance tribes and their members, and the
19 corresponding reductions in the Federal bureauc-
20 racy; and

21 “(3) include the separate views of the tribes.

22 **“SEC. 406. EFFECT ON OTHER AGREEMENTS AND LAWS.**

23 “Nothing in this title shall be construed to limit or
24 reduce in any way the services, contracts, or funds that
25 any other Indian tribe or tribal organization is eligible to

1 receive under section 102 or any other applicable Federal
2 law.

3 **“SEC. 407. NEGOTIATED RULEMAKING.**

4 “(a) **IN GENERAL.**—Not later than 90 days after the
5 date of enactment of this title, at the request of a majority
6 of the Indian tribes with agreements under this title, the
7 Secretary shall initiate procedures under subchapter III
8 of chapter 5 of title 5, United States Code, to negotiate
9 and promulgate such regulations as are necessary to carry
10 out this title.

11 “(b) **COMMITTEE.**—A negotiated rulemaking commit-
12 tee established pursuant to section 565 of title 5, United
13 States Code, to carry out this section, shall have as its
14 members only Federal and tribal government representa-
15 tives, a majority of whom shall be representatives of In-
16 dian tribes with agreements under this title.

17 “(c) **ADAPTATION OF PROCEDURES.**—The Secretary
18 shall adapt the negotiated rulemaking procedures to the
19 unique context of Self-Governance and the government-to-
20 government relationship between the United States and
21 the Indian tribes.

22 “(d) **EFFECT.**—The lack of promulgated regulations
23 shall not limit the effect of this title.

1 **“SEC. 408. AUTHORIZATION OF APPROPRIATIONS.**

2 “**There are authorized to be appropriated such sums**

3 **as are necessary to carry out this title.”.**

 Passed the Senate November 24 (legislative day, No-
vember 23), 1993.

Attest:

WALTER J. STEWART,

Secretary.

BACKGROUND ON H.R. 3508 AND S. 1618

In 1988 the Congress enacted Title III of the Indian Self Determination and Education Assistance Act (Public Law 100-472). This unique new Title which was called "Tribal Self-Governance Demonstration Project" authorizes tribes through a planning and negotiation process to develop a Compact of Self-Governance and to obtain an annual funding agreement to govern financial transfers from the federal government to the tribes. Under the Compact, an Indian tribal government is authorized to plan, consolidate, and administer programs, services and activities previously administered by the Bureau of Indian Affairs and to redesign these activities and reallocate federal funds. Funding allocations for Self-Governance tribes come from BIA Agency, Area and Central office accounts on the basis of what the tribe would have received in funds and services in the absence of the agreement. The Project began with twenty tribes and was originally to be five years in duration. However, the Project was extended an additional three years in a 1991 amendment and expanded to include ten additional tribes (Public Law 102-184). Since 1988, 28 tribes have entered into Self-Governance Compacts with the Secretary of Interior.

S. 1618, sponsored by Senator McCain, and H.R. 3508, sponsored by Chairman Richardson, would make Self-Governance permanent in the Interior Department. Under both bills, up to twenty new tribes per year could enter into the process of Compacting for funding with the Secretary of the Interior.

SECTION-BY-SECTION ANALYSIS ON H.R. 3508**SECTION 1. SHORT TITLE**

Section 1 provides that the Act may be cited as the "Tribal Self-Governance Act of 1993."

SECTION 2. FINDINGS

Section 2 provides the findings of the Congress.

SECTION 3. DECLARATION OF POLICY

Section 3 declares the policy of the Act which includes the continuation of the trust responsibility to Indian tribes, and an orderly transition from the Federal domination of programs toward tribal authority to plan, redesign and administer programs and services.

SECTION 4. TRIBAL SELF-GOVERNANCE

Section 4 provides for an amendment to the Indian Self-Determination and Education Assistance Act entitled "Title IV - Tribal Self-Governance." The section of the amendment are as follows:

SECTION 402. SELECTION OF PARTICIPATING INDIAN TRIBES

Subsection (a) provides that tribes currently participating in the Self-Governance Demonstration Project shall participate in Self-Governance under this title after enactment.

Subsection (b) provides that the Secretary may select up to 20 new tribes per year to participate in Self-Governance.

Subsection (c) provides that the applicant pool shall consist of tribes that (1) complete the planning phase, (2) requests participation, and (3) demonstrates financial stability and financial management capability.

Subsection (d) provides that each tribe is to complete a planning phase which includes (1) legal and budgetary research, and (2) internal tribal government planning and organizational preparation.

SECTION 403. FUNDING AGREEMENTS

Subsection (a) authorizes the Secretary to negotiate and enter into an annual funding agreement with each participating tribal government.

Subsection (b) provides for the contents of the funding agreements which shall (1) authorize tribes to plan and administer programs administered

by the Departments of Interior, (2) authorize tribes to redesign programs and reallocate funds for services, (3) prohibit the use of funds for (A) Tribally Controlled Community Colleges, (B) elementary and secondary schools under formulas developed, and (C) the Flathead Irrigation Project; (4) specify services to be provided and the responsibilities of the Secretary under the agreement; (5) authorize the tribe and the Secretary to reallocate funds or modify budget allocations; (6) allow for retrocession of programs; (7) provide that the tribe (A) shall not be entitled to contract with funds under Section 102 of the Act and (B) shall be responsible for the administration of programs and services pursuant to agreement entered into under this section; (8) prohibit the Secretary from modifying the Federal trust responsibility to Indian tribes.

Subsection (c) provides that within 90 days of the effective date of an agreement the Secretary must submit a copy to (1) each tribe within the Agency, (2) the Committee on Indian Affairs of the Senate, (3) Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

Subsection (d) provides that (1) at the request of a tribe the Secretary shall provide funding pursuant to the agreement; (2) the amount of the funding is to equal what the tribe would have been eligible to receive under contracts and grants under the Act related to the provision of services; and (3) funds for trust services to individual Indians are to be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to the individual Indians by the tribe.

Subsection (e) provides that for the purposes of civil actions the term 'contract' under the Act is to include agreements entered into under this title, and provisions in existing laws related to attorney and other professional contracts are not to apply to Self-Governance tribes.

Subsection (f) provides that (1) the Secretary is to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs and services and the implementation of agreements; and (2) the tribe may request the waiver of a regulation in writing, the Secretary must respond within 60 days either approving or denying the waiver of the regulation, and within 60 days of a denial the Secretary is to provide the tribe with a hearing and an opportunity for an appeal.

SECTION 404. BUDGET REQUEST

Section 404 provides that the Secretary is to identify funds to be included in Self-Governance in the President's budget request.

SECTION 405. REPORTS

Subsection (a) provides that the Secretary is provide the Congress with an annual report.

Subsection (b) provides that the report is to contain (1) the cost and benefits of Self-Governance, (2) identification of funds related to the provision of services and the corresponding reduction in the Federal bureaucracy, and (3) the views of tribes.

SECTION 406. EFFECT ON OTHER AGREEMENTS AND LAWS

Section 406 provides that nothing in the this title is be construed to reduce services to other Indian tribes.

SECTION 407. NEGOTIATED RULEMAKING

Subsection (a) provides that within 90 days of enactment the Secretary is to initiate procedures to negotiate and promulgate regulations.

Subsection (b) provides that the negotiated rulemaking committee is to have as a majority of its members Self-Governance tribes.

Subsection (C) provides that the negotiated rulemaking procedures are to be adapted by the Secretary to reflect the government to government relationship between the federal government and the tribes.

Subsection (d) provides that the lack of regulations is not to limit the effect of this title.

SECTION 408. AUTHORIZATION OF APPROPRIATIONS

Section 408 provides that such sums as may be necessary to carry out this title are authorized to be appropriated.

Mr. FALEOMAVAEGA. I do want to say that Chairman Richardson is necessarily occupied right now in a very important meeting, but I want to let the audience know that his interest is very much part of this whole hearing process. For this reason, we want to continue now with our hearing this morning.

I also want to insert the statement of the gentleman from Wyoming into the record if there is no objection.

[Prepared statement of Mr. Thomas follows:]

**OPENING STATEMENT
OF CONGRESSMAN CRAIG THOMAS
ON
H.R. 3508: THE TRIBAL SELF-GOVERNANCE ACT**

I believe my support for tribal self-determination is well-known, so I will keep my statement to a minimum.

I fully support H.R. 3508. It is an important step towards giving the tribes more control, flexibility and decision making authority over federal programs and financial resources. I have long been convinced that it is the individual tribal government, and not some bureaucrat in Washington with his or her own agenda, that is in the best position to know the needs of the tribe and how best to meet those needs.

However, while support for this legislation is widespread, I hope that in our headlong rush towards passage we will not fail to hear the voices of some of the smaller tribes who have concerns about how the bill might have a negative impact on them. I have heard specifically from the tribes of the Quinault Reservation. I hope the Chairman will listen to their concerns, and work hard to implement their suggestions.

Mr. FALEOMAVAEGA. For the first panel, we are very happy to have with us the Honorable Ada Deer, the Assistant Secretary for Indian Affairs for the U.S. Department of Interior, accompanied by Mr. Ronald Brown, the Acting Director of the Office of Self-Governance, and Mr. Richard Monette, Director of Congressional and Legislative Affairs.

I want to offer my personal welcome to Secretary Deer and the tremendous leadership that she has given to this very important sector or division of the Department of Interior, and I certainly commend her for her outstanding leadership and work in dealing with Native American issues.

Secretary Deer.

STATEMENT OF ADA DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY RONALD BROWN, ACTING DIRECTOR, OFFICE OF SELF-GOVERNANCE, AND RICHARD MONETTE, DIRECTOR, CONGRESSIONAL AND LEGISLATIVE AFFAIRS

Ms. DEER. Thank you very much, Mr. Chairman, for that warm welcome and introduction. I look forward to working with you and other Members of the committee as we all work toward justice for and with American Indians and Alaska natives. I appreciate the opportunity to present the Department's views on H.R. 3508 and S. 1618 regarding their self-governance. The Department strongly supports the enactment of this legislation.

As former chairperson of the Menominee Nation, I know firsthand how important it is for a tribe's government to have control over sufficient resources to meet the needs of its people. I have engaged in numerous discussions over the years with tribal leaders about the need for a more balanced relationship with the U.S. I want to do everything I possibly can to assist tribes in preparing for the 21st century.

By way of background, I should point out that we now have 28 tribes in tribal self-governance. These 28 tribes, which are geographically dispersed in 12 States, will account for over \$100 million of the Bureau of Indian Affairs budget in 1994.

Mr. Chairman, I have two overarching recommendations. First, the self-governance demonstration project should be made permanent and available to more tribes. Second, I am proposing that this legislation be separated from the Indian Self-Determination Act and enacted as a freestanding law. I believe that the policy of self-governance is the most significant Federal policy for tribes since the Indian Reorganization Act of 1934. Self-governance will be the policy that will guide the relationship between the Federal Government and the tribes into the 21st century. Creating a separate Public Law for a permanent self-governance program would symbolize its importance.

We believe that recognizing tribal self-governance and self-determination is our greatest responsibility in our Federal trust relationship with Indian tribes. We see self-governance as a crucial step in making self-determination a reality. Self-governance makes tribal governments closer and more accountable to the political processes of those they govern.

In the demonstration phase of tribal self-governance, we have seen numerous benefits to participating tribes. Paperwork for tribes and the Bureau has been minimized. Tribal social services and law enforcement have witnessed increased cooperation. Preliminary evidence indicates that voter participation in the Lummi Nation has increased dramatically under the self-governance compact, from 20 percent before the compact to 58 percent after the compact; a clear indication that the people feel they have a stake in their government.

There are other reported successes, as documented in numerous letters from tribal leaders sent to the Senate in support of S. 1618. One need only look at a tribe such as the Cherokee Nation to have some idea of the tremendous potential tribal self-governance has.

Let's also be candid. As originally designed, the self-governance demonstration project was justified because it would streamline the Bureau and eliminate unnecessary bureaucracy. It has done just that. As the program continues to expand, it is inevitable that certain programs administered by the Bureau in accordance with our Federal relationship will be affected and, in some cases, curtailed. While I want to accelerate the trend toward self-governance, I wish to respect the rights of those tribes that choose not to participate. Thus, it is critical that support for non-participating tribes be maintained.

Section 407 of the bill provides for negotiated rulemaking between the Department and a majority of participating tribes. We have serious concerns about restricting the negotiations to participating tribes. Mandating negotiated rulemaking in this context would result in a cumbersome, unworkable process that likely will not adequately represent all interests. We recommend that the administrative formal rulemaking process provide an open forum for all interested parties, including potentially affected nonparticipating tribes.

Finally, I would like to inform you that the Department has undertaken a comprehensive study of the demonstration project, the results of which are expected by June of this year. I am hopeful that this legislation will move at a deliberate pace so that our respective staffs can work together to address any unresolved issues. The Department will propose necessary amendments to address these issues and provide for the effective implementation of the program.

Among other matters, the administration and the Congress, in consultation with the tribes, must address the Federal relationship and trust responsibility to tribes and individual Indians in the context of self-governance and this legislation, and the proper scope of the program. Also, the Department is considering the proper application of standards for ensuring public health and safety and quality control in the context of self-governance compacts for certain programs such as construction. Beginning today, I look forward to continuing to work with the committee on these and other matters.

Thank you for inviting me to present the Department's views. And at this time I would be glad to answer any questions that you may have.

[Prepared statement of Ms. Deer follows:]

**STATEMENT OF MS. ADA E. DEER, ASSISTANT SECRETARY - INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE
AMERICAN AFFAIRS, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R.
3508 AND S. 1618, A BILL TO PROVIDE FOR TRIBAL SELF-GOVERNANCE AND
FOR OTHER PURPOSES.**

February 25, 1994

Good morning Mr. Chairman and Members of the Committee. I appreciate the opportunity to present the Department's views on H.R. 3508 and S. 1618, regarding tribal self-governance. The Department strongly supports the enactment of this legislation.

As former chairperson of the Menominee Nation, I know first hand how important it is for a tribe's government to have control over sufficient resources to meet the needs of its people. I have engaged in numerous discussions over the years with tribal leaders about the need for a more balanced relationship with the United States. I want to do everything I possibly can to assist tribes in preparing for the 21st century.

Mr. Chairman, I have two over-arching recommendations. First, the self-governance demonstration project should be made permanent and available to more tribes. Second, I am proposing that this legislation be separated from the Indian Self-Determination Act and enacted as a free-standing law. I believe that the policy of self-governance is the most significant Federal policy for tribes since the Indian Reorganization Act of 1934. Self-governance will be the policy that will guide the relationship between the Federal government and tribes into the 21st century. Creating a separate

public law for a permanent self-governance program would symbolize its importance.

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In the demonstration phase of tribal self-governance, we have seen numerous benefits to participating tribes. Paperwork for tribes and the Bureau has been minimized. Tribal social services and law enforcement have witnessed increased cooperation. Preliminary evidence indicates that voter participation in the Lummi Nation has increased dramatically under the self-governance compact -- from 20 percent before the compact to 58 percent after the compact -- a clear indication that the people feel they have a stake in their government.

Let's also be candid. As originally designed, the Self-Governance Demonstration Project was justified because it would streamline the Bureau and eliminate unnecessary bureaucracy. It has done just that. As the program continues to expand, it is inevitable that certain programs administered by the Bureau in accordance with our Federal relationship will be affected and, in some cases,

curtailed. While I want to accelerate the trend toward self-governance, I wish to respect the rights of those tribes that choose not to participate. Thus, it is critical that support for non-participating tribes be maintained.

Section 407 of the bill provides for negotiated rulemaking between the Department and a majority of participating tribes. We have serious concerns about restricting the negotiations to participating tribes. Mandating negotiated rulemaking in this context would result in a cumbersome, unworkable process that likely will not adequately represent all interests. We recommend the administrative formal rulemaking process to provide an open forum for all interested parties, including potentially affected non-participating tribes.

Finally, I would like to inform you that the Department has undertaken a comprehensive study of the demonstration project, the results of which are expected by June of this year. I am hopeful that this legislation will move at a deliberate pace so that our respective staffs can work together to address any unresolved issues. The Department will propose necessary amendments to address these issues and provide for the effective implementation of the program.

Among other matters, the Administration and the Congress, in consultation with the tribes, must address the Federal relationship

and trust responsibility to tribes and individual Indians in the context of self-governance and this legislation, and the proper scope of the program. Also, the Department is considering the proper application of standards for ensuring public health and safety and quality control in the context of self-governance compacts for certain programs such as construction. Beginning today, I look forward to continuing to work with the Committee on these and other matters.

Again, thank you for inviting me to present the Department's views on this important legislation. At this time I would be glad to answer any questions you may have.

Mr. FALÉOMAVAEGA. Madam Secretary, the times that I have had the privilege of participating in hearings, it is such a tremendous feeling for me to know you are here personally to say the Department of Interior does support this legislation in every way. And I, for one, am very happy to hear this position taken by the administration on the importance of this legislation.

I do have several questions that in the interests of time I am going to submit to your office for a response, but just a couple questions, if I might. With respect to the right or privilege of a tribe not to participate in this process, you say that this should be given as an option for other tribes that may not want to participate. Do you see what would be the negative or the downside of this, for reluctance on the part of some of the tribes not to participate in this process?

Ms. DEER. Well, first of all, I want to emphasize that we fully support tribal self-determination, and it is entirely within the tribe's prerogative to make the decision, whether they wish to compact or whether they wish not to compact. The legislation and the past workings of this whole demonstration project have been very cognizant of this, and there is provision in the shortfall funding for any potential impacts that this may have.

Mr. FALÉOMAVAEGA. Which raises another question that I might have, and maybe we are talking about semantics, but maybe if you could elaborate this for the record.

We are talking about self-governance. How does this differ from sovereignty? Or is this also a matter of distinction in terms of how different tribes tend to define what sovereignty means? I understand that a statewide commission has been established by the State of Hawaii for the native Hawaiian community to find out for themselves how they define sovereignty, but is there a distinction between self-governance and how we are defining it in this bill and that of—perhaps how other tribes look at the principle or the concept of sovereignty? Are we within the ball park? Are they trying to get away from any further Federal imposition on the rights of Indians to be more self-governing?

Ms. DEER. Well, first of all, let me point out, before Columbus landed here, all the tribes were self-governing, and that there is great overlap between self-governance and the basic sovereignty. There is a degree, perhaps, of interpretation in these two, but the point is to help the tribes achieve self-governance to make the basic determinations over the land and the people. I view this as an important evolution in the ongoing evolution of the relationship between the Federal Government and the tribes.

So to answer your question in a short way, there is overlap, but I don't see any basic contradictions.

Mr. FALÉOMAVAEGA. It is ironic that I believe for the last 150 years at least, or even earlier, this very thing has been with the—what the native Americans have been asking for, and we here in Washington keep going around and around and around and never seem to really come to the point by way of saying, well, send the money. That seems to be the sheer way to resolve, supposedly, some of the problems that Native Americans have faced over the years.

It seems to me this may be a real successful concept to be applicable, especially with the affairs of the Bureau of Indian Affairs.

How would this apply? Do you think that this should also extend to other Federal agencies? I think that maybe this is something, because we—you talk about Washington and the myriads of agencies, the turfs and everybody wanting a piece of the pie. You have to go to the Department of Education if you want education; you have got to go to HUD to get housing.

I mean, if I were a Native American, I would be confused, myself, in terms of what—can this be in some way applicable, as well, to other agencies of the Federal Government besides the Department of Interior?

Ms. DEER. A short answer, yes.

Mr. FALEOMAVAEGA. Do you think that President Clinton might be favorable to the concept later on if we see this as a demonstration that the Department of Interior can sure prove the substance of this bill if it is made into law, that this can be applicable on a Federal-wide basis?

Ms. DEER. I would not presume to speak for our President, but I would point out that he has strongly supported tribal sovereignty and self-determination; and this is, of course, the next logical step.

Mr. FALEOMAVAEGA. Well, Madam Secretary, I want to certainly tip my hat off to President Clinton for having nominated you to hold this very important position. No one could appreciate and know more about what it means to go through such situations where your own tribe was terminated and, all of a sudden, was resurrected, and then—what was it—assimilated. And having all these different policies taken over the years, I commend President Clinton for having appointed you to serve in this position, as I am sure there is a real sense of appreciation and understanding throughout Indian country in having you take the helm of this office.

And I again want to offer my personal commendation for you and the members of your staff. We look forward to working with you together in this legislation, and hopefully we will do it expeditiously.

Ms. DEER. And I would like to point out how important it is for all of us to work in a strong partnership, the Bureau of Indian Affairs, Federal Government and the Congress and the tribes, to achieve full justice and help tribes move into the 21st century.

So again, I thank you for your warm, friendly reception and your strong interest and involvement in this very important legislation. My two colleagues here are ready to answer additional questions, and I am sure that when the tribal and other people come to testify, you will have a lot more illumination on this topic.

Mr. FALEOMAVAEGA. Please look after my cousin Esera Tualo, who plays defensive tackle for the Minnesota Vikings. At any rate, thank you so much for coming this morning. I assure you that both Chairman Richardson and Chairman Miller share this same strong sentiment and support for your efforts in heading this important division of the Department of Interior. Thank you very much, Secretary Deer.

Ms. DEER. Thank you.

Mr. FALCOMAEGA. Our next panel, we will have the Honorable Marge Anderson, the Chief Executive of the Mille Lacs Band of Ojibwe, of Onamia, Minnesota, accompanied by Mr. Philip Baker-Shenk, the Tribal Attorney; also the Honorable Edward Thomas, President of Tlingit and Haida Central Council, Juneau, Alaska; also the Honorable Christine Collison, President of the Ketchikan Indian Corporation of Alaska; also the Honorable Larry Nuckolls, Governor, the Absentee Shawnee Tribe of Oklahoma; also the Honorable Herbert Whitish, Chairman of the Shoalwater Bay Tribe in Tokeland, Washington; and also the Honorable George Bennett, Tribal Council Member of the Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, the State of Michigan.

I want to welcome all of you here this morning, members of the panel.

PANEL CONSISTING OF HON. MARGE ANDERSON, CHIEF EXECUTIVE, MILLE LACS BAND OF OJIBWE, ONAMIA, MN; ACCOMPANIED BY PHILIP BAKER-SHENK, TRIBAL ATTORNEY; HON. EDWARD K. THOMAS, PRESIDENT, TLINGIT AND HAIDA CENTRAL COUNCIL, JUNEAU, AK; HON. CHRISTINE COLLISON, PRESIDENT, KETCHIKAN INDIAN CORPORATION, AK; HON. LARRY NUCKOLLS, GOVERNOR, ABSENTEE SHAWNEE TRIBE, OK; HON. HERBERT WHITISH, CHAIRMAN, SHOALWATER BAY TRIBE, TOKELAND, WA; AND HON. GEORGE E. BENNETT, TRIBAL COUNCIL MEMBER, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, SUTTONS BAY, MI

Mr. FALCOMAEGA. We would like to begin with Marge Anderson. Would you proceed, please.

STATEMENT OF HON. MARGE ANDERSON

Ms. ANDERSON. Good morning. I am Marge Anderson. I am the Chief Executive of the Mille Lacs Band of Ojibwe Indians in Minnesota. I am glad to be here to talk about self-governance. I will keep my remarks brief. I will let my written testimony take care of the important details.

First, some background. We are a first-tier tribe, self-governance tribe, having signed our first compact with Interior in 1990. In 1993, we were one of the first tribes assigned a compact with the Indian Health Service. We have a great deal riding on the future of self-governance.

Second, we strongly support H.R. 3508 and urge that it be quickly adopted. After four years with self-governance, we think the experiment is a success and should be made permanent. We also welcome an increase in the number of tribes allowed to participate. Self-governance participation could be very valuable to many of our sister tribes.

Third, we ask you support language that would make BIA negotiate, line by line, tribal shares of central office funds. We want BIA to negotiate central office funds the same way they negotiate area and agency office funds. For the past four years, the Mille Lacs Band has asked and asked and asked for this, but BIA has simply refused to do it; even in report language, Congress said BIA shouldn't. My written testimony gives the disappointing details.

It is clear that it won't happen unless you require it by law.

Fourth, we very much need the law changes here to clarify lines of authority and responsibility within Interior in dealing with self-governance issues. We think many of the problems would be faced if Interior made regular and open use of a self-governance policy council with tribal representatives allowed to participate. Mille Lacs Band has been shut out for the most part, even though we have a tribal office here in Washington, D.C., with a representative who could work here in Washington, D.C. with them. The contacts met infrequently and has failed to make final and informed decisions. Nothing much will change until you change the law.

In conclusion, I want to thank this committee and its able staff for being very helpful over the past five years in my tribe's effort to get the Federal agencies to implement their responsibilities under the self-governance project. We are extremely grateful for the personal support of self-governance of the Chairman. Over the last year, Chairman Richardson has tremendous—has been a tremendous activist for Indian tribes on the issue of self-governance and self-determination.

From my experience, I am here to tell you that BIA and Indian Health Service need more direct and specific guidance in the law on self-governance. Let me give you a story fresh from the pages of history.

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

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

The time has now come to make self-governance permanent for Interior. It is time for Congress to stay firmly in charge of guiding the administration's implementation of this initiative. The agencies may tell you this is a new administration and they need more time. With all due respect, we have been hearing this since 1988. In fact, at every Indian event since this administration has taken office, where an address has been given by Clinton appointees, these officials consistently refer to their support of self-governance as an example of how committed this administration is to a positive change for Indian tribes.

It is time to act. Either self-governance is a priority, or it is not. We need prompt, pro-tribal implementation. The best chance for that lies with you, the Congress, and this permanent legislation dealing with BIA.

Also I want to thank you, Congressman, for your constant support of Indian tribes over the last several years. We know you well in Indian country and know that you have been one of the greatest friends in the Congress that we have. Thank you.

Mr. FALCOMVAEGA. Thank you, Ms. Anderson.

[Prepared statement of Ms. Anderson and attachment follow:]



MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

**TESTIMONY OF THE HONORABLE MARGE ANDERSON, CHIEF EXECUTIVE
MILLE LACS BAND OF OJIBWE**
BEFORE THE U.S. HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
HEARING ON H.R. 3508, A BILL TO MAKE SELF-GOVERNANCE AUTHORITY PERMANENT
FEBRUARY 25, 1994

I. INTRODUCTION.

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

I am pleased to be here in support of H.R. 3508, the "Tribal Self-Governance Act", and to discuss Self-Governance issues related to both the Department of the Interior/Bureau of Indian Affairs (BIA) and the Department of Health and Human Services/Indian Health Service (IHS).

I also want to thank you because over the past five years that this Subcommittee and the full Committee have been very helpful to my Tribe in our efforts to get the federal agencies to implement their responsibilities under the Self-Governance Project. I am particularly grateful for what you as Chairman of the new Subcommittee on Native American Affairs have done to assist us during this first year of the Clinton Administration when I have tried to get positive action on Self-Governance issues. We are extremely grateful for your commitment to Indian Tribes and your keen interest in Tribal Self-Governance, particularly given your leadership position in the House of Representatives.

At Mille Lacs, we have a great deal riding on the future of Tribal Self-Governance. For that reason, I am of the opinion that it will be necessary for Congress to give both BIA and IHS more direct guidance in their implementation of this policy.

II. BACKGROUND ON MILLE LACS BAND OF OJIBWE.

The Mille Lacs Band of Ojibwe is the name used by the Ojibwe People of the Mille Lacs Reservation, located in central Minnesota about 100 miles north of Minneapolis/St. Paul. The Band has approximately 7,500 acres throughout four counties: Pine, Mille Lacs, Aitkin, and Crow Wing. While the main Reservation was established by the Treaty of 1855, it also provides services to outlying Mille Lacs communities off the Reservation. This presents a challenge to effective tribal program administration. The Mille Lacs Band has a form of government, which in contrast to the other Bands of the Minnesota Chippewa Tribe, has

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three branches: Executive, Legislative and Judicial. Years ago we determined that a formal separation of powers was necessary for our successful Self-Governance and later, for implementation of our Self-Governance Compact.

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

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

The Mille Lacs Band strongly supports any and all legislative improvements that can, as a practical political matter, be enacted this year. Thus we strongly support H.R. 3508, which would make the Self-Governance authority permanent for the Interior Department. We understand that it is not feasible to consider legislation extending permanent authority to IHS this year, but hope that upon adoption of this legislation the Subcommittee will turn its attention to IHS.

We believe that permanent authority is a positive step forward and one that should be taken as soon as possible, especially for a Tribe such as ours that is now in its fourth year of Compact administration. We believe that our experience, and that of other Tribes, is positive proof that this experiment is a success and should be transformed from demonstration to permanent in nature. We also welcome the increase in the number of Tribes participating. There is strength in numbers. Most importantly, however, we also believe that the path of Self-Governance could be of great value to many of our sister Tribes who choose to take it.

IV. ADDITIONAL SELF-GOVERNANCE ISSUES REQUIRING SUBCOMMITTEE ATTENTION.

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

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

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

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line-by-line negotiation of tribal shares. Rather, the law anticipates Central Office funds being treated the same as BIA Area Office and Agency Office funds in Self-Governance negotiations of tribal shares.

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

During our June negotiations in 1993, I met with John Duffey, counselor to Secretary Babbitt, to explain to him why I expected a pro-tribal response out of the Interior Department this year on Central Office shares.

We submitted a formal proposal on Central Office shares. Mr. Duffey asked for some time to respond. We agreed, anticipating with Mr. Duffey that Interior's counter-proposal would be made in time to negotiate a modification to our fiscal year 1994 funding agreement in October or November, 1993.

As of this date, however, it appears the Department has only just begun the process of developing a counter-proposal. The Mille Lacs Band would like to work with the Department on this. For that purpose, last July I wrote Assistant Secretary Ada Deer to suggest a process by which the Department could deliver on its commitment. Thus far it seems to us that the Department has become bogged down, unable to make or implement even a simple decision like what is the scope of work and deadline of a work group that develops options for Interior decision-makers to consider. We think this is partly because of the lack of clear lines of authority within Interior on Self-Governance.

While we are committed to working with Interior to see that this proposal is developed as soon as possible, we fear that nothing will change until Congress provides specific and express direction in the statute and accompanying Subcommittee or Committee Reports.

We have learned that the Department is considering recommending to the Subcommittee that you amend existing law to limit the funds that are to be made available for Self-Governance negotiations. The restrictions being considered include limiting Self-Governance funds to those that are contractible. The Mille Lacs Band urges the Subcommittee to strenuously oppose any retreat from current law. We have indicated our strong support for H.R. 3508 as introduced, but if the available funds authority is going to be amended from current law, we suggest that it be strengthened, not weakened. We set forth below some Bill language that would strengthen H.R. 3508 in this regard:

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PROPOSED BILL LANGUAGE

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

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

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

(2) The tribal share of a tribe shall be determined in negotiations using factors directly related to the budget account, fund or program

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being allocated, and shall be separately calculated at each administrative level of the Federal agency using factors specific to that level. In lieu of negotiating a tribal share of funds from the central office or other national-scope organizational level of a Federal agency, a tribe may elect to receive the sum of \$45,000 per year."

PROPOSED REPORT LANGUAGE

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

B. COMPEL BIA RESTRUCTURING.

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

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

We suggest that this Subcommittee ask BIA and IHS to alert the Subcommittee and the Tribes to the details of each internal Administration proposal to reinvent BIA and IHS so

<p style="text-align: center;">TESTIMONY OF THE HONORABLE MARGE ANDERSON, CHIEF EXECUTIVE MILLE LACS BAND OF OJIBWE FEBRUARY 25, 1994, SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS HEARING ON H.R. 3508 (SELF-GOVERNANCE)</p>

that the Subcommittee and the Tribes have the chance to analyze each proposal to ensure that savings are captured for the benefit of Indian Tribes and their members.

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

C. MAKE INTERIOR'S POLICY COUNCIL USEFUL

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

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

The Mille Lacs Band fears that nothing will change until Congress provides specific and express direction in the statute and accompanying Committee Reports. Therefore we suggest that this Subcommittee provide Report language to accompany H.R. 3508 as follows:

PROPOSED REPORT LANGUAGE

"The Subcommittee urges the Secretary to order the Department's Self-Governance Policy Council to convene regularly scheduled monthly meetings to finally resolve departmental policy and administrative issues concerning Self-Governance. The Interior Self-Governance Policy Council should be chaired by the Director of the Office of Self-Governance, with additional members including the Assistant Secretary for Indian Affairs, a representative of the Office of the Secretary, the Associate Solicitor for Indian Affairs, and two non-Federal members appointed by the Secretary representing tribes with self-governance agreements with the Department. Each non-Federal member should serve a 1-year, nonconsecutive term, and should be selected in such manner as to achieve geographic representation from among nominations made by tribes having agreements authorized under this title

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with the Department. Each non-Federal member should have voice but no voting privileges on all matters before the Self-Governance Policy Council. Complete minutes of each meeting of the Self-Governance Policy Council should be timely distributed to all tribes having agreements authorized under this title with the Department. The Subcommittee intends these measures to strengthen the existing Self-Governance Policy Council within the Department of the Interior. Of particular importance to participating tribes is the need to ensure that the Department makes Self-Governance decisions with dispatch, with a rational basis, and in close coordination and communication with those most affected -- the tribes themselves."

V. CONCLUSION.

The time has now come to make Self-Governance permanent for Interior and adopt H.R. 3508 as introduced. It is also an opportune time for Congress to stay firmly in charge of guiding the Administration's implementation of this initiative. I understand that a few key Interior policy advisers would prefer to move slowly with this project and legislation. I respectfully submit that the Department has not moved in any speed but "slow" thus far, which is why this legislation is so critically necessary. We have received numerous public and private promises of support for this project and legislation from the top appointees in the Clinton Administration. Indeed, whenever an appointee gives an address before a tribal audience, Self-Governance is consistently referenced as an example of how strongly the Department supports self-determination for Indian tribes. I believe that it is time to do away with the speeches and simply act. However, action will not occur without a push from the Congress.

The Mille Lacs Band of Ojibwe thanks this Subcommittee for its leadership on Self-Governance. I further thank you, Mr. Chairman, for introducing H.R. 3508 and for your personal commitment to Self-Governance. Together with Tribes, you have been charting a dramatically new course in the relations between tribal governments and the United States. We appreciate very much your effort.

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

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COMPARISON OF SELF-GOVERNANCE BILLS WITH CURRENT LAW

February 25, 1994

H.R. 3508 (as introduced 11/15/93)	S. 1618 (as Senate passed 11/24/93)	Current Law Title III, P.L. 93-638
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"Sec. 1. Short Title.

This Act may be cited as the "Tribal Self-Governance Act of 1993".

"Sec. 2. Findings.

Congress finds that --

(1) the tribal right of self-governance flows from the inherent sovereignty of Indian tribes and nations;

(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

"Sec. 1. Short Title.

This Act may be cited as the "Tribal Self-Governance Act of 1993".

"Sec. 2. Findings.

Congress finds that --

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(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States Government with Indian tribes;

[no comparable]

[no comparable]

H.R. 3508

(as introduced 11/15/93)

(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

(4) the Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that --

(A) transferring control to tribal governments, upon tribal request, over funding and decisionmaking for Federal Programs, services, functions, and activities intended to benefit

S. 1618

(as Senate passed 11/24/93)

(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

(4) the Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States, and to strengthen tribal control over Federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that --

(A) transferring control to tribal governments, upon tribal request, over funding and decisionmaking for Federal programs, services, functions, and activities intended to benefit

Current Law

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(as introduced 11/15/93)

Indians is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

(B) transferring control to tribal governments, upon tribal request, over funding and decisionmaking for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.

"Sec. 3. Declaration of Policy.

It is the policy of this Act to permanently establish and implement tribal self-governance --

(1) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(2) to permit each Indian tribe to choose the extent of the

S. 1618

(as Senate passed 11/24/93)

Indians, is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

(B) transferring control to tribal governments, upon tribal request, over funding and decisionmaking for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.

"Sec. 3. Declaration of Policy.

It is the policy of this Act to permanently establish and implement Self-Governance --

(1) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(2) to permit each Indian tribe to choose the extent of the

Current Law

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participation of such tribe in self-governance;

(3) to coexist with the provisions of the Indian Self-Determination Act relating to the provision of Indian services by designated Federal agencies;

(4) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

(5) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, and activities that meet the needs of the individual tribal communities; and

(6) to provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.

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(6) to provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.

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"Sec. 4. Tribal Self-Governance.

The Indian Self-Determination and Education Assistance Act is amended by adding at the end the following new title:

"TITLE IV – TRIBAL SELF-GOVERNANCE

"Sec. 401. Establishment.

"The Secretary of the Interior (hereinafter in this title referred to as the 'Secretary') shall establish and carry out a program within the Department of the Interior to be known as Tribal Self-Governance (hereinafter in this title referred to as 'Self-Governance') in accordance with this title.

"Sec. 402. Selection of Participating Indian Tribes.

"(a) Continuing Participation.-- Each Indian tribe that is participating

"Sec. 4. Tribal Self-Governance.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following new title:

"TITLE IV – TRIBAL SELF-GOVERNANCE

"Sec. 401. Establishment.

"The Secretary of the Interior (referred to in this title as the 'Secretary') shall establish and carry out a program within the Department of the Interior to be known as Tribal Self-Governance (referred to in this title as 'Self-Governance') in accordance with this title.

"Sec. 402. Selection of Tribes.

"(a) Continuing Participation.-- Each tribe that is participating in the

[no comparable]

"Sec. 301. The Secretary of the Interior and the Secretary of Health and Human Services (hereafter in this title referred to as the 'Secretaries') each shall, for a period not to exceed eight years following enactment of this title [October 5, 1988], conduct a research and demonstration project to be known as the Tribal Self-Governance Project according to the provisions of this title.

[no comparable]

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in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III on the date of enactment of this title shall thereafter participate in Self-Governance under this title and cease participation in the Tribal Self-Governance Demonstration Project under title III with respect to the Department of the Interior.

Tribal Self-Governance Demonstration Project at the Department of the Interior under title III on the date of enactment of this title shall thereafter participate in Self-Governance under this title and cease participation in the Tribal Self-Governance Demonstration Project under title III with respect to the Department of the Interior.

"(b) Additional Participants.--In addition to those Indian tribes participating in Self-Governance under subsection (a), the Secretary, acting through the Director of Self-Governance, may select up to 20 new tribes per year from the applicant pool described in subsection (c) to participate in Self-Governance.

"(b) Additional Tribes.--In addition to those tribes participating in Self-Governance under subsection (a), the Secretary, acting through the Director of the Office of Self-Governance, may select up to 20 new tribes per year, from the applicant pool described in subsection (c), to participate in Self-Governance.

"Sec. 302. (a) The Secretaries shall select thirty tribes to participate in the demonstration project, as follows:

"(1) a tribe that successfully completes a Self-Governance Planning Grant, authorized by Conference Report 100-498 to accompany H.J.Res. 395, One Hundredth Congress, first session [Pub.L. 100-202] shall be selected to participate in the demonstration project; and

"(c) Applicant Pool.--The qualified applicant pool for Self-

"(c) Applicant Pool.--The qualified applicant pool for Self-

"(2) the Secretaries shall select, in such a manner as to achieve geographic representation, the

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Governance shall consist of each tribe that --

Governance shall consist of each tribe that --

remaining tribal participants from the pool of qualified applicants. In order to be in the pool of qualified applicants --

"(1) successfully completes the planning phase described in subsection (d);

"(1) successfully completes the planning phase described in subsection (d);

[see comparable § 302(a)(1) above]

"(2) has requested participation in Self-Governance; and

"(2) has requested participation in Self-Governance; and

"(A) the governing body of the tribe shall request participation in the demonstration project;

"(B) such tribe shall have operated two or more mature contracts; and

"(3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

"(3) has demonstrated, for the previous 3 fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

"(C) such tribe shall have demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by such tribe having no significant and material audit exceptions in the required annual audit of such tribe's self-determination contracts.

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"(d) Planning Phase.--Each Indian tribe seeking to begin participation in Self-Governance shall complete a planning phase in accordance with this subsection. The tribe shall be eligible for a grant to plan and negotiate participation in Self-Governance. The planning phase shall include --

"(1) legal and budgetary research; and

"(2) internal tribal government planning and organizational preparation.

"Sec. 403. Funding Agreements.

"(a) Authorization.--The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government.

"(b) Contents.--Each funding agreement shall --

"(d) Planning Phase.--Each tribe seeking to begin participation in Self-Governance shall complete a planning phase in accordance with this subsection. The tribe shall be eligible for a grant to plan and negotiate participation in Self-Governance. The planning phase shall include --

"(1) legal and budgetary research; and

"(2) internal tribal government planning and organizational preparation.

"Sec. 403. Funding Agreements.

"(a) Authorization.--The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government.

"(b) Contents.--Each funding agreement shall --

[see comparable § 302(a)(1) above]

"Sec. 303. (a) The Secretaries is (sic) directed to negotiate, and to enter into, an annual written funding agreement with the governing body of a participating tribal government that successfully completes its Self-Governance Planning Grant. Such annual written funding agreement --

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<p>"(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities administered by the Department of the Interior that are otherwise available to Indian tribes or Indians, including (but not limited to) --</p>	<p>"(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities administered by the Department of the Interior that are otherwise available to Indian tribes or Indians, including --</p>	<p>"(1) shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions of the Department of the Interior and the Indian Health Service of the Department of Health and Human Services that are otherwise available to Indian tribes or Indians, including but not limited to, the Act of April 16, 1934 (48 Stat. 596), as amended, [sections 452 to 457 of this title] and the Act of November 2, 1921 (42 Stat. 208)[section 13 of this title];</p>
<p>"(A) the Act of April 16, 1934 (25 U.S.C. 452 <u>et seq.</u>); and</p>	<p>"(A) the Act of April 16, 1934 (popularly known as the 'Johnson-O'Malley Act') (48 Stat. 596, chapter 147; 25 U.S.C. 452 <u>et seq.</u>); and</p>	<p>61</p>
<p>"(B) the Act of November 2, 1921 (25 U.S.C. 13);</p>	<p>"(B) the Act of November 2, 1921 (popularly known as the 'Snyder Act') (42 Stat. 208, chapter 115; 25 U.S.C. 13);</p>	<p>"(2) subject to the terms of the written agreement authorized by this title, shall authorize the tribe to redesign programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services;</p>
<p>"(2) subject to the terms of the agreement, authorize the tribe to redesign programs, services, functions, or activities and to reallocate funds for such programs, services, functions, or activities;</p>	<p>"(2) subject to the terms of the agreement, authorize the tribe to redesign programs, services, functions, or activities, and to reallocate funds for such programs, services, functions, or activities;</p>	<p>"(2) subject to the terms of the written agreement authorized by this title, shall authorize the tribe to redesign programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services;</p>

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"(3) prohibit the inclusion of funds provided --

"(A) pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

"(B) for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

"(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 102;

"(4) specify the services to be performed, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

"(3) prohibit the inclusion of funds provided --

"(A) pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

"(B) for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

"(C) to the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 102;

"(4) specify the services to be performed, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

"(3) shall not include funds provided pursuant to the Tribally Controlled Community College Assistance Act (Public Law 95-471) [Pub.L. 95-471, Oct. 17, 1978, 92 Stat. 1325], for elementary and secondary schools under the Indian School Equalization Formula pursuant to title XI of the Education Amendments of 1978 (Public Law 95-561, as amended) [Pub.L. 95-561, Nov. 1, 1978, 92 Stat. 2143], or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division: Provided, That nothing in this section shall affect the contractibility of such divisions under section 102 of this Act [section 450f of this title];

"(4) shall specify the services to be performed, the functions to be performed, and the responsibilities of the tribe and the Secretaries pursuant to this agreement;

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"(5) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

"(5) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

"(5) shall specify the authority of the tribe and the Secretaries, and the procedures to be used, to reallocate funds or modify budget allocations within any project year;

"(6) allow for retrocession of programs or portions of programs pursuant to section 105(e);

"(6) provide for retrocession of programs or portions of programs pursuant to section 105(e);

[see comparable § 303(a)(8) below]

"(7) provide that, for the year for which, and to the extent to which, funding is provided to a tribe under this section, the tribe --

"(7) provide that, for the year for which, and to the extent to which, funding is provided to a tribe under this section, the tribe --

"(A) shall not be entitled to contract with the Secretary for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

"(A) shall not be entitled to contract with the Secretary for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

[see comparable § 303(b)(1) below]

"(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to agreements entered into under this section; and

"(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to

[see comparable § 303(b)(2) below]

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agreements entered into under this section; and

"(8) prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, and other laws.

"(8) prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, and other laws.

[see comparable § 303(a)(7) below]

"(c) Submission for Review.--Not later than 90 days before the proposed effective date of an agreement entered into under this section, the Secretary shall submit a copy of such agreement to --

"(c) Submission for Review.--Not later than 90 days before the proposed effective date of an agreement entered into under this section, the Secretary shall submit a copy of such agreement to --

[see comparable § 303(a)(9) below]

"(1) each Indian tribe that is served by the Agency that is serving the tribe that is a party to the funding agreement;

"(1) each tribe that is served by the Agency that is serving the tribe that is a party to the funding agreement;

"(2) the Committee on Indian Affairs of the Senate; and

"(2) the Committee on Indian Affairs of the Senate; and

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"(3) the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

"(3) the Committee on Natural Resources of the House of Representatives.

"(d) Payment. --

"(d) Payment. --

"(1) In general.--At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

"(1) In general.--At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

[see comparable § 303(c) below]

"(2) Amount.--Subject to paragraph (3) of this subsection and paragraphs (1) and (3) of subsection (b), the Secretary shall provide funds to the tribe for one or more programs, services, functions, or activities in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including direct program costs, and for any funds that are specifically or functionally related

"(2) Amount.--Subject to paragraph (3) of this subsection and paragraphs (1) and (3) of subsection (b), the Secretary shall provide funds to the tribe for one or more programs, services, functions, or activities in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including direct program costs and indirect costs, and for any funds that are specifically or

"(6) shall, except as provided in paragraphs (1) and (2), provide for payment by the Secretaries to the tribe of funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under contracts and grants under this Act [Public Law 93-638], including direct program costs and indirect costs, and for any funds which are specifically related to the provision by the Secretaries of

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to the provision by the Secretary of services and benefits to the tribe and its members.

functionally related to the provision by the Secretary of services and benefits to the tribe and its members.

services and benefits to the tribe and its members: Provided, however, That funds for trust services to individual Indians are available under this written agreement only to the extent that the same services which would have been provided by the Secretaries are provided to individual Indians by the tribe;

"(3) Trust services.--Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

"(3) Trust services.--Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

[see comparable § 403(b)(8) above]

[see comparable § 403(b)(8) above]

"(7) shall not allow the Secretaries to waive, modify or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians which exists under treaties, Executive orders, and Acts of Congress;

[see comparable § 403(b)(6) above]

[see comparable § 403(b)(6) above]

"(8) shall allow for retrocession of programs or portions thereof pursuant to section 105(e) of this Act [section 450j(e) of this title]; and

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[see comparable § 403(c) above]

[see comparable § 403(c) above]

"(9) shall be submitted by the Secretaries ninety days in advance of the proposed effective date of the agreement to each tribe which is served by the agency which is serving the tribe which is a party to the funding agreement and to the Congress for review by the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

"(b) For the year for which, and to the extent to which, funding is provided to a tribe pursuant to this title, such tribe --

[see comparable § 403(b)(7)(A) above]

[see comparable § 403(b)(7)(A) above]

"(1) shall not be entitled to contract with the Secretaries for such funds under section 102 [section 450f of this title], except that such tribe shall be eligible for new programs on the same basis as other tribes; and

[see comparable § 403(b)(7)(B) above]

[see comparable § 403(b)(7)(B) above]

"(2) shall be responsible for the administration of programs,

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services and activities pursuant to agreements under this title.

[see comparable § 403(d)(1) above]

[see comparable § 403(b)(1) above]

"(c) At the request of the governing body of the tribe and under the terms of an agreement pursuant to subsection (a), the Secretaries shall provide funding to such tribe to implement the agreement.

"(e) Civil Actions. --

"(1) Definition of contract.-- Except as provided in paragraph (2), for the purposes of section 110, the term 'contract' shall include agreements entered into under this title.

"(2) Professional contracts.--For the period that an agreement entered into under this title is in effect, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other

"(e) Civil Actions. --

"(1) Definition of 'contract'.-- Except as provided in paragraph (2), for the purposes of section 110, the term 'contract' shall include agreements entered into under this title.

"(2) Professional contracts.--For the period that an agreement entered into under this title is in effect, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576, 25 U.S.C. 476), shall not apply to attorney and other

"(d) For the purpose of section 110 of this Act [section 450m-1 of this title] the term 'contract' shall also include agreements authorized by this title; except that for the term of the authorized agreements under this title, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81) [section 81 of this title], and section 16 of the Act of June 18, 1934 (25 U.S.C. 476) [section 476 of this title], shall not apply to attorney and other professional contracts by participating Indian tribal governments operating under the provisions of this title.

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professional contracts by Indian tribal governments participating in Self-Governance under this title.

professional contracts by Indian tribal governments participating in Self-Governance under this title.

"(f) Facilitation. --

"(f) Facilitation. --

"(1) Interpretation.--Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate --

"(1) Interpretation.--Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate --

"(e) To the extent feasible, the Secretaries shall interpret Federal laws and regulations in a manner that will facilitate the agreements authorized by this title.

"(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section; and

"(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section; and

"(f) To the extent feasible, the Secretaries shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.

"(B) the implementation of agreements entered into under this section.

"(B) the implementation of agreements entered into under this section.

"(2) Waiver. --

"(2) Waiver. --

"(A) Request.--A tribe may submit a written request for a waiver to the Secretary identifying the regulation sought

"(A) Request.--A tribe may submit a written request for a waiver to the Secretary identifying the regulation sought

[no comparable]

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to be waived and the basis for the request.

"(B) Decision.--Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because that regulation is expressly required by Federal law.

to be waived and the basis for the request.

"(B) Decision.--Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law.

"(C) Appeal.--Not later than 60 days after denial of a waiver request, the Secretary shall at the request of the tribe, provide the tribe with a hearing on the record and an opportunity for an appeal.

"(C) Appeal.--Not later than 60 days after denial of a waiver request, the Secretary shall, at the request of a tribe, provide the tribe with a hearing on the record and opportunity for an appeal.

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"Sec. 404. Budget Request.

"The Secretary shall identify, in the annual budget request of the President to the Congress under section 1105 of title 31, United States Code, any funds proposed to be included in Self-Governance.

"Sec. 405. Reports.

"(a) Requirement.--The Secretary shall submit to Congress a written report on January 1 of each year following the date of enactment of this title regarding the administration of this title.

"(b) Contents.--The report shall contain --

"(1) the relative costs and benefit of Self-Governance;

"(2) identification of all funds that are specifically and functionally related to the provision of services and benefits to the tribe and its

"Sec. 404. Budget Request.

"The Secretary shall identify, in the annual budget request of the President to the Congress, any funds proposed to be included in Self-Governance.

"Sec. 405. Reports.

"(a) Requirement.--Not later than January 1 of each year after the date of enactment of this title, the Secretary shall submit to Congress a report regarding the administration of this title.

"(b) Contents.--The report shall --

"(1) identify the relative costs and benefits of Self-Governance;

"(2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and

"Sec. 304. The Secretaries shall identify, in the President's annual budget request to the Congress, any funds proposed to be included in the Tribal Self-Governance Project. The use of funds pursuant to this title shall be subject to specific directives or limitations as may be included in applicable appropriations Acts.

"Sec. 305. The Secretaries shall submit to the Congress a written report on July 1 and January 1 of each of the five years following the date of enactment of this title [October 5, 1988], on the relative costs and benefits of the Tribal Self-Governance Project. Such report shall be based on mutually determined baseline measurements jointly developed by the Secretaries and participating tribes, and shall separately include the views of the tribes.

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members and the corresponding reduction in the Federal bureaucracy; and

benefits to Self-Governance tribes and their members, and the corresponding reductions in the Federal bureaucracy; and

"(3) the separate views of the tribes.

"(3) include the separate views of the tribes.

"Sec. 406. Effect on Other Agreements and Laws.

"Sec. 406. Effect on Other Agreements and Laws.

"Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

"Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

"Sec. 306. Nothing in this title shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 [section 450f of this title] or any other applicable Federal law and the provisions of section 110 of this Act [section 450m-1 of this title] shall be available to any tribe or Indian organization which alleges that a funding agreement is in violation of this section.

"Sec. 407. Negotiated Rulemaking.

"Sec. 407. Negotiated Rulemaking.

"(a) In General--Not later than 90 days after the date of enactment of this title, at the request of a majority of the Indian tribes with

"(a) In General--Not later than 90 days after the date of enactment of this title, at the request of a majority of the Indian tribes with

[no comparable]

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agreements under this title, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

"(b) Committee.--A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section, shall have as a majority of its members representatives of Indian tribes with agreements under this title.

"(c) Adaptation of Procedures.-- The Secretary shall adapt the negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and the Indian tribes.

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agreements under this title, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

"(b) Committee.--A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section, shall have as its members only Federal and tribal government representatives, a majority of whom shall be representatives of Indian tribes with agreements under this title.

"(c) Adaptation of Procedures.-- The Secretary shall adapt the negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and the Indian tribes.

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"(d) Effect.--The lack of promulgated regulations shall not limit the effect of this title.

"(d) Effect.--The lack of promulgated regulations shall not limit the effect of this title.

"Sec. 408. Authorization of Appropriations.

"There are authorized to be appropriated such sums as may be necessary to carry out this title."

"Sec. 408. Authorization of Appropriations.

"There are authorized to be appropriated such sums as are necessary to carry out this title."

"Sec. 307. For the purpose of providing planning and negotiation grants to the ten tribes added by section 3 of the Tribal Self-Governance Demonstration Project Act [Pub.L. 102-184, § 3, which amended section 302(a) of this note] to the number of tribes set forth by section 302 of this Act (as in effect before the date of enactment of this section)[Dec. 4, 1991], there is authorized to be appropriated \$700,000.

[no comparable]

[no comparable]

"Sec. 308. (a) The Secretary of Health and Human Services, in consultation with the Secretary of the Interior and Indian tribal governments, participating in the demonstration project under this title, shall conduct a study for the purpose of determining the feasibility of extending the demonstration project under this title to the activities,

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programs, functions, and services of the Indian Health Service. The Secretary shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act [Dec. 4, 1991].

[no comparable]

[no comparable]

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"(b) The Secretary of Health and Human Services may establish within the Indian Health Service an office of self-governance to be responsible for coordinating the activities necessary to carry out the study required under subsection (a).

[no comparable]

[no comparable]

"Sec. 309. The Secretary of the Interior shall conduct a study for the purpose of determining the feasibility of including in the demonstration project under this title those programs and activities excluded under section 303(a)(3). The Secretary of the Interior shall report the results of such study, together

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with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act [Dec. 4, 1991].

[no comparable]

[no comparable]

"Sec. 310. For the purposes of providing one year planning and negotiations grants to the Indian tribes identified by section 302, with respect to the programs, activities, functions, or services of the Indian Health Service, there are authorized to be appropriated such sums as may be necessary to carry out such purposes. Upon completion of an authorized planning activity or a comparable planning activity by a tribe, the Secretary is authorized to negotiate and implement a Compact of Self-Governance and Annual Funding Agreement with such tribe."

Mr. FALCOMVAEGA. As you will see, we are now accompanied by two very powerful members of the committee. On my immediate right, the gentleman that certainly has my admiration and respect over the years, and he has always been very sensitive to the needs of Native Americans.

First, my apologies to Mr. Edward Thomas, as I may have misstated the name of the tribe as Tlingit. It is Tlingit and Haida. I see the same problems these Members have with my name when they keep saying Falcomvaega. They screw it up so royally, they could never pronounce it.

Of course, also on my left we have with us Chairman Richardson. I would like to give time now to the distinguished Ranking Minority Member of our committee, Mr. Young from Alaska, for his opening statement.

Mr. YOUNG. Thank you, Mr. Chairman. I apologize for being a little late. I want to thank you for holding this hearing today to allow us to discuss the Tribal Self-Governance Act and the mysterious removal of the Tlingit and Haida Central Council from the list of federally recognized Indian groups by the Department of the Interior. I strongly support both of those bills we are having a hearing on today.

First, I would like to welcome all of our witnesses and guests here this morning, especially those who have traveled from Alaska to be with us today. I just flew back Tuesday on my wedding anniversary to vote on a home school amendment yesterday. I have great sympathy for anybody that flies that far all the time. It is not an easy trip and the weather is good here today and just as I left Alaska, the weather was better there.

My support for local decision-making and cutting red tape is well-known. If there is one thing that riles Alaskans more than anything, it is being controlled from Washington. The Indian Self-Governance Act seeks to place more decision-making in the hands of people closest to the problems and to trust them to administer programs to benefit their neighbors. Since there seems to be little disagreement about the initiative, I hope we can move forward with the legislation and send it to the White House.

I would like to focus this morning on the Tlingit Haida Central Council legislation introduced in the other body by Senator Frank Murkowski. I wish it wasn't necessary; I am sorry we have to do it just to correct something I think the Department of the Interior screwed up on. I don't think there is anyone familiar with the Central Council's activity who would have thought the Department would deny them or drop them from their list. They have been on every list of federally recognized tribes since 1982. In 1975, my good friend Morris Thompson was head of the BIA. He was clear in a memo that the Central Council was a tribal entity.

That is what makes the Department's action concerning the Central Council so mysterious. When this legislation was being considered at the end of the session last year, there were threats of a veto if the bill was passed. As of this morning, we have heard no reasons why they should have been bumped off the list.

This is very disturbing to me and I think that Alaskans deserve better than that from their government. It is my intention that this bill pass with the help of Chairman Richardson and be sent to the

President for his signature. I also intend to ask and submit questions to get to the bottom of this mystery, and I am considering taking further legislative steps to remedy what appears to be a pattern of dropping the departmental recognition of long-recognized individuals and entities. While I support the Department's responsible use of its recognition powers to extend status to groups and individuals, I think the recent development of disorganizing without justification—or derecognizing without justification has to be hemmed in.

Again, Mr. Chairman, I think we can move these bills very rapidly. I look forward to hearing from the witnesses and especially those from Alaska.

Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. I thank the gentleman from Alaska.

[Prepared statement of Mr. Young follows:]

HONORABLE DON YOUNG .

re: Hearing on H.R. 3508/S. 1608 - "Tribal Self Governance Act" & S. 1784, "Restore Central Council of Tlingit-Haida Indian Tribes to DOI List of Federally Recognized Indian Entities"

Mr. Chairman:

I want to thank you for holding this hearing today to allow us to discuss the Tribal Self-Governance Act and the mysterious removal of the Tlingit Haida Central Council from the list of federally recognized Indian groups by the Department of Interior. I strongly support both bills.

First, I'd like to welcome all of our witnesses and guests here this morning, especially those who have travelled from Alaska to be with us today. It's no easy trip, and despite our nice weather today, it's never much fun having to leave the Great Land to come to the hustle and bustle of the East Coast.

My support for local decision-making and cutting red

tape is well-known; if there's one thing that riles Alaskans more than anything, it's being controlled from Washington. The Indian Self Governance Act seeks to place more decision-making in the hands of people closest to the problems, and to trust them to administer programs to benefit their neighbors. Since there seems to be little disagreement about the initiative, I hope we can move forward with the legislation and send it to the White House.

I'd like to focus this morning on the Tlingit-Haida Central Council legislation introduced in the other body by Senator Frank Murkowski. I wish it weren't necessary, and I'm sorry we have to do it just to correct something I think the Department of Interior screwed up. I don't think there's anyone familiar with the Central Council's activities who

would have thought that the Department would drop them from its list. They've been on every list of federally-recognized tribes since 1982. In 1975, my good friend Morris Thompson was head of the BIA, and he was clear in a memo that Central Council was a tribal entity.

That's what makes the Department's actions concerning the Central Council so mysterious. When this legislation was being considered at the end of the session last year, there were threats of a veto if the bill was passed. As of this morning, we had heard no reasons why they should have been bumped off the list. This is very disturbing to me, and I think that Alaskans deserve better than that from their government. It is my intention that this bill pass with the help of Chairman Richardson, and be sent to the President for his

signature. I also intend to ask and submit questions to get to the bottom of this mystery, and am considering taking further legislative steps to remedy what appears to be a pattern of dropping Departmental recognition of long-recognized individuals and entities. While I support the Department's responsible use of its recognition powers to extend status to groups and individuals, I think the recent development of de-recognizing without justification has to be hemmed in.

Thank you again, Mr. Chairman, and a hearty welcome to our guests.

Mr. FALCOMVAEGA. Chairman Richardson.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. Thank you, Mr. Chairman. I am going to submit my statement in the record.

Let me just add to what Mr. Young has said, first. He has been a very valuable Member of this committee on Indian issues. Over the years, he has been most supportive. I agree with him that in the brief description I have had of his legislation that it is my intent to support his legislation, to move it rapidly. I think we have to correct this problem.

And I would like to again thank my friend, Mr. Faleomavaega, for subbing for me. I had a conflict downtown. I would ask that Mr. Faleomavaega continue chairing this hearing.

We have some very important witnesses from around the country. I see several of my friends that are here. I hope to stay and listen to their testimony.

Thank you, Mr. Chairman.

Mr. FALCOMVAEGA. Thank you, Mr. Chairman. I would like to echo, certainly, the sentiments expressed by both Mr. Young and Mr. Richardson. I would like to consider that this problem with our friends, the Tlingit and the Haida, was a little oversight on the part of the administration, that there will be corrective actions taken. We will be having the hearing later on as part of Panel IV on S. 1784; so with that in mind, shall we continue then with the witnesses?

Mr. Thomas.

STATEMENT OF HON. EDWARD K. THOMAS

Mr. EDWARD THOMAS. Good morning, Mr. Chairman, Congressman Young, Chairman Richardson. My name is Ed Thomas. I am the President of the Central Council of Tlingit and Haida Indian tribes of Alaska, I have been there now for about 10 years.

We have been one of the original tribes involved in the self-governance movement. We were one of the first to get the planning grants, or one of the first ten tribes. We, in our region, operate as a consolidated compact and we involve other signatory tribes who signed our compact with equal status. And so with that in mind, in the interests of time, I will yield to Chris Collison, who is also from Ketchikan, and a signatory tribe to our compact.

I want to thank you for the opportunity for this hearing, and I will reserve my comments until the second hearing. Thank you.

[Prepared statement of Mr. Edward Thomas follows:]



CENTRAL COUNCIL
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**TESTIMONY OF
 THE HONORABLE EDWARD K. THOMAS, PRESIDENT
 TLINGIT AND HAIDA CENTRAL COUNCIL**

BEFORE THE
 U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
 HEARING ON H.R. 3508
 A BILL TO MAKE SELF-GOVERNANCE AUTHORITY PERMANENT
 FEBRUARY 25, 1994

I. INTRODUCTION

GREETINGS FROM JUNEAU, ALASKA! My name is Edward K. Thomas. I am President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Central Council). I am honored to present testimony on Self-Governance issues to this distinguished Subcommittee and to lend our strong support for this effort to make the Self-Governance authority permanent.

II. CENTRAL COUNCIL IS A PIONEERING SELF-GOVERNANCE TRIBE

Central Council was one of the first ten Tribes to receive Self-Governance planning grants five years ago. After great difficulty in getting BIA to sit down to negotiate, we finally negotiated a Compact in 1991 which became effective January 2, 1992. Under our Compact, Central Council assumed responsibility for all of our BIA-funded programs.

The bulk of our planning grant was used to develop a consensus of all the Tribes in the region covered by the BIA Southeast Alaska Agency Office. This resulted in a Compact where each community-based I.R.A. Tribe that was administering a P.L. 93-638 BIA contract at that time joined Central Council as an equal partner in the Compact. Permanent Compact language was adopted to ensure that no Signatory Tribe would be subordinated to another Signatory Tribe.

The Southeast Alaska Tribes' initial top priority was to increase tribal program services for our needy people by using tribal share dollars BIA had previously spent on bureaucracy and administration. We were able to do this in our first Compact year by abolishing an entire BIA Agency Office and applying the dollars saved to direct services. This may have made us fewer friends within the federal bureaucracy, but it was good tribal self-governance.

I will not dwell on the problems we have had trying to negotiate funds and implement our tribal programs under Self-Governance. Instead, I want to focus my remaining remarks on the good things that have happened for Central Council in this new, government-to-government relationship we have been building with the United States Congress and various federal agencies.

III. EXAMPLES OF PROGRESS IN CENTRAL COUNCIL'S SELF-GOVERNANCE

Under its recent years of Self-Governance experience, Central Council has greatly expanded its programs and services, become an even more active contributor in its government-to-government

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TLINGIT AND HAIDA CENTRAL COUNCIL
FEBRUARY 25, 1994 HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
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relationship with the United States, strengthened its administrative management structures, increased its political ties to other Tribes in Southeast Alaska, and enhanced the responsiveness of its internal political structure to its members.

Under Self-Governance, Central Council has greatly expanded the programs and services it delivers to its members. Our mission as a tribal government is to care for the welfare of our people. One obvious way to measure how well we are doing is to look at the type and level of services we offer our people. In nearly every area, the variety, quantity, and quality of services has increased in recent years.

Because of our relatively stable base Compact budget and the flexibility of our program management tasks under Self-Governance, our key staff are able to conceive of and implement new directions which enhance the efficiency of our program operations. These staff are also more able to develop new and additional sources of public and private funding, which leverages an increased value from the Self-Governance funds we have already obtained.

Self-Governance participation has placed Central Council at the center of emerging federal Indian policy. Because we are involved so deeply in policy and implementation matters, we have had increasingly close contact with our State congressional delegation and other Members of Congress, Congressional Committees such as this one, and of course, White House and federal agency officials. Central Council has been able to bring a Self-Governance tribal perspective to its leadership roles in inter-tribal efforts to study and restructure the federal agencies and budgeting process. Active involvement in these ongoing efforts is a consuming task, because the transition to government-to-government relationships between the United States and the various Indian Tribes will not be fully achieved until the last vestiges of paternalism and control are removed from every federal statute, regulation and manual guideline.

Increasing our responsibilities under Self-Governance has also required Central Council to make major efforts to strengthen our administrative management structures. We have much more work to do under Self-Governance than before. This work requires far tighter internal management controls. We have improved our financial management procedures and upgraded our communication and control systems. Our program managers establish performance goals within established budget constraints, and then perform regular evaluations designed to spot problems early enough to permit efficient improvement. Our membership is best served by an efficient and well-ordered service delivery system, and the continuity and flexibility provided by Self-Governance authority has enabled and expanded our capacity in these areas.

Program consolidation and stable base budget authority under Self-Governance has helped make it possible for us to fine-tune our indirect cost proposal so that we now have in place a multiple rate that better reflects our actual operations and provides us with greater ability to control costs and target funds at the most need.

As a consequence of working together with other Tribes to help shape and implement Self-Governance, Central Council has developed stronger political and programmatic ties with other tribal governments in our region of Southeast Alaska and also throughout Alaska and the United States. We have learned and gained from this interaction with other Tribes. As a pioneering Self-Governance Tribe, Central Council has also contributed much to other Tribes in this process. In one case, we have offered to manage on an interim basis the financial administration of another Tribe at

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that Tribe's request in order to ensure that critical services to its members are resumed and it is given the tools to restore its capacity to operate its own programs.

The multi-tribal Compact to which Central Council is a Signatory Tribe could serve as a model for other Tribes. Central Council initially pursued Self-Governance on its own authority as one of the ten original Tribes chosen to begin the Demonstration Project. But later, Central Council invited five other Signatory Tribes to join Central Council in a multi-tribal Compact after it saw potential advantages for all Indians within the Southeast Alaska Agency Office region and the Interior Department indicated a willingness to forge such a multi-tribal agreement. Since the multi-tribal Compact embraced all those served within a single BIA Agency Office, this mechanism permitted a far less cumbersome approach for abolishing the Agency Office and redirecting its funds into program services operated by the Tribes themselves. One result of the multi-tribal Compact approach has been increased political or diplomatic ties between Tribes in Southeast Alaska. I have been invited on numerous occasions to address the governing bodies of other Signatory Tribes on various issues, we regularly coordinate our Self-Governance efforts, and our tribal staff assist each other in implementing Self-Governance initiatives. While Central Council and the other Signatory Tribes may not conclude that a multi-tribal Compact is the best way to achieve these goals in the future, our Compact arrangement has served us fairly well up to this time.

Finally, Self-Governance authorities have enhanced the responsiveness of Central Council's internal political and governing structure to its individual members. As a result of Self-Governance, our Executive Committee, which serves as Central Council's tribal council or general governing body, has had to make many more decisions that are of a governmental nature than ever before. While it has always been open process, our members have more access to our budgeting decision-making. Under Self-Governance, we do much better at assessing tribal priority needs and at communicating those judgments to our members. We have increased our efforts to write down and codify the tribal codes and laws that our people have followed for centuries, so that we can regain the actual exercise of more and more of the broad self-government power we once enjoyed.

For these and other examples space and time do not permit me to raise, Central Council wishes to thank this Subcommittee and the Congress in general for seeing the tribal vision for Self-Governance and for changing federal law to help make it possible.

**IV. CENTRAL COUNCIL STRONGLY SUPPORTS H.R. 3508
TO MAKE SELF-GOVERNANCE AUTHORITY PERMANENT**

Central Council strongly supports H.R. 3508 because it would give permanent statutory authority to what has been, to date, an impliedly temporary Demonstration Project. As a Tribe that was among the original ten Tribes in 1988 that developed the vision for the Self-Governance initiative, Central Council views each step forward as a very positive event.

There are many things we wish H.R. 3508 would address. Many of our concerns are answered in great detail in S. 550, which was introduced in early 1993 for discussion purposes by Senator McCain. S. 550 prescribes in a highly directive fashion how the federal agencies should carry out their responsibilities under Self-Governance.

However, we are persuaded that it is far more important to take an important journey step by step. Making Self-Governance authority permanent is a very important step in and of itself. For

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this reason, we strongly support H.R. 3508 as introduced and urge that it be quickly and favorably reported so that it can be signed into law at the earliest possible moment. We will continue to work with the Subcommittee to encourage the Interior Department to adopt the detailed reform efforts contained within S. 550.

V. CENTRAL COUNCIL SUPPORTS INCREASING
THE NUMBER OF PARTICIPANT TRIBES

H.R. 3508 lifts the lid on the number of Tribes authorized to participate in Self-Governance from the present maximum of 30 Tribes to an additional 20 new Tribes each year.

Central Council supports this increased participation because we believe Self-Governance is a wonderful opportunity which others should have access to if they so choose. We commend it to all other Tribes ready to face the challenge.

Central Council also supports the request of its sister Signatory Tribes in Southeast Alaska who have asked that Interior negotiate separate Compacts with them. Central Council invited these Signatory Tribes to participate alongside Central Council from the beginning, with the understanding that once the Self-Governance Project is made permanent, Central Council would likewise support these Signatory Tribes' request to have separate Compacts with the United States. Our multi-tribal Compact in Southeast Alaska is unique and has certain advantages and disadvantages for all concerned, but if a participating Signatory Tribe wishes to have its own Compact, Central Council has supported, and will continue to support, such requests.

VI. CONCLUSION

We strongly support H.R. 3508. We seek this Subcommittee's support in Central Council's continuing efforts to make good on the aspirations contained in our Compact of Self-Governance with the United States -- that government to government relations between my Tribe and the United States will be fostered and enhanced, that our tribal government will be strengthened, and that vital services will increase so that the life of my people will improve. We believe making the Self-Governance Project permanent as set forth in H.R. 3508 will go a long way toward making these goals more of a reality. Thank you.

Mr. FALCOMVAEGA. Ms. Collison.

STATEMENT OF HON. CHRISTINE COLLISON

Ms. COLLISON. Thank you. My name is Christine Collison; I am from Ketchikan, Alaska. I am the President of the Ketchikan Indian Corporation.

KIC strongly supports the enactment of H.R. 3508. The KIC tribal government believes that the self-governance effort is one of the most important Federal policies to affect Indian tribes in the last 20 years. KIC asks that you clearly indicate in the report language that the subcommittee intends H.R. 3508, and specifically Section 402(a), that deals with continuing participation of tribes, to mean that any tribe like KIC, which is now participating as a signatory tribe to a multitribal compact, shall be immediately eligible to negotiate a separate, single-tribe self-governance compact with the Interior Department.

During the demonstration phase of self-governance, Interior limited our opportunity to participate. This was through a multitribal compact with four other signatory tribes. But now as the number of tribes has increased on an annual basis and the project is made into a permanent program, our Tribal Council wants the option to have a separate single-tribe compact.

We ask you to avoid enacting any legislative language that could be interpreted in such a way that would exclude KIC or any other self-signatory tribes from immediately entering into a single-tribe self-governance compact with the United States Government.

KIC has experienced many problems with the BIA's implementation of the self-governance demonstration project. The most recent problem is in the area of contract support. It is our position that because of the added responsibility of administrating all of our programs, we are entitled to a larger share of contract support. To ensure that the self-governance succeeds, we need to have the resources to do the job.

All the same, our tribe has experienced many positive things, a result of our participation in self-governance. We have had the advantage of increased flexibility in targeting funds towards economic development. Last year, we did a pilot project of our dance theater with our Haida children. It was marketed for the tourism market, which is ever increasing in Alaska, and we hope to bring that back again this year, employing some of our GA clients and our native dance groups.

Our tribe is becoming more reliant on our own abilities to develop solutions for our own unique problems. We highly recommend passage of H.R. 3508 so that this authority is made permanent.

Thank you very much.

Mr. FALCOMVAEGA. Thank you, Ms. Collison.

[Prepared statement of Ms. Collison follows:]

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**TESTIMONY OF THE HONORABLE CHRISTINE COLLISON, PRESIDENT
KETCHIKAN INDIAN CORPORATION**

BEFORE THE

U.S. HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

**ON H.R. 3508 (A BILL PROVIDING PERMANENT AUTHORITY FOR TRIBAL SELF-GOVERNANCE)
FEBRUARY 25, 1994**

GOOD MORNING. My name is Christine Collison. I am the duly-elected President of Ketchikan Indian Corporation, a tribal government organized under the Indian Reorganization Act (I.R.A.). I am pleased to be able to personally present testimony to this Subcommittee on H.R. 3508, a bill that provides permanent legal authority for the Tribal Self-Governance efforts associated with the Department of the Interior and increase the number of Tribes eligible to sign Compacts and Annual Funding Agreements with the Department.

Ketchikan Indian Corporation (KIC) is a Tribe that has undergone rapid growth in its program responsibilities over the past three years. For many years prior to 1992, we administered contracts and grants under P.L. 93-638, the Indian Self-Determination Act. For the past three years we have joined with Central Council Tlingit Haida and three other Tribes as Signatories to the Southeast Alaska Compact of Self-Governance. The five Signatory Tribes to the combined Southeast Alaska Tribes' Compact of Self-Governance with Interior are KIC, Tlingit Haida Central Council, Organized Village of Kake, Sitka Tribe of Alaska, and Yakutat Native Association.

KIC strongly supports quick enactment of H.R. 3508. The KIC Tribal Council believes that the Self-Governance effort is one of the most important federal policies to affect Indian Tribes in the last 20 years. Self-Governance allows Tribes to address issues that arise at the local level. Our KIC Tribal Council has determined that our Native students are at risk -- their dropout rate is 63%. We have redesigned some of our education programs to meet this need. That is just one of the many examples of the flexibility we have under Self-Governance.

Another benefit is that our Tribal Council's effectiveness and commitment has improved dramatically. Tribal Council members are now involved in developing policy that gives specific direction to program and administrative staff. Council members are more informed about the immediate needs of our membership.

In addition to expressing our strong support for the bill, KIC specifically asked to testify today in order to urge this Subcommittee to include Report language similar to that in the Senate

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BEFORE THE U.S. HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
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Committee's Report which directs Interior to permit any Tribe which is a signatory to a multi-tribal Compact to negotiate a separate, single-Tribe Compact with the Interior Department.

KIC asks that you clearly indicate in the Report language that the Subcommittee intends H.R. 3508, and specifically, Section 402(a) that deals with the "continuing participation" of Tribes, to mean that any Tribe like KIC which is now participating as a Signatory to a multi-tribal Compact shall be immediately eligible to negotiate a separate, single-Tribe Self-Governance Compact with the Interior Department if that Signatory Tribe so chooses. (We have included proposed Report language as an attachment to our testimony.) KIC understands that three other Signatory Tribes, the Organized Village of Kake, Sitka Tribe of Alaska, and the Yakutat Native Association, also seek this same authority. All of us have the full support of the fifth Signatory Tribe to our multi-tribal Compact, the Tlingit and Haida Central Council. In fact, we note here KIC's appreciation for the role that Central Council played, as one of the original ten Self-Governance Tribes, in making it possible for KIC to be a Signatory Tribe along-side Central Council in the Southeast Alaska Tribes' Compact.

During the Demonstration phase of Self-Governance, Interior limited our opportunity to participate only through a multi-Tribe Compact with four other Signatory Tribes. But now as the number of Tribes is increased on an annual basis and the project is made into a permanent program, our Tribal Council wants the option to have a separate, single-Tribe Compact. Additionally, virtually all of the infrastructure for KIC to have a separate Self-Governance Compact is now in place. A primary example of this is our separate and distinct fund transfer system. We ask you to avoid enacting any legislative language that could be interpreted in such a way that would exclude KIC or any other Southeast Alaska Signatory Tribe from immediately entering into a single-Tribe Self-Governance Compact with the U.S. government. It would be unfair to KIC as well as an unnecessary administrative burden on the BIA and OSG if KIC was forced to revert to the BIA contracting system and wait its turn in line under Section 402(b) as an "additional Tribe" in order to qualify to negotiate a separate Compact.

KIC began operating our BIA-funded programs under the Compact on January 2, 1992. One of our main aims was to reduce a layer of BIA bureaucracy and transform the savings into tribal direct service programs. Our Compact has accomplished this - the Southeast Alaska BIA Agency Office was abolished and some of the savings were transferred to our Compact.

KIC has now begun our third year of Compact administration. At each of its annual negotiations, KIC and the other Southeast Alaska Compact Signatory Tribes have pressed hard for a tribal share of the Central Office budget. Last year, BIA provided only a proportional amount (approximately \$100,000) to our multi-tribal Compact as a whole, despite the fact that there are five separate Signatory Tribes to our Compact. There is no rational basis for denying each Signatory Tribe its own Central Office share.

At the Agency and Area Office budget levels, Interior has uniformly required a tribal share to be calculated based on factors related to the program or account being divided (e.g., if a Tribe has 3% of the trust acres in an Agency Office, its tribal share is 3% of the Agency's realty funds).

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This same approach should be applied to Central Office. Indeed, this Subcommittee and other committees of Congress have previously suggested that this be done. Nevertheless, to date Interior has refused all efforts to negotiate uniformly and consistently a tribal share of Central Office programs. Moreover, the negotiation of program-based tribal shares of Central Office budgets would go a long way to softening the inequity of BIA-wide funding distributions. KIC asks this Subcommittee's special help in directing Interior in Report language to do so in F.Y. 1995 negotiations in the coming months. (We have included proposed Report language as an attachment to our testimony.)

KIC has experienced many problems with the BIA's implementation of the Self-Governance Demonstration Project. The most recent problem is in the area of contract support. It is our position that because of the added responsibility of administering all our programs, we are entitled to a larger share of contract support. To ensure that Self-Governance succeeds, we need to have the resources to do the job.

At the same time, our Tribe has experienced many positive things as a result of our participation in Self-Governance. We have realized the benefit of increased tribal program funds as a result of our Compact reducing one layer of the BIA bureaucracy. We have also had the advantage of increased flexibility in targeting funds toward economic development priorities of our Tribe. We have also been able to increase and improve services to our members in the key areas of education and social services.

We are eager to have the Tribal Self-Governance Demonstration Project given permanent authority at the Interior Department and ask that you make every effort to secure passage of H.R. 3508 as quickly as possible. We support the fact that the scope of the bill has been limited so that no controversial provisions will delay quick enactment this year.

Self-Governance is working as envisioned by the 1988 Act that created it. Our Tribe is becoming more reliant on our own abilities to develop solutions to our own unique problems. We highly recommend passage of H.R. 3508 so that this authority is made permanent. Thank you for this opportunity to present our position. I would be happy to answer any questions you might have.

Attachment

TESTIMONY OF THE HONORABLE CHRISTINE COLLISON, PRESIDENT
KETCHIKAN INDIAN CORPORATION
BEFORE THE U.S. HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
HEARING ON H.R. 3508 (PERMANENT SELF-GOVERNANCE AUTHORITY) – FEBRUARY 25, 1994

ATTACHMENT

Proposed Report Language Permitting Any Signatory Tribe to Negotiate a Separate, Single-Tribe Compact

The Subcommittee also intends subsection 402(a) to permit any Tribe now participating as a Signatory Tribe to a multi-Tribal Self-Governance agreement to, at that Tribe's option, separately negotiate and participate in a single-Tribe Self-Governance Compact and Annual Funding Agreement with the Department of the Interior. Because such a Tribe is already participating as a Signatory in a Self-Governance agreement, its election to go its separate way in a single Self-Governance agreement should not be constrained by the statutory ceiling on the number of new or additional Tribes permitted to begin participation each year. In particular, the Subcommittee expects the Department of the Interior to follow the Subcommittee's intentions with respect to any such request received from a Signatory Tribe participating in the Southeast Alaska Tribes' Compact of Self-Governance.

Proposed Report Language on Tribal Shares of BIA Central Office Funds

The Subcommittee is aware that, despite repeated congressional directives, no negotiation of tribal shares of BIA Central Office funds has been accomplished that is similar in procedure and scope with that used on BIA Area and Agency Office budgets during the past three fiscal years. Although significant transfers of funding and responsibilities have been accomplished, Central Office budgets remain largely untouched. The Subcommittee therefore directs the Interior Department to ensure that all Central Office budgets be subjected to the same negotiation process currently used with Area and Agency Office budgets, applying the same or similar tribal share formulas and residual percentages used in negotiations at those levels.

Mr. FALCOMVAEGA. Mr. Nuckolls, Governor of the Absentee Shawnee Tribe.

STATEMENT OF HON. LARRY NUCKOLLS

Mr. NUCKOLLS. Thank you. I am here to testify on behalf of the Absentee Shawnee Tribe of Indians of Oklahoma. We have been a tier one tribe since 1990. We were one of the first seven tribes to enter into self-governance, like the Mille Lacs. And we too support H.R. 3508.

We do have some great concerns as far as the funding levels go that we have had a decrease from 1993 to 1994 by 17 percent. And Arkoma, Oklahoma has an increase of FTEs since that time. Also, I believe that as far as our tribe's participation in the demonstration project, we have been successful.

We are determined more than ever to be sovereign. As you commented on a few minutes ago, what was the difference? The difference is that when we do receive the funding from Congress, that we are able to reallocate, determine on our priorities, our tribal needs, to be able to move forward in proper planning for operations of our tribal government, so we can in fact move forward.

The problems that the Absentee Shawnee has since 1990 was our participation in the shortfall funding that Congress has appropriated. Our belief is that the Bureau of Indian Affairs has not streamlined in any effort. When we have to take a 17 percent reduction in our annual funding agreement, and the Bureau of Indian Affairs has not streamlined—in fact, have added FTE's, I cannot see streamlining effects. I can only see where we are reduced in 17 percent funding.

When we got into this in 1990, Dr. Brown was Assistant Secretary. We were entered in the negotiations in good faith, and we have negotiated those every year since then. My biggest concern—and I personally negotiated that compact, as well as our first IHS compact this year—was that if we continue to participate in the shortfall funding and not the hard dollars of Bureau of Indian Affairs, then eventually more tribes were going to get into, as we determined in 1990, and we would have major shortfalls in our annual funding agreements.

I am before this committee to say today that if I have to take another 17 percent decrease next year, as Mrs. Deer has remarked in a letter she has addressed to me, that if I am not in agreement with the annual funding agreement, I can retrocede.

We would hate to be the first tribal government in the United States to retrocede. But when it continues to be a procession of reduction in our annual funding agreements, we have very big concerns when we have to appropriate over a million dollars of our own tribal dollars to make sure that this self-governance is successful. And we are determined—we are sovereign, and we too, like the Mille Lacs, are very concerned why we haven't been able to participate in the major line items, budgetary line items of the BIA in Washington, DC.

I do have my written testimony I would like to submit into the record; and also the letter, that as Exhibit 1, that we received. I do thank you for allowing me at this time to come forth.

Mr. FALEOMAVAEGA. Thank you, Mr. Nuckolls.

[Prepared statement of Mr. Nuckolls follows:]

TESTIMONY BEFORE HOUSE ON
NATIVE AMERICAN AFFAIRS

FEBRUARY 25, 1994

WASHINGTON , D. C.

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- II. BUREAU OF INDIAN AFFAIRS CONTINUES TO IGNORE ACTS MANDATED BY CONGRESS IN REGARDS TO SELF GOVERNANCE.

PREPARED BY:

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Congressman Bill Richardson
Chairman
Subcommittee on Native
American Affairs

I would like to thank this Committee for allowing me to present testimony today on behalf of the Absentee Shawnee Tribe of Indians of Oklahoma. My name is Larry Nuckolls and I am the Governor of the Absentee-Shawnee Tribe. Today I shall present testimony on our efforts to be successful as a tier one Self-Governance Tribe.

We began this new government to government relationship in 1990 and have experienced various degrees of success and frustration. We have identified our Tribal share of funding at the lowest level and as of this date, we along with other self governance Tribes, have been repeatedly denied access to Central Office dollars by the Bureau of Indian Affairs. The Bureau has continued to be nonresponsive to the Self Governance Tribes by using shortfall funding to fulfill Annual Funding Agreements. The Bureau continues to ignore Congressional Acts mandated by Congress and the Bureau has refused to reorganize to allow money to be "freed up" for annual funding agreements. As more Tribes participate in self governance there will be less shortfall funding available for the Tribes and with the Bureau's refusal to identify all dollars available for Tribal shares, the self governance concept will not reach the level of success that I feel Congress has intended.

If it is the position of the Bureau that this program is to fail, they could not have made a better effort to insure its failure by their actions since 1990. We are a living example as we testify today. In 1993, our Annual Funding Agreement was \$ 899,535.00 which included shortfall funding of \$ 223,967.00. The Bureau, without consulting with us after negotiations were concluded reduced our 1994 Annual Funding Agreement to \$ 743,144.00. The reduction was set by the Bureau when the Bureau determined that there were not enough funds available in shortfall to fully fund the Absentee-Shawnee Tribe at our funding level established in 1993.

When we recieved the notification of this reduction, we requested the reasons justifying this type of reduction without notice, to what has amounted to a 17 per cent total reduction in funding to our Tribal Government. After consulting with the office of Self Governance we were told that the Bureau had presented to them a position paper on their need to retain more of the funding. After their review we were then reduced in

funding. We were not allowed to respond to this position paper, nor were we allowed to review this paper in order to prepare a proper response to such an adverse action to our Government.

We proceeded by requesting a meeting with Assistant Secretary Ada Deer to resolve these funding issues. Upon two attempts to visit with Secretary Deer and being received only by her staff, a decision on these issues was rendered by Secretary Deer on January 25, 1994. (See, Attachment "A") The decision that Secretary Deer rendered was that some of the funding issues were to be taken under advisement and if we did not agree with the Annual Funding Agreement that she was to sign we could exercise our option under the compact and utilize retrocession. If in fact the Absentee Shawnee used retrocession, this would not be in the best interest of our government to give back much needed funding for our Tribe, but could possibly be in the best interest of the Bureau if we were to retroceed this funding to them. We shall continue our efforts in Self Governance despite the negative actions by the Bureau of Indian Affairs.

If this program is to be in fact a true government to government relationship, I believe that the Secretary and the Bureau's lack of sensitivity to Tribal needs must improve dramatically. Without their understanding and cooperation self governance cannot be successful now or in the future.

Upon review of our position in Self Governance, we are more determined than ever to be successful. After visiting with the Office of Self Governance on February 23, 1994, we were informed that we could establish a stable base funding level, and that stable base funding could be accomplished in 1995, according to information received by personnel in the office of Self Governance. We were told that four Tribes had accomplished this, but we were advised that the office of Self Governance could not make that decision, and that this decision could only be made by Secretary Deer. Our concerns with the decision rendered by Secretary Deer in regard to our 1994 funding agreement comes down to this, will Secretary Deer adhere to Congressional Acts mandated by Congress allowing us to participate in all funding levels of the Bureau of Indian Affairs? Congressional intent needs to be adhered to, and if the office of Self Governance is subject to the direction of Secretary Deer, we believe that Congressional intent in regard to self governance and Bureau restructuring is not being adhered to.

We ask for support from this Committee that would allow the Absentee Shawnee Tribal Government to establish a stable base of funding for 1995. Recommendations from this Committee to the House Appropriations Subcommittee will allow this Tribal Government to have predictable funding. Stable funding will allow for further improvements for our Tribal Government's planning and operations in the future.

It is our recommendation that a directive be given to the Bureau of Indian Affairs to cease the continued use of shortfall money in annual funding agreements. The Bureau's excuse that the utilization of hard dollars to fund Annual Funding Agreements would create a negative effect on other Tribes is only valid if the Bureau has no real intention to implement reorganization. By the Bureau's lack of restructuring they continue to use shortfall to fully implement Self Governance Annual Funding Agreements. By restructuring and following Congressional intent the real purpose of self governance can be realized and the Bureau should not have had to reduce our Governments Annual Funding Agreement by 17 per cent in 1994.

Attachment "A"



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

January 25, 1994



Honorable Larry Nuckolls
Governor, Absentee Shawnee
Executive Committee
2025 S. Gordon Cooper Drive
Shawnee, Oklahoma 74801

Dear Governor Nuckolls:

I am responding to your concerns raised in meetings with members of my staff during the week of December 13. I apologize for being unable to meet with you on the 14th as had been arranged but have been briefed on the matters which you brought to our attention.

Let me say that I am very concerned about our failure to reach an agreement in accordance with the statutory timeline provided in Title III. This reduces the opportunities of the Congress and other tribes to review the Agreement. It also reduces my opportunity to consider and resolve problems such as those you are raising. Since we are long past the legal timeframe on this agreement, I will address your issues in part. Since certain of these matters may involve policy issues, I will reserve the right to reconsider them at a later date and may choose to involve the Policy Council at that time.

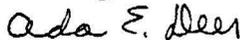
First, with regard to the reduction in the amounts that were base transferred from Administrative Services-Agency, Administrative Services-Area, and Area Real Estate Services; I will confirm the decisions communicated earlier by the Director of the Office of Self-Governance. The purpose of negotiations is to identify the tribal share. Though it may not generally be the case, there is the possibility for reductions as well as increases in subsequent negotiations as additional information becomes available causing changes in the formula or residual amounts. In a demonstration project, such errors need to be corrected.

Second, with regard to the matters you indicated are identified as "To Be Determined" following a review by the Policy Council, I wish to defer these items for further study. It would be helpful if the Tribe would separately identify these line items and prepare a brief rationale or justification for their inclusion in the Annual Funding Agreement. I would like to hear directly from the Tribe on this rather than rely on others to state the Tribe's position.

Regarding the "shortfall" and restructuring controversy, I can see how the failure of the Bureau to restructure results in a decrease in the category two available to participating tribes. On the other hand, it seems logical and in keeping with Congressional intent that the amount of start-up and implementation shortfall would be reduced over a period of time. The large number of new tribes in the program for 1994 has complicated the problem by further limiting the funds available in this account. Also, nationwide reorganization planning is under serious consideration and may affect what we can do and when we can do it. I will be looking very carefully at this issue in the weeks ahead. There does not appear to be anything that I can do immediately since restructuring must be planned for and it seems clear that little planning has been done. Shortfall funds are not available due to the great demand on them. I do pledge to study this matter carefully to determine what restructuring is possible and reasonable and to act when I have reviewed the situation thoroughly.

It is now time to finalize our Agreement for 1994. I will sign the Agreement based upon the prepared 1994 Negotiations Summary Worksheet which you have also signed making the necessary changes to the front page of the Agreement. If for any reason you do not wish to proceed with this Agreement in 1994, you may utilize retrocession procedures identified in the compact.

Sincerely,



Ada E. Deer
Assistant Secretary - Indian Affairs

Mr. FALCOMA. Mr. Whitish, chairman of the Shoalwater Bay Tribe in Tokeland, Washington.

STATEMENT OF HON. HERBERT WHITISH

Mr. WHITISH. My name is Herb Whitish. I am the Chairman of the Shoalwater Bay Tribe. I also represent the affiliated—or Allottee's Association and Affiliated Tribes, which has about 2,500 members. It is representative of a great deal of people that own allotments on the Quinault Reservation.

With that, I would like to go into some of the problems I have with self-governance as proposed. I see some real detrimental effects out there to the tribes that aren't participating in the self-governance project. I don't see in any of this legislation, or bills or anything, any protection for the tribes that aren't going with self-governance. I do see bureaus in my area shrinking, and less and less services available to me.

How are you going to protect my rights, my trust rights? The responsibilities of the Federal Government to the tribes that aren't in self-governance, how do you propose to do this?

In the area that we are talking about now, it all equates into dollars. The pot of gold at the end of the rainbow is shrinking. How are we going to do both of these? It is not compatible. Every time something goes over to the self-governance tribes, it takes something out of the budget. Where is this going to come from?

I hear talk of shortfalls. This gentleman here says he hasn't got the money to run his programs. Where is that money going to come from? I see the Quinault compact, where it says they are getting \$500,000 increase. Where is the equitable distribution of funds involved in this?

I see trust responsibilities and rights being given by the Bureau to certain tribes to look out for the trust allotments and those kinds of things on reservations. Where is their protection?

I can't see the reason to try to make this thing go through so fast.

I appreciate Secretary Deer's comment on a train. It is a train. It is a train that is going out of control, moving down the track so fast it is pulling the nonself-governance tribes along with it. And they don't have the ability to respond to this. Give us the time to look at this.

I have heard a lot of good statements about the things and the positive nature here. But prove them. Find a way to deal with my problems. Don't just take people's words for these things. Look at it. Slow down the process long enough to take a good, hard look at what you are doing to other tribes. I can see this is no more than bureaucratic tinkering with the futures of the lives of other tribes. You have to slow it down.

You look at the effects, you talk about budgets. I just go back to where is the money going to come from? With the balanced budget amendments out here, where is the money going to come from? Where is the protections going to come from?

Senator Inouye himself said that this was an experiment. Don't you take the data from an experiment to analyze it, to look at it, to figure out what is wrong with it, then fix it? Why make this per-

manent legislation? Let's fix what is wrong with it first. Then we can.

I have no problem with self-governance if done correctly. But I don't see this being done correctly. This breakneck speed is only going to put us in an arena where tribes are going to suffer as a consequence. I don't know how to deal with it, but I can sure say that if you give us enough time to look at it, then we can find the solutions. I urge you to go out, do field hearings, talk to the people out there who are affected.

Not the ones employed by self-governance and the compacts and those stuff; the people in the villages. Ask them if they have seen any more services or anything else. Ask the people that are being affected. Find out if the government is truly representative of those people. That is only fair. That is a fairer process to everyone. That is a process that we can live with.

If you find, down at the end of the road, that it is, then I can see it. If you find out at the end of the road that you can deal with my concerns on budgets and those things, so be it.

I myself—self-governance does not fit what the Shoalwater Bay Tribe needs, nor the Allottee's Association. We have been given a right—or the Congress has given the right to the Quinault Tribe in their compact to deal with my trust resource, my legacy to my people. My people depend on those kind of things.

The Quinault Government is not responsible for my property, for my trust responsibility. That is the Federal Government. That is my protection. And I can't get it there. Every time that we have tried to deal with these issues, and that, we end up with an indispensable party in the court, we can't decide the issue.

The Quinault Government is not the overriding and the sole government on the reservation. If you look in my testimony, you will find many court cases that deal with that. I feel as though this is being given and a right of mine is being given away.

I would urge you, once again, to come out and do field hearings. And I would urge you to look within yourself and in your soul and answer to me what are you going to do to protect my rights.

Thank you.

Mr. FALEOMAVAEGA. Thank you, Mr. Whitish.

[Prepared statement of Mr. Whitish and addendum follow:]

**TESTIMONY OF
THE HONORABLE HERBERT M. WHITISH, CHAIRMAN
SHOALWATER BAY TRIBE**

**TESTIMONY ON BEHALF OF ALLOTTEES ASSOCIATION
AND AFFILIATED TRIBES OF THE QUINAULT RESERVATION**

**Hearing Before the Native American
Affairs Subcommittee of the
House Committee on Natural Resources
on The Tribal Self Governance Act**

February 25, 1994

TESTIMONY OF HERBERT M. WHITISH
Concerning H.R.3508

Mr. Chairman and members of the Subcommittee. My name is Herbert M. Whitish. I am the Chairman of the Shoalwater Bay Tribe and I am appearing before you on behalf of my Tribe, as well as the Allottee's Association and Affiliated Tribes of the Quinault Reservation.

My Tribe is a federally-recognized Indian tribe with a small tribally-owned reservation at Tokeland, Washington. Many of our enrolled members, including me, own allotments at the Quinault Reservation and we regard our property there as an important element to our Indian heritage as well as our lives.

The Allottee's Association and Affiliated Tribes is an organization representing some 2,500 non-resident owners of allotments on the Quinault Reservation. In addition to members of my Tribe, it represents individual allottees who are members of the Chehalis, Quileute, Hoh, Makah, Chinook and Cowlitz tribes, as well as those tribes. In addition, the membership includes enrolled members of the Quinault Tribe whose land interests are not being protected or even respected by the Quinault Tribe.

I. Initial Comments.

It is clear to me that this legislation is premature, in that none of us -- including any member of this Subcommittee -- knows what the impacts are from the Demonstration Project. This legislation would make permanent what Senator Inouye has called a "great experiment" and I believe that there must be definite and long-term assessments of this experiment before we make it a permanent program, lest tragedy for Indians results.. The most tragic example of experimentation with Indian lives is seen in the policy of Termination which was enacted by Congress 40 years ago this year and from which many tribes still have not recovered. Such tinkering with Indian people must not be repeated and the impacts of Self-Governance -- both short- and long-term -- should be fully examined before Congress takes another step. If Congress had stopped in 1954 for a careful look at what it was doing, a great deal of pain and suffering just might have been avoided. I urge you to study the past in order to avoid making the same type of mistake now.

On February 18, 1988, Senator Inouye spoke prophetically about the initiation of the Tribal Self-Governance Demonstration Project: "I have no way of knowing what the outcome will be. It may be a great success, or it may fail. . . I think it is about time we took bold steps, and in taking these steps we may fail. But that is the way we learn."

Senator Inouye's concerns were well taken, as several small tribes in Western Oregon already have learned. The Siletz Agency in Siletz, Oregon, has served five tribes, two of which are now Self-Governance tribes. The BIA has announced its intention to close that agency in the interests of economy, leaving three small tribes with no agency for service delivery and forcing them to deal directly with the Portland Area Office bureaucracy which is hundreds of miles away.

I look at the Olympic Peninsula Agency which serves my Tribe from a distance of less than 40 miles and wonder if it will be the next closure and, if so, how far we will have to travel in order to obtain our share of what will be a substantially diminished service capacity. This creeping reduction of service is real and already occurring; it can be no surprise that we are asking if the total termination of services is the next step for tribes not part of Self-Governance though reductions in funding until programs are no longer viable.

These questions probably can't be answered for the reason I already have stated: essential studies of the Demonstration Project and Self-Governance as a long-term policy have not been conducted. Again, I urge Congress to SLOW DOWN. Do not leap before you look.

If Congress determines that the legislation should go forward now, then I urge you to accept an amendment which would protect the interests of the individual land owners on reservations inhabited by Self-Governance tribes, especially reservations such as Quinault where the majority allotment ownership is held by Indians who are enrolled in other tribes.

As an Addendum to this statement is the "History of the Quinault Indian Reservation." It explains how and why the Reservation was created for, and allotted to, members of many tribes; it also explains some 70 years of litigation in which every federal court looking at these issues has confirmed that the Quinault Reservation was created for all of our tribes, and that the various tribes and allottees have independent, legally-protected rights at the Reservation, and that no tribe is the exclusive governing body of the Reservation. I urge each member of the Subcommittee to read it, for the facts are clear and adjudicated.

II. Negative Impact of Self-Governance.

The negative impact from the Demonstration Project is real and being experienced by the tribes and landowners I represent. Let me emphasize as a predicate that my Tribe enjoys a government-to-government relationship with the United States, as do the other recognized tribes represented in the Allottee's Association and Affiliated Tribes. We have trust relationships with the United States, and not the Quinault Tribe, but we are being adversely impacted by Self-Governance at this time because the BIA is ceding to the Quinault Tribe the trust responsibilities it owes to us.

Our Agency Superintendent, Ray Maldonado, has stated that his top staff spends a large proportion of this time dealing with Self-Governance issues, including negotiations and day-to-day problems. Yet, Self-Governance was designed to take Self-Governance tribes out of the BIA, freeing up the reduced staffs and budgets for the remaining BIA tribes. Why are agencies even answering Self-Governance phone calls, when to do so means the rest of us are receiving a reduced share of an already reduced service and program capacity? The result is that the Quinault Tribe receives its huge Self-Governance funding and continues to draw services from the BIA, and Mr. Maldonado has confirmed it!

The Quinault Tribe is getting a \$500,000 increase in its budget while everyone else is taking cuts. Where does this revenue come from? Again, it is hard to answer even this simple question when no studies have been performed.

When the Self-Governance tribes can't make ends meet and have to dip into shortfall funding, this affects the non-Self-Governance tribes since this money is not available for other programs. There is not an infinite pot of gold to draw from but the Self-Governance Project seems to create gold for the "haves" while us "have nots" get none.

We already see a depleted technical assistance available from the BIA to the point that we have to try to find funding elsewhere to supplement our tribal programs. And, we don't have sufficient funds to pay for full time employees to perform basic service functions which should come from the BIA. It is a vicious cycle which will continue unless something is done now. Again, it must be assessed.

Finally, there is a shrinking federal dollar for Indian country. It would be fair for the necessary reductions to fall equally on all, but this fundamental notion of fairness is compromised by the fact that Self-Governance tribes are allowed to negotiate their budgets before budgeting is made for the non-Self-Governance tribes. We know this from BIA officials, but what we do not know is how severely our existence is going to be impacted through the precarious reduction of funding necessitated by the financial preference given to Self-Governance tribes. Again, where is a competent analysis of this problem?

III. The Trust Responsibility Is Jeopardized by Self-Governance.

Anticipating that my comments will be denigrated as nothing more than political dissent, I would urge the Subcommittee to consider the situation of the Quileute Tribe. Quileute signed the Treaty of Olympia at the same time that the Quinault Tribe signed the same treaty. Going back to 1924, this joint signatory tribe has repeatedly received judicial confirmation that its rights at the Quinault Reservation are equal to, and independent of, those of the Quinault Tribe. Yet, Quileute landowners at the Quinault Reservation have no vote with the Quinault Tribe and no way of protecting their land from the Quinault Tribe. What happened to the trust responsibility?

It is possible that the allottees and the tribes I represent are unique throughout Indian Country. On the other hand, it is all too possible that we are not alone and that you have simply not heard from the other small tribes who will be adversely affected by this legislation. It is a fundamental principle of Title I of the Indian Self Determination Act that no "tribal organization" may obtain a contract which benefits more than one "Indian Tribe" without the consent of that tribe. It is not clear that same principle will apply to Title IV which will become law if H.R.3508 is enacted.

Let me note that Shoalwater Bay and Chehalis are recognized tribes with adjudicated rights at the Quinault Reservation as "affiliated tribes" under the Treaty of Olympia. (See "History of the Quinault Indian Reservation" at Addendum for a detailed explanation of the rights through treaty affiliation.) Along with Quileute, Shoalwater Bay and Chehalis enjoy a

government-to-government relationship with the United States, and we all are entitled to all benefits and protections of the Indian Self Determination Act. We ask Congress to give us those benefits and protections by not endorsing Self-Governance and the continued trampling of our rights.

Rather than rely on the vague policy statement in Section 3 that "self-governance" is supposed "to co-exist with the provisions of the Indian Self Determination Act", we think you should specifically require that any contract negotiated under this legislation which benefits more than one tribe must have the consent of that tribe. We think the legislative history should be clear that this sort of consent would apply to situations such as exist on the Quinault Reservation.

It is axiomatic that the federal government has a trust responsibility to the recognized tribes I represent. Moreover, the United States Supreme Court has ruled that the same trust responsibility is owed to individual trust landowners at the Quinault Reservation, in Mitchell v. United States, 445 U.S. 535, 542 (1980). Nobody seems to care, as we learned only a few years ago when various of our tribes and individual allottees filed litigation in federal court seeking to compel the Secretary of the Interior to recognize and protect his trust responsibility to us. This action was Confederated Tribes of the Chehalis Indian Reservation, et al. v. Lujan, et al., Civil No. C89-58R (W.D. Wash.). The Secretary should have responded by agreeing to the relief we sought -- indeed, as our federal fiduciary, he is obligated to do just this. Instead, he directed his attorneys to plead that the Quinault Tribe was an indispensable party to any adjudication of our rights at the Reservation and the action must be dismissed since we could not sue the Tribe because it enjoys sovereign immunity.

With Quinault attorneys in the room as amicus curiae but not parties, the Judge reluctantly agreed that the indispensable party technicality barred us from adjudicating our rights in court and dismissed. On appeal, the Secretary made the same argument to the Ninth Circuit which on a 2-1 vote affirmed the dismissal but with a blistering dissent that we were being denied our rights.

So, here we sit. We have adjudicated federal trust rights at the Reservation which (1) the Secretary refuses to protect from Quinault tribal encroachment and (2) we cannot preserve in court. Yet, this legislation would give the Quinaults even more power over our land without providing us with any manner of protecting the trust rights we have under federal law.

IV. If Self-Governance Is to Proceed, Our Rights Must Be Protected.

Our tribes and allottees are in a crisis, due to the BIA's wholesale abrogation of its trust responsibilities to us.

The Secretary cannot contract away his trust responsibility to us. And, indeed, the Quinault Compact of Self-Governance purports to preserve our rights at Article IV, Section 1:

Nothing in this Compact is intended to, nor should be interpreted, to terminate, waive, modify or reduce the Trust responsibility of the United States to the Tribe or individual Indians. The Secretary pledges to practice utmost good faith in upholding said trust responsibility.

Neither the Compact nor the current legislation protects us, so we urge that it be amended through the inclusion of the following new Section 409 which embodies the Compact's guarantees:

"Sec. 409. PRESERVATION OF RIGHTS.

"No Self-Governance agreement shall in any way infringe on the trust responsibility of the United States to any individual, tribe or other entity. Any individual, tribe or other entity who believes that the federal trust responsibility between the United States and said individual, tribe or entity is being or has been adversely impacted by any self-governance agreement or other action or inaction of the Secretary of the Interior shall have standing in the United States District Courts to litigate any and all issues relating to the trust responsibility against the Secretary, and the absence in court of any Indian tribe, including tribes with which any self-governance agreement is signed shall not be a bar or defense to such litigation for any reason, including the doctrine of indispensable party.

Mr. Chairman, I thank you and the Subcommittee for allowing me to speak here today.

ADDENDUM

HISTORY OF THE QUINAULT INDIAN RESERVATION

HISTORY OF THE QUINAULT INDIAN RESERVATION

Detailed histories of the Treaty of Olympia are found in Halbert v. United States, 283 U.S. 753 (1931) ; Wahkiakum Band of Chinook Indians v. Bateman, et al., 655 F.2d 176 (9th Cir. 1981); The Quinalt Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945) ; Williams v. Clark, 742 F.2d 549 (9th Cir. 1984) ; and Solicitor's opinion D-40140 (September 2, 1916). There is no serious dispute as to the following discussion, since it is based in toto on established fact and law.

A. Treaty of Olympia.

The history of the Reservation must begin with an understanding of the background of the Treaty of Olympia, supra, which was executed by the Quinault and Quileute tribes and bands.

The Treaty of Olympia was preceded by the so-called Chehalis River Treaty Council held in 1855 prior to the treaty session at Olympia. Governor Isaac Stevens convened all the coastal and interior tribes of the area without understanding the alliances and animosities which existed between them. It was his intention, and insistence, to place all of these tribes on a single reservation which previously had been set aside for other Indians by the Treaties of Medicine Creek and Point-No-Point.¹ Virtually all of the tribes refused to accept such a plan and Governor Stevens angrily dismissed the treaty council.² Although the Chehalis River negotiations failed to achieve their full purpose, they did result in a treaty between the United States and the Quinaults and Quileutes. Later in 1855, aides of Governor Stevens met with the two tribes and signed the treaty which was presented to him in Olympia in early 1856.

At Article II, the treaty guaranteed to the Indians a reservation "sufficient for their wants" and ARTICLE VI provided that the President "may consolidate them with other friendly tribes and bands" on that reservation.³ The language about consolidation (or "affiliation") was

¹ Duwamish Tribe of Indians, et al. v. The United States, 79 Ct.Cl. 530, 601 (1934).

² In addition to the other case citations noted in the text, the Indian Claims Commission found that the Chehalis River Treaty Council was an unsuccessful attempt to negotiate a treaty with the Chinook Indian Tribe and various bands of Chinooks which now are components of the Chinook Tribe. The Chinook Tribe and Bands of Indians v. United States, 6 Ind. Cl. Comm. 177, 195 (1958), aff'd, 196 Ct.Cl. 780 (1958).

³ Ibid, p.47.

incorporated into the treaty after (a) the failure of negotiations at Chehalis River and (b) the end of all negotiations with the Indians other than Quinault and Quileute.

B. Executive Order of 1873.

In 1863, an area of 10,000 acres was tentatively defined for the Reservation but it was never formally established as such. Ten years later, the Reservation finally was created by the Executive Order of November 4, 1873.⁴ By this order, President Grant stated that he intended "to provide for other Indians in that locality" by withdrawing lands from the public domain "for the use of the Quinaielt, Quillehute, Quit, and other tribes of fish-eating Indians on the Pacific Coast." [Emphasis supplied.] A total of 220,000 acres was then designated for the Reservation.

C. Land Allotment Laws and Practices.

Pursuant to the Allotment Act of February 8, 1887 (24 Stat. 388), allotments were being made on the Reservation by the turn of the century. However, the tribes which were affiliated on the Reservation by the Executive Order were having difficulty in obtaining allotments, a situation which Congress sought to remedy through the Allotment Act of March 4, 1911 (36 Stat. 1345). The Allotment Act of 1911 directed the Secretary of the Interior to make allotments on the Quinault Reservation --

to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty [of Olympia] . . . and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set apart for those tribes. [Emphasis supplied.]

In Halbert v. United States, which is discussed below, the Supreme Court noted that both the BIA and Congress recognized that the eight tribes identified above have reserved rights under the Treaty of Olympia by virtue of their post-treaty affiliation, and that the 1911 Allotment Act was enacted specifically to guarantee their rights to land within the Reservation.

D. The Lighthouse Reserve.

There has been a consistent recognition by Congress and the courts that all of the affiliated tribes had coequal rights within the Quinault Reservation. By the Act of August 22, 1914 (38 Stat. 704), Congress authorized the Secretary of the Interior to set aside Indian lands within the Reservation for lighthouse purposes, for which payment was to be deposited in the United States Treasury not in favor of the Quinault Tribe but rather "to the credit of the Indians

⁴ Kappler, "Indian Affairs Laws and Treaties," Vol. I, p.923.

of the Quinaielt Reservation." [Emphasis supplied.] In addition, Congress reserved the mineral rights within the Lighthouse Reserve, again "for the use and benefit of the Indians of the Quinaielt Reservation." (Emphasis supplied.)

E. The Halbert Case.

By about 1916, the allotment process was halted within the Reservation after more than 600 allotments had been made. The stated reason for this cessation was that BIA Forestry Staff had concluded that timberlands should not be allotted. Since all agricultural and grazing lands within the Reservation already had been allotted, the BIA determined that there was no land remaining which was "suitable" for allotment under allotment law.

An unallotted Quileute Indian sued to obtain an allotment from the timberland sections of the Reservation, and the Supreme Court ruled that he was entitled to an allotment of "timbered lands capable of being cleared and cultivated." United States v. Payne, 264 U.S. 446, 449 (1924). Thus, timberlands within the Reservation were to be allotted under federal law. Following Payne, allotments primarily were made to Quileutes, Hohs and Quits. Few allotments were being made to Chinook, Cowlitz, Makah or Chehalis Indians, so they were forced to litigate their entitlement thereto in the Halbert case.

In Halbert v. United States, 283 U.S. 753 (1931), the Supreme Court found that individual Indians who were members of the Chinook, Cowlitz, Makah and Chehalis Tribes had a right to allotments at the Quinault Reservation because, as a matter of law, they were affiliated with the signatory tribes to the Treaty of Olympia. The Court specifically cited the Executive Order of 1873 and the Allotment Act of 1911, and noted that Interior had consistently taken the position (beginning in 1913) that the 1911 legislation provided for these tribes and that further legislation was not necessary to protect their entitlements to allotments within the Quinault Reservation. Moreover, the Court found that post-treaty affiliation clearly was contemplated by the Treaty:

Strictly speaking there was no affiliation in the treaty. But the treaty did contain a provision under which affiliation might be brought about. [Emphasis supplied.] (283 U.S. at 759)

As for the inclusion of the other tribes within the affiliation provisions of the Treaty of Olympia and the Executive Order of 1873, the Court observed that the affiliating language unquestionably applied to them:

In 1855, the Quinaielt, Quillehute (also called the Quileute), Chehalis, Chinook, and Cowlitz Indians were neighboring tribes in the southwesterly section of what is now the state of Washington. They were all known a "fish-eating Indians" and lived in small villages adjacent to the Pacific coast and the lower reaches of the Columbia River. The Quits and Ozettes [also called Makahs] were

also fish-eating tribes living in coast villages a little north of the others*** [Emphasis supplied.] (283 U.S. at 756)

In addition, the Supreme Court noted at pp.759-61 that several additional facts in further support of its determination that a post-treaty affiliation had occurred:

1. prior to 1911, over 750 allotments had been made at the Reservation, more than half of which were made to members of tribes other than the treaty signatories;
2. more than 20 percent of the pre-1911 allottees had never resided on the Reservation; and,
3. by 1911, Congress and the BIA felt it "altogether appropriate" to "speak of" the other tribes as being affiliated under the treaty.

F. Post-Halbert Case Law.

Since the 1931 ruling in Halbert, other federal courts have looked at the situation at Quinault and the question of post-treaty affiliation. Without exception, they have held that there was a post-treaty affiliation under the Treaty of Olympia and the Executive Order of 1873, and that the affiliated tribes still enjoy rights as a result of that affiliation.

1. The "Boundary Dispute" litigation.

A survey error led to an incorrect drawing of Reservation boundaries and a slight reduction in total land area. Congress authorized litigation in the United States Court of Claims to recover from the United States the value of land erroneously excluded from the Reservation through this survey error.⁵ The Quinault Tribe filed and sought to prosecute the litigation in its own name, but the Court concluded that the case could not go forward because the Quinaults do not have exclusive rights to the Reservation. The Court confirmed that the Chinook, Quileute, Hoh, Quit, Chehalis, Cowlitz and Ozette Tribes have rights equal to those of the Quinault Tribe. See The Quinault Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945). Among its Findings of Fact, the Court of Claims stated the following:

After the date of this Executive Order [of 1873] the plaintiff and the Quillehutes, Hobs, Quits, Chehalis, Chinook, Cowlitz, and Ozette tribes, and any other tribes in the Territory of Washington who may have been affiliated with the Quinault and Quillehute tribes were entitled to equal

⁵ Act of February 12, 1925 (43 Stat. 886).

rights in this reservation. [Emphasis supplied.] Finding of Fact No. 3. (102 Ct. Cl. at 825)

Recognizing the interaction between the treaty provisions allowing for affiliation and the Executive Order of 1873, and citing Halbert, the Court found that the affiliated tribes are "entitled to equal rights in the [R]eservation" [emphasis supplied]⁶ since they were affiliated tribes, concluding:

It is plain, therefore, that the Quinaielts are not entitled to exclusive rights in the reservation. The Quillehutes, Hobs, Quits, Chehalis, Chinook and Cowlitz tribes are also entitled to an interest therein. [Emphasis supplied.] (102 C.Cls. at 835)

Subsequent to its 1945 opinion in the Boundary Dispute, the Court of Claims looked at the case a second time. The Quinaielt Tribe of Indians v. The United States, 118 Ct.Cl. 220 (1951). Again relying upon Halbert, the Court observed, "the Chehalis, Chinook, and Cowlitz tribes were [found by the Supreme Court to be] entitled to equal rights in the reservation." [Emphasis supplied.]⁷ Moreover, the Court observed that the Chinooks were allotted in large numbers after the Halbert decision was rendered.⁸

Finally, the significance of the affiliation was underscored in the 1951 Court of Claims ruling when it was evaluating damage awards for the Boundary Dispute claim. The case was before the court by virtue of a special and limited statute -- the Act of July 24, 1947 (61 Stat. 416) -- which permitted the Quinault Tribe to litigate the claim on behalf of itself and the affiliated tribes -- and the court determined the value of the land illegally omitted from the Reservation, plus interest, to total \$87,988.68. However, the original jurisdictional act directed that any award be reduced by appropriate set-offs equal to disbursements by the federal government to the "tribes and bands" [emphasis supplied] for which the claim was presented; the Court noted --

In schedules (prepared by the General Accounting Office)..... there are listed amounts spent by the United States for the benefit of these tribes and bands under other than treaty obligations totalling (in excess of) \$87,995.62. [Emphasis supplied.] (118 Ct.Cl. at 231)

⁶ 102 Ct.Cl. at 835.

⁷ 118 Ct.Cl. at 226.

⁸ Ibid.

With this, the case was dismissed because no money was owed the tribes of the Reservation for the diminishment in acreage.

2. The fishing rights litigation.

Certain Chinook and Cowlitz Indians recently litigated the issue of post-treaty affiliation and whether they have federally protected rights to fish as Indians pursuant to the Treaty of Olympia. Wahkiakum Band of Chinook Indians v. Bateman et al., 655 F.2d 176 (9th Cir. 1981). Declaring that Halbert "does state that the Chinook and Cowlitz are affiliated with the Quinalts under the Treaty of Olympia,"⁹ the Ninth Circuit affirmed that a post-treaty affiliation of Chinooks and Cowlitz had occurred at the Quinalt Reservation and that they have coequal and joint rights and jurisdiction at the Reservation:

As members of a tribe subsequently affiliated with the Quinalt under the treaty, [the affiliated tribes] are, however, entitled to share such rights as are granted to the original signatories by the treaty. [Emphasis supplied.] (655 F.2d at-179-80)

3. The Willessi Estate litigation.

The Estate of Joseph Willessi was litigated through the Ninth Circuit by a Quileute Indian in order to receive a bequest of land within the Reservation. Williams v. Clark 742 F.2d 549 (9th Cir. 1984). Both Willessi and the claimant Williams were enrolled members of the Quileute Indian Tribe¹⁰ and the BIA pleaded that the IRA bars Williams "from receiving an interest in trust land on the Quinalt Reservation because [he] is neither an heir nor a member of the Quinalt Tribe of Indians."¹¹ The BIA's argument was that Section 4 of the IRA restricts the Willessi bequest of lands to "members of the Indian tribe in which the lands . . . are located."¹² Since (a) Williams is an enrolled Quileute and (b) the Quileute Tribe has its own reservation, the BIA insisted that no Quileute Indian could receive land at the Quinalt Reservation for such would contravene IRA Section 4. Citing many of the cases noted in this History, the Ninth Circuit affirmatively declared that the Quileute Tribe has treaty rights at the Quinalt Reservation

⁹ 655 F.2d at 178.

¹⁰ 742 F.2d at 550.

¹¹ Ibid.

¹² See IRA Section 4 at 25 U.S.C. §464; 742 F.2d at 551.

and that the Quinault Tribe does not have exclusive authority over the Reservation which supersedes the Reservation rights of the other tribes for which it was established.¹³

G. The 1935 IRA Election.

Finally, it is well-documented that members of the affiliated tribes -- regardless of whether they actually resided within the Reservation -- were permitted to the vote in the 1935 election at the Quinault Reservation in order to determine whether the IRA would be applicable thereto. These voters included members of the plaintiff tribes and the tribes in which the individual plaintiffs are enrolled. The IRA vote determined that the IRA would be applicable to the Reservation, which outcome paved the way for the Quinault Tribe and the BIA to attempt to deny the Willessi bequest to Williams. However, the Quinault Tribe has refused and failed to take the next step in the process, which is the mandatory adoption of an IRA constitution.¹⁴ This is important because Congress established a two-step procedure for implementing the IRA. First, an election was required to be held on every Indian reservation, so that Indians could determine whether the IRA would be applicable to their reservation.¹⁵ Second, if the vote on IRA applicability was affirmative, all resident tribes would then decide whether to reorganize under the IRA -- that is, whether to become an IRA tribe.¹⁶ The Indians of the Quinault Reservation - including the affiliated tribes -- voted to accept the IRA for the Quinault Reservation. However, the Quinault Tribe has never reorganized pursuant to the IRA, and it is not an IRA tribe.

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¹³ 742 F.2d at 553-55.

¹⁴ The Ninth Circuit noted this point in Williams v. Clark at its footnote 5.

¹⁵ The reservation elections were established by Section 18 of the IRA, 25 U.S.C. §478.

¹⁶ The reorganization of individual tribes or groups of tribes within a single reservation is provided for at Section 16 of the IRA, 25 U.S.C. §4786.

Mr. FALCOMVAEGA. Mr. Bennett.

STATEMENT OF HON. GEORGE E. BENNETT

Mr. BENNETT. Thank you, Mr. Chairman. My name is George Bennett. I am here representing the Grand Traverse Band of Ottawa and Chippewa Indians. We bring you greetings from Michigan. I know you don't have much snow where you are living, but we do have, and I had trouble getting out of the airport yesterday; but I am thankful that I am here today to testify before the subcommittee.

I appreciate being here, and our chairman was not able to make it, and because of my tenure in the Federal system, he asked that I take his place in submitting testimony. It is a matter of the record, as you have indicated. We would like to have it recorded, and I would like to move forward by making five points with regard to the enactment of this legislation.

First of all, we support the legislation. Secondly, I think it directs—it does address the sovereignty of Indian tribes. Thirdly, we support negotiated—the negotiated waiver clause within the legislation, and request to do so. We do feel that there need to be stronger negotiation meetings with the Bureau of Indian Affairs; and we also think that there might be a slight problem with the central office share of the pot, where it is not trickling down to the tribes. The field offices have not been willing to share equitably.

I don't know that the—as a matter of fact, we have some 1993 monies due to us that we haven't gotten, about \$163,000. Nor has the indirect cost rate been discussed in this legislation. We urge the enactment, as I mentioned, of H.R. 3508; but beyond that, we need to look to the future, we suggest, to coincide with the priorities of our tribe. We have set in education as the high priority. I urge the committee to take a look at that in the coming years.

As far as other agency involvement, we urge that you move forward with this legislation and that there be an expansion with other agencies. With that, I thank the committee. Pleasure to be here, and good wishes on your work ahead.

Mr. FALCOMVAEGA. Thank you, Mr. Bennett.

[Prepared statement of Mr. Bennett follows.]



The Grand Traverse Band of Ottawa and Chippewa Indians

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**TESTIMONY OF THE HONORABLE GEORGE E. BENNETT, TRIBAL COUNCIL MEMBER
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
HEARINGS ON H.R. 3508 (SELF-GOVERNANCE)
FEBRUARY 25, 1994**

Good morning. I bring you greetings from our Tribal Chairman, the Honorable Joseph C. Raphael, and from the people of the Grand Traverse Band of Ottawa and Chippewa Indians. My name is George Bennett. I am here today as a member of our Tribal Council, as a representative of my people, and as a spokesperson for our Tribal Council. Chairman Raphael was unable to attend this hearing at the last minute and asked me to provide this testimony in his place. I want to thank you for the opportunity to address you and to discuss the issue before you today that directly affects our people.

I am here today to ask for your assistance in enacting permanent legal authority for the Tribal Self-Governance effort. The Grand Traverse Band began administering our programs under Self-Governance authority on October 1, 1992 with Interior Department funds and added Indian Health Service funds on September 30, 1993. We have found Self-Governance to be the most positive federal policy put forward for Indian people in the 217 years that the U.S. Congress has made laws and regulations involving Indian people.

H.R. 3508 authorizes a new government to government relationship on a permanent basis between Indian Tribes and the United States government. While it cannot reverse the mistakes of the past, such as the Indian Removal Act of 1830, the General Allotment Act of 1887, and the federal termination policy of the 1950s and 1960s, it can create a new beginning for Indian Tribes to work within the federal system as independent units of government free of the paternalism that has been so devastating for Indian people for so many years.

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

The permanent legal authority in H.R. 3508 must be enacted into law so that the federal agencies involved in the Self-Governance Demonstration Project are told that Self-Governance is not a passing phase that will go away tomorrow and will not have to be taken seriously by the federal agencies. Federal agencies have created as many road-blocks as possible to the Self-Governance Demonstration Project and the Project is succeeding in spite of that fact. This shows that Tribes have the expertise to make Self-Governance a success and that Self-Governance can improve conditions for Indian people.

We now need to remove the obstructions to good government created by the federal agency staff who are interpreting current law to mean they do not have to cooperate with the Demonstration Project. They have consistently refused to take seriously the Congressional directive to down-size the BIA and IHS in direct response to the negotiated transfer of their functions and duties to Tribes under Self-Governance. The BIA has slowed the financial process of the transfer in funds and our Tribe has yet to receive all funding provided for in last year's annual funding agreement.

I want to say a few specific things about H.R. 3508. We understand the procedural reasons why H.R. 3508 maintains the current law's exclusion of Indian education funding from Self-Governance authority, but after H.R. 3508 is enacted, we urge this Subcommittee to move quickly to expand Self-Governance authority to Indian education and to other federal agencies.

The Grand Traverse Band also strongly supports the language in H.R. 3508 that makes available to a Tribe all funds it would have received under contracts and grants plus all funds related to the Interior Department's provision of services and benefits to our Tribe and its members. This is identical to the language in current law. We do not want this language changed except to clarify that these funds should include those "functionally" related to the Department's delivery of services and benefits.

We also strongly support the regulatory waiver procedures included in H.R. 3508. We have been developing several waiver requests to streamline the operation of our Compact programs, but have been hesitant to propose them given the lengthy, costly, and exasperating experience other Tribes have had when they have proposed similar regulation waiver requests to the Department.

We view the negotiated waiver provisions in H.R. 3508 as absolutely necessary. If regulations are needed to properly implement H.R. 3508, and we are not altogether sure they will be, the spirit of Self-Governance requires that the regulations be drafted in a partnership effort between Tribal government and federal government representatives. We believe the time frames and the specific requirements in H.R. 3508 are needed to ensure that the Secretary comply with the intent of Congress. This language is especially reasonable in view of the five years it took BIA and IHS to produce

proposed regulations on the 1988 amendments that virtually ignored substantial Tribal government input. My Tribe heavily contributed to that effort to give meaning to the Tribal consultation process, only to see its views ignored by the federal regulation writers.

Enactment of H.R. 3508 is important to us for many other reasons. Despite current law, the BIA has not yet seriously discussed the negotiation of Tribal Shares of Central Office funds. The IHS Headquarters Office continues to maintain control over the Project and prevents many funding issues from being resolved. We have completed four months of the fiscal year 94, yet we have not received full BIA indirect cost funding for fiscal year 93 and contract support funding remains a question for fiscal year 94 even though congressional intent is very clear for full funding of indirect cost.

In our IHS negotiations we identified a \$33,000,000 line item in the IHS budget that we believe should but does not provide direct assistance to Indian people and are seeking to negotiate an equitable distribution of that fund among Tribes. We feel strongly that these and other issues can and will be resolved if we can get the cooperation of the federal agencies. One way to begin getting better cooperation is to obtain permanent legislative authority. We feel that Self-Governance is the way to go for our Tribe at this time in our history and feel we should be allowed to proceed on a permanent basis that will allow us to plan positively for the future of our people.

Self-Governance is first and foremost an issue of sovereignty. Congress has passed well over 5,000 laws involving Indian people since the Treaty process stopped in 1871. If you look at those laws and Supreme Court decisions involving Indian people, you find that Indian Tribes are domestic Sovereign Nations in this country, and consequently should be able to work directly with the United States Congress and the Executive Branch on a government to government basis to resolve issues of government. This governmental partnership is happening here today as Indian Tribes are working with Congress in requesting assistance through permanent Self-Governance authority that will better permit Indian Tribes to take their rightful place within the federal system. We ask your support in making this a permanent process so that a message may be sent to the federal agencies that Congress is serious about Self-Governance and will no longer endorse the paternalistic practices of the federal agencies.

I thank you for your time today and would personally like to thank Chairman Richardson, Congressman Williams, Congressman Gejdenson, Congressman Faleomavaega, Congressman Johnson, Congressman Abercrombie, Congressman English, Congressman Thomas, Congressman Young, Congressman Baker and Congressman Colvert and other members of the full Committee who have taken a positive active role in assisting Indian people in this country.

Mr. FALCOMA. The gentleman from Alaska for questions.

Mr. YOUNG. Thank you, Mr. Chairman. I appreciate it. I would like to compliment Mr. Whitefish for his testimony, because I know there is some real concern—

Mr. WHITISH. Mr. Whitish.

Mr. YOUNG. What is it?

Whitish, I am sorry. And I think you bring a very valid point out. And I would like the idea of self-governing primarily because it makes people become directly involved in the activities of the trust relationship with the government.

And I understand your concern about the monies and I understand your concern about having field hearings. I think that is very important, because sometimes we only hear from one side of the issue. And those that are directly affected may not be being heard. And so I think that is a good idea, Mr. Chairman.

We can possibly do this, get into some areas and find out if this is just an attempt to increase the power of certain individuals. Or is it really an attempt to service the people?

In my State, we have had some pretty good opportunities now—it has been slowed down—to taking over some through current contractual efforts, some of the activities that BIA, and I suggested that. Is there a way we can possibly amend this legislation for those tribes that are ready for self-government to be allowed to be self-governing, and those that are not ready be protected under the trust relationship with the government? Do you think that could be done?

Mr. WHITISH. It would seem to me that the only way you are going to pull this off is to put more money into the project. You will have to evaluate the needs and those of the individual tribes and at least provide them with a baseline budget so that they can draw from that so that you can protect them so that this money doesn't keep sliding down and down as the drain from self-governance has taken it the other way. So that would be my only response to try to deal with that issue.

Mr. YOUNG. Secondly, one of my biggest concerns is every time—I have been here 22 years and the BIA under the Self-Governing Act Contracting Provision was supposed to decrease in size, and if I am not mistaken, they have increased their budgets and I am not sure that is the way we should be going.

My complaint is that, if anything, at least the money to run the BIA through Department of Interior, if we could designate in areas where we have self-governing, get that money that BIA was using, decrease the staff and decrease the people involved in BIA, that we might be able to have more money for doing what I think is correct, and that is servicing the constituency of the tribes. That is going to be the real battle.

When you have a compact or a self-governing group and their moneys are cut by the BIA—we don't cut it—and BIA gets a lump sum, and their moneys are cut back, you can't function as a compact or as a governing body.

We are going to have address that because if it ends up like you say where they don't get the money and decrease it by direction of the BIA, it won't work. Services will be decreased and you will

have unrest and unhappy people; not just the money, but the services provided. It is a real challenge to us.

I appreciate your comments and agree with the lady from Ketchikan and her comments. I think we have some areas where the tribes are ready, can do the job. I think it would be more cost efficient, but I don't want to get you on the spot when we don't have the money to do what we thought you could do.

That is what we have to do, Mr. Chairman. I am glad you brought this up, frankly. I think it is a good point. We will have hearings.

Mr. WHITISH. I would like to make one more comment on that. Unless you provide a baseline budget, even if you go in and streamline the Bureau and then push the money towards the tribes, some smaller tribes, like my tribe with 150 people, most of those contracts are dealt out on a per-head basis so that, yes, you could do that and you could shove the money to me, but the problem is that I would not have enough money to have any full-time employees to provide the same technical services that the Bureau is.

So if you try to do that, you are still going to have the long-range effect of hurting the tribes because they will not be able to have the same services that are presently available through the Bureau. It doesn't work that easily, to me. Maybe somebody out there has a better mind than mine that can deal with these issues, but I think if we get together and talk about these issues, that we can come up with some answers and then be able to make this a fairer process.

Mr. YOUNG. I agree. Like I say, some are able to walk and some are not, but we ought to allow those that want to walk to walk, but take care of those that can't.

There are a lot of tribes, 150, 200, 300 people that would be unable, like you say. The base isn't there, according to the formula. That is something we have to consider, the formula.

We have the same problem in Alaska. If you look at the total enrollment of the Alaskan native versus the total enrollment of the American Indian, we won't get maybe the percentages under the formula that we are now getting through distribution by the BIA.

Back to your testimony. This says, "If Congress determines the legislation could go forward, I urge you to accept an amendment that would protect the interests of an individual landowner on reservations inhabited by self-governance tribes, especially reservations where"—I can't pronounce the word—"the majority allotment ownership is held by Indians who are enrolled in other tribes."

Are you suggesting that there is a possibility that because you have land and you are in a tribe, that if you become a self-governing tribe, that they can take that ownership of land away from you?

Mr. WHITISH. They become the self-governing tribe. What I am afraid of is that the Bureau, if they start downsizing and eliminating some of these programs, those programs that are dealing with forestry and land issues and natural resources will have to go somewhere. If there is no Bureau to do that, then it would naturally seem that it would fall into the Quinault Tribe. That tribe does not represent five tribes that own property on that reservation.

If you look on a map, 65 percent of that reservation is owned by non-Quinault members. If self-governance goes through, they already have three areas where they are taking trust responsibility for individual allotments. If they continue on that, is this an opening for the taking of other trust responsibility from the Bureau, being a sign from the Department of Interior to the Quinault Tribe to deal with my issues on my property which should rightfully be decided by the allottee's association affiliated tribes or each individual tribe that is on here?

If you look at the court cases that I mentioned, it will show you a clear pattern that the Quinault is not the exclusive governing body on that reservation. The Tlingit Tribe was co-signers on that treaty; yet they are going to be locked from anything to do or say on this—if this self-governance goes through. That in my mind is a detrimental effect.

Now we may be just the anomaly, but how do we know this unless we get out there and do those field hearings and find out? There may be other instances where this could happen.

I am only talking about this as an indicator of something that is wrong with the process in its present form and unless rectified, there is going to have to be some action taken by the tribes if something happens.

One of the things I have a problem with in the Quinault Tribe is that if they were to do an action resulting in damage to say a timber claim that I own, can I go and try to sue them? I can't because they passed Article 99 that protects each council member from any individual responsibility as a result of their actions.

You have that. You have the tribal sovereign immunity, plus the government could say "If we try to go after them, they can say Quinault Indispensable Party." Therefore, we are blocked out of all avenues to decide the issue. We are being deprived of due process of law.

The Fifth Amendment of the Constitution says that. Here we are not being able to exercise that and I am afraid of that situation. I think it needs to be rectified and at least as far as the trust responsibility, this amendment would do that.

Mr. YOUNG. Mr. Chairman, I appreciate this gentleman's comments because we have some cases in Alaska in my hometown where one group deeded over a bunch of land—I don't think they have authority to do that—by taking it away from another group. This is going to be heavily debated before it is over.

I would suggest that your points are well taken and I think we have a responsibility to make sure that there is no taking by or undoing the Fifth Amendment of the Constitution, and this bill may have further to go than we thought it did for the reasons you brought up.

I think the rest of you on the panel recognize his problem, because there is a definite concern here that by governing does not give you the rights of taking or abusing an individual of the tribes which you will be governing.

We will have to write this so the individual is protected also. It is crucial to me, what I have based a whole career on. One person is more important than the mass if he or she is right, not the mass.

Thank you, Mr. Chairman.

Mr. FALCOMA. Thank you Mr. Young, a majority of one. Chairman Richardson?

Mr. RICHARDSON. Thank you, Mr. Chairman.

Let me advise Mr. Whitish that we would appreciate him making some suggestions to this Act. We are ready to take them in terms of amendment suggestions. It seems to me that his problem is not with self-governance, but the internal Quinault issue. But I do want to stress that it is my view that self-governance is the future.

We do have some built-in protections in this Act. I think right now we have 28 tribes participating, but it is my view that this gives tribes more authority. It eliminates bureaucracy that shouldn't exist. I think the tribes should make these decisions themselves regarding their financial futures and their policy.

So I am vigorously in the days and years ahead going to push this concept. If we can refine it, I am ready to do that, but I think it is the future and I know that many of my colleagues on the subcommittee share the view that it is a future.

Mr. Chairman, I have no further questions.

Mr. WHITISH. Can I make one more comment?

Everybody talked before about equating self-governance with sovereignty, but what about the sovereignty of my tribe that doesn't feel that that is our future? That is what I am saying, that it doesn't look out for all parties involved.

All I am asking for is an honest read on this so that we can determine because self-governance in my belief is not for my tribe and I should not have to catch this train against my will.

Sovereignty is to decide what is best for your tribe, your situation and not be forced to do something that is not in the best interest of your tribe. That is what they voted me in for. That is my job.

I appreciate that that is the way this train is going. If it has to go that way, think about amendments, ways to fix this so it is responsive to everyone's needs.

Thank you.

Mr. RICHARDSON. The train is moving and you should give us some constructive amendments and we are ready to look at them.

Mr. FALCOMA. Mr. Ron Brown, when we say pilot projects, the administration has dealt with the issue of self-governance for eight years; in other words, we are dealing with an eight-year experience.

Mr. Ron Brown, I believe, is currently the Acting Director of the Office of Self-Governance. Do you have a response to concerns like what Mr. Whitish has said about the rights of those tribes that may be affected negatively concerning this concept?

I think we need your assistance in this.

Mr. BROWN. Yes, we have. We went through the process taking into consideration those tribes that didn't want to go into self-governance. In fact, during the whole process, one of the most important issues is that there be no adverse impact to the nonparticipating tribes.

What we have done so far is use shortfall. For instance, if an agency can't give up all of the due amount of money that should go to a compact tribe, then instead of using the agency money, we would use the shortfall pool.

As this program evolves, we hope that the Bureau will eventually pare down, but as it pares down we will still give the same level of services to the non-compact tribes that they had before the compacting took place.

Mr. FALEOMAVAEGA. Is it your opinion that the 20 tribes that have initiated this whole concept of self-governance, has it been pretty much to your satisfaction as far as the administration is concerned?

I realize one of the concerns mentioned by this panel was the funding. It seems that every year the money gets tighter or lesser. What can you respond to that?

Mr. BROWN. Well, the funding issue is a real tough issue to deal with because the self-governance concept right now is depending on the shortfall for the adverse impact that we are talking about. If we have other initiatives like the national reduction in programs with which we are dealing, that initiative flies in the face of what we are trying to do in self-governance.

What we are trying to do is get the administrative dollars that are currently used by the Bureau to process paper, get that money out in scholarships, in social services, get it out there to do other kinds of things. That is our big initiative. Throughout the process we are still worried about the non-compact tribes and I think the shortfall thing, the way we are dealing with it right now to make sure that the Bureau is still there for those tribes is with the shortfall.

Mr. FALEOMAVAEGA. Is it the intention of Secretary Deer and yourself to provide perhaps some kind of amendatory language in the legislation that would answer the concerns Mr. Whitish expressed?

Mr. BROWN. I think there would be no problem with that.

Mr. FALEOMAVAEGA. Give us some suggested language for that. Thank you.

[EDITOR'S NOTE.—Information not received at time of printing.]

Mr. FALEOMAVAEGA. I want to thank the members of the panel for their testimony.

On our third panel this morning we are having Hon. Dale Risling, Chairman of the Hoopa Valley Tribe of California; Hon. Henry Cagey, Chairman of the Lummi Indian Nation, Bellingham, Washington; also Hon. Joe DeLaCruz, President, Quinault Indian Nation, Taholah, Washington; Mr. Gordon Smith, Operations Manager, Makah Tribe, Neah Bay, Washington; and Mr. William Lavell, Former Director of the Office of Self-Governance, Bureau of Indian Affairs, U.S. Department of the Interior.

PANEL CONSISTING OF HON. DALE RISLING, CHAIRMAN, HOOPA VALLEY TRIBE; HON. HENRY CAGEY, CHAIRMAN, LUMMI INDIAN NATION; HON. JOSEPH B. DeLaCRUZ, PRESIDENT, QUINAULT INDIAN NATION; MATT KALLAPPA, POLICY ANALYST, MAKAH TRIBE; AND, WILLIAM LAVELL, FORMER DIRECTOR OF THE OFFICE OF SELF-GOVERNANCE, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. FALEOMAVAEGA. We will start with Mr. Risling.

STATEMENT OF HON. DALE RISLING

Mr. RISLING. Good morning.

Thank you very much.

I appreciate the opportunity to testify here today in support of H.R. 3508. I will submit our written testimony for the hearing and I will summarize my presentation.

Mr. Chairman, this legislation represents the cornerstone in the future of Indian affairs policies. After six years of tribal experimentation and general success and experience with self-governance, the administration now proposes limitations and restrictions on our progress and accomplishments.

The self-governance project has been time consuming, expensive and often frustrating as we, our governments, have literally pushed and pulled the bureaucracy forward. We will not retreat or step back, as suggested by the administration.

I would like you to keep in mind a couple things. One is that self-governance is an optional way of doing business with the Federal Government. Each tribe will have that option. Tribes who do not feel comfortable with self-governance don't have to enter into compacts. They can progress in that direction at the pace they feel comfortable with.

I think it is important to note that the funding that we receive under our compact agreements, according to self-governance, according to the law, we cannot adversely affect any other tribe with this funding.

I think it is also important to note that the law also assures that the Federal trust responsibility will not be diminished in any way in regard to these compacts.

Let me give you a couple of positive examples of the Hoopa tribal progress under self-governance and several examples of obstacles we have had to overcome in self-governance implementation. In 1991, our tribal program produced the second-highest return on the sale of tribal timber trust in the Nation despite California's being the lowest BIA-budgeted agency in the Nation.

In 1994, through self-governance and the implementation of a tribally designed alternative rule health care model serve delivery system, we are expanding health services to our Hoopa people. A small hospital at Hoopa closed in 1988 and will be renovated and opened in the near future to serve the entire community.

In terms of obstacles, the demonstration project clearly allows for negotiated transfer of all programs, services, functions and created a seemingly endless series of obstructions to stop us from taking over the Indian Reservations Roads program, as documented in our testimony.

We are now building roads on our reservation that meet our own design and construction standards in less time and at a reduced cost. The demonstration project allows tribes to waive regulations to be replaced by tribal guidance documents.

No regulations have been waived to date, which means the bureaucracy has only allowed self-administration to prevail. The Federal Acquisition Regulation System is comprised of 500 pages of procurement regulations. Although we have presented our own tribally-relevant procurement policies to the BIA and formally

sought waiver approval, the bureaucracy has refused, as documented in our issue paper, to submit it with the testimony.

I have some comments on the waiver process and improved policy formulations. We recommend clear congressional language that the negotiated rulemaking process fully respect and support government-to-government principles and that regulations waivers will be addressed in this rulemaking forum.

We recommend that Congress direct that the Interior Department's Office of Self-Governance be isolated from the influence and control of the BIA, that the Office of Self-Governance be capable of independent management with full-time FTE and financial support.

We recommend that Congress stipulate that the Director of the Office of Self-Governance require Senate confirmation.

The Clinton Administration has also proposed, as predecessor administrations, that Indian Health Service third-party collections offset major budget cuts. These widely optimistic receipt projections have been rejected by Congress every year. It is unfortunate that this new administration continues the same phony budget projection policies.

We urge the committee to reject the planned administrative cost savings and FTE reductions in fiscal year 1995 for the BIA and Indian Health Service, which would return these funds to the Treasury. Congress should allow these cuts to be redistributed to tribal governments.

Thank you.

Mr. FALEOMAVAEGA. We thank you very much, Mr. Risling.

STATEMENT OF HENRY CAGEY

Mr. CAGEY. Thank you, Mr. Chairman.

Good morning.

I am Henry Cagey, Chairman of the Lummi Nation located in Washington State. I certainly appreciate the opportunity to provide public testimony on H.R. 3508, the Tribal Self-Governance Act to permanently authorize the tribal self-governance initiative in the Department of the Interior.

I will try to verbalize my testimony. I would like to request to reserve the right to extend my written testimony on the administration recommendations.

Mr. FALEOMAVAEGA. Without objection.

Mr. CAGEY. Tribal self-governance is fundamentally about political change in the management of American Indian programs, a shifting of responsibilities from the bureaucracy to tribal governments and the management of our unique tribal affairs and the empowerment of tribal elected officials to determine priorities on the expenditures of financial resources intended for our benefit.

This is not an anti-bureaucracy policy, but a tribal policy shaped and driven by tribal leadership. As you clearly stated, Mr. Richardson, the Self-Governance Act has proposed development of Indian country by Indian tribes themselves in the right direction at the right time.

This bill is nothing less than the future of Indian country.

We certainly agree with the assessment and the historical initiatives heard by Democratic and Republican leaders in the House and Senate.

I reaffirm that self-governance is not another Federal program, but the very cornerstone of a new improvement in Indian affairs policy, supporting tribal self-government and independence and sovereignty as well as a mutual respect government-to-government relationship between tribal governments and the United States.

I am not going to—I don't want to read this anymore.

Mr. FALEOMAVAEGA. Why don't you just wing it?

Mr. CAGEY. I want to summarize what I heard this morning. We will be submitting written testimony, but I would like to say a few things.

I do appreciate the committee's support of the Act and I have heard Mr. Young's comments on the questions. The Act itself is a good Act and I have heard Ada Deer talk about some of the things on what self-governance has done for our tribes.

As you heard, the membership of the Lummi Nation has increased quite a bit since we have been self-governing. We are into our fourth year of implementation. We are seeing a lot of activity happen at home.

These field hearings on individuals that you are hearing coming out, it takes time for our people to understand. It has taken two years for our people to really understand the concepts of responsibility. Our council has become more responsible in the last two or three years on making its own decisions on its own priorities.

I stress the fact that this is a really new way of doing things for our people, being accountable, being responsible. If there are problems with the way the dollars are being spent or how we are managing, that is up to the tribal people and through our Constitution and through our own membership on voting every year whether we are doing a good job or not.

This is not over dollars. It is over control of how we are doing things at home. For the last two or three years, I have seen a lot of good changes in our people and I really can't stress enough, if there are concerns in the amendments or recommendations that are coming forward on slowing this process down, then really, it will slow it down.

There is nothing really to hide that we are trying to do with this project.

We are also responsible for the education and communications program that is being administered, and I urge Mr. Young to come up and look at the library that we have put together on self-governance.

I hope you will visit some of the people that are actually working self-governance to where it should be, but with the people.

Thank you.

Mr. FALEOMAVAEGA. Thank you.

By the same token, you can come and visit my islands.

[Prepared statement of Mr. Cagey follows:]


LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT: _____

EXT. _____

Testimony of Henry Cagey, Chairman
Lummi Indian Nation
Presented to the
House Native American Affairs Subcommittee
Hearing on
H.R. 3508, the "Self-Governance Act of 1993"

February 25, 1994

I appreciate the opportunity to provide public testimony on H.R. 3508, the "Tribal Self-Governance Act of 1993" to permanently authorize Self-Governance with the Department of the Interior with the exception of selected BIA Education programs. This bill is companion to the Senate measure, S. 1618 which passed the Senate on November 23, 1993. This legislation will be remembered as the cornerstone law to improvements of future Indian Affairs policies and the government-to-government relationships between Indian Tribes and the United States.

Chairman Richardson, your introductory statement on H.R. 3508 in the November 15, 1993 Congressional Record certainly summarized the views and expectations of many of the Tribal leaders involved in the advancements of the Demonstration Project phase of this historic endeavor. For the hearing record, I would like to reiterate your closing statement:

This bill is the product of 200 years of failed Federal Indian policies, 18 years of capacity building under the Indian Self-Determination Act, and 5 years of experimentation under the Self-Governance Demonstration Project.

The Self-Governance Act was a proposal developed in Indian Country by Indian Tribes, themselves. It is the right direction at the right time. This bill is nothing less than the future of Indian Affairs.

Tribal Self-Governance is fundamentally about political change in the management of American Indian programs; a shifting of administrative responsibilities from the bureaucracy to Tribal governments; and, empowering Tribal elected officials to determine priorities in the expenditure of financial resources intended for our benefit. Although the Self-Governance policies and legislation has bi-partisan Congressional support and increasing endorsement from Indian Country, I forewarn that the established Federal Indian Affairs bureaucracy has an arsenal of obstacles to covertly dismantle this policy. Any efforts to narrow the Self-Governance

authorities or impose added restrictions on Tribal governments by the administration should be rejected by this Committee.

This hearing provides the first opportunity for the Clinton Administration through the Department of the Interior testimony to officially address the Self-Governance permanent authorization. We certainly will support improvements in the legislation, such as ensuring Tort Claims coverage and other positive aspects of the Indian Self-Determination Act apply to Self-Governance. We will oppose any efforts, however seemingly insignificant, to restrict progress already achieved with the Interior Department.

The testimony of Assistant Secretary-Indian Affairs Ada Deer at this hearing offers a glimpse of the Administration's almost tentative support for H.R. 3508. I would like to comment briefly on her broad testimony recommendations. Further amendments by the Administration are indicated. Therefore, I also request the opportunity to revise and extend our testimony after review of the Interior Department legislative recommendations.

We are certainly pleased that Assistant Secretary Deer states that the "policy of Self-Governance is the most significant Federal policy for Tribes since the Indian Reorganization Act of 1934." We do oppose specific recommendations by the Assistant Secretary including the proposal to make the Self-Governance permanent legislation a separate, free-standing law from Indian Self-Determination authorizations; the replacement of negotiated rule-making with the traditional administrative formal rule-making process; the delay of permanent authorization passage until after a comprehensive study is completed in June; and, the need for further clarifications, standards and quality control requirements.

The Tribal Self-Governance Demonstration Project and permanent authorization legislation have important foundations and relationships to the predecessor Self-Determination laws as included in our Compacts of Self-Governance. The linkage to Self-Determination provisions is important at this critical stage of Self-Governance to ensure logical continuity, provide a framework of regulations until the waiver process replaces existing rules with Tribal guidance documents, and maintains the opportunity of retrocession in the unlikely event such action is needed by a Tribe. Therefore, Self-Governance should remain connected to Self-Determination.

The proposed negotiated rule-making process is purposely included in the permanent authorization bills to require the Department of the Interior and Tribal government representatives to enter the new frontier of face-to-face negotiations

over rules and regulations affecting Self-Governance. Given our past negotiation experiences over the last six years, I truly believe we can create a meaningful, participatory process of debate and dialogue to reach logical conclusions as governments at the negotiations table. Although Assistant Secretary Deer conjectures that the negotiated rule-making will be a "cumbersome, unworkable process that will likely not adequately represent all interests," I expect just the opposite provided we enter the process with commitment of how we "can do" versus the reasoning of "why we can't."

The Self-Governance Tribes that have assumed the responsibilities, liabilities and challenges of Self-Governance should be the principal parties at the negotiation table regarding Self-Governance rules and regulations. Once negotiations are complete, these proposed rules can be published for public comment by all interested parties. Tribal representatives and Federal officials would then return to the negotiations to establish the final rules. Obviously, the existing administrative formal rule-making process for P.L. 100-472, Titles I & II took over six years, extensive time and expense to reach the current proposed rules stage. I am sure we can improve measurably on this traditional process.

The proposal to hold up passage of the permanent Self-Governance authorization until a comprehensive study is completed in June also does not have merit. The proposed law simply extends the Title III authorization provisions which the Interior Department and participating Tribes have experienced for over six years in the Demonstration phase. We urge prompt passage of this legislation without delay.

And finally, the Administration indicates that the Congress, Tribes and Administration must address "the Federal relationship and trust responsibility to Tribes and individual Indians in the context of Self-Governance" as well as the "proper application of standards for ensuring public health and safety and quality control in the context of Self-Governance Compacts for certain programs such as construction." The law already outlines broadly the Federal relationship and trust responsibility which has worked well for over six years. In terms of standards and quality, the bureaucracy once again is imposing requirements on Indian Tribes that are usually left unaddressed by the Federal system. Any other standards, safety assurances or quality control issues should be addressed through negotiations.

I am troubled by the Administration's repeated assertions that non-participating Tribes and individual Indians need certain protections when no Tribe or individual has proven any negative affects of Self-Governance over the Demonstration period. The testimony presented by the Shoalwater Bay Tribe regarding the negative impact of Quinalt Nation Self-Governance on the Tribe, its members and Quinalt

allottee landholders is not based on any fact relative to Self-Governance and represents the political problems between these parties that have been clearly decided by the Administration, Courts and Congress. The attempt to overturn these past determinations through an unrelated Self-Governance authorization should be rejected by the Committee. In fact, the Olympic Peninsula Agency due to Self-Governance shortfall monies has the same Executive Direction and Administration funds as before Self-Governance yet is responsible for only half the number of Tribes and only twenty percent of the Indian population as before. Actually, the Shoalwater Bay Tribe, its members and Quinalt allottees are experiencing a windfall of available support due to Self-Governance. The BIA is the responsible party; not the Self-Governance Tribes, in not improving services to these groups.

Proposed amendments contained in Mr. Whitish's testimony and circulating separately modify the doctrines of indispensability and sovereign immunity in litigation affecting Self-Governance Tribes. The changes proposed in these doctrines are unnecessary, inappropriate, and would effectively overturn numerous court decisions. There is absolutely no reason for Self-Governance Tribes to be treated any differently with respect to these judicial doctrines than tribes contracting Bureau of Indian Affairs programs under the existing provisions of the Indian Self-Determination Act.

When I speak of covert bureaucratic obstacles to Self-Governance policy development, there are knowledgeable people among us who would deny that charge. Let me provide several current examples for everyone's consideration and enlightenment.

A. BIA Refusal to Restructure/Reorganize as a Result of Self-Governance Negotiations Creating Extensive Demand on Shortfall Funds and Limitation on Funds Available for Start-Up and Implementation Costs.

The Self-Governance Supplemental Funds provided initially in the Fiscal Year 1991 Interior and Related Agencies Appropriations were intended to provide start-up and implementation funds for Self-Governance Tribes embarking on this pioneer Demonstration Project. Knowing that time would be required for BIA administrative adjustments to the effect of negotiated transfer of "programs, services, functions and activities," the Tribes also requested shortfall funds to be provided to Tribes in lieu of actual transfer of administrative dollars and restructuring to continue the same level of services to other non-participating Tribes. The BIA refusal to restructure has resulted in a major portion of these Supplemental Funds being expended for Agency shortfall with only \$25,000 per

Tribe available in Fiscal Year 1994 for start-up and implementation costs. By this inaction, the Bureau will basically eliminate shortfall monies for new Tribes entering the initiative under permanent authority.

B. The Fiscal Year 1995 Budget Justification Applies Administrative Cost Savings and FTE Reductions Disproportionately to those Area and Agency Offices with Extensive Self-Governance Involvement Creating Potential Mischief on the Allocation of Shortfall Monies and Potential Disruption of Services to Non-Participating Tribes.

The BIA plans to contribute approximately \$12 million in Administrative Cost Savings and FTE reductions principally through Area/Agency Office program consolidations and elimination of program funds, including \$700,000 from the Portland Area Office which is directly attributable to previous Self-Governance negotiations. Although Self-Governance has the same goals as the "Reinvent Government" effort, the Bureau budget staff have superimposed these government savings designated for the Treasury on top of Area/Agency Offices already heavily committed to shortfall reimbursements to Self-Governance Tribes. You can imagine the potential administrative chicanery in mixing these two fund transfer operations while further reducing the capabilities for these Offices to provide services. Self-Governance Tribes have been and will be blamed for service disruptions at the local level; shortfall monies dedicated to Self-Governance Tribes will be diverted to the Treasury with BIA Budget personnel taking credit; and, Self-Governance Tribes will lose rights to their negotiated resources.

C. Tribal Regulations Waiver Authority under the Demonstration Project Never Became Relevant; Tribal Negotiated Rule-Making and Regulations Waiver Authority Will Continue to be Subverted and Diminished Under Permanent Authorization.

Tribal government rights under the Self-Governance Demonstration Project to waive burdensome or obsolete regulations to be replaced by relevant Tribal guidance policies never materialized during the Demonstration Project phase. Waiver requests became lost in the maze of the Solicitor's Office and the BIA surname approval process. So, Tribal governments in actuality performed "Self-Administration" rather than experienced Self-Governance in the Demonstration period. Despite President Clinton's Executive Order of October 26, 1993 on "Enhancing the Intergovernmental Partnership" to reduce burdensome regulations for State, local and Tribal governments, we expected the Interior Department to propose restrictions on regulations waiver and negotiated rule-making. In fact, the

Administration has proposed the elimination of the negotiated rule-making authorization. We urge this Committee to:

1. Make the Interior Department's Office of Self-Governance as autonomous as possible from the BIA with independent, sufficient budgets to manage all administrative matters associated with Self-Governance;
2. Provide for Senate confirmation of the Director of the Office of Self-Governance a requirement for selection to remove this position from manipulations; and,
3. Establish a delegation of authority directly to the Office of Self-Governance to grant Tribal waiver of regulations requests.
4. Include the OMB Cost Exceptions contained in our Self-Governance Compacts as OMB only allowed their application during the Demonstration period of the initiative.

Tribal governments will need clear Congressional authority for Self-Governance to move forward under a cooperative, mutual decision-making process or the bureaucracy will continue to nit-pick against progress. This will ultimately require Congressional micro-management until the administrative policy-makers comprehend that Self-Governance is the new, permanent way for Tribes to conduct their business.

The Lummi Nation has been a part of this historic, tribally-driven initiative since it's inception. On October 27, 1987, our Tribal Chairman at that time, Larry Kinley, presented testimony before the House Interior Appropriations Subcommittee regarding "Problems and Solutions in the Tribal-Federal Relationship." In that testimony, the Lummi Nation stated:

"The basic issue confronting us today is a cumbersome, unwieldy bureaucracy built layer upon layer over the years being pressured by frustrated Tribal governments yearning for independence in the management of their affairs and seeking a larger share of resources allocated for their benefit.

I truly believe that American Indian Tribes and Congress over the next several years should restructure the Federal service and resource delivery system to Indian Country to efficiently and effectively address the broad spectrum of Tribal government needs from those totally dependent

Tribes to Tribes desiring true self-government. The process of change is always unsettling and painful, but the new system could still provide strong trust protection and allocate a greater share of existing resource expenditures to Tribes without drastically increasing government appropriations."

With the passage of permanent legislation, we can better realize the full potential of this initiative. Without Self-Governance, as a permanent option for Tribal governments, it is likely that the Federal bureaucracy would return to the "business as usual" relationship with Tribal Governments and tie Tribal entities to the constraints of the 93-638 contracting relationship whereby the bureaucracy chooses the priorities; determines funding allocations; and, selects Tribal participants. If this initiative were to continue as simply another one time "experiment," these Tribally-proposed principles would not be taken seriously. The Demonstration Phase of the Self-Governance initiative is a living example of the Clinton/Gore's concept of reinventing Government. We have only scratched the surface of the creative and innovative possibilities for the restructuring operations of Tribal government and effective Tribal/U.S. relationships.. The Lummi Nation supports and commends your efforts in moving forward with permanent legislation.

The Lummi Nation has helped develop and evolve this initiative for over six(6) years. We are in our fourth year of implementation with our Compact of Self-Governance with the Department of the Interior and will begin to implement our Compact with the Indian Health Service on January 1, 1994. We have also coordinated and administered the Self-Governance Communication/Education Project (since 1989), in coordination with the Jamestown S'Klallam, Quinault Indian Nation, and the Hoopa Valley Indian Tribe. In this short period of time, the Lummi Nation has realized a great deal of positive change due to Self-Governance.

Tribal Community

- **Budget Ordinance:** With the adoption of this ordinance, the Tribal community members are actively involved in the decision-making processes of their Tribal government. This has resulted in greater Tribal control and fiscal accountability of all programs and resources. In 1988, prior to Self-Governance, of 538 registered voter, only 28% of our members voted; in 1994, 64% of our 816 registered voters participated in our General Elections.

Tribal Government

- **Lummi Indian Business Council:** Restructuring of the Tribal Government has occurred to accommodate new responsibilities and authorities. The Council now meets weekly rather than monthly. For the first time in Lummi Nation history we have a full-time paid Tribal Chairman. The Council focus now is on planning for the future, in sharp contrast with the past of simply reacting to crisis situations.
- **Tribal Staff:** A new awareness has occurred among Tribal Staff. They have become accountable to the people and to the Business Council rather than to an outside Federal entity and/or representative.
- **Priorities:** The Business Council now establishes meaningful Tribal priorities and determines the resource allocations for those priorities. Tribal members are part of this decision-making process under the auspices of the Tribal Budget Ordinance.

Tribal Programs

- **Veteran Affairs Office:** This office was created to service Veterans in meeting their social, educational, health, employment and housing-related needs. The Lummi Nation has over 330 Lummi Veterans with unique and different needs than the general Lummi population. The Office was created in 1992 with Self-Governance monies. The program is recognized as a regional and national model Veterans program for Native Americans.
- **Culture:** A new Department was established under Self-Governance. A new Ordinance is completed for the Protection of Cultural Resources, Burial and Archaeological Sites.
- **Education:** The Johnson O'Malley program has expanded from servicing 370 students, to providing services to over 800 youth. Tribal School teacher salaries were supplemented to bring them closer to that of the Washington State teachers. Under our Scholarship program, funding has assisted over 80 students to further their education. We established a Youth Program to supplement educational services. This program has serviced over 350 youth.

- **Law & Order:** A full-time criminal investigator has been employed. We have cleared the record of many pending cases. A new drug code has resulted in drug-related and criminal arrests.
- **Court:** The staffing has stabilized and an accumulated back-log of cases have been reviewed, evaluated and processed. Tribal code revisions for Criminal, Traffic and Rules of Court are being up-dated.
- **Program Support:** Support for the following programs: Safe Streets; Senior Citizens; Education Commission; Budget Committee; and, our local volunteer Fire Department
- **Business Assistance Center:** This center, in coordination with the Northwest Indian College, provided technical assistance to 150 tribal members who own or operate small businesses.

External

- **Self-Governance Communication/Education:** Since 1989, we have accomplished the following: conducted 21 workshops across the Nation, with participation of over 250 Tribes; made over 200 presentations; wrote, edited, published and distributed over 13,550 copies of publications on the Project, the *Red Book and Workshop Manual*; currently publish and distribute a national Self-Governance monthly newsletter; and, we have recently completed a one-half hour documentary video on Self-Governance.

With potential permanent legislative authorization of the Self-Governance Initiative, the Lummi Nation is excited and we look forward to the future with a new vision for our Tribal community. Our vision includes: the reaffirmation and re-establishment of the government-to-government relationship with the United States; to move forward towards greater self-sufficiency, the possibility of becoming a community that is proactive rather than reactive; and, the realization of a Tribal government that is accountable and responsible to the people we are here to serve. Through Self-Governance, these visions, ideas and hopes for the future can and have become realities. Our experiences have proven that through Self-Governance, positive change can occur within our Tribal community. We know what our problems are, but most importantly, we know what the solutions are and how they can best be implemented.

We understand the need to proceed at a steady, calculated pace in the development of Self-Governance as a permanent way of implementing our government-to-

government relationship. Yet, it is very difficult to explain to our people why we are self-governing in some areas, but not in others. Why we can be flexible in meeting the needs with some funding, but still restricted with others. Let us not lose sight of the need to address the inclusion of the rest of the Federal system that provides services, activities and functions to Indians in the very near future. We envision a future in which the Tribal governments can comprehensively manage services and development according to Tribally-established priorities and Tribally-oriented guidelines.

We know that Self-Governance does not answer all of our Tribal problems and that Self-Governance may not be appropriate for all Indian Nations, but for the Lummi Nation, it is our road to the future. For the first time in over 100 years, we are beginning to determine our own successes and learn from our own failures.

Bill Clinton and Al Gore said it the best with regards to, *"Putting People First"*:

"We can no longer afford to pay more for--and get less from --our government. The answer for every problem cannot always be another program or more money. It is time to radically change the way government operates--to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up. We must reward the people and ideas that work and get rid of those that don't work."

This is the Tribal Self-Governance Initiative -- the empowerment of Tribal governments to improve the quality of life of the Tribal people in our Tribal communities. Your support in prompt passage of permanent Self-Governance authorization is strongly encouraged. We appreciate and commend you and your many supportive efforts on behalf of Indian people.

I am available for any questions the Committee may have now or during your deliberations over permanent Self-Governance authorization provisions.

Mr. FALCOMAVAEGA. Mr. DeLaCruz.

STATEMENT OF JOSEPH B. DeLaCRUZ

Mr. DELACRUZ. Mr. Chairman, for the record, I am Joe DeLaCruz, the President of the Quinault Indian Nation and I really appreciate the opportunity to come before this committee again, and I request to submit a written statement to the record of things that have been brought up in this hearing.

Mr. FALCOMAVAEGA. Without objection. All of your statements will be submitted.

Mr. DELACRUZ. I want to point out that I have been coming before these committees for 26 years. I worked with your former colleagues to see that Indian people were able to come before these committees and express what their wants and needs were instead of the old way when Interior and Insular Affairs and Appropriations was Federal bureaucrats coming before the committees.

We have a long track record.

I was involved with the legislation on the Self-Determination Act. We thought we had a good piece of legislation at that time that was going to begin providing Indian people the opportunity to govern themselves and make their own mistakes and grow in this Nation instead of being continuously under five generations of paternalism.

I was there when it came about under the last administration through a fluke of some articles in The Tulsa Tribune and Arizona Star about corruption and misuse of funds in the Bureau of Indian Affairs and Indian Health Service when Congressman Yates in the Appropriations Committee asked Secretary Hodel and Dr. Rhodes to come before his committee oversight hearing and the administration, at that time represented by Secretary Hodel, said "Let's turn everything over to the Indians, and let them sink or swim."

It was out of that hearing that the idea of self-governance came out of, ten tribes originally, ten leaders that had been through twenty or thirty years of experience at that time. As it was with self-determination, there has been a lot of external-internal interference as far as Indian people trying to grow in this country under the generations of paternalism.

Today you heard comments from the Chairman of the Shoalwater Tribe about the Quinault Indian Nation. There have been I.G. audits, bureau investigations, three court cases showing that these peoples' charges are wrong. They submitted stuff to the record. We will submit that for the record.

That is not a place for a hearing on self-governance. Many of the people back here that understand Indian tribes have told them your problem is at home. If this committee wants to take a look at the Dodge General Allotment Act in 1887 and what it has done to our people, that is another issue. Congress has and knows a long record of what that Act has done to people.

No Indian tribe just like the United States can infringe on another person's property on another person's under the Code of Federal Regulations.

One thing I want to comment on, this is my first opportunity to talk on this administration's position on self-governance. We had

several meetings all with self-governance tribes, all those that were interested in self-governance, three or four months ago in D.C.

We are trying to get to the point, Mr. Chairman, we are back in the late 1960's and early 1970's—some of us worked with your people, with people in the Pacific Islands to work out free association, commonwealth relationships and those type of things.

We were speaking to these things back then. When we had our meetings three or four months ago with self-governance tribes and various people from the agencies, we agreed on and recommended a Federal negotiation process that is in this legislation.

We want to make sure that it isn't a negotiation process that is set up for unions and citizen disputes and those type of things; that it is a process that is government-to-government, nation-to-nation. We are trying to get back to where our forefathers were when they signed treaties with the United States and get back to the United States honoring its word, honoring its commitment and honoring its own Constitution.

I will submit to this committee the record of all the things that happened at Quinault, because that is not the issue before this committee. It is Indian nations, Indian people, moving ahead.

Mr. FALEOMAVAEGA. Thank you, Mr. DeLaCruz.

[Prepared statement of Mr. DeLaCruz follows:]



Quinault Indian Nation

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Testimony of Joseph B. DeLaCruz, President
 Quinault Indian Nation
 Presented to the
 House Native American Affairs Subcommittee
 on H.R. 3508, the "Tribal Self-Governance Act of 1993"
 Hearing of February 25, 1993

The Quinault Indian Nation expresses appreciation to Chairman Richardson for the introduction of H.R. 3508, the "Tribal Self-Governance Act of 1993" on November 15, 1993. The Chairman's introductory remarks in the Congressional Record concluded that this Tribally-designed legislation is "nothing less than the future of Indian Affairs." We certainly agree with that assessment, yet remain perplexed at the continued reluctance of the Indian Affairs bureaucracy to assist in creatively implementing this most logical stage of our evolution towards meaningful government-to-government relations.

We appreciate the expressed support by Assistant Secretary-Indian Affairs Ada Deer for H.R. 3508 and her stated belief that the "policy of self-governance is the most significant Federal policy for Tribes since the Indian Reorganization Act of 1934." I would hope through her leadership that the Interior Department will exhibit real change in its attitude and behavior towards the concept, principles and realities of Tribal Self-Governance.

The views and recommendations of the Interior Department were noticeably brief with the expectation that more substantive Administration amendments would be forthcoming. We would appreciate the opportunity to express our opinion on these amendments when available. In regards to the Assistant Secretary's recommendations on H.R. 3508, the Quinault Nation positions include:

1. **Do not Separate Self-Governance from Self-Determination legislation and enact a free-standing law.**

The Tribal Self-Governance Demonstration Project is the next step in the Self-Determination process. The last eighteen years of Indian Self-Determination have provided Tribes with extensive experience in managing their own affairs. Under Self-Governance, we still administer programs under existing Self-Determination rules and regulations until the waiver regulations process replaces these rules with more appropriate Tribal guidance provisions. The Title III and proposed Title IV authorizations still contain important linkages and protections to established Self-

Determination principles and procedures, including retrocession, that should be maintained in this transition. Therefore, Self-Governance should continue to be linked to Self-Determination.

2. Respect for the rights of non-participating Tribes already well covered under Title III and HR 3508

The rights of non-participating Tribes and Indian individuals are directly addressed in the Title III Demonstration Project phase and the Title IV permanent authorization. The bills are straight-forward in this regard. Report language should reiterate the intentions of the Congress and Self-Governance Tribes to protect the interests and rights of Tribes who choose, as is their sovereign right, not to participate.

3. Do not replace negotiated rule-making with the administrative formal rule-making process; we do not believe the negotiated rule-making will be "cumbersome, unworkable process that likely will not adequately represent all interests."

The provision of negotiated rule-making is intended to require government-to-government negotiations between Federal officials and Tribal leadership over the rules and regulations to govern Self-Governance operations. We are seeking, again, creative, logical and streamlined processes that clearly recognize a new Indian Affairs policy and communications between Tribes and the United States. Tribal and Federal representatives will negotiate the rules and regulations for permanent Self-Governance legislation and these proposed rules would be published for public comment. Tribal governments that have chosen the responsibilities and liabilities associated with Self-Governance should have the primary role in determining appropriate regulatory guidance. Non-participating Tribes with no stake or commitment should be allowed to comment on the proposed rules. Self-Governance Tribal representatives and Federal officials will then negotiate the final rules. Our last experience with the administrative formal rule-making process for P.L. 100-472 Titles I & II required five and one-half years plus millions of dollars in Tribal and Federal time and expense which has proven to be a cumbersome, unworkable process. We challenge the Administration that Self-Governance can do it more effectively and efficiently for the mutual benefit of all, but both sides must be willing to negotiate as governments.

4. The enactment of Self-Governance permanent authorization should be done immediately and not await the results of a comprehensive study due in June 1994 and subsequent Administration amendments.

The Self-Governance Demonstration Project was actually initiated on December 23, 1987 with enactment of the Fiscal Year 1988 Omnibus Appropriations measure

providing over six years of experience and experimentation in the Demonstration phase. The proposed legislation basically extends the Demonstration provisions into permanent authorization. The Administration has had ample time and opportunity to study, analyze and reach conclusions on the merits and issues of Self-Governance. We urge the legislation to be passed quickly into law.

5. **There is not a clear need to legislatively address the Federal relationship, trust responsibility to Tribes and individual Indians, the scope of the program, and the application of standards and quality control in the context of Self-Governance as proposed by the Assistant Secretary.**

Tribal Self-Governance is NOT another Federal program, but the next logical step in our progressive quest for government-to-government relations between Indian Tribes and the United States. The Demonstration Project phase has clearly proven that the Tribes and the Interior Department can reach agreement and move forward on a complex spectrum of issues without micro-managed legislation. The Federal relationship, trust responsibility to Tribes and individuals Indians and scope of Self-Governance are addressed in H.R. 3508. Issues of standards and quality control, responsibilities and liabilities should be on the negotiation table between governments.

Department officials and Tribal governments have discussed the need to add clarifications to H.R. 3508 that protections such as Tort Claims coverage and authorities such as access to GSA and Federal Supply sources contained in Self-Determination laws should also be afforded Self-Governance Tribes. As long as these provisions are supportive and not restrictive, we would agree. We would also urge the Committee to support the inclusion of the ten OMB Cost Exceptions negotiated in the Compacts of Self-Governance as authorized in the permanent bill. These Cost Exceptions were only allowed by OMB during the Demonstration Project period.

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

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

diminish and even extinguish our cultures, languages, reservation land titles and rights to exist as legitimate, independent governments.

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

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

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

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

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

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

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

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

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

The permanent Self-Governance legislation, as a cornerstone to a new Indian Affairs foundation of government-to-government relationships between individual Indian Tribes and the United States, is a beginning. There will be those detractors who will seek to diminish Tribal jurisdiction due to peripheral concerns such as gaming, water rights or the myriad special interest agendas employed against Tribes over the centuries. The Indian Affairs foundation, however, recognizes our rights and responsibilities as independent governments to exist and develop according to our Tribally-determined priorities. In the future, I envision that permanent Self-Governance will involve multiple Federal Departments and Agencies with negotiated agreements over multi-year periods. This permanent Self-Governance statute is a most important first step to an improved future.

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

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

On behalf of the Quinault Indian Nation, I want to express our deep appreciation for the understanding, support and respect you have shown to Tribal governments in the development of Self-Governance. We strongly encourage prompt passage of permanent Self-Governance legislation embodied in H.R. 3508 with timely negotiations with the Senate Committee on Indian Affairs and their previously passed bill, S. 1618. We look forward to working together with Congress as we enter new frontiers in establishing meaningful government-to-government relationships between American Indian Tribes and the United States.

Mr. FALCOMVAEGA. Mr. Smith is not here. In his place is Matt Kallappa, the Policy Analyst for the Makah Tribe of Washington.

STATEMENT OF MATT KALLAPPA, MAKAH TRIBE

Mr. KALLAPPA. Good morning Mr. Chairman and members of the committee.

I bring greetings from the Honorable Chairman of the Makah Tribe who was unable to attend today's proceedings.

My name is Matt Kallappa. I am an enrolled member of the Makah Tribe currently serving as Policy Analyst for my tribal council. I consider it an honor to represent my tribe and provide our testimony today. We wish to submit written testimony within the allotted time frame.

The Makah Tribe began our self-governance planning efforts in November of 1990 and negotiated our compact and first annual funding agreement in September 1991 to be effective January of 1992.

The Makah Indian Tribe supports passage of H.R. 3508, the Tribal Self-Governance Act of 1993. The tribes involved in the self-governance demonstration project have successfully demonstrated that we are capable of managing and operating tribal programs, activities, functions and services according to tribal priorities. This is certainly the case for the Makah Tribe.

Makah participation in the Self-Governance Demonstration Project has localized decision-making and given us flexibility to implement the priorities of our tribe. It has allowed us to both improve the quality and increase the quantity of services to our tribal membership.

More than anything else, it has allowed us to envision the vast possibilities available through effective and efficient use of tribal resources free from paternalistic and bureaucratic barriers built through years under the Bureau of Indian affairs. Our tribe has made significant steps of progress by exercising negotiated authorities through self-governance.

Since our participation in self-governance, the Makah Tribe has tripled the amount of scholarship funds for our Higher Education program and doubled the funding for vocational education. Now our people are seeking and receiving education and training more than was possible prior to self-governance.

We have enhanced our judicial system by establishing a public defender, a tribal prosecutor and adult probation officer. These programs did not exist prior to self-governance.

We have established a full-time juvenile officer for our children's protective services and we have doubled the funding for child and family therapeutic counseling. We have funded our Tribal Language program, which teaches the Makah language to our children and our adults.

In prior years, funding for this program was based on grants and contracts and was inconsistent. We have implemented a comprehensive tribal budgeting and reporting process which are helping to establish a greater sense of accountability overall.

We have greatly increased our knowledge and understanding of the broad range of services funded by the Federal Government to the Bureau of Indian Affairs on behalf of Indian tribes. We have

provided the tribal membership greater opportunity for direct input into funding the priorities of the Makah people. An example of that, in our most recent election we had the highest voter turnout as we have ever had; we had 751 members of our tribe voting in the election.

We have also begun implementation of a plan to improve administrative and management systems by creatively redesigning and refocusing our tribal programs and we have added 47 new jobs to our tribal organization. This partial list highlights only a few of the more notable tribal developments under self-governance.

While our responsibilities have increased greatly, we believe we have prospered because we have been able to manage our resources according to our own priorities. After all, who better to make decisions for the Makah Tribe than the Makah people themselves?

In addition to the Tribal Self-Governance Act of 1993, we recommend that there be only one Office of Self-Governance and that it be located in the Executive Office of the President. This would firmly establish the government-to-government relationship originally envisioned in the Treaty of 1855.

Multiple self-governance offices in the administration will force tribes to continue negotiating with the numerous federal agencies. A single Office of Self-Governance would ensure consistent implementation of government-to-government policy, eliminate duplication of efforts and streamline all self-governance processes.

We encourage passage of the Self-Governance Act of 1993 because we believe that permanent self-governance legislation will do much to address the following issues, will prevent the BIA from using the implied nature of a demonstration project as an excuse to delay permanently base transferring negotiated funds.

It will help prevent the BIA from avoiding adjusting itself in light of tribal self-governance activity. It will speed up the waiver process to allow tribes an opportunity to creatively implement our tribal initiatives and it will assure that tribes have the ability to implement long range plans established under self-governance.

The Makah Tribe is convinced that congressional support for this tribally driven initiative is absolutely essential for tribes to have ample opportunity to set our respective courses for the benefit of our future generations. We strongly advocate passage of this critical piece of legislation as a clear statement of that congressional support.

I want to take this opportunity to thank the cosponsors of the Tribal Self-Governance Act for introducing and sponsoring this bill, and we look forward to working with Congress in continued efforts to enhance the lives of our Indian people both now and in the years to come.

Thank you.

[Prepared statement of Mr. Kallappa follows:]



MAKAH TRIBAL COUNCIL

P.O. BOX 115, NEAH BAY, WA. 98357 · 206-645-2205



MAKAH TRIBAL TESTIMONY SUPPORTING PASSAGE OF H.R. 3508, THE "TRIBAL SELF-GOVERNANCE ACT OF 1993"

BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE

February 25, 1994

Mr. Chairman, members of the Committee, I bring greetings from the Honorable Hubert Markishtum, Chairman of the Makah Tribal Council, who was unable to attend today's proceedings.

My name is Matt Kallappa, I am an enrolled member of the Makah Tribe, currently serving as the Policy Analyst for my Tribal Council. I consider it an honor to represent my Tribe and provide our testimony today. We wish to submit written testimony within the allotted timeframe.

The Makah Tribe began our Self-Governance planning efforts in November of 1990, negotiated our Compact and first Annual Funding Agreement in September, 1991 to be effective January, 1992.

The Makah Indian Tribe supports passage of H.R. 3508, the "Tribal Self-Governance Act of 1993". Tribes involved in the Self-Governance Demonstration Project have successfully demonstrated that we are capable of managing and operating Tribal programs, activities, functions and services according to Tribal priorities. This is certainly the case for the Makah Tribe.

Makah participation in the Self-Governance Demonstration Project has localized decision making and given us flexibility to implement the priorities of the Makah Tribe. It has allowed us to both improve the quality and increase the quantity of service to our Tribal membership. More than anything else it has allowed us to envision the vast possibilities, available through effective and efficient use of Tribal resources, free from paternalistic and bureaucratic barriers built through years under the Bureau of Indian Affairs.

Our Tribe has made significant steps of progress by exercising negotiated authorities through Self-Governance. Since participation in Self-Governance the Makah Tribe has:

1. Tripled the amount of scholarship funds for our Higher Education Program and doubled the funding for Vocational Education. Now, our people are seeking and receiving education and training, more than was possible before Self-Governance.

2. Enhanced our Judicial system by establishing a Public Defender, Tribal Prosecutor and Adult Probation Officer. These programs did not exist prior to Self-Governance.
3. Established a full-time Juvenile Officer for children's protective services and doubled the funding for child and family therapeutic counseling.
4. Funded our Tribal Language Program which teaches the Makah language to our children and adults. In prior years funding for this program was inconsistent and funded primarily by grants.
5. Implemented comprehensive Tribal budgeting and reporting processes which are helping to establish a greater sense of accountability overall.
6. Greatly increased our knowledge and understanding of the broad range of services funded by the federal government on behalf of Indian Tribes.
7. Provided the Tribal membership greater opportunity for direct input into funding the priorities of the Makah People. As an example, in our last Tribal election we had approximately 75% voter turn-out. This was a record turn-out, higher than for any election prior to Self Governance.
8. Began implementation of a plan to improve administrative and management systems by creatively redesigning and re-focusing Tribal programs.
9. Added 47 new jobs to our Tribal Organization.

This partial list highlights only a few of the more notable Tribal developments under Self Governance. While our responsibilities have increased greatly, we believe we have prospered because we have been able to fund according to our local priorities. After all, who better to make decisions for the Makah Tribe than the Makah People themselves!

In addition to the "Tribal Self-Governance Act of 1993", the Makah Tribe recommends that there be only one Office of Self-Governance and that it be located in the Executive Office of the President. This would firmly establish a Government-to-Government relationship as originally envisioned in our Treaty of 1855. Multiple self-governance offices in the administration will force Tribes to continue negotiating with the numerous federal agencies. A single Office of Self-Governance would insure consistent implementation of government-to-government policy, eliminate duplication of effort and streamline all self-governance processes.

We encourage passage of the Self-Governance Act of 1993 because we believe that permanent Self Governance legislation will do much to address the following issues:

1. The BIA using the implied nature of a "demonstration project" as an excuse to delay permanently base-transferring negotiated funds.
2. The BIA avoiding adjusting itself in light of Tribal Self-Governance activity.
3. Speed up the waiver process to allow Tribes an opportunity to creatively implement Tribal initiatives.
4. Assure Tribes' ability to implement long-range plans established under Self-Governance.

The Makah Tribe is convinced that Congressional support for this Tribally driven initiative is absolutely essential for Tribes to have ample opportunity to set our respective courses for the benefit of our future generations. We strongly advocate passage of this critical piece of legislation as a clear statement of that support.

We want to take this opportunity to thank the co-sponsors of the Tribal Self Governance Act of 1993 for introducing and sponsoring this bill. We look forward to working with Congress in continued efforts to enhance the lives of our Indian People both now and in the years to come. Thank you.

Mr. RICHARDSON. Thank you.

I think our Constitution says that we don't recognize titles of nobility, and that was probably a typographical error here, not giving Mr. Lavell proper recognition as the Honorable William Lavell, Former Director of the Office of Self-Governance. He is certainly very deserving.

Rather than calling him emperor or king, we call him president, so I guess everybody here is honorable unless proven otherwise. My apologies for not giving you that proper recognition.

Mr. Lavell.

STATEMENT OF WILLIAM LAVELL

Mr. LAVELL. Thank you, Mr. Chairman.

Needless to say, I am happy to be here, particularly as a private retired citizen. I am Bill Lavell, and I am the former Director of the Office of Self-Governance since its inception in December of 1990 until my retirement January 31 of this year.

I am honored to be asked to testify at this occasion. I will summarize.

I go through the history of how we have handled this project and I think that is important. It is important for the committee to know that we early on decided that there was not any need for regulations and a demonstration. Regulations ought to come after you demonstrate whatever you are going to demonstrate.

When we went into it, the statute was sufficiently clear. This was a tribal initiative and we worked this on a partnership base. In my office, we sat down with the tribal leaders and worked things out, decided how we were going to do things and we did them.

The important phrase there is, we did them. We didn't try to plan it to the last, cross the last T, dot the last I. We decided to try these things because for many years the tribes have been self-governing and had worked through 638 contracts and as a tribal attorney in the past, I was aware of the abilities of tribal leaders.

So we worked through this thing and we tried things out; some things worked, some things didn't. We tried different things different places. But we have a program, I think, that is working beautifully.

In 1992 and 1993, there was an independent assessment headed by Bernard Strickland, a Professor of Law at the University of Oklahoma and Chief Editor of the 1982 Edition of Federal Indian Law and they reported very favorably on the program and recommended that it be enacted as a permanent program.

I would like to read my last paragraph. It has been a privilege for me to work with tribal leaders in implementing this project. Everything I have learned over 28 years of involvement in the field of Indian law and Indian affairs about what tribal leaders need and desire for their governments and their people is embodied in this program of self-governance except one, sufficient resources, the money, to fully address the needs of their people. Unfortunately that was beyond the scope of the project.

However, self-governance has allowed tribal leaders to better utilize those resources available to them. The self-governance program is now ready to be made a permanent program available to any

tribe that so chooses. Indian self-governance is an idea a long, long time in the birthing whose time has finally come.

If I may read into the record this excerpt from an article written by Felix Cohen in 1949.

On May 20, 1834, not 1934 but 1834, the House Committee on Indian Affairs reported that a large part of the activity of the Indian Bureau was being carried on in violation of law and without any statutory authority. It urged that the Indian Bureau work itself out of a job by turning over the various jobs in the Bureau itself to Indians and by placing the Indian Bureau employees on the various reservations under the control of the various Indian tribes.

These recommendations were written into law. They are still the law. The justice of these recommendations has not been challenged for 115 years—that was in 1949. But always the answer of the Indian Bureau is give us more time. We must wait until more Indians have gone to college, until Indians are rich, until the Indians are skilled in politics and able to overlook traditional jealousies, until the Indians are experts in all fields in which the Indian Bureau now employs experts, but we are never told how the Indians are to achieve these goals without participation in their own government.

Mr. Chairman, as stated in my testimony, the time for self-governance has come. The act of this committee in recommending passage of this bill will be a step—let me share a little vision that the tribal leaders have shared with me. They see a future where they will come back to you and say how about five-year funding agreements like we do for the territories?

How about one-stop shopping where we go to one place and do a contract for all the Federal funds? All this is going to improve the efficiency, improve the entire situation for both the Federal Government and the tribes. What this bill is is an act of faith in democracy; that is what it is.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Lavell follows:]

**STATEMENT OF WILLIAM G. LAVELL,
BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
UNITED STATES HOUSE OF REPRESENTATIVES,
ON H.R. 3508 AND S. 1618,
A BILL TO PROVIDE FOR TRIBAL SELF-GOVERNANCE
AND FOR OTHER PURPOSES.**

FEBRUARY 25, 1994

Mr. Chairman and Members of the Committee, I am William G. Lavell, former Director of the Office of Self Governance from its inception in December, 1990 to the date of my retirement from government service on January 31, 1994. I am honored to be asked to testify at this important occasion.

H.R. 3508 is a bill which would make Self-Governance a permanent program available to any Indian tribe that chooses to participate. It is before you for consideration because of the Self-Governance Demonstration project authorized by Title III of P.L. 100-472.

The intent of the Project was to turn over to the tribes whatever funds would have been spent for their benefit at any level and to allow them to determine program and funding priorities on their reservations. It was expected that savings would be achieved in overall administrative costs and that these savings would be passed on to the tribes. There are two main objectives of the Project. First, to increase efficiency in service delivery and second, to make services more responsive to the needs of a particular reservation.

This Project has been a tribal initiative from the beginning and has been administered on a partnership basis. We decided early on that we would not promulgate regulations for the Demonstration Project--the idea was to demonstrate through action and interaction. From this experience whatever regulations are needed can be developed through the negotiated regulations process provided in H.R. 3508. We specifically intended to keep the Project and any permanent program as simple as possible, eliminating much regulatory oversight. We have focused on implementing the stated purpose of the Project--to turn over to the tribes funds the Secretary would have spent for their benefit and allow them to choose the priorities as to where those funds would be applied and to design the programs for delivery of services. This is wholly consistent with the objectives stated in the Democratic Leadership Council's publication Mandate for Change, Chapter 11: A New Federal Compact: Sorting Out Washington's Proper Role; and with the concepts set forth in the publication Creating a Government that Works Better and Costs Less, the Report of the National Performance Review by Vice President Gore.

Any regulatory monitoring has been reduced to only that which accountability requires: base line measure reports; an annual A-128 audit; an annual trust assessment; a requirement in the Compact that each tribe have a procedure for redressing grievances under the Indian Civil Rights Act; and, finally, the ultimate monitoring device in any democracy--tribal elections.

Since the United States is still held to full responsibility as trustee, we provided for the annual trust assessment, modeled on a procedure required of all private trustees, and an expedited procedure for the trustee to take over control of any trust program where a trust asset is in imminent jeopardy of irreparable harm.

In 1992 and early 1993, an independent assessment of the project was conducted by an outside contractor. Rennard Strickland, Professor of Law at the University of Oklahoma Law School, Director of the Center for the Study of American Indian Law and Policy and Editor-in-Chief of the 1982 Edition of Federal Indian Law, was the leader of the team. The report finds that the Project has been completely successful and recommends that self-governance be made a permanent program available to all Indian tribes.

It has been a privilege for me to work with tribal leaders in implementing this Project. Everything I have learned over 28 years of involvement in the field of Indian Law and Indian Affairs about what tribal leaders need and desire for their governments and their people is embodied in this program of self-governance except one: sufficient resources to fully address the needs of their people. Unfortunately, that was beyond the scope of the Project. However, self-governance has allowed tribal leaders to better utilize those resources available to them. The self-governance program is now ready to be made a permanent program available to any tribe that so chooses. Indian Self-Governance is an idea, a long, long time in the birthing, whose time has finally come.

Mr. FALCOMVAEGA. Thank you for a very moving statement.

The gentleman from Alaska.

Mr. YOUNG. Mr. Cagey, I have my self-governing groups in Alaska and they work very well and I would like to see the Lummi. I know you have done a great job. I will try to get there as long as you take me fishing.

Mr. DeLaCruz, you heard the statement from Mr. Whitish and their main concern, do you see any way you two can work out—I am not talking about your internal problems, but in this legislation—you heard my statement. I happen to believe that the small tribes have to be serviced and taken care of either by the BIA or yourself and especially in land issues. Do you see any problem with that?

Mr. DELACRUZ. Mr. Young, there has never been a problem with that. What we have had going on probably since the early twenties and again all the way through history, because of U.S. policy of how they mixed people in the General Allotment Act, we have had arguments and differences amongst people that were put on the Quinault reservation, and we have submitted information time and time again to the Congress, to the courts, of who makes up the Quinault nation.

These people keep going to court. They keep making charges. They won't get the answer they want to hear. I have no problem with those people coming to our people, coming to our government as governments and meeting with us. They keep going to meetings with allegations where there is information that is contrary to what they say, but they won't come to meetings where information is being provided on self-governance.

I want to point out, in the Olympic Peninsula agency there are ten tribes. Quinault is one of the ten. Five of those tribes are compacting tribes. The Bureau Agency in Washington has not diminished one person because of self-governance; so there are actually more people there to provide services to five tribes.

The problem that you end up with, and this again, I see it happening through the 638 process, I saw it when the Reagan-Bush Administration called some of us in and said we all have to tighten our belt one notch, not you five, not you three.

We were told we were going to get increases in the budgets in 1993 by the administration. We are told, and we understand, that because of the massive national budget deficit, we are going to be looking at cuts in 1994, 1995 and 1996.

But what is happening politically, bureaucrats have a favorite game of going to their favorite chiefs that are naive and misinformed and pointing a finger at a reason why things are happening. We were just at a 42-tribe affiliated tribe meeting in Spokane, Washington and they are pointing the finger at the 1994 budget and the administration reduction in force at self-governance, the shortfalls that are going on.

It happened in 1981 and 1982. We are told the cuts will be at the top, the huge central offices in Washington D.C., at Indian Hill and the Bureau. We are looking at cutting positions and early retirements in the area regional offices. We are going to do the least amount of damage as we can at the agency and tribal level.

In black and white, that is the opposite again. The cuts are at the bottom where the rubber meets the road and again we find a government that can't keep the truth of the matter and you have people pointing the finger because of self-governance. It has nothing to do with self-governance.

We heard people at the Spokane meeting from the Federal agencies defending the budget cuts and the FTE cuts and the shortfalls that is because of self-governance. I know tribes from Oklahoma are feeling that type of blame. They are mixing apples and oranges.

Mr. YOUNG. I agree with that. The Indian Health Service has been contracted out, yet the Indian Health Service in Alaska's centralized office took no cuts. That is wrong.

But my concern is, you heard me say before, the allotment question on the reservation, which I believe your business manages—

Mr. DELACRUZ. Yes. We did not take any of the money for the management of allotments. That still is with the agency. They have around 48 foresters in that division to handle the allotted lands, appraisals, and sales for allotted land.

BIA retained that. They did not take it.

Mr. YOUNG. This is what we have these hearings for. The truth of the matter is that I am going to look carefully at the small tribes who do not have the capability and I am going to make sure they are not forced in an area where there is a taking.

Mr. DELACRUZ. We appreciate that. We sat with the Senate and House both on Title III. The tribal leaders were the ones that wanted to assure that there was language, the demonstration project doesn't impact other tribes. There again we have to be part of the fact of what is really going on with the Congress when allegations are made.

Mr. YOUNG. We need all the information. I go back to the BIA, and all of you in the room on the panel, would there be any objection, or are you suggesting, or can it be done where we don't have to go through the BIA as a direct line item budget request to the governing tribes? I am sure you would like that.

Mr. DELACRUZ. I didn't go through my whole statement because of time. One of my recommendations—because again the experience that I have been involved in with the Self-Determination Act and the demonstration project, is that even as it goes into permanent, that there be within Interior basically a separate division that is for self-governance to move this project forth; because people blame presidents, they blame administrations.

We still have the same people there that worry about their program, their jobs, and tribal leaders, to be honest, have been behind the reorganization, trying to be a partnership. We get, in four years we get a new election we run into some of the same things. We feel we have the proper words coming out of the administration of how we should move forth.

There are some corrections, and it is a partnership. The evaluations, investigations on self-governance, we have been a part of that independence.

Mr. Lavell mentioned that the contract went to Dr. Strickland at the University of Oklahoma rather than an internal evaluation and investigation, which again I think right now is happening, the Bu-

reau is looking at it. We feel the private sector should do those things so it clears the air on allegations.

I didn't want to get into the appropriation funding thing. I think that is something that has to go before Mr. Yates on 8 May. There are a lot of games being played here with self-governance and self-determination on what is going on in the budget.

I think the Alaska people will tell you that also.

Mr. YOUNG. My big concern is we can go through this game playing and give you self-governance; if we don't somehow finance it, it doesn't work. I am not picking on the BIA. I don't care what administration, the gentleman said 1874, 1949—it has not decreased in size and it is a bureaucratic nightmare.

I am just saying if we are going to make self governance work somehow we have to stop that restriction and work with the recognized governments to get the money to you or it is going to fail. I don't care how much you tell BIA to do it, they are not going to cut the top echelon. They are not going to do it unless we cut them here. If they give them a lump sum, guess where the cuts are going to come from?

Mr. DELACRUZ. I concur with what Mr. Lavell said when he has talked to tribal leaders that have been involved in this and those in self determination.

At some point of time, some of these things, as we have said in hearings before, are not for every tribe. There has to be a severance. I am having some people research some of my statements in the early 1970s about some of these issues when I was asking for direct funding at that time for a pilot project to show what an Indian Nation can do.

Mr. YOUNG. Mr. Risling, you are from which tribe?

Mr. RISLING. The Hoopa Tribe in California.

Mr. YOUNG. Whereabouts is that located?

Mr. RISLING. It is in Humboldt County near Eureka.

Mr. YOUNG. Do you know a guy named Larry Moore?

Mr. RISLING. No, I don't.

Mr. YOUNG. He played football with me at Yuba Junior College from the Hoopa Tribe, one of the best football players I ever ran into. I wondered what happened to him.

Mr. RISLING. That was the other name I go by.

Mr. YOUNG. No; he was slim and trim and could run 100 yards in 9.9. That is not you.

Thank you, Mr. Chairman.

Mr. FALCOMA. I thank the gentleman from Alaska for his testimony and questions.

I have raised at previous hearings we need more Jim Thorpes and Sonny Sixkillers here in the NFL. Yesterday on the Floor, I shared with my colleagues the fact that we have 10 Samoans that play in the NFL right now.

In fact, three of them played in the top four teams that vied for the Super Bowl and they all happen to be relatives. It is nice to have cousins in the NFL.

Without objection and for the record, I am submitting a letter that was submitted by the Senator from Arizona, Senator McCain, who is the Vice Chairman of the Senate Indian Affairs Committee, and also the good Senator is the sponsor of Senate bill 1618, the

companion bill introduced also by Chairman Richardson, which is H.R. 3508.

[EDITOR'S NOTE.—See appendix.]

Mr. FALCOMA VEGA. Mr. DeLaCruz, I have a question.

Mr. Whitish here in his testimony is the Chairman of the Shoalwater Bay Tribe and at the same time he is testifying on behalf of the affiliated tribes of the Quinalt reservation and you are here this morning as the President or the Tribal Chairman of the Quinalt Nation.

Can you clarify who is testifying on behalf of which tribe? I am a little confused here.

Mr. DELACRUZ. Mr. Whitish is the Chairman of the Shoalwater Bay Tribe. We have three lawsuits that they filed, I don't know if I can put them into the record, but the Quinalt Tribe, Quinalt Nation was one of the tribes that signed what we call the Treaty of Olympia. They get history mixed up.

The final thing was signed at Quinalt River, but it went to Olympia to be signed. And it was Quinalt, Quilute, Tlingit and Ho people that signed the treaty. The United States initially set up a treaty reservation of 10,000 acres and that was for those four signed tribes to move all their people to the mouth of the Quinalt River where the Quinalt people's original capital and homeland was from their territories north of us.

Later on there was an Executive Order that expanded the Quinalt reservation from the original 10,000 acres to 189,000 acres and the language of the Executive Order was to move all fish-eating Indians to that reservation.

Governor Stevens was ordered by grant at that time to try to treaty with the Indians in that territory and move all the Indians west of the Cascades to one reservation, and all Indians east of the Cascades to one reservation, looking at Yakima and Quinalt.

Over time, some of those peoples moved to the Quinalt territory. Some would not move to the Quinalt territory. They stayed in their aboriginal areas and would not move. Over time, there were later executive orders that set up a small Shoalwater reservation south of the river. They set up a Chahalis reservation that is up on the Chahalis River 50, 60 miles and they set up a Tlingit reservation and a Ho reservation for people that would not move from their original homelands, and the people that moved to Quinalt people called the Quinalt Nation.

Then with the Doss Act—and we all understand that that Act was brought about from the courthouse to White House politics of America, they wanted to get at Indian resources, whether it was farmland, timberland or what, pushed very hard for the Quinalt reservation to be allotted.

Our people, if you look at records, were fishermen. They said we want part of that, but politics overruled them so they allotted the Quinalt reservation to all fish-eating Indians, some were Swedes, Finns, non-Indians that happened to be around at that time and that made up 2300 original allottees of the Quinalt reservation that are members of seven tribes mentioned in the Executive Order that we recognize in our constitution and by-laws that make up the Quinalt Nation, but some of the people stayed and had their own reservations, their own governments, and even other tribes.

We have landownerships on Quinalt. People from Makah, people from Piat, people from Squaksin Island, Yakima, people who happen to be in that territory. That is the situation. We are saying we represent the descendents of those people, our governments established later. I happen to be a descendent of an allottee.

My family and my mother and aunts and uncles own a lot of lands. Those people don't speak for them. When you look into the group you have individual private Indian loggers and the tribe now trying to merge and grow. They have a problem with that, although non-Indian loggers have been having a field day for years but they are not attacking them.

Mr. DELACRUZ. So you got that history. I will submit all that stuff for the record.

[The information follows:]

MYTHS ABOUT THE QUINAULT RESERVATION
February 17, 1994

MYTH: *The Quinault Indian Nation consists only of Indians of Quinault ancestry.*

FACT: The Quinault Indian Nation is a consolidated tribe comprised of individuals whose heritage can be traced to seven tribes. Membership in the Quinault Indian Nation is open as a matter of absolute right to any person of 1/4 or more combined Chinook, Chehalis, Cowlitz, Quileute, Hoh, Quinault, or Queets ancestry. Individuals who do not meet the blood quantum requirement can be adopted upon vote of the Quinault General Council. Each tribe has the right to establish qualifications for enrollment. The Quinault Indian Nation has a liberal membership policy that reflects the history of allotment on the Quinault Reservation; unlike many other tribes, the Quinault Nation does not require proof of descent from a single base roll of Indians residing on the Reservation on a particular date.

The Quinault Indian Nation prohibits dual enrollment as do almost all tribes. The Quinault Nation's requirement that an individual choose a single tribe for enrollment is not unique or discriminatory. Tribal membership is akin to a declaration of citizenship, of political allegiance and identification with a group of people who share common ideals and aspirations.

MYTH: *The tribal lands of the Quinault Indian Reservation are owned in common by the Chinook, Chehalis, Cowlitz, Quileute, Hoh, Quinault, and Queets Tribes.*

FACT: Almost all of the tribal land on the Quinault Reservation owned by the Quinault Indian Nation was restored to the Quinault Indian Nation by Acts of Congress specifically naming the Quinault Indian Nation, or donated to the Quinault Indian Nation, or purchased with the Quinault tribal funds in the name of the Quinault Indian Nation. The Quinault Reservation was almost entirely allotted to individual Indian owners before 1934; little land was left unallotted on the Reservation.

MYTH: *The Quinault Indian Nation has never been formally recognized as the tribal governing authority for the Quinault Indian Reservation.*

FACT: The individuals making this claim have raised their arguments numerous times without success before the Administration, Congress and the Courts. The Quinault Indian Nation has been repeatedly recognized by the United States as the tribal governing authority of the Quinault Indian Reservation. The Administration has recognized the Quinault Indian Nation as the only governing body of the Quinault Reservation for decades. Congress has recognized the Quinault Indian Nation as the governing tribe of the Quinault Indian Reservation at least three times in the last five years.

In 1988, Congress rejected claims that the Quinault Nation was not the legitimate governing tribe of the Reservation and returned almost 12,000 acres of the Reservation land to the Nation.

In 1990, the Senate Indian Affairs Committee stated:

The Congress has consistently recognized the Quinault Indian Nation as the governing body of the Quinault Indian Reservation which includes residents of the Chinook, Cowlitz, Chehalis, Quileute, Hoh, Queets, and Quinault tribal groups.

And in 1991, the same committee stated:

In the Pacific Northwest, tribal groups were also settled on a few reservations, and accordingly, on the Quinault Reservation, the Quinault Indian Nation serves as a successor in interest to the tribes or tribal groups that were eligible to settle on the reservation. Today, membership in the Quinault Indian Nation is open to any individual of one quarter or more in the aggregate of Quinault, Queets, Quileute, Hoh, Chehalis, Chinook or Cowlitz ancestry. Many members of the Quinault Indian Nation are eligible for enrollment in the Federally-recognized, Quileute, Hoh, Chehalis, or Shoalwater Tribes, and members of those tribes are often eligible to enroll in the Quinault Indian Nation.

MYTH: *Numerous court decisions have held that the Quinault Indian Nation is not the exclusive tribal governing body of the Quinault Reservation and shares authority with other tribes.*

FACT: There have been no such court decisions. The Federal courts have reviewed and rejected these claims, including the assertion that court decisions in Williams v. Clark and other cases have determined that the Quinault Indian Nation is not the legitimate tribal government of the Quinault Reservation. Most recently in the 1991 decision in Confederated Tribes of the Chehalis Indian Reservation et. al. v. Lujan, 928 F.2d 1496 (9th Cir. 1991), the United States Court of Appeals for the Ninth Circuit rejected the claim that Williams or any other case cited by Quinault tribal opponents even addresses the question of tribal governance on the Quinault Reservation let alone questions the legitimacy of Quinault tribal government. Yet these non-tribal Indians continue their efforts to overthrow the Quinault Indian Nation; most recently, they have begun to circulate a "ballot" calling for formation of a new tribal government on the Quinault Reservation.

MYTH: *The Quinault Reservation was enlarged from 10,000 acres in order to provide for other tribes.*

FACT: The Quinault Reservation was enlarged from 10,000 acres to 190,000 acres in anticipation that Indians from several tribes located in Western Washington who were not then residing on any reservation would relocate and become consolidated with other Indians who chose to make the Reservation their home. It was anticipated that the individuals who did move to the reservation would become part of the Quinault Tribe; there was never any intent to provide for wholesale movement of other tribal governments onto the Quinault Reservation. In fact, several reservations were established to provide land for individuals who refused to relocate and become a part of the Indian community on the Quinault Reservation. Nearly all land on the Quinault Reservation was eventually allotted to individuals of diverse tribal heritage. The current membership requirements of the Quinault Indian Nation reflect this history of allotment by providing a right of membership for individual Indians of Quinault, Queets, Quileute, Hoh, Chehalis, Shoalwater, Cowlitz, and Chinook tribal heritage.

MYTH: *Most of the Indian owned land on the Quinault Reservation is owned by members of other tribes.*

FACT: As a government, the Quinault Indian Nation owns 28% of the entire Reservation. The Quinault Nation and its members together own approximately 67% of the Indian owned land on the Reservation. On many reservations, interests in land are commonly held by members of other tribes.

**Percentage Of Indian Land Owned On the Quinault Reservation¹
By Members of Various Tribes:**

Quinault (Tribe and Members)	67%
Quileute	6%
Hoh	3%
Chehalis	2%
Shoalwater	1%
Unenrolled and other	21%

¹Based on weighted acreage of tribal fee, tribal trust, and individual trust lands.

MYTH: *The Quinault Indian Nation routinely discriminates against non-Quinaults.*

FACT: The Quinault Indian Nation is required by federal law to provide all persons with equal protection under its laws.

MYTH: *The Quinault Allottees Association was formed to represent individual land owners in the tribal government of the Quinault Reservation.*

FACT: The Quinault Allottees Association was established with the support of the Quinault Indian Nation; the Quinault Indian Nation and many of its members are members. The sole purpose of the Quinault Allottees Association was to provide an organizational structure for pursuing and financing litigation against the United States for mismanagement of the natural Reservation resources. Some individuals, however, have attempted to utilize the membership and mailing list to pursue personal agendas aimed at overthrowing the tribal government of the Quinault Reservation. At various times, organizations such as "Concerned Indians of the Quinault Reservation" or the "Indians of the Quinault Reservation, Inc.", an organization chartered by the State of Washington, have emerged, misrepresenting themselves as speaking on behalf of all allottees.

MYTH: *The individuals sponsoring the ballot for a new Allottees Association are interested in a strong tribal government for the Quinault Reservation.*

FACT: Only a small handful of these individuals actually live on the Quinault Reservation; the vast majority live elsewhere and are not interested in the welfare of the Reservation community. Several of these individuals have resisted the Quinault Indian Nation's efforts to stop uncontrolled exploitation of the reservation's timber resources. These individuals object to the exercise of tribal governmental powers as a threat to continuation of their unregulated economic activity. When tribal governments began to exercise the will of tribal members, tribal officials used governmental power to restrain the actions of persons who exploited reservation land and resources to amass personal wealth. It is no mere coincidence that many of the most vocal individuals involved in the effort to overthrow the government of the Quinault Reservation are non-residents who have been or are actively engaged in buying and selling reservation lands and timber.

The report noted:

Several non-tribal Indians participate in the anti-Indian movement as "legitimizers of factual distortion." Typically, the "non-tribal Indian supporter" is wealthy as a result of "helping my fellow Indian." These activists gained their wealth by exploiting other Indians by means of, for example, buying an Indian's individual allotments and selling the same allotments to a non-Indian for a vastly higher price. Instead of "allotment of land" one could substitute any of the following words timber, oil, gravel, water, fish, natural gas, or minerals. The (anti-Indian government) movement helps the "non-tribal Indian supporter" avoid tribal

government regulation.

MYTH: *The Quinault Indian Nation uses the Indian Land Consolidation Act to take land from Indian allottees.*

FACT: Only §207 of the Indian Land Consolidation Act, the escheat provision, has been implemented on the Quinault Indian Reservation. This provision was enacted by Congress over tribal opposition in order to reduce the cost to the federal government of administering small trust interests and to prevent land from becoming unmanageable due to a large number of owners. It applies mandatorily to all allotted land on all reservations, not just the Quinault Indian Reservation.

The escheat provision provides for title of small undivided fractional interests in allotments (<2% and incapable of earning \$100 in any one of the five years preceding the decedent's death) to pass to the reservation's recognized tribal government unless that interest is willed to someone who already owns an interest in the same allotment.

Any allottee can prevent the escheat of trust land subject to §207 of the ILCA by making a will leaving these small interests to family members or other owners trust interests in the same allotment. Escheat can also be prevented by families working together to consolidate their trust landholdings to insure that no interest is smaller than 2% maximum for escheat. The BLA is available to assist allottees with the preparation of wills or land exchanges which will prevent the escheat of trust land under the ILCA.

The Quinault Indian Nation has never sought to prevent any Indian from leaving land to his/her heirs. In fact, the Nation has notified the courts of eligible heirs when an interest has been about to escheat so as to provide an opportunity to keep the interests within the family. The Quinault Indian Nation encourages owners of trust land potentially subject to this provision to work with family members and other individual owners to consolidate their ownership interests or to prepare a will to avoid the possibility of escheat.

BRIEFING PAPER ON THE QUINAULT NATION February 17, 1994

WHAT IS THE QUINAULT NATION?

The Quinault Indian Nation is recognized by the United States as the tribal entity that exercises exclusive political and territorial jurisdiction over the Quinault Indian Reservation. The Nation maintains law and order on the reservation, regulates land use, hunting, fishing, building and sanitation, levies taxes, and otherwise exercises complete tribal civil and criminal jurisdiction over the entire Reservation. Each year the Department of the Interior enters into numerous contracts with the Quinault Nation pursuant to the Indian Self-Determination Act for the provision of governmental services on the Quinault Reservation.

The United States has consistently recognized the Quinault Indian Nation as having exclusive tribal jurisdiction. In 1947, Congress recognized the consolidated nature of the Quinault Nation when it enacted a statute declaring the Quinault Tribe the proper party to pursue "on behalf of all Indians having an interest in the Quinault Reservation" an action against the United States arising from the loss of reservation land as the result of an improper survey. 61 Stat. 416. The statute reads in pertinent part:

[T]he Quinault Tribe is hereby declared to be the proper party plaintiff for the purpose of further proceedings ... and for the purpose of prosecuting the action to a final conclusion on behalf of all Indians having rights in the Quinault Reservation as established under the treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress.

In support of this legislation, the Secretary of Interior advised Congress that it "was proper to refer to the collective group regardless of tribal blood as the Quinault Indians..." The Secretary further advised Congress that "[c]ollectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." H.R. Rep. No. 671, 80th Cong. 1st Sess. (1947).

The Quinault Indian Nation is this consolidated tribal entity which the United States has consistently recognized as possessing political jurisdiction over the Quinault Reservation and beneficial ownership of the unallotted tribal land on the Reservation.

In a March 18, 1980 opinion, the Acting Associate Solicitor for Indian Affairs of the Department of the Interior affirmed the status of the Quinault Indian Nation as the exclusive governing body of the Quinault Reservation. The opinion relies in part upon the Act of July 24, 1947, 61 Stat. 416, and upon the Secretary's contemporaneous report to Congress that the Quinault Tribe was the proper tribal representative for all of the Indians having an interest in the Quinault Reservation.

Congress has continued to recognize the Quinault Nation as the tribe governing the Quinault Reservation and as the beneficial owner of tribal lands within the Reservation. In 1962, for example, Congress restored to the "Quinault Tribe of Indians" 85 acres of tribal land which had been previously appropriated by the United States for lighthouse purposes. Act of October 15, 1962, 76 Stat. 913. To the same effect is the Act of August 26, 1959, 73 Stat. 427, which also returns tribal lands to the Quinault Tribe.

Reviewing this history of Congressional recognition, the Solicitor's 1980 opinion concludes:

At Quinault a tribal council does exist which Congress has recognized at least since 1947 as representing the Indians of the Quinault Reservation regardless of their original tribal ancestry. This has been reaffirmed at least twice since 1947 when Congress has transferred lands to the "Quinault Tribe of Indians."

(Citations omitted.) The Solicitor's opinion was later affirmed by the Secretary of the Interior. See, Indians of the Quinault Reservation v. Commissioner of Indian Affairs, 9 IBIA 81 (1981).

Congress reaffirmed the Quinault Nation's role as the governing body of the Quinault Indian Reservation and as the appropriate tribal entity to consolidate tribal land ownership on the Quinault Reservation in connection with the enactment of P.L. 100-638, 102 Stat. 3327. This Act restored 11,905 acres of Quinault Reservation land improperly excluded from the Quinault Reservation to the Quinault Indian Nation, and provides the Nation with a share of the revenue derived from an additional 5,460 acres of the Olympic National Forest. Revenues received by the Quinault Nation from these lands are dedicated to fund the implementation by the Quinault Nation of a tribal land consolidation program on the Quinault Indian Reservation. P.L. 100-638 §8(d), 102 Stat. 3327, 3329; Senate Report 100-582, Senate Select Committee on Indian Affairs, 100th Cong., 2d Sess. (Sept. 30, 1988) at 3.

Helen Sanders and representatives of the Chehalis and Shoalwater Bay Tribes among others submitted testimony to Congress in connection with P.L. 100-638 claiming that multiple tribes hold equal tribal interests in the Quinault Indian Reservation. They advised Congress that they intended to file suit challenging the Quinault Nation's authority to govern the Reservation. Hearing on S. 2752, Senate Select Committee on Indian Affairs, 100th Cong., 2nd Sess. (Sept. 12, 1988). Accordingly, they asked Congress to have the lands at issue placed in trust for all the Indians who might have claims to share in governing the Reservation. Congress declined and restored the land at issue to the Quinault Nation alone, so that the Quinault Nation could consolidate tribal ownership of Reservation land. P.L. 100-638, 102 Stat. 3327; Sen. Rep. 100-582.

Congress rebuffed these claims because it had previously declared the Quinault Indian Nation the proper party to pursue the claim for improperly omitted Reservation lands and because Congress found that "membership in the Quinault Indian Nation is open to all Indian residents of the Quinault Reservation who are descendants of the tribes for whom the reservation was established." Sen. Rep. 100-582.

Congress was well aware that individual members of other tribes hold certain property interests in the Quinault Indian Reservation. It took pains to preserve and protect those property interests. §9(b) of P.L. 100-638 provides:

Nothing in this Act is intended to affect or modify--

...

(b) any property rights which may exist within the exterior boundaries of the Quinault Indian Reservation as it existed prior to enactment of this Act...

102 Stat. 3327, 3329-30.

Senator Evans, principal sponsor of P.L. 100-638, explained this provision:

Mr. EVANS. ... I share the concerns of my colleague from Washington about the implications of this legislation with respect to the rights of individuals with interests in the Quinault Indian Reservation as it exists prior to enactment of this legislation. The Federal courts have ruled that members of several tribes have certain property interests in the Quinault Reservation. Consequently, provisions in this legislation state that it is not intended to affect or modify any property rights which may exist within the boundaries of the Quinault Reservation prior to enactment of this act.

134 Cong. Rec. S15303-304 (October 7, 1988.) App. T.

Senator Evans and Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, also explained that the existence and recognition of such individual property rights do not affect continuing Congressional recognition of the Quinault Indian Nation as the tribal governing body of the Quinault Indian Reservation.

Mr. INOUYE. Finally, I note that S. 2752 expands the boundaries of the Quinault Reservation to include approximately 12,000 acres of Federal land. S. 2752 provides explicit direction to the Secretary of the Interior to hold lands referred to in section 1 for the benefit of the Quinault Indian Nation.

Mr. EVANS. The Senator is correct. Membership in the Quinault Indian Nation is currently open to individuals who have a minimum combined total of one-quarter Chinook, Cowlitz, Chehalis, Quileute, Hoh, Queets, or Quinault ancestry. This open membership policy ensures that the benefits of this legislation will be made available to all reservation residents descended from the original tribes who are not members of other federally-recognized Indian tribes. In any event, the bill does not affect the property rights of other tribes or the property rights of individual property owners who are not members of the Quinault Indian Nation.

The Quinault Indian Nation has long been recognized by the Department of the Interior as the governing body of the Quinault Reservation, and is similarly treated by Congress. Each year appropriations are provided to the Quinault Indian Nation for law enforcement, tribal courts, fisheries and other programs administered for the benefit of Indian residents of the reservation. Furthermore, on two previous occasions, Congress has transferred Federal land within the boundaries of the Quinault Reservation to the Quinault Indian Nation.

The Federal Courts also have consistently upheld the exercise of governmental power over the reservation by the Quinault Indian Nation. The Ninth Circuit has upheld the exercise by the Quinault Indian Nation of building, health and safety regulations over non-Indian residents of the Quinault Reservation. The Federal District Court, in a famous decision affirmed by the U.S. Supreme Court, has recognized the Quinault Indian Nation as a self-regulating tribe for the purposes of treaty protected fishing rights.

Mr. INOUE. I thank my colleague for this clarification. The expressed policy of the committee and of the Congress has been to affirm and strengthen the government to government relationship between the Federal government and Indian tribes. The provisions of this bill are consistent with current Federal Indian policy. The Quinault Indian Nation has been an effective representative of the Indians of the Quinault Reservation. I am encouraged that this legislation will provide the Quinault Nation with the resources to better manage its land base—for the benefit of all reservation residents.

134 Cong. Rec. S15304 (October 7, 1988).

Since 1988 Congress has clearly indicated its recognition of the Quinault Indian Nation as the sole tribal governing authority of the Quinault Indian Reservation on two additional occasions. Thus in connection with the enactment of the National Indian Forest Resources Management Act, the Congress stated:

The phrase "reservation's recognized tribal government" is deliberately utilized throughout S.1289 and this report. The phrase is necessary to avoid confusion since several distinct tribes or descendants of tribes may reside on a single reservation. For example, the Congress has consistently recognized the Quinault Indian Nation as the governing body of the Quinault Indian Reservation which includes residents of the Chinook, Cowlitz, Chehalis, Quileute, Hoh, Queets, and Quinault tribal groups.

Senate Report No. 101-402, 101st Cong. 2nd Sess 9 (1990), accompanying, the National Indian Forest Resources Management Act, Title III of P.L. 101-630, Act of November 28, 1990, 104 Stat. 4531. And, in connection with amendments to the Indian Civil Rights Act confirming tribal criminal jurisdiction over non-member Indians, the Congress stated:

In the Pacific Northwest, tribal groups were also settled on a few reservations, and accordingly, on the Quinault Reservation, the Quinault Indian Nation serves as a successor in interest to the tribes or tribal groups that were eligible to settle on the reservation. Today, membership in the Quinault Indian Nation is open to any individual of one quarter or more in the aggregate of Quinault, Queets, Quileute, Hoh, Chehalis, Chinook or Cowlitz ancestry. Many members of the Quinault Indian Nation are eligible for enrollment in the Federally-recognized, Quileute, Hoh, Chehalis, or Shoalwater Tribes, and members of those tribes are often eligible to enroll in the Quinault Indian Nation.

Senate Report 102-153, 102nd Cong. 1st Sess. 7 (September 19, 1991), accompanying, P.L. 102-137, Act of October 28, 1991, 105 Stat. 646.

WHO CAN BE A MEMBER OF THE QUINAULT INDIAN NATION?

The Quinault Indian Nation is a consolidated tribal government, representing the interests of individuals of diverse tribal heritage. The members of the Quinault Indian Nation are comprised of descendants of the Quinault, Queets, Quileute, Hoh, Chehalis, Cowlitz, and Chinook tribes. Under the Constitution of the Quinault Indian Nation, any person of 1/4 or more heritage from these groups, either singly or any combination thereof, has an absolute right to membership, so long as that person is not a member of another federally recognized Indian tribe. ¹ Persons not satisfying this blood quantum requirement may be adopted by action of the General Council.

This consolidation occurred partly as the result of federal design in allotting land on the Quinault Reservation to Indians who resided on the Olympic Peninsula and Southwest Washington and encouraging them to relocate to the Reservation. While the allotment process distributed most of the Quinault Reservation's land and timber resources to individual allottees some of whom were members of other tribes, the Nation's enrollment criteria which accommodates the allotment of several tribal groups at Quinault helps insure that the Quinault Nation comprises the largest landowning group on the Quinault Reservation. Currently the Nation and its members own approximately two-thirds of the Indian owned Reservation land.

WHAT ARE THE GOALS OF THE QUINAULT INDIAN NATION?

The goals of the Quinault Indian Nation have been stated as:

...establish a better tribal organization; to preserve our land base, culture and identity; to safeguard our interests and general welfare; to secure the blessings of freedom and liberty for ourselves and for our prosperity...

* * *

Strengthen the Quinault Reservation as a cultural, economic, social, and political unit for the continuing benefit of the Tribal members; understand history as it relates to present problems; and strengthen the tribal governmental structure which addresses the problems of tribal management; and

* * *

Utilize the natural resources of the Reservation in the best interest of the Tribal members, collectively and individually; create opportunities for productive, satisfying employment for every member of the Quinault Indian Nation who desires to work on or adjacent to the Reservation; and

¹ Article II, Section 1 Constitution of the Quinault Indian Nation. Prohibitions against multiple enrollment are common among Indian tribes. This should not be surprising since tribal membership is akin to a declaration of citizenship, of political allegiance and identification with a group and its ideals and aspirations.

* * *

Regain an adequate land base; rebuild the fish runs; manage the timber resource and water resource.; and

* * *

Make available housing and education opportunities, including job training, for both young people and adults; provide community services and facilities to promote a healthful, productive and satisfying living environment.

During the last few decades, the Quinault Indian Nation has moved to intensify its efforts to defend and promote social, economic, and political control over its own future. The resurgence of Quinault initiatives has called for the formulation of a wide range of internal and external policies, plans and strategies covering such matters as natural resources regulation, enactment and enforcement of Quinault National laws, and development of economic initiatives. All this to ensure that the rights and interests of its members yet unborn will be protected.

The destiny of any nation depends upon the strength, creativity, discipline, and adaptability of its people. The natural and man-made influences which affect the peace, prosperity, and security of a nation come from both inside and outside the territorial jurisdiction of the nation, and generally fall into the broad categories of political, economic, cultural, and social factors. Survival of a nation depends upon the ability to effectively undertake its own initiatives and to respond to changing circumstances.

Like all nations of the world, the Quinault Indian Nation is constantly confronted with the need to make choices and decisions to ensure a way of life that is secure, satisfying, fulfilling, purposeful, and prosperous. The people of the Nation have historically demonstrated their will to accept the challenges of change, and they have shown discipline and ingenuity in the face of often menacing political, economic, and social demands.

CHALLENGES TO THE LEGITIMACY OF THE QUINAULT INDIAN NATION AS THE GOVERNMENT OF THE QUINAULT RESERVATION

Between 1967 and 1977, non-Indians owning property on Indian reservations reacted to the increasing success of the Quinault Nation in exercising its governmental powers. Resident and absentee non-Indian landowners and businesses objected to the growing exercise of general governmental powers in areas of taxation, zoning, construction and land-use ordinances. Several organizations opposing tribal sovereignty find their roots in the Quinault Reservation, for example, the Quinault Property Owners Association and the Interstate Congress for Equal Rights and Responsibilities. These organizations are part of a network of anti-Indian groups formed across the United States to challenge tribal efforts on other areas, for example, the Association of Property Owners and Residents in Port Madison Area, Salmon and Steelhead Protection Action in Washington Now (S/SPAWN), Protect Americans' Rights and Resources (PARR), Citizen's Equal Rights Alliance (CERA), United Property Owners of Washington (UPOW), Wisconsin

Alliance for Rights and Resources (WARR), Equal Rights For Everyone (ERFE). These organizations are based on a populist and frequently racist ideology that attracts legitimately distressed non-Indians as well as bigoted activists like those involved in White Supremacist movements.

Development of these non-Indian groups to challenge tribal governments has been aided by the political emergence of the "non-tribal Indian" reservation land owner. The non-tribal Indian, regarding individual self-interest as more important than broad tribal interests, object to the exercise of tribal governmental powers as a threat to continuation of their unregulated economic activity. When tribal governments began to exercise the will of tribal members, tribal officials used governmental power to restrain the actions of persons who exploited reservation land and resources to amass personal wealth. It is no mere coincidence that many of the most vocal individuals involved in the effort to overthrow the government of the Quinault Reservation are non-residents who have been or are actively engaged in buying and selling reservation lands and timber.

Several non-tribal Indians participate in the anti-Indian movement as "legitimizers of factual distortion." Typically, the "non-tribal Indian supporter" is wealthy as a result of "helping my fellow Indian." These activists gained their wealth by exploiting other Indians by means of, for example, buying an Indian's individual allotment and selling the same allotment to a non-Indian for a vastly higher price. Instead of "allotment of land" one could substitute any of the following words timber, oil, gravel, water, fish, natural gas, or minerals. The (anti-Indian government) movement helps the "non-tribal Indian supporter" avoid tribal government regulation.²

For years, a small group of individuals has relied upon factual distortion and innuendo in an attempt to discredit the legitimacy of the Quinault Indian Nation as the tribal government for the Quinault Reservation. Claims and charges levied in the Congress of the United States (see previous discussion of P.L. 100-638), with the Administration, and with the Inspector General have been investigated and rejected.

The Federal courts too, have reviewed and rejected these claims, including the assertion that court decisions in Williams v. Clark and other cases have determined that the Quinault Indian Nation is not the legitimate tribal government of the Quinault Reservation. Most recently in the 1991 decision in Confederated Tribes of the Chehalis Indian Reservation et. al. v. Lujan, 928 F.2d 1496 (9th Cir. 1991), the United States Court of Appeals for the Ninth Circuit rejected the claim that Williams or any other case cited by Quinault tribal opponents even addresses the question of tribal governance on the Quinault Reservation let alone questions the legitimacy of Quinault tribal government. Yet these non-tribal Indians continue their efforts to overthrow the Quinault Indian Nation; most recently, they have begun to circulate a "ballot" calling for formation of a new tribal government on the Quinault Reservation.

Because many of the claims of the individuals sponsoring this "ballot" are factually incorrect, the following historical background information is provided.

² Ryser, R.C. (1991). Anti-Indian Movement on the Tribal Frontier, Center for World Indigenous Studies, Occasional Paper #16.

HISTORICAL BACKGROUND

THE QUINALT RIVER TREATY

In early 1855 the United States attempted to negotiate a treaty with the Quinault, Queets, Chehalis, Chinook, and Cowlitz looking toward the cession by these tribes of their territory and their consolidation on a single reservation. Upper Chehalis Tribe v. United States, 8 Ind. Cl. Com. 436, 442-44 (1960). The treaty negotiations which were held at a site along the Chehalis River failed, in large part because of Chehalis, Chinook, and Cowlitz objections to being placed together on a single reservation with the Quinalts in Quinalt territory north of Grays Harbor. *Id.*

The Quileute Tribe was not invited to the abortive treaty negotiations because Governor Stevens did not become aware of the Quileute's existence until the Treaty Council commenced. The Minutes of the Treaty Council report:

It was now however found that the Quinalts did not occupy the whole country between the Chihalis and the Makah's, but that another and distinct tribe, the Kwilleuytes were intermediate.

Quileute Tribe v. United States, 7 Ind. Cl. Com 31, 32 (1958).

The Quileutes and their subtribe the Hoh's principle villages were located in the Quileute and Hoh River drainages to the north of the Queets and Quinalt, and south of the Makah. *Id.*

Stevens returned to Olympia where he prepared a new treaty before leaving for Eastern Washington. The new treaty differed from that presented at the Chehalis River Treaty Council. The Chehalis, Chinook, and Cowlitz were dropped as treaty parties and the Hoh and Quileute were added. Adjustments were made in the identification of the tribal parties in the preamble and the description of the cession area to reflect this change.

Stevens instructed Michael Simmons to meet with the Quinault and Quileute and obtain their agreement to the new treaty. Stevens told Simmons to advise the other tribes who had been present at the Chehalis River Council that he would hold further separate treaty negotiations with them at a later date in Olympia. Col. Simmons met with the Quinault, Queets, Quileute, and Hoh in July 1855 at Taholah and concluded a treaty which Governor Stevens later signed in Olympia. Quinalt Tribe v. United States, 7 Ind. Cl. Com. 1, 6 (1958); Quileute Tribe v. United States, *supra*, at 37-8. The Treaty with the Quinault was ratified by Congress in 1859, 12 Stat. 971.

Before Governor Stevens could return from Eastern Washington to conduct further treaty negotiations with the Chehalis, Chinook, and Cowlitz war broke out and occupied his attention. In the unsettled period that followed no further arrangements were made to treat with the Chehalis, Chinook, and Cowlitz and a treaty was never concluded with them.

CREATION OF THE QUINALT AND OTHER INDIAN RESERVATIONS ALONG THE WASHINGTON COAST

Under the treaty the Quinault, Queets, Quileute, and Hoh Tribes ceded their territory to the United States, and the United States agreed to reserve for the use and occupancy of the signatory tribes a tract or tracts sufficient for the tribes' wants to which the tribes were required to remove within one year of

treaty ratification. Article 6 of the treaty also provided the United States with authority to "consolidate" the signatories and "other friendly tribes;" to assign reservation lands to individuals and families willing to locate on such lands as a permanent home; and to remove "said Indians" from "said reservation or reservations to such other suitable place within the Territory as he may deem fit...." 12 Stat. 971.

In 1859 it was decided to protect land for the Upper Chehalis and Satsop at the confluence of the Black and Chehalis Rivers and notice was published that a reservation would be established at that location. A portion of this land was eventually set aside as the Chehalis Reservation. Instead of a treaty, the Chehalis Reservation was set apart by Secretarial Order of July 8, 1864, after the Commissioner of Indian Affairs advised the Secretary of the Interior that the Chehalis had resisted all suggestions to jointly occupy other reservations. Two years later the Shoalwater Reservation was established by Presidential Executive Order of September 22, 1866 for Chinook and Lower Chehalis Indians.

The Treaty with the Quinault does not designate the location of the reservations to be established for the Indian parties. In 1859 after the ratification of the Treaty, Michael Simmons proposed establishment of a reservation encompassing approximately six sections between Point Grenville and the mouth of the Quinault River. The reservation was surveyed in 1862.

In 1871 only the Quinaults were living on the reservation. At the time there were only three reservations in southwestern Washington. In addition to the three reservation communities there were a number of small bands of Indians who had not moved to any reservation whose tenure was threatened by settlers and land speculators. Superintendent Milroy in his 1872 annual report proposed the enlargement of the Quinault Reservation. Milroy proposed that the Quileute, Hoh, and Quaits, together with other Indians not then residing on any reservation could be collected on the enlarged reservation.

The Quinault Reservation was enlarged in accordance with Milroy's recommendation by Executive Order of November 4, 1873. However, the Quileutes regarded the Quinault Reservation as the property of the Quinaults, and their understanding of the Treaty was that they would have their own separate Reservation on the Quileute River and would not be required to relocate to the Quinault Reservation. As a result, the United States' hope that the Quileutes would be induced to remove to the Quinault Reservation was quickly abandoned. Hardly a year went by after the expansion of the Quinault Reservation that the local agent did not report that the Quileute Tribe had not relocated to the Quinault Reservation, and that a separate Reservation should be established on the Quileute River for those Quileutes who refused to have any part of the Quinault Reservation.

But one of the four tribes that have been made parties to the Quinault treaty is on the reservation. The Quillutes, Hohs, and Quaits reside at different points and distances on the coast north of the reservation, and say they never agreed to sell their country, nor did they, to their knowledge, sign any treaty disposing of their rights to it. That they were present at the time the treaty with them alleged to have been made, but that the paper that they signed was explained to them to be an agreement to keep the peace with the citizens of the United States, and to accord them the same rights to come into the country and trade for furs, &c., as had previously been accorded to the Hudson Bay Company.... They therefore refuse to leave their homes and localities in which they then and still reside, and move on the reservation which they (the Quileutes, Hohs, and Quaits) regard as the home and property of the Quinaults.

Report of the Superintendent of Indian Affairs for Washington Territory to the Commissioner of Indian Affairs, October 1, 1872, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1872

at 339-40.

The tribes of Hohs and Quillehutes are still living upon lands north of the limits of the reservation. I have conversed frequently with them upon the subject of residing on the reserve. Although they express themselves friendly, and willing that the whites should occupy their land, or so much of it as is fit for settlement, they did not understand when they signed the treaty that they were giving up their homes. They were very peaceable, and in several instances have been of great assistance to individuals who have been wrecked and cast upon their coast, always treating them kindly.

Report of the Special Indian Agent, Quinaielt Agency to the Commissioner of Indian Affairs, September 1, 1874, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1874 at 335.

The Indians living off from the [Quinault] reservation are not disposed to leave their old homes, and as the country is mostly unoccupied by white settlers, no means have been taken to bring them on to the reserve. In my opinion this reservation is entirely inadequate for the support of these four tribes, although it includes a large area of land, the most of it being mountainous and entirely unfit for agriculture. Nature seems to have provided the means suitable for the support of each tribe in the way of a stream that affords salmon and other fish for their wants as they are, but not enough for all, should they be dependent on one stream.

The country occupied by the Quillehute Indians is partly settled by whites, and it is the desire of those settlers to have them placed upon the reserve. In the event of their becoming troublesome, measures will have to be taken to remove them. They are opposed to coming to this reserve for the reason that they could not make a living, which I believe is true.

Report of the Special Indian Agent, Quinaielt Agency to the Commissioner of Indian Affairs, August 24, 1876, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1874 at 142.

The other three tribes, viz, Queets, Hohs, and Quillehutes, live at such a distance from the agency as to be entirely out of reach. The two latter tribes are not on the [Quinault] reservation, and are not disposed to leave their old homes....

In the treaty made with these Indians the following language is used in contemplation of their removing on to the reserve: "And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any lands not in the actual claim and occupation of the citizens of the United States," & [Treaty with Quinaielt and Quillehute Indians, July 1, 1855, art.2.] No steps have been taken to comply with this agreement on the part of the United States, and the Indians are still occupying their old homes.

Report of the Special Indian Agent, Quinaielt Agency to the Commissioner of Indian Affairs, August 6, 1877, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1877 at 195.

• Howeattl. Head Chief of the Quillehutes under the treaty then said.

... Col. Simmons told us when he gave us our papers that we were always to live on our own land that we were not to be removed to another place.

....

Tah a howtl or Tah ah ha whtl. Sub Chief of Quillehutes under the treaty then said.

I told Mr. Simmons that my land was from the Island of Upkows opposite Kwediarsatsit down the coast to the Hoooh River. This was my land formerly, and we would not sell our right to the river where we get our salmon, or to the land at the mouth of the river where we now live. We also claim the right to the seacoast as far as our land extends. And we want one half of the prairie land where the Cammas grows. The rest we will sell to Washington. Mr. Simmons said it was good and he would do as the Indians wished. Mr. Simmons said I have not bought your land. All I want of you is to look out for any white man who may be wrecked on your coast or come to you in distress. I want you to take care of them.

....

Capt Charles Willoughby US Indian Agent then said.

....

I will write to Washington and recommend that lands be reserved for you as was promised by Col Simmons. I want you to continue your fisheries for seals and whales as usual, but I want you to pay more attention to planting and cultivating land and taking care of your horses and cattle. Don't idle away your time in gambling, but build homes and fences and furnish your homes with comforts. I have counted ten new homes built since I was here one year ago every one of which has a working stove and coal oil lamps and many other evidences of civilization, all of which I am glad to see.

Proceedings of a Council Meeting with the Quillehuts August 20 and 21, 1879 re. Choice of Agencies.

The Quillehutes are 35 miles south from the agency, and all have their homes in one village, and not having so good opportunities from improvement, are not as far advanced as the Makahs.

A great deal of dissatisfaction has been manifested by these Indians for the past year and a half and with good reason. Something like two years since a white man named Daniel Pullen made entry on the lands on which their village is located, and ever since that time he has tried to exercise full control of all the premises and endeavored to have the Indians pull down their house for his accommodation. On receipt of circular No. 128, I immediately wrote the Indian Office, giving full particulars of the entry and asked to have the entry vacated and the land set apart for use of the Indians. No action has been taken so far as I am advised, although I have frequently called attention to it in my monthly reports. The Indians make frequent complaints of the acts of Pullen, but as they are off the reserve I am powerless to give them such protection as they should have. They have occupied this land from before the knowledge of the oldest Indian on the coast of any of their traditions. They have built some very comfortable frame houses and have several very large buildings built in Indian style from lumber manufactured by themselves, and they feel it would be a great hardship to be driven off and lose all their buildings and improvements, and all fair-minded people will agree with them.

Report of the Indian Agent, Neah Bay Agency to the Commissioner of Indian Affairs, August 13, 1885, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1885, at 187.

THE QUILLEHUTES do not live on a reservation. They are 40 miles south of the agency, on the Pacific. They have lived there for, I suppose, 100 years, yet the very land upon which their village is has been thrown open for settlement, and is now claimed by a white man. This, I think, is a piece of great injustices to these Indians, as I have frequently represented to the Department, and had hoped that long ere this they would have been righted.

Report of the Indian Agent, Neah Bay Agency to the Commissioner of Indian Affairs, August 15, 1887, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1887, at 209.

The Quillehutes are still without a reservation, about which I have frequently written, and hope they may have one so soon as the Pullen land case is decided.

Report of the Indian Agent, Neah Bay Agency to the Commissioner of Indian Affairs, August 11, 1888, reprinted in the Annual Report of the Commissioner of Indian Affairs for 1888, at 225.

Finally, in 1889 the United States acquiesced in the Quileute Tribe's desire to have its own separate reservation in the Quileute's ancestral homeland. United States v. Moore, 62 F.Supp. 660, 668-69 (W.D. Wash. 1945), *aff'd.*, 157 F.2d 760, 764 (9th Cir. 1946). In establishing this separate reservation for the use of the Quileutes who refused to relocate to the Quinault Reservation the United States relied upon the removal provision of Article 6 of the Treaty with the Quinault.

Article 6 of the Treaty as set forth in Appendix M provides in pertinent part:

The Presidents may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of the said Indians be promoted by it, remove them from said reservation or reservations to such other suitable place or places within the said Territory as he may deem fit.

Similarly, the Hoh Tribe declined to relocate to the Quinault Reservation. And, in 1893 the United States set aside a reservation for the Hoh Indians who refused to relocate to the Quinault Reservation. Executive Order of September 11, 1893 establishing the Hoh Reservation for "Hoh Indians not now residing on any Indian reservation". I Kappler, Indian Affairs, 916 (1904). Although the Indian groups for whom the Chehalis, Shoalwater, Quileute, and Hoh Reservations were established refused to relocate to the Quinault Reservation as political entities, many individuals from these groups did relocate to the Quinault Reservation. See e.g., Quinault Tribe v. United States, 7 Ind. Cl. Com. 1, 20 (1958). Many of these Indians were assimilated into the Quinault community and are today known as Quinaults. See United States v. Washington, 384 F. Supp. 312, 374 (W.D. Wash. 1974). Today the membership of the Quinault Indian Nation includes many individuals of Chinook, Chehalis, Cowlitz, Quileute, and Hoh ancestry, as well as Queets and Quinault.

ALLOTMENT OF THE QUINAULT RESERVATION

Much of the controversy over the legitimacy of the Quinault Indian Nation as the tribal government for the Quinault Reservation can be traced to the policy of allotment. Under the terms of the General Allotment Act of 1887, the Quinault Reservation was divided into allotments of approximately 80 acres in anticipation that the individuals who received this land would relocate, make

their homes, and become a part of the reservation community.

In 1905 the United States began to allot the Quinault Reservation under the terms of the General Allotment Act of 1887, 24 Stat. 388, which provided for the allotment of land suitable for agriculture upon which Indians were to locate and make their homes. Both Article 6 of the Treaty with the Quinault, 12 Stat. 971, and the General Allotment Act, 24 Stat. 388, required reservation residence as a prerequisite to allotment.

On many reservations special acts were passed that provided for the disposition of "surplus" reservation lands left after allotment of all eligible reservation Indians. See e.g., 36 Stat. 455; 35 Stat. 458; 35 Stat. 448, 457. In 1911, Congress passed a special Quinault Allotment Act, 36 Stat. 1345.

This Act provided that after the allotment of lands to Indians residing on the Reservation, "surplus" Quinault Reservation lands were to be allotted "to all members of the Hoh, Quileute, Ozette and other tribes" who "elect to take allotments on the Quinault Reservation rather than on the reservations set aside for these tribes." *Id.*

In 1905, allotment of the Quinault Reservation commenced. In June of that year the allotting agent was instructed to take applications for allotment from Quinaults, Quileutes, Queets, Hohs, and members of those tribes which the Central Office had been advised were occupying the Reservation. In October the allotment instructions were amended and clarified to restrict allotment at Quinault to Indians having no rights in land on another reservation. Later instructions in 1906, specifically provide that Quileute and Hoh Indians located on the Quileute and Hoh Reservation are not entitled to an allotment at Quinault.

Shoalwater Bay Indians were allotted at Quinault based on the erroneous impression that they were resident on the Quinault Reservation. Indians of the Chehalis, Hoh, and Quileute Reservations, however, were not allotted. Legislation was introduced in 1910 (SB 5269) to authorize allotment of surplus land of the Quinault Reservation remaining after allotment of the Indian residents to Quileute, Hoh, and Ozette Indians desiring allotments at Quinault, rather than at the Reservations set aside for their own tribes.

Subsequently, the Secretary of the Interior proposed an amendment to this legislation to also authorize allotments of surplus Quinault Reservation land to members of "other tribes of Indians in Washington, who are affiliated with the Quinault and Quileute Tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, eighteen hundred and fifty-six...." The Secretary of the Interior advised the Chairman of the House Committee on Indian Affairs that the amendment was designed principally to provide for allotment of certain unallotted Clallam and Squaxin Island Indians who the Secretary stated "were at one time affiliated with the Indians on the Quinault Reservation."

At the time both the Squaxin and Clallam had been lobbying for land. The Squaxin and Clallam Tribes are respectively parties to the Treaties of Medicine Creek and Point No Point. The Secretary's description of the Squaxin and Clallam as "affiliated" with the Indians of the Quinault Reservation and his use of the term in the proposed amendment to the allotment bill is not readily explained.

SB 5269 was enacted with the amendment proposed by the Secretary of the Interior added in the House. Act of March 4, 1911, 36 Stat. 1345. The Act provides in its entirety:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to make allotments on the Quinalt Reservation, Washington, under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington, who are affiliated with the Quinalt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, eighteen hundred and fifty-six, and who may elect to take allotments on the Quinalt Reservation rather than on the reservations set aside for these tribes, Provided, That the allotments authorized herein shall be made from the surplus lands on the Quinalt Reservation after the allotments to the Indians thereon have been completed.

Act of March 4, 1911, 36 Stat. 1345.

The intent of the Act was to authorize Indians whose reservation contained insufficient land for allotment to take allotments from the "surplus land" at Quinalt that remained after the allotment of Reservation residents. The legislative history and correspondence relating to the Act of March 4, 1911, do not discuss the Shoalwater Bay or Chehalis Tribes.

In 1931, the Supreme Court construed the Act of March 4, 1911, to permit the allotment of Chehalis, Chinook, and Cowlitz Indians from the surplus lands of the Quinalt Reservation, if they were without allotment elsewhere. Halbert v. United States, 283 U.S. 753, 760 (1931). Only those who did not already have land at another reservation such as Chehalis received allotments at Quinalt.

The Halbert Court did not have before it the legislative history of the Act of March 4, 1911, nor did it have available to it the extensive documentary record developed in more recent litigation in which the United States District Court rejected claims by the Chehalis and Shoalwater Bay Tribes that they are entitled to share rights reserved by the Quinalts under the Treaty with the Quinalt.

Nonetheless the Quinalt Indian Nation has accommodated the fact that descendants of tribal groups other than Quinalt have individual property interests in Quinalt Reservation land by adopting enrollment provisions that allow individuals of Chehalis, Chinook, Cowlitz, Quileute and Hoh ancestry to enroll in the Nation on exactly the same basis, and with the same rights, as persons of Quinalt and Queets ancestry. This enrollment policy insures that Quinalt Indian Nation truly represents the Indians of the Quinalt Reservation without regard to original tribal affiliation.



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

SELECTED BUREAU OF INDIAN AFFAIRS
FORESTRY PROGRAM ACTIVITIES
RELATED TO THE QUINALT RESERVATION

REPORT NO. 91-I-1336
SEPTEMBER 1991

This report may not be disclosed to anyone other than
the auditee except by the Assistant Inspector General
for Administration, Office of Inspector General,
U.S. Department of the Interior,
Washington D.C. 20240



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240



SEP 27 1991

MEMORANDUM

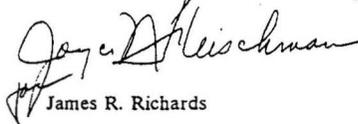
TO: The Secretary
FROM: Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Selected Bureau of Indian Affairs Forestry Program Activities Related to the Quinault Reservation"

DISCUSSION: The subject review was initiated as a result of allegations made by allottees of the Quinault Reservation. The objective of this review was to evaluate allegations related to (1) the timber bidding process, (2) timber sales practices, (3) timber rights-of-way, (4) road use fees, (5) fractional land ownerships, and (6) accountability of timber harvested from land that was previously owned by the U.S. Forest Service.

We concluded that the allegations were not substantiated except for the allegation related to road use fees. In that instance, the Bureau of Indian Affairs did not collect or distribute about \$26,500 in road use fees applicable to timber harvested on the Quinault Reservation. The purchaser of timber is to pay the Bureau a fee for hauling timber on reservation roads prior to hauling. According to Bureau forestry personnel, road use fees were not collected and distributed because the potential for the fees not being collected was low and because the documentation for distributing road use fees was not prepared.

The Bureau has implemented the two recommendations contained in the report.


James R. Richards

Attachment

cc: Solicitor
Assistant Secretary for Indian Affairs
Assistant Secretary for Policy, Management and Budget
Deputy Commissioner of Indian Affairs
Director, Office of Public Affairs

Prepared by: Harold Bloom
Extension: 208-4252



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

September 23, 1991



MEMORANDUM AUDIT REPORT

To: Assistant Secretary for Indian Affairs

From: Assistant Inspector General for Audits

Subject: Final Audit Report on Selected Bureau of Indian Affairs Forestry Program Activities Related to the Quinault Reservation (No. 91-I-1336)

INTRODUCTION

This report presents the results of our review of selected Bureau of Indian Affairs forestry activities related to the Quinault Reservation. The review was initiated as a result of allegations made by individual Indian landowners (allottees) of the Quinault Reservation. This report is the third of six reports that we have issued or that we plan to issue concerning the Bureau's forestry operations. The sixth report will summarize the audit results of the prior five reports. The objective of this review was to determine whether the allottees' allegations were valid concerning (1) the timber bidding process, (2) timber sales practices, (3) timber rights-of-way, (4) road use fees, (5) fractional land ownerships, and (6) accountability of timber harvested from land that was previously owned by the U.S. Forest Service. We concluded that the allegations by the allottees were not valid except for deficiencies related to road use fee collections and distributions (the allegations and our audit conclusions are summarized in Appendix 1). We found that about \$26,500 in road use fees applicable to timber harvested on the Quinault Reservation was not collected (\$13,300) or distributed (\$13,200) by the Olympic Peninsula Agency.

BACKGROUND

The Olympic Peninsula Agency Office, which is located in Hoquiam, Washington, and is under the direction of the Portland Area Office of the Bureau of Indian Affairs, administers timberlands on 10 reservations in western Washington. In fiscal year 1989, the Agency managed 154,000 acres of commercial timberland, including 126,000 acres on the Quinault Reservation. Fiscal year 1989 funding of approximately \$2.2 million was used to operate the forestry program of the Quinault Reservation and support about 40 full-time equivalent positions. The Quinault Reservation generated about \$5 million in timber sales revenues in fiscal year 1989. Approximately 80 percent of the commercial timberland on the Quinault Reservation is owned by allottees.

The principal objectives of the Bureau's forestry program are to maintain, protect, enhance, and develop Indian forest resources through the application of sound forest management principles. Forests are managed in accordance with the principle of sustained yield. Sustained yield is the amount of forest products that a forest can produce continuously at a given intensity of management. Commercial forestry program activities include timber sales, forest development (reforestation and timber stand improvements), forest management inventory and plans, forest protection, forest products marketing and assistance, and forest program management.

SCOPE OF AUDIT

This review was made because of allegations by allottees of the Quinault Reservation regarding ineffective management of the Bureau's forestry program activities related to the Quinault Reservation. We examined forestry and realty records, interviewed Agency personnel and allottees, and visited timber sales sites. Audit work was performed from March through May 1991. This performance review was made, as applicable, in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, our review included such tests of records and other auditing procedures that were considered necessary under the circumstances.

As part of our review, we evaluated the system of internal controls to the extent that we considered necessary. The internal control weaknesses identified are discussed in the Results of Audit section of this report. If implemented, the recommendations should improve the internal controls.

We reviewed the Department of the Interior Fiscal Year 1989 Federal Managers' Financial Integrity Act Annual Statement and Report to determine whether any reported weaknesses were within the objective and scope of our review. We determined that none of the reported weaknesses were directly related to the objective and scope of this review.

PRIOR AUDIT COVERAGE

The Office of Inspector General has issued one audit report in the past 5 years related to the forestry program on the Quinault Reservation. The report "Selected Forestry Operations of the Portland Area Office, Bureau of Indian Affairs" (No. 91-I-603), issued in March 1991, concluded that the Bureau had not collected sufficient allowable forest management deductions related to timber sales for the Quinault Reservation. The report recommended that the Assistant Secretary for Indian Affairs, with Tribal concurrence, increase the forest management deductions for the Quinault Reservation to 10 percent of gross proceeds from timber sales. At the time of our review, the Bureau was still conferring with the Tribe about increasing forest management deductions.

The General Accounting Office has not issued any audit reports in the past 5 years that pertain to the forestry program of the Quinault Reservation.

RESULTS OF AUDIT

The Olympic Peninsula Agency did not assess and collect or distribute road use fees for all timber sales that occurred in fiscal years 1990 and 1991. Timber sales contracts and agreements specify the requirements for collecting and distributing road use fees. The Agency, however, did not appropriately collect and distribute road use fees because Agency officials said that they were a low collection risk and because the documentation for distributing road use fees was not prepared. As a result, road use fees of about \$26,500 were not assessed and collected (\$13,300) or distributed (\$13,200) to allottees.

Road use fees applicable to timber sales for the Quinault Reservation were not assessed and collected from purchasers of timber or distributed to land allotment owners. We found that the Agency did not assess and collect road use fees applicable to two timber sales that occurred in November 1989 (Federal Land Bank Sale) and November 1990 (Rayonier Timberlands Operating Company Sale--Parcel 1). In addition, the Agency had not distributed road use fees that were collected for 26 other timber sales as early as November 1989.

Timber sale contracts and agreements specify that the purchaser of timber is to pay the Bureau of Indian Affairs a fee for hauling timber on reservation roads prior to hauling. The contracts also specify that these road use fees are payable to allotment owners as soon as they are received by the Bureau.

Road use fees were not collected because Agency forestry personnel said that they considered road use fees for these two timber sales a low risk for uncollectibility. Also, road use fees that had been collected were not distributed to allotment owners because the Agency's Branch of Forestry had not prepared the documentation that specified the allottees and the amounts of road use fees each allottee was to receive.

Consequently, road use fees of about \$26,500 were not assessed and collected (\$13,300) or distributed (\$13,200) to allottees by the Agency.

Recommendations

We recommend that the Deputy Commissioner of Indian Affairs direct the Olympic Peninsula Agency to:

1. Assess and collect the road use fees for the Federal Land Bank Sale and the Rayonier Timberlands Operating Company Sale--Parcel 1.

2. Prepare the necessary road use documentation for all the undistributed road use fees and distribute these fees and ensure that future fees are distributed in a timely manner.

Bureau of Indian Affairs Response

The August 29, 1991, response from the Acting Deputy Commissioner of Indian Affairs (Appendix 2) stated that both recommendations have been implemented by the Bureau.

Office of Inspector General Comments

The Bureau's response was sufficient for us to consider both recommendations resolved and implemented (see Appendix 3).

Since all of the recommendations are implemented, no further response to the report is necessary.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been implemented.



Harold Bloom

**SUMMARY OF ALLOTTEES' ALLEGATIONS
AND OFFICE OF INSPECTOR GENERAL AUDIT CONCLUSIONS**

ALLEGATION

CONCLUSION

Timber Bidding Process

The Quinault Tribe's timber enterprise (Quinault Land and Timber Enterprise) received all of the timber contracts on the Quinault Reservation by matching the highest bid amount.

Between August 1, 1988, and March 5, 1991, the Enterprise was awarded 10 to 25 timber sales contracts because the Enterprise matched the highest bid amount. This practice was approved by the Bureau on October 18, 1988, and was in accordance with the Code of Federal Regulation (25 CFR 163.8). The Enterprise also received 7 of the 25 contracts during this period because it submitted the highest bid.

Since the Enterprise was allowed to meet the highest bid and receive timber contract awards, other loggers did not bid on timber sales contracts, which resulted in lower timber sales amounts.

For Quinault Reservation timber sales contracts awarded in fiscal years 1985 through 1988, there was an average of 2.1 bids that averaged 22.8 percent above the Bureau's minimum bid amount. However, after the Enterprise began matching the highest bid, the average number of bids per timber sale increased to 2.4, and the average bid amount increased to 25.1 percent above the Bureau's minimum bid amount for the period October 13, 1988, through March 5, 1991. Also, two logging companies bid on Quinault Reservation timber contracts after they stated in letters dated September 1990 that they would no longer bid on Quinault contracts because of the Enterprise's practice of meeting the high bid to receive the contract.

Timber Sales Practices

Allotment owners were not paid for timber harvested based on amounts of timber actually scaled (measured).

The Quinault Land and Timber Enterprise subcontracted all of its timber cutting to the Quinault Logging Corporation, which is owned by a non-Indian.

The Bureau did not state volumes and values of timber to be sold on the power-of-attorney form when the forms were submitted to allotment owners for signature.

The Enterprise was not required to provide fire boundaries around timber cutting areas.

Timber on allotments was sold on a lump-sum basis, which is an acceptable industry practice. Allotment owners benefit from lump-sum sales because the owners receive payment for timber when it is sold rather than when it is removed from the allotment. Also, the buyers pay for the timber whether or not it is harvested or removed from the allotment.

The Enterprise and the Quinault Logging Corporation formed a joint-venture partnership to harvest timber. The Quinault Logging Corporation hired Indian and non-Indian loggers.

The volumes and values of timber were not included on these forms because the Bureau needed to know whether the majority of the allotment owners desired to sell the timber on their allotments before the timber sales packages were prepared. It would be inefficient to prepare the sales packages and find out that allottees did not consent to the sales. According to Agency forestry personnel, allottees have the option of withdrawing their allotments from sales if the Bureau's estimated timber values do not meet their expectations.

The Enterprise and all other timber purchasers were subject to the same requirements for fire boundaries.

Timber Rights-of-Way

The Quinalt Land and Timber Enterprise cut 75-foot rights-of-way, while other contractors cut only 25-foot rights-of-way.

The Bureau required 70-foot rights-of-way for roads that bordered timber and 30-foot rights-of-way for roads that bordered brush. These standards for rights-of-way applied to the Enterprise and to all other contractors.

The Enterprise kept money it received from the sale of timber that was removed from rights-of-way on allotments.

The Bureau properly collected the money for timber removed from rights-of-way by the Enterprise and distributed the money to the allottees.

The Enterprise left timber access roads in poor condition after timber harvests were completed, while other loggers were required to maintain access roads in good condition.

We did not identify any timber access roads that the Enterprise left in poor condition.

Road Use Fees

Road use fees on some timber sales may not have been paid to allotment owners.

The Bureau did not collect and/or distribute about \$26,500 in road use fees to allotment owners. See the Results of Audit section of this report for further details.

Fractional Land Ownership

Fractional ownership in allotments was lost to the Quinalt Tribe.

The Bureau properly transferred fractional ownership in allotments in accordance with estate probate orders that were prepared by administrative law judges.

Accountability of Timber Harvested From Land Previously Owned by the U.S. Forest Service (North Boundary Area)

The internal controls over timber harvested from the North Boundary

Timber harvested from the North Boundary Area was marked with

Area may not have been adequate to prevent the timber from being exported.

yellow paint and stored in piles separate from exportable timber. Also, the Bureau and other parties periodically monitored the storage of North Boundary Area timber to prevent export.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

APPENDIX 2
Page 1 of 4



IN REPLY REFER TO:

Forestry
Code 230

AUG 29 1991

Memorandum

To: Assistant to the Inspector General, Audits

From: ^{Acting} Deputy Commissioner of Indian Affairs *James A. Pace*

Subject: Response to the Draft Audit Report on Selected Bureau of Indian Affairs Forestry Program Activities Related to the Quinault Reservation (Assignment No. C-IA-BIA-16-90E)

Thank you for the opportunity to respond to the subject report. On July 19, 1991, the Portland Area Office prepared a response to the Regional Audit Manager regarding the issues raised. Although the memorandum was written prior to the release of the draft report, it was based upon a preliminary draft of the report submitted by the Regional Audit Manager on June 21, 1991, which contained the same issues and recommendations.

Our Central Office forestry staff has been in contact with the Area Office and has been assured that the July 19, 1991, response is the Portland Area's final response to the draft report. We have discussed the Area's response with them and concur with their findings and comments. It has therefore been made an attachment to this memorandum and will serve as our official response to the draft audit report.

Any questions on this response should be directed to Mr. James Pace, Chief, Branch of Timber Sales Management at (202)208-6067.

Attachment



IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
911 N.E. 11th Avenue
Portland, Oregon 97232-1669

MEMORANDUM

TO: Regional Audit Manager

FROM: Assistant Area Director (Program Services)
Attention: Branch of Forestry

SUBJECT: Draft Audit Report on Selected Bureau of Indian Affairs Forestry Program Activities Related to the Quinault Reservation (Assignment No. C-IA-BIA-16-90(E))

A meeting was held with Mr. Douglas Coster and Mr. Zane Michael on July 8, 1991, to discuss the results of the review and recommendations of the Draft Audit Report on Selected Bureau of Indian Affairs Forestry Program Activities Related to the Quinault Reservation (Assignment No. C-IA-BIA-16-90(E)).

Discussions were directed toward the six allegations made by individual Indian landowners (allottees) of the Quinault Reservation. The scope of the audit presented a brief description of the audit work performed from March through May 1991 in addressing these allegations. The audit concluded that the only valid allegation was the one pertaining to deficiencies related to road use fees collections and distributions. The other five allegations relating to the timber bidding process, timber sales practices, timber right-of-ways, fractional land ownerships, and accountability of timber harvested from newly acquired Forest Service lands were determined to be not valid. While detailed information was presented in the draft audit report concerning the road use fee allegation, no information was presented which provided the basis for determining that the other five allegations were invalid.

Since these five allegations have been given a high level of importance by the allottees of the Quinault Reservation they, no doubt, will be raised again and will become issues which we will be required to address in the future. Therefore, it would be very helpful to all parties involved to have information provided in the report which provides the basis for determining that these allegations are invalid.

-3-

As indicated to Messrs. Coster and Michael at the meeting, corrective actions have already been taken by the Superintendent, Olympic Peninsula Agency, in regard to the two recommendations pertaining to road use fee collections and distributions. A copy of a memorandum from the Superintendent to this office concerning this matter is attached.

We appreciate the opportunity to meet with your staff and discuss the audit report and the highly professional manner in which your personnel have conducted their audit activities of the forestry program in the Portland Area.

Attachment

A handwritten signature in cursive script, appearing to read "William E. Bond". The signature is written in dark ink and is positioned to the right of the word "Attachment".

THE STATES GOVERNMENT

memorandum

DATE: July 1 1990

APPROVED BY: Superintendent, Olympic Peninsula Agency

SUBJECT: Office of Inspector General Draft Audit Report on Selected Forestry Quinault Reservation (Assignment No. C-IA-BIA-16-90(E))

TO: Portland Area Director

APC
ms

This memorandum addresses the Recommendations portion of the subject report. The review covered six subject areas. Of the six, the Audit Report states "that the allegations by the allottees were not valid except for deficiencies related to road use fee collections and distributions".

The deficiencies identified concerned two areas of road use fees: (1) Collection of road use fees and (2) distribution to allottees of road use fees. Collection of road use fees on forest roads by commercial operators is based on volume and route of haul of timber and gravel. Of the two sales identified, the Federal Land Bank (FLB) purchase by the Quinault Indian Nation is more complex due to the number of individual allotments crossed during haul.

The audit states that Forestry personnel considered payment to owners a "low priority". The agency emphasizes payments to all owners. In Fiscal Year 1990, the agency paid out \$6,727,306 to owners on timber sales. During this same period, approximately \$7,500 were collected for road use fees. Payments due individuals were very small in value. For example, the Federal Land Bank (FLB) payment, which is typical in scope, shows the following:

- (1) 183 Allotments crossed (1,486 individual owners)
- (2) 37 Parcels of FLB hauled (43 MMBF)
- (3) \$ 5.36 Average payment owed each owner
- (4) \$7,965.71 Total payment

The agency recognized the payment problem prior to the audit. Agency action to correct this problem was to reorganize a separate accounting section and hire an individual to address road payments. This section continues to strive to overcome the ever-increasing difficulties of making payments through the IRMS. I would appreciate recognition of this action in the IG report.

The audit report states that timber sale contracts require payment prior to haul. This sale is different than past operations. The RTOC Timber Sale Contract is administered by the Quinault Tribe under self-governance. While the agency has a role in collections, the Tribal Administrator is the responsible entity to ensure contract compliance.

In the Federal Land Bank purchase, the BIA was responsible for collections. Our role in this complex sale between the Quinault Tribe and a private logging firm on fee land has been emphasized and updated.

Full payment for both sales has been made.

R. J. Maloney

STATUS OF AUDIT REPORT RECOMMENDATIONS

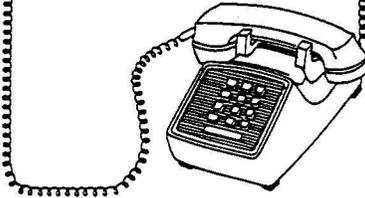
<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
1 and 2	Implemented	None

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gar v. Sarafite, 376 U.S. 575, 589, 84 S.Ct. 841, 849, 11 L.Ed.2d 921 (1964).

The district court found that Creech did not "advise the court that notification of the parties on May 22, 1986, as to the nature and scope of the May 29th hearing would not provide counsel with adequate time to prepare for that hearing." Moreover, the district court found that Creech's own delinquency culminated in the limited period of time between the deadline for briefing and the May 29th hearing date. Further, Creech's counsel admitted as much at the May 29th hearing, stating "I frankly am not prepared to present medical evidence today and . . . that was my confusion and it was all my fault. . . ."

Creech was given one week's notice of the nature and scope of the evidentiary hearing. In conjunction with Creech's delinquency and the amount of time for Creech to prepare his case between the filing of the habeas petition on January 29 and the May 29 hearing (not to mention the four years between Creech's initial sentencing on January 25, 1982 and the filing of his petition), we conclude that the district court did not abuse its discretion in denying Creech a continuance.

X

We **AFFIRM** the district court on Creech's claims of ineffective assistance of counsel, incompetence to plead guilty, involuntary and unknowing guilty plea, denial of his right to confrontation, and need for an evidentiary hearing. We also **AFFIRM** the district court's conclusion that Creech had no right to a jury trial on the existence of aggravating factors and that he was not sentenced pursuant to a mandatory death penalty formula. We **REVERSE** and direct the district court to grant the petition on Creech's claim that the state trial court relied on improper aggravating circumstances, and that prohibiting him from introducing evidence of mitigating circumstances at his resentencing hearing violates the Constitution.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.



CONFEDERATED TRIBES OF the CHEHALIS INDIAN RESERVATION, Shoalwater Bay Indian Tribe, Chinook Indian Tribe, Cowlitz Indian Tribe, Lillian Payne Penn Pullen, Philip Ward, Leo Williams, Edward E. Claplanhoo, Glenn F. Penn, Iola Mary Penn Williams, Helen Sanders, Leda Anderson, and Gloria Brown, Plaintiffs-Appellants,

v.

Manuel LUJAN, United States Secretary of the Interior, James Burnley, United States Secretary of Transportation, Defendants-Appellees.

No. 90-35192.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Oct. 5, 1990.

Decided April 3, 1991.

As Amended May 23, 1991.

As Amended on Denial of Rehearing
and Rehearing En Banc June 13, 1991.

Indian tribes and individual Indians brought suit seeking declaratory and injunctive relief enjoining Secretary of Interior from dealing with the Quinault Tribe as sole governing body of a reservation. The United States District Court for the Western District of Washington, Barbara J. Rothstein, Chief Judge, 129 F.R.D. 171, granted Government's motion to dismiss, and plaintiffs appealed. The Court of Appeals, Skopil, Circuit Judge, held that suit was properly dismissed for failure to name the Quinault Nation as a party.

Affirmed.

O'Scannlain, Circuit Judge, issued an opinion concurring in part and dissenting in part.

CONFEDERATED TRIBES v. LUJAN

Cite as 628 F.2d 1496 (9th Cir. 1991)

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1. Federal Civil Procedure ¶203

In determining whether nonparty is "indispensable," district court must first determine if absent party is "necessary" to action; then, if that party cannot be joined, court must determine whether party is "indispensable" so that in equity and good conscience action should be dismissed. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

2. Federal Courts ¶818

District court's decision to dismiss action based on absence of indispensable party is reviewed for abuse of discretion. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

3. Federal Civil Procedure ¶203

Under Federal Rule of Civil Procedure 19 pertaining to "indispensable" parties, there is no precise formula for determining whether particular nonparty is necessary to action; determination is heavily influenced by facts and circumstances of each case. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

4. Federal Civil Procedure ¶203

Under Federal Rule of Civil Procedure 19 pertaining to "indispensable" parties, in determining if absent party is necessary, court must consider if complete relief is possible among those parties already in action, and must then consider whether absent party has legally protected interest in outcome of action. Fed.Rules Civ.Proc. Rule 19(a), 28 U.S.C.A.

5. Indians ¶27(5)

Quinault Indian Nation was indispensable party in action brought by various groups of Indians against federal officials challenging United States' continuing recognition of Quinault Indian Nation as sole governing authority to Quinault Indian Reservation, as Nation had legal interest in litigation and complete relief could not be afforded plaintiffs without Nation; thus, because Nation did not waive its immunity from nonconsensual actions in federal court, and because judgment in favor of plaintiffs would clearly prejudice Nation on ground that judgment would presumably alter Nation's existing authority to govern reservation, dismissal was required. Fed. Rules Civ.Proc.Rule 19(a, b), 28 U.S.C.A.

Dennis J. Whittlesey & Joseph S. Gerbaso of Collier, Shannon & Scott, Washington, D.C., and Jill A. Salmi, Seattle, Wash., for plaintiffs-appellants.

Richard B. Stewart, David C. Shilton, Thornton Withers Field, and Jacques B. Gelin, U.S. Dept. of Justice, Washington, D.C., for defendants-appellees.

Richard Reich, Taholah, Wash., for amicus curiae Quinault Indian Nation.

Appeal from the United States District Court for the Western District of Washington.

Before SKOPIL, O'SCANLAIN and FERNANDEZ, Circuit Judges.

SKOPIL, Circuit Judge:

We are asked on this appeal to determine if the district court properly dismissed an action brought by various groups of Indians against federal officials. These Indians challenge the United States' continuing recognition of the Quinault Indian Nation as the sole governing authority for the Quinault Indian Reservation. The district court dismissed the action after concluding that the Quinault Nation is an indispensable party that cannot be joined in the action: 129 F.R.D. 171. We affirm.

FACTS AND PRIOR PROCEEDINGS

This controversy is rooted in the treaty negotiations conducted at the Chehalis River Treaty Council in 1855. There, the United States, represented by Governor Isaac Stevens, sought to place all coastal and interior Indian tribes of the Olympic Peninsula onto a single reservation. All but two tribes refused to accept the United States' proposal. The Quinault and the Quillehute signed the Treaty of Olympia. A reservation was established under the terms of the treaty.

The treaty reservation proved to be inadequate for the needs of the Quinault and Quillehute Tribes. As a result, President

Grant issued the Executive Order of November 4, 1873, enlarging the reservation and providing that it be "for the use of the Quinault, Quillehuts, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific coast." Thus, by treaty and executive order, various tribes of the Pacific coast became affiliated with the Quinault. See *Wahkiakum Band of Chinook Indians v. Bateman*, 655 F.2d 176, 178-79 (9th Cir. 1981) (reviewing history of the Quinault Indian Reservation).

Several of these affiliated tribes and individual tribal members filed this action seeking to enjoin federal officials from "dealing with the Quinault Indian Nation . . . as the governing body of the Quinault Indian Reservation." They also seek judgment "declaring that the [plaintiffs] have equal rights in the Reservation, are entitled to be treated equally as federally recognized Indian tribes by [defendants], and that the governing body of the Reservation must be constituted so as to reflect those rights and the rights of all Indians who are allotted at the Reservation, including the individual plaintiffs."

The United States, on behalf of the federal officials, responded by moving to dismiss the action on the ground that the district court lacked authority to decide the controversy. Specifically, the United States contended that (1) the district court lacks subject matter jurisdiction; (2) the action is barred by a statute of limitations; (3) the action raises a political question not justiciable by federal courts; (4) plaintiffs failed to exhaust administrative remedies; and (5) plaintiffs failed to join an indispensable party, the Quinault Indian Nation. The district court ruled only on the last ground, holding that "plaintiffs have indeed failed to name an indispensable party in this suit, and therefore the government succeeds in its motion to have the case dismissed."

DISCUSSION

[1.2] Whether a non-party is "indispensable" is determined by application of Federal Rule of Civil Procedure 19. Under that rule, the district court must first de-

termine if an absent party is "necessary" to the action; then, if that party cannot be joined, the court must determine whether the party is "indispensable" so that in "equity and good conscience" the action should be dismissed. *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir.1990). The district court's decision to dismiss an action based on the absence of an indispensable party is reviewed for an abuse of discretion. *Id.* at 557.

A. Necessary Party

[3.4] There is no precise formula for determining whether a particular non-party is necessary to an action. See *Bakia v. County of Los Angeles*, 687 F.2d 299, 301 (9th Cir.1982). "The determination is heavily influenced by the facts and circumstances of each case." *Id.* Nevertheless, Rule 19(a) contemplates a two-part analysis to aid in determining if an absent party is necessary. First, the court must consider if complete relief is possible among those parties already in the action. Second, the court must consider whether the absent party has a legally protected interest in the outcome of the action. See *Makah Indian Tribe*, 910 F.2d at 558.

[5] We conclude that the Quinault Nation is a necessary party to the action for the reasons recognized by the district court. First, success by the plaintiffs in this action would not afford complete relief to them. Judgment against the federal officials would not be binding on the Quinault Nation, which could continue to assert sovereign powers and management responsibilities over the reservation. Second, the Quinault Nation undoubtedly has a legal interest in the litigation. Plaintiffs seek a complete rejection of the Quinault Nation's current status as the exclusive governing authority of the reservation. Even partial success by the plaintiffs could subject both the Quinault Nation and the federal government to substantial risk of multiple or inconsistent legal obligations.

Thus, the district court properly concluded that "[t]he Tribe is most certainly a party whose interests are affected, and in whose absence complete relief may not be

CONFEDERATED TRIBES v. LUJAN

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Cite as 928 F.2d 1496 (9th Cir. 1991)

afforded." That conclusion is entirely consistent with other decisions where courts have concluded that Indian tribes are necessary parties to actions affecting their legal interests. See, e.g., *McClendon v. United States*, 885 F.2d 627, 633 (9th Cir. 1989) (Indian tribe is a necessary party to an action seeking to enforce a lease agreement signed by the tribe); *Enterprise Mgt. Consultants, Inc. v. United States*, 883 F.2d 890, 893 (10th Cir.1989) (Indian tribe is a necessary party to an action seeking to validate a contract with the tribe); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 774 (D.C.Cir.1986) (Indian tribe's beneficiary interest in a trust makes it a necessary party to an action by a minority tribe seeking to obtain redistributions of future income).

U.S. 903, 96 S.Ct. 1492, 47 L.Ed.2d 752 (1976).

Rule 19(b) provides that the factors to be considered to determine whether an action should be dismissed because a non-party is indispensable are: (1) prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and (4) whether there exists an alternative forum. See *Makah Indian Tribe*, 910 F.2d at 560. The district court applied these four factors and concluded that three of the four factors favored dismissal of the action. Specifically, the court reasoned that a judgment in favor of the plaintiffs would clearly prejudice the Quinault Nation because it would presumably alter the Quinault's existing authority to govern the reservation. The court concluded that no relief could be fashioned to avoid that prejudice and that no compromise position would satisfy plaintiffs without prejudice to the Quinault Nation. The court expressed sympathy that plaintiffs lacked a qualified forum but nevertheless concluded that "it cannot ignore the rule of law on joinder of parties."

B. Indispensable Party

Generally, a necessary non-party will be joined as a party. Fed.R.Civ.P. 19(a). Indian tribes, however, are sovereign entities and are therefore immune from nonconsensual actions in state or federal court. *McClendon*, 885 F.2d at 629. The parties here agree that the Quinault Nation has not waived its immunity and accordingly cannot be joined in this action. Consequently, our next step is to determine if the district court properly concluded that the Quinault Nation is an indispensable party so that the action cannot in "equity and good conscience" proceed in its absence. Fed.R.Civ.P. 19(a).

We agree with the district court. The prejudice to the Quinault Nation if the plaintiffs are successful stems from the same legal interests that makes the Quinault Nation a necessary party to the action. See *Enterprise Mgt. Consultants*, 883 F.2d at 894 n. 4 (prejudice test under Rule 19(b) is essentially the same as the inquiry under Rule 19(a)); *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1048 n. 15 (9th Cir.) (same), cert. denied, 464 U.S. 849, 104 S.Ct. 155, 78 L.Ed.2d 144 (1982). There is no partial or compromise remedy that will not prejudice the Quinault Nation.

Rule 19(b) provides a four-part test to determine whether a non-party is indispensable to an action. Some courts have noted, however, that when the necessary party is immune from suit, there is very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor. See *Enterprise Mgt. Consultants*, 883 F.2d at 894 (citing *Wichita and Affiliated Tribes*, 788 F.2d at 777 n. 13). We have nonetheless consistently applied the four-part test to determine whether Indian tribes are indispensable parties. See *Makah Indian Tribe*, 910 F.2d at 560; *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1326 (9th Cir.1975), cert. denied, 426

Appellants nevertheless argue that the Quinault Nation will not be prejudiced if the action proceeds because a favorable judgment would only "fulfill rights guaranteed by prior decisions of federal courts." They further contend that affording the Quinault Nation "an opportunity to intervene constitutes a sufficient attempt to

shape relief to lessen any possible prejudice." Moreover, they contend that the United States could adequately represent the Quinault Nation's interests. Finally, appellants argue that dismissing their action impermissibly precludes relief because no other forum is available to them.

We reject appellants' argument that the Quinault Nation will not be prejudiced because the action seeks only to enforce prior decisions. We have found no decisional law which specifically addresses the authority of the Quinault Nation to govern the Quinault Indian Reservation. The authorities cited by the appellants involve only the adjudication of individual member's rights. See *Halbert v. United States*, 283 U.S. 753, 756-60, 51 S.Ct. 615, 616-17, 75 L.Ed. 1389 (1931) (members of affiliated tribe are among those entitled to allotments on the Quinault Reservation); *Williams v. Clark*, 742 F.2d 843, 854 (9th Cir.1984) (members of affiliated tribe are permissible devisees of Quinault Reservation lands under the Indian Reorganization Act), cert. denied, 471 U.S. 1015, 105 S.Ct. 2017, 85 L.Ed.2d 299 (1985). At any rate, we do not need to address the merits of the underlying controversy except to conclude that the Quinault Nation might be prejudiced if the action was allowed to proceed.

We also reject appellants' theory that the Quinault Nation could minimize the potential prejudice by intervening in the action and asserting its interests. See *Makah Indian Tribe*, 910 F.2d at 560 (the ability to intervene if it requires waiver of immunity is not a factor that lessens prejudice). Similarly, the United States cannot adequately represent the Quinault Nation's interest without compromising the trust obligations owed to the plaintiff tribes. See *id.* (potential intertribal conflicts means the United States cannot properly represent any of the tribes). Finally, the "lack of an alternative forum does not automatically prevent dismissal of a suit." *Id.* Courts have recognized that a plaintiff's interest in litigating

a claim may be outweighed by a tribe's interest in maintaining its sovereign immunity. See *Enterprise Mgt. Consultants*, 883 F.2d at 894 ("dismissal turns on the fact that society has consciously opted to shield Indian tribes from suit without congressional or tribal consent.") (quoting *Wichita and Affiliated Tribes*, 788 F.2d at 777).

CONCLUSION

The district court did not abuse its discretion in dismissing this action pursuant to Rule 19.

AFFIRMED.

O'SCANLAIN, Circuit Judge,
concurring in part and dissenting in part:

The majority's analysis has two parts. First, the majority concludes that the Quinault Indians are a necessary and indispensable party under Rule 19; the court then concludes that because the Nation cannot be joined for reasons of sovereign immunity, the suit must be dismissed. While I agree that some of plaintiffs' claims should have been dismissed, I am not persuaded that dismissal of the complaint as a whole was proper. I therefore can concur in only part of the court's judgment. Moreover, because I believe that the majority has adopted a Draconian and overbroad interpretation of the compulsory joinder rule—which unlike sovereign immunity is an equitable rule of discretion—I respectfully dissent from the majority's reasoning.

I

As the majority explains, Rule 19 has two pertinent parts. Rule 19(a) prescribes standards for determining whether a non-party is "necessary" to the litigation, and Rule 19(b) prescribes standards for determining whether a non-party is "indispensable," so that litigation cannot proceed in that non-party's absence.¹

1. Our historical use of the terms "necessary" and "indispensable" in conjunction with Rule 19 provides some cause for confusion. Logically and in the vernacular, the two words are synon-

ymous: if a party is truly "necessary" to an action, then presumably the action cannot proceed without that party; the party is thus "indispensable."

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Cite as 928 F.2d 1496 (9th Cir. 1991)

1501

A

Rule 19(a) states that a non-party: who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed.R.Civ.P. 19(a). Applying these standards to the Quinaults, the majority concludes that they are a necessary party. I disagree.

1

First, the majority reasons that the plaintiffs' success in this action would not afford them "complete relief" without joinder of the Quinaults. The court's opinion offers a one-sentence explanation: "Judgment against the federal officials would not be binding upon the Quinault Nation, who could continue to assert sovereign powers and management responsibilities over the

reservation." *Ante* at 1498. It is, of course, true that judgment against the named defendants would not bind the Quinaults—in the same sense that judgment against a named defendant can never bind a non-party.² That observation is definitional, but it says nothing about the unavailability of relief within the meaning of Rule 19(a). The plaintiffs have alleged that federal officials have "denied their rights in the Reservation," have failed to recognize their right "to be treated equally as federally recognized Indian tribes," and have improperly recognized the Quinaults as "the exclusive governing body of the Reservation." Complaint at ¶¶ 31, 32, 43; *see also id.* at ¶¶ 21-51 (alleging six causes of action). It is not clear why declaratory or injunctive relief rendered against the named defendants on these claims would not be "complete" within the relevant level of generality.

The Confederated Tribes probably have no illusions that success in this action will afford them complete relief from all their troubles with the Quinaults, but defining "complete relief" in such expansive terms deprives it of meaning. The relevant question for Rule 19(a) must be whether success in the litigation can afford the plaintiffs the relief for which they have prayed. Again, the "completeness" of relief must be analyzed within the relevant level of generality: the four corners of the complaint.³

In order for the distinction to make any sense in the context of Rule 19, therefore, we must mean something less than actual necessity when we speak of a "necessary party." Indeed, the current caption for Rule 19(a) does not use the term "necessary" but instead speaks of "Persons to be Joined if Feasible." Fed.R.Civ.P. 19(a). Persons who fit this definition are non-parties "whose joinder in the action is desirable" in the effort to ensure a just, informed, and fair result. Fed.R.Civ.P. 19 advisory committee's note on amended rule (emphasis added); *see* 7 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1604, at 35 (2d ed. 1986) ("the necessary party label has been eliminated to emphasize that the real purpose of this rule is to bring before the court all persons whose joinder would be desirable for a just adjudication of the action"). These non-parties should be joined if possible, but they are not, truly speaking, "necessary parties" unless and until they satisfy the terms of Rule 19(b). *See id.* § 1601, at 7-8

(Identifying *Shields v. Barrow*, 58 U.S. (17 How.) 130, 139, 13 L.Ed. 158 (1855), as one source for our use of the terms "necessary" and "indispensable" in the joinder context and quoting language from the Court's opinion in that case that indicates that the Court meant something less than "necessary" by its use of that word).

2. *See Provident Traders Bank & Trust Co. v. Patterson*, 390 U.S. 102, 110, 88 S.Ct. 733, 738, 19 L.Ed.2d 936 (1968); *see also* Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 Mich.L.Rev. 327, 330-35 (1957); *see generally* Hazard, *Indispensable Party: The Historical Origin of a Procedural Phantom*, 61 Colum.L.Rev. 1254 (1961).

3. *See* 3A J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 19.07-[1], at 19-93 to 98 (2d ed. 1990) [hereinafter *Moore's Federal Practice*] ("It must be noted that complete relief refers to

The majority places considerable weight on this circuit's recent decision in *Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir.1990), but *Makah* is clearly distinguishable. The plaintiff Indians in *Makah* sought to force the government to reallocate a limited number of fishing allotments. A panel of this circuit affirmed the district court's dismissal of the suit because the plaintiff tribe had failed to join the twenty-three other tribes which possessed allotted rights. As the court explained:

The [district] court, viewing the 1987 harvest as a trust fund, held that it could not grant complete relief to the Makah because it would violate the treaty rights of other tribes. It held the absent tribes had an interest in the suit because "any share that goes to the Makah must come from [the] other tribes."

Makah, 910 F.2d at 559 (quoting district court order) (emphasis added). It is appropriate to dispose of cases like *Makah* through Rule 19 because in such circumstances the court quite literally cannot give the plaintiff the interest that it seeks without simultaneously taking that interest away from the absent non-party. By contrast, the Confederated Tribes seek to vindicate rights to which they allege all Indians on the Quinault Reservation are entitled. There is no comparable "trust fund" or limited resource at issue in this case; here, there is "no pie to carve up."

relief as between the persons already parties, and not as between a party and the absent person whose joinder is sought"), quoted in *Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training Comm.*, 662 F.2d 534, 537 (9th Cir.1981), cert. denied, 459 U.S. 917, 103 S.Ct. 231, 74 L.Ed.2d 183 (1982); see also *id.* (citing, inter alia, *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251 (9th Cir.1983), cert. denied *sub nom. Trans-Canada Enters. Ltd. v. Muckleshoot Indian Tribe*, 465 U.S. 1049, 104 S.Ct. 1324, 79 L.Ed.2d 720 (1984) and three other Ninth Circuit cases).

In *Puyallup*, an Indian tribe petitioned for declaratory relief to quiet title to a tract of land that was exposed after the Army Corps of Engineers altered the course of a navigable river. Before proceeding to the merits, the court noted and applied the established Ninth Circuit rule that an Indian tribe need not join either the federal or the state government in an action to

The *Makah* court itself recognized this distinction. At the same time that the court affirmed dismissal of the plaintiffs' challenge to the fishing allotments, it reversed the district court's dismissal of their challenge to the administrative process that determines those allotments. The court held that an adjudication of these "procedural claims" could still be effective and would not prejudice the absent tribes "because all of the tribes have an equal interest in an administrative process that is lawful." *Id.*

The ruling that the Confederated Tribes seek would likewise be an adjudication of "procedural," rather than proprietary, claims. They seek—at least in part, if not entirely—a declaration and enforcement of their rights in the governmental processes that most immediately affect their lives. All the resident tribes of the Quinault Reservation have an equal interest in a fair and lawful administration of these processes; none would be legitimately prejudiced by a judgment regarding their respective rights under the laws and treaties that govern the reservation.⁴

2

The majority's determination that the Quinaults have an interest at risk under Rule 19(a)(2) is similarly overbroad. The court's opinion asserts that "the Quinault Nation undoubtedly has a legal interest in the litigation. Plaintiffs seek a complete

protect its tribal lands—even though the federal government, as trustee, legally holds title to the tribe's realty and even though the state might challenge the tribe's title in a future action. See *Puyallup*, 717 F.2d at 1254-56.

4. Under the majority's holding, if the Bureau of Indian Affairs were suddenly to announce that henceforth the Sioux Nation of South Dakota shall have governing authority over the Quinault Indian Reservation, neither the Confederated Tribes nor the Quinaults would be able to challenge that ruling. Such a challenge would require joinder of the Sioux, who are immune from suit. Joinder of the Sioux, however, should be irrelevant to a challenge upon the authority of federal officials so to designate the Sioux. The majority's reasoning comes dangerously close to suggesting that Indians have less judicial recourse than other Americans against arbitrary exercises of federal power.

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rejection of the Quinault Nation's current status as the exclusive governing authority of the reservation." *Ans* at 1498. Certainly, on one level of analysis, an enhancement of the standing of the Confederated Tribes relative to that of the Quinaults must be viewed as an erosion of the Quinaults' current status, but to assert that the Quinaults have a legally protectable interest for that reason sufficient to make them a necessary party is to stretch the directive of Rule 19(a) very broadly indeed. It is indisputable that if the plaintiffs prevail, the Quinaults' "interests," broadly defined, will suffer. The relevant inquiry for Rule 19(a), however, must be whether *cognizable legal rights* of the absent non-party will be prejudiced by the suit's continuation.⁵ "Prejudice to one's self-interest" and "prejudice to one's legally protected interests" are not synonymous.⁶ An application of compulsory joinder principles as broad as the majority's would force dismissal of virtually every case in which the

self-interest of a non-party is adversely affected and the non-party cannot be joined.

More importantly, the court's assertion that the plaintiffs seek "a complete rejection" of the Quinaults' "current status" both distorts and prejudges the plaintiffs' claim. What the plaintiffs seek is not a *rejection* of the Quinaults' current status but a declaration that the Quinaults are not and never have been entitled to that status. If the former were the case, then presumably the majority would be correct in concluding that the Quinaults have a vested legal interest and that Rule 19(a) applies, but to reach that same result when the plaintiffs seek a declaratory judgment is to give the Quinaults the benefit of an unfair bootstrap. The court is saying that whether or not the Quinaults actually have a right to their current status, they say that they do, and that is enough to qualify as a protectable interest under Rule 19(a)(2).⁷

5. See *Makah*, 910 F.2d at 538 ("the court must determine whether the absent (non-)party has a *legally protected interest* in the suit.") (emphasis in original); *Moore's Federal Practice* § 19.07(2.-0), at 19-99 ("The 'interest' ... that makes an absent person a party needed for just adjudication, must be a legally protected interest, and not merely a financial interest or interest of convenience.").

6. For example, we would not regard every consumer of electricity to be a necessary party to every judicial proceeding that involves the local public utility. Even though every consumer's "interests" might be affected by the outcome, that does not mean that every consumer has a vested legal interest in the litigation.

This analogy is not as far-fetched as it might seem. Just like these fictitious electricity consumers, the Confederated Tribes have an interest in a fair allocation of their community's power—only in this case, the power is political rather than electrical. Claiming that the current allocation of power is fundamentally unfair and incompatible with federal law, the Confederated Tribes have undertaken to sue the government, a "power source" roughly analogous to the utility. The majority has dismissed the Tribes' complaint for their failure to join others who also have an "interest" in political power.

The reason why this result is unacceptable (and why the *Makah* result is not) is that the political power at issue, unlike fishing allotments, is an essentially public right. "In litigation involving the adjudication of public rights, non-parties who may be adversely affected by a

decision in plaintiffs favor do not have a protectable interest which would require their joinder under Rule 19." *Moore's Federal Practice* § 19.07(2.-0), at 19-100 to 101 (footnote omitted). In addition to being a public right, political power is also a purely relative concept. If the plaintiffs have a worthy claim here, then this court should accommodate that claim—without worrying that the *relative* standing of the Quinaults may decline as a result.

7. The majority's confusion on this point stems from its implicit assumption that the present litigation somehow challenges the Quinaults' sovereign immunity and that such a challenge cannot proceed without the Quinaults' consent. Sovereign immunity, however, is not the issue here. The only issue is whether the Quinaults have a cognizable legal interest that *absolutely* requires their joinder under a *practical-minded* application of a *discretionary* federal rule. Sovereign immunity does not become a relevant consideration unless and until one first concludes the Quinaults' joinder is necessary under that rule. As Justice Harlan explained for a unanimous Supreme Court:

To say that a court "must" dismiss in the absence of an indispensable party and that it "cannot proceed" without him puts the matter the wrong way around: a court does not know whether a particular person is "indispensable" until it has examined the situation to determine whether it can proceed without him.

Provident Tradesmens Bank & Trust Co., 390 U.S. at 119, 88 S.Ct. at 743. Indeed, if anything,

The majority's final argument under Rule 19(a)(2) is that "[e]ven partial success by the plaintiffs could subject both the Quinault Nation and the federal government to substantial risk of multiple or inconsistent legal obligations." *Ante* at 1498. This sentence, which stands alone without reasoning or analysis, is cryptic. Again, unlike *Makah*, the controversy here does not involve a limited fund or resource. Vindicating any of the asserted rights of the Confederated Tribes would take nothing from the Quinaults (in any non-relative sense) and certainly nothing which they might later be asked to give to someone else. More importantly, the concern of the Rule is to protect "persons *already parties*" from the risk of inconsistent legal obligations. Fed.R.Civ.P. 19(a)(2)(ii) (emphasis added). The Quinaults are not already a party; therefore, any risk to them on this score is irrelevant. I respectfully suggest that the majority has simply misread the Rule.

B

Having determined that the Quinaults are a necessary party, the majority properly proceeds to determine whether they may be joined. The majority also correctly concludes that because they have sovereign immunity and have not consented to suit, they may not be. The court then proceeds to determine whether the Quinaults are an

the Quinaults' sovereign immunity is only relevant here as a factor that weighs *against* compulsory joinder. See Fed.R.Civ.P. 19(a) (only a party "whose joinder will not deprive the court of jurisdiction over the subject matter of the action" can be deemed necessary); 19(b) (court must consider "whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder").

8. Because I do not believe that the Quinaults are a necessary party under Rule 19(a), it follows that I do not believe that they are an indispensable party under Rule 19(b). Assuming for the sake of argument that they are a necessary party, I would then disagree with the majority's conclusion that they are indispensable.

9. Before considering the Rule's four factors, the majority first points out the observation of some courts that "when the necessary party is immune from suit, there is very little need for balancing Rule 19(b) factors because immunity

"indispensable" party within the meaning of Rule 19(b); but here too the analysis loses force.⁸

Rule 19(b) states that if a necessary party cannot be joined,

the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: [1] first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; [2] second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; [3] third, whether a judgment rendered in the person's absence will be adequate; [4] fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.⁹

In applying these four factors, the district court concluded that the first three counsel dismissal of the suit. The majority endorses that determination, but in so doing, its reasoning, in my view, exhibits the same infirmities as its Rule 19(a) analysis.

1

First, the majority adopts the district court's reasoning that "a judgment in favor

itself may be viewed as the compelling factor." *Ante* at 1499 (citing *Enterprise Management Consultants, Inc. v. United States*, 883 F.2d 890, 894 (10th Cir.1989) (citing *Wichita & Affiliated Tribes v. Hodel*, 788 F.2d 765, 777 n. 13 (D.C.Cir. 1986))). It is important to clarify exactly what this observation means. Assuming that an immune non-party is truly "necessary" to the litigation, a weighing of equitable concerns is irrelevant because joinder is legally impossible without the non-party's consent. A non-party's immunity is therefore conclusive on whether that non-party may be joined without its consent, but immunity says nothing about a non-party's *indispensability* to the litigation.

Thus, if one concludes that joinder of an immune non-party is *not* necessary—as I would in this case—one still can (and logically must) conclude that the immune non-party is not indispensable in the suit: i.e., the litigation may proceed in the non-party's absence. See *supra* note 1 (discussing troubling use of terms "necessary" and "indispensable" in Rule 19 context).

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of the plaintiffs would clearly prejudice the Quinault Nation because it would presumably alter the Quinault[s'] existing authority to govern the reservation." *Ante* at 1499-1500. By equating "alteration" of the Quinaults' status with "prejudice" of their legal rights, the majority once again interprets the Quinaults' protectable interests too broadly, viewing "interests" in extra-legal terms. Moreover, by implicitly legitimizing the Quinaults' "existing authority to govern," the majority again prejudices the very substance of the plaintiffs' claim.¹⁰

2

Second, the majority adopts the district court's conclusion that "no relief could be fashioned to avoid that prejudice and that no compromise position would satisfy [the] plaintiffs without prejudice to the Quinault Nation." *Ante* at 1499. Without supporting reasoning or explanation, the majority insists that "[t]here is no partial or compromise remedy that will not prejudice the Quinault Nation." *Id.* at 1499. It is difficult to find these pronouncements persuasive without any discussion of the nature or substance of the plaintiffs' claims. When facing such a complicated complaint, how can a court be so sure—on the basis of the pleadings alone—that protective provisions cannot be worked into a final judgment to avoid unfair prejudice? Assuming that the plaintiffs prevail, why would the court be unable to fashion relief in a man-

10. As the majority correctly points out, the prejudice analysis under Rule 19(b) is essentially the same as the necessity analysis under Rule 19(a)(2)(i). See *Ante* at 1499 (citing *Enterprise Management Consultants*, 883 F.2d at 894 n. 4 (10th Cir.1989), and *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 n. 15 (9th Cir.), cert. denied, 464 U.S. 849, 104 S.Ct. 130, 78 L.Ed.2d 144 (1983)). I therefore disagree with the majority's Rule 19(b) prejudice analysis for the same reasons that I disagree with its Rule 19(a) analysis.

11. Thus, although accurate, the majority's observation that "a plaintiff's interest in litigating a claim may be outweighed by a tribe's interest in maintaining its sovereign immunity" is not relevant within the context of this case. This case does not pit the Confederated Tribes' interest in litigation against the Quinaults' interest in sovereign immunity. See *supra* note 7.

ner that would avoid prejudice to any legitimate rights of the Quinaults? The majority does not answer these questions.

8

With respect to the third factor, whether a judgment rendered in the Quinaults' absence would be adequate, the court's opinion is largely silent. The implicit argument is a non sequitur. My colleagues appear to suggest that because the Quinaults are immune from suit, there can be no effective relief. The plaintiffs, however, are not suing the Quinaults; they are suing the named federal officials, and the relief they seek would be summoned entirely from the hands of those officials. The Quinaults do not have to be a party in order for the requested relief to be adequate.¹¹

4

The majority admits that the fourth factor weighs heavily in favor of the plaintiffs. Given the absence of an alternative forum, proceeding to the merits in this action is the plaintiffs' only hope of obtaining an adequate remedy. In my view, this single factor makes dismissal of the suit so harsh that it may outweigh the other three factors combined.¹²

5

Finally, Rule 19(b) states that the applicable standard by which to consider all four of its factors is whether "in equity and

12. See *Anrig v. Ringsby United*, 603 F.2d 1319, 1326 (9th Cir.1978) ("whether a judgment rendered in the person's absence will be adequate and whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder" are "the most relevant factors proposed by Rule 19(b)" and the "most weighty in the circumstances of the case at bar").

The district court itself acknowledged the harshness of dismissing this action: "Plaintiffs describe their procedural situation in this suit as a 'Catch-22.' While the court is sympathetic to plaintiffs' frustration at their inability to achieve jurisdiction over the party at the heart of the dispute, it cannot ignore the rule of law on joinder of parties." *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 129 F.R.D. 171, 175 (W.D. Wash.1990) (order granting defendants' motion to dismiss).

good conscience the action should proceed among the parties already before [the court]." I believe that under this standard the present action clearly should proceed and that a better question might be whether "in equity and good conscience" this action can be dismissed. Rule 19 does not grant absent non-parties a substantive legal right to joinder; it is an equitable rule of discretion, the purely pragmatic purpose of which is to effect justice in the immediate case. See *Provident Tradesmens Bank & Trust Co.*, 390 U.S. at 115-25, 88 S.Ct. at 741-46 (Part II of the opinion). As we said in *Makah*, "[t]he inquiry is a practical one and fact specific, and is designed to avoid the harsh results of rigid application." *Makah*, 910 F.2d at 558 (citations omitted).

The rule is that if the merits of the cause may be determined without prejudice to the rights of necessary parties, absent and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result. [Citations omitted.]

We refer to the rule established by these authorities because it illustrates the diligence with which courts of equity will seek a way to adjudicate the merits of a case in the absence of interested parties that cannot be brought in.... [T]he rule as stated is intended for the benefit of a plaintiff whose bill sets forth

a cause of action which he should, if possible, be given an opportunity to prove....

Bourdieu v. Pacific W. Oil Co., 299 U.S. 65, 70-71, 57 S.Ct. 51, 53-54, 81 L.Ed. 42 (1936); see also *Moore's Federal Practice* ¶ 19.01-1[1], at 19-20 (quoting *Bourdieu*). Thus, even if a balancing of the Rule 19(b) factors were to favor dismissal, it is clear that when compulsory joinder presents a close question the court should err on the side of continuing the litigation. If necessary, the action can always be dismissed at a later date,¹³ but dismissal now—with nowhere else for the plaintiffs to turn—terminates the asserted claims forever.¹⁴

C

In short, I cannot agree with the majority's conclusion that the action was properly dismissed for failure to join the Quinault Nation. I do not believe that the Quinaults are either necessary or indispensable under Rule 19. At the very least, it is too early to tell if the Quinaults are such a party. The complaint alleges six causes of action, and without analyzing the substantive law behind these claims and the various possibilities for relief, one cannot fairly determine that the suit cannot proceed.

II

To say that a Rule 19 dismissal is inappropriate begs the question of what is ap-

tween the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an action between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed; but they do not themselves negate the court's power to adjudicate as between the parties who have been joined. Fed.R.Civ.P. 19 advisory committee's note (emphasis added).

13. A joinder question should be decided with reasonable promptness, but decision may properly be deferred if adequate information is not available at the time. Thus, the relationship of an absent person to the action, and the practical effects of an adjudication upon him and others, may not be sufficiently revealed at the pleading stage; in such a case it would be appropriate to defer decision until the action was further advanced. Fed.R.Civ.P. 19 advisory committee's note on amendment to subdivision (b).

14. The 1966 advisory committee's note on general considerations for Rule 19 also supports a flexible application of compulsory joinder:

Whenever feasible, the persons materially interested in the subject of an action ... should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished ... the case should be examined pragmatically and a choice made be-

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appropriate. The answer to that question depends on how one reads the plaintiffs' complaint. Although the complaint alleges six causes of action, they can be reduced to essentially three sorts of claims.

A

Plaintiffs allege in their third cause of action that they are entitled to an injunction requiring defendant "to establish and recognize a governing body of the Reservation pursuant to the Indian Reorganization Act of June 18, 1934" and consistent with declaratory relief requested in other portions of their complaint. Complaint at ¶ 37. Plaintiffs allege in their sixth cause of action that they are entitled to an injunction prohibiting the defendant from "considering . . . applications for construction within the Reservation . . . proposed by or on behalf of the Quinault Tribe." *Id.* at ¶ 47.

I would affirm dismissal of these claims for reasons of non-justiciability. As defendants argued below, such claims present political questions that lie beyond the adjudicative powers of this court. To the extent that the plaintiffs seek a judgment declaring how the federal government should deal with them or the Quinaults as a forward-looking matter, they are asking this court for an impermissible encroachment upon the prerogatives of the other branches of government. The Constitution itself explicitly commits to Congress the task of "regulat[ing] Commerce . . . with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. Congress, in turn, has explicitly assigned "the management of all Indian affairs and of all matters arising out of Indian relations" to the Executive Branch. 25 U.S.C. § 2 (1990). Indeed, in its seminal opinion in *Baker v. Carr*, 369 U.S. 186, 82

S.Ct. 691, 7 L.Ed.2d 663 (1962), in which it recast the political question doctrine, the Supreme Court pointed to cases that question the status of Indian tribes as "representative" of political controversies inappropriate for judicial resolution. See *Baker*, 369 U.S. at 211, 215-17, 82 S.Ct. at 706, 709-10.¹⁵

I therefore concur in the court's judgment to the extent that it affirms dismissal of the third and sixth causes of action. I would affirm, however, on the alternative ground of nonjusticiability. See *Lee v. United States*, 809 F.2d 1406, 1408 (9th Cir.1987) ("We may affirm on any ground fairly supported by the record."). *cert. denied sub nom. Lee v. Eklutna, Inc.*, 484 U.S. 1041, 108 S.Ct. 772, 98 L.Ed.2d 859 (1988).

B

Plaintiffs allege in their first cause of action that "[t]he Quinault Tribe has never been lawfully and formally federally recognized as the exclusive governing body of the Reservation," and that plaintiffs "are entitled to judgment declaring that the Quinault Tribe is not the exclusive governing body of the Reservation." Complaint at ¶¶ 28, 32. They further allege that the defendants' favoring of the Quinaults denies "their rights in the Reservation" and that they "are entitled to judgment declaring that [the various tribes on the Reservation] have equal rights in the Reservation." *Id.* at ¶¶ 31, 33. Similarly, the plaintiffs allege in their fifth cause of action that the defendants "ha[ve] implemented and [are] enforcing the Indian Land Consolidation Act . . . as though the Quinault Tribe is the

This distinction—which represents the difference between a nonjusticiable challenge to the Constitution's delegation of powers on the one hand and a potentially justiciable challenge to government officials' interpretation of that delegation on the other—is critical to the case at bar. The Confederated Tribes' complaint appears to challenge both (a) the legitimacy of the defendants' exercise of their authority and (b) the legitimacy of substantive decisions clearly within the defendants' authority. The latter claims are nonjusticiable under *Baker v. Carr*, the former are not.

15. The Court did point out, however, that "there is no blanket rule" of nonjusticiability in cases involving the status of Indian tribes. *Baker*, 369 U.S. at 215, 82 S.Ct. at 709. Governmental actions that exceed Congress's authority over the Indians—as opposed to discretionary actions executed within that authority—may present justiciable questions: "[The courts] will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power." *Id.* at 217, 82 S.Ct. at 710; see also *United States v. Sandoval*, 231 U.S. 28, 46, 34 S.Ct. 1, 5, 58 L.Ed. 107 (1913).

exclusive governing body of the Reservation." *Id.* at 143.

To the extent that the plaintiffs simply seek a declaration of their rights and of the scope of the defendants' authority under the Treaty of Olympia and more recent federal legislation, I believe that the district court's dismissal of their claims should be reversed and that their claims should be reinstated. The Declaratory Judgment Act, upon which the plaintiffs have alleged jurisdiction, provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a) (emphasis added).¹⁶ The Confederated Tribes have insisted repeatedly, both in their briefs and during oral argument, that what they seek above all else is a declaration of previously recognized and adjudicated rights. I believe that the district court has both the jurisdiction and the obligation to provide that declaration.

Indeed, federal courts have been favorable to similar claims in the past. Nine years ago, in *Wahkiakum Band of Chinook Indians v. Bateman*, 655 F.2d 176 (9th Cir.1981), this court acknowledged its obligation to interpret the rights of Indian litigants under the Treaty of Olympia and associated laws. In that case, the court affirmed the district court's summary judgment denying the plaintiff Indians' plea for

declaratory and injunctive relief, but the court parsed the relevant laws and declared the parties' rights under those laws in the process. Sixty years ago, in *Halbert v. United States*, 288 U.S. 753, 51 S.Ct. 613, 75 L.Ed. 1389 (1930), the Supreme Court interpreted the Treaty of Olympia and associated laws and granted declaratory relief to a group of Indians seeking "to establish and enforce asserted rights to allotments . . . in the Quinalt [sic] Indian Reservation." 288 U.S. at 755, 51 S.Ct. at 615.¹⁷

In short, to the extent that the plaintiffs seek a declaration of what their rights are as opposed to what their rights *should be*, their claims appear to be justiciable, within the jurisdiction of the court, and not dependent upon the courtroom presence of the Quinalts. I therefore dissent from the majority's affirmance of the district court's dismissal of the first and fifth causes of action.

C

The third group of claims is the most troubling. In numerous statements sprinkled throughout their complaint, the plaintiffs have alleged violations of "rights" in the vaguest of terms. They have neglected to state with any specificity the substantive law upon which these claims are based. Presumably, this court could affirm dismissal of these allegations for failure to state a claim, but liberal pleading rules counsel against that approach. See Fed.R.Civ.P. 15(a) ("a party may amend the party's

16. There appears to be little doubt that this is "a case of actual controversy within [the district court's] jurisdiction." Under 28 U.S.C. § 1362, which the plaintiffs also cited in their complaint, "[t]he district courts . . . have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." The defendants admitted in their answer that the plaintiffs "are an Indian tribe . . . with a governing body duly recognized by the Secretary of the Interior." Complaint at ¶ 9; see Answer at ¶ 9 (admitting claim).

17. Incidentally, the *Halbert* Court noted that the federal government had statutorily waived its sovereign immunity for that action and had consented to suit. The statute cited by the *Hal-*

bert Court, which was originally passed at the turn of the century, was split in half by a subsequent Congress, and both halves remain in effect today. See 28 U.S.C. § 1353 (conferring federal jurisdiction for allotment claims); 25 U.S.C. § 345 (waiving federal sovereign immunity for allotment claims); see also *Scholder v. United States*, 428 F.2d 1123, 1126 (9th Cir.) (interpreting 25 U.S.C. § 345 as "a limited consent by the United States to suit"), *cert. denied*, 400 U.S. 942, 91 S.Ct. 340, 27 L.Ed.2d 246 (1970). The plaintiffs have cited one of the extant halves of the old statute as a basis for jurisdiction in their complaint. Complaint at ¶ 2 (citing 28 U.S.C. § 1353). It is not clear, therefore, whether sovereign or official immunity would bar continuation of this suit on remand.

CHRYSLER CREDIT CORP. v. COUNTRY CHRYSLER, INC. 1509

Cite as 928 F.2d 1509 (10th Cir. 1991)

pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires"); *see, e.g., United States v. Hougaard*, 364 U.S. 310, 316, 81 S.Ct. 13, 18, 6 L.Ed.2d 8 (1960) (Rule 15 is a "liberal rule[.] governing the amendment of pleadings" and "was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result"); *Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome.").

I believe that a fair reading of the complaint suggests that the plaintiffs may mean to raise civil rights claims, and if that is their intent, the district court surely should have allowed an opportunity to amend. The extraordinary judicial interest in vindicating civil rights, the absence of an alternative forum, and the embryonic stage of this litigation all add considerable weight to what should be an already strong bias in favor of a liberal treatment of the pleadings. Cases implicating the civil rights of Indians are especially sensitive and complex, and they should not be dismissed prematurely. I therefore believe that this court should reverse dismissal of and reinstate those claims which may appear to be civil rights claims with specific instructions that the district court direct the plaintiffs to amend their complaint.

D

Plaintiffs allege in their second cause of action that they "are entitled to a prohibitory injunction preliminarily and permanently enjoining defendant [Lujan] from recognizing and dealing with the Quinault Tribe as the exclusive governing body of the Reservation." Complaint at ¶ 35. They similarly allege in their fourth cause of action that they are entitled to an injunction prohibiting the defendants from recognizing the Quinaults as the exclusive Reservation authority for matters dealing with forest management, forest roads, law and order, Indian lands, and natural resources. *Id.* at ¶¶ 39, 41.

To the extent that these claims seek an interpretation of the relevant federal laws

and a declaration of the plaintiffs' rights under those laws, I would apply the analysis suggested in part II-B above and reinstate their claims. To the extent, however, that these claims seek "prospective" relief that would encroach upon the discretion of Congress and the Secretary of the Interior, I would apply the analysis suggested under part II-A above and affirm dismissal for nonjusticiability.

III

In sum, I concur in the majority's judgment insofar as it affirms dismissal of some of the plaintiffs' claims, but I cannot endorse the majority's reasoning as to those claims. Specifically, I concur in affirming dismissal of all allegations the adjudication of which would require judicial encroachment upon the discretionary authority of the political branches of government.

I dissent from the majority's judgment insofar as it affirms dismissal of any other claims, and I dissent from the majority's interpretation and application of the compulsory joinder rule.



CHRYSLER CREDIT CORPORATION,
a Delaware corporation,
Plaintiff-Appellee,

v.

COUNTRY CHRYSLER, INC., an Oklahoma corporation; Max Pepper; Muriel S. Pepper; Cindy Joan Pepper Guterma, Defendants and Third-Party Plaintiffs-Appellants,

v.

CHRYSLER CORPORATION,
Third-Party Defendant.

Nos. 89-6240, 89-6280.

United States Court of Appeals,
Tenth Circuit.

March 29, 1991.

Credit corporation brought action against automotive dealership and officials



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
 PORTLAND AREA OFFICE
 POST OFFICE BOX 1705
 PORTLAND, OREGON 97208

IN REPLY REFER TO:

File: 2252

SEP -2 1988

cc: Legal

TO: Assistant Secretary-Indian Affairs
 Attention: Congressional and Legislative Affairs,
 Marge Wilkins, 4641-MIB

FROM: Portland Area Director
 Attention: Branch of Forestry

SUBJECT: S.2752, a Bill to Declare that Certain Lands be Held
 in Trust for the Quinault Indian Nation, and for Other
 Purposes

On August 26, 1988, this office transmitted a recommendation that the Bureau support the above-referenced legislation. The purpose of this memorandum is to address whether the Quinault Indian Nation is the rightful beneficiary of the land being restored to the reservation. I understand some parties have suggested that the land be restored in name of the allottees on the reservation. In fact, however, the allottees are those who received individualized parcels of reservation land, and even if additional lands on the reservation were to be opened for allotment it would not be to those who previously acquired individual allotments. If, as the legislation proposes, the land is restored to the Quinault Indian Nation, then all members of the tribe, and not a few individuals, who will reap the benefits of tribal land consolidation.

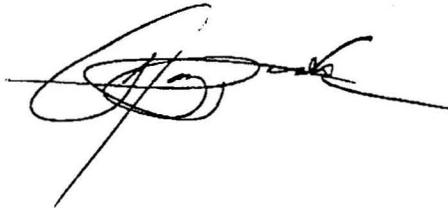
The Quinault Indian Nation is recognized by the federal government as having exclusive political and territorial jurisdiction over the Quinault Reservation. See 51 F.R. 25115 (July 10, 1986) (list of federally recognized tribal entities). The Quinault Indian Nation is a consolidated political body comprised of members of various tribal ancestries and its constitution recognizes the right of any person of one quarter or more blood of the Quinault, Quileuts, Hoh, Chehalis, Chinook, Cowlitz, or Queets Tribes to enroll in the Quinault Nation. The Quinault Nation has been retroceded political jurisdiction by the State of Washington under the Indian Civil Rights Act, and it has been repeatedly entrusted with governmental responsibilities by the federal government pursuant to the Self Determination Act and other federal statutes.

The courts have consistently recognized the Quinault Tribe's jurisdictional authority to promulgate and enforce comprehensive regulatory laws on the reservation. See, e.g., Snow v. Quinault Indian Nation, 709 F.2d, 1319 (9th Cir. 1983), cert. denied 104 S.Ct. 655 (1984); Cardin v DeLaCruze, 671 F.2d 363 (9th Cir. 1982), cert. denied, 102 S.Ct. 293 (1982). Judge Boldt, in the

landmark fishing case, United States v. Washington, recognized the Quinault Nation as the entity "maintaining a tribal government on the Quinault Reservation" for purposes of regulating and managing the tribal fishery under the Treaty of Olympia. United States v. Washington, 384 F.Supp. 312, 372 and 374 (W.D. Wash. 1974). In Cultse v. United States, 713 F.2d 1455 (9th Cir. 1983), the court treated the Quinault Nation as the jurisdictional tribe on the Reservation for the probate purposes of the Indian Reorganization Act. Significantly, in Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981), the court recognized that those persons provided allotments on the Reservation have individual rights only, and not the governmental or political rights accorded recognized tribes such as the Quinault Nation.

Congress has twice returned lands to the Quinault Nation. See Act of October 15, 1962, 76 Stat. 913; Act of August 26, 1959, 73 Stat. 427. Moreover, in 1947 Congress declared the Quinault Nation the proper party plaintiff to litigate the boundary survey dispute that the proposed litigation is intended to resolve. 61 Stat. 416. Commenting on the 1947 Act, the Secretary of the Interior told Congress that "collectively the Indians having an interest in that Reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." See H.R. Rep. No. 671, 80th Cong., 1st Sess. 3 (1947). The Quinault Nation has assumed the responsibility for pursuing this matter with Congress. Therefore, the Quinault Nation should be the beneficiary of this legislation that will equitably resolve the claim.

Residents of the Quinault Reservation look to the Quinault Indian Nation to provide essential government services such as law enforcement, social service programs, resource management and rights protection. As we pointed out earlier, this proposed legislation will greatly enhance the Quinault Nation's land consolidation efforts and be a major step in helping the Tribe obtain its goal of self determination and economic self sufficiency. The benefit of these efforts will accrue to all residents of the Reservation, including the allottees, and there should be no question but that the Quinault Indian Nation is the appropriate beneficiary of this proposed legislation.



cc: Quinault Tribe

Mr. FALCOMA. Could you please? Because I will say now that the situation with the Quinault Nation in the testimony that Mr. Whitish has presented, you have quite a complicated situation in the tribal rivalries and the lawsuits and everything that is involved in this.

Mr. DELACRUZ. It has been there for a long time, Mr. Chairman. There has been times that people that were allotted there have come and tried to take over the government, in the 1930's and 1940's. And the people that have lived on the reservation—defended it, fought all the battles and all the court cases—say, we are the Quinault Government.

I have one of the cases here that is the confederated tribes he speaks of, and it has some individuals that were allottees named from Quinault, from Makah, some tribal members that demonstrated records in some areas that were involved, Quinault, but were not tribal. That says something. So I will leave that.

Mr. FALCOMA. Please. I think I got myself in a hornet's nest here. I hope you will take care of my Samoan tribe in Seattle.

Mr. DELACRUZ. You have some of your people there that don't agree with the government, too.

Mr. FALCOMA. Please look after them. They tend to get cold all the time.

Well, I think in reference to what has been said—Mr. Risling, Mr. Cagey and Mr. Kallappa—there seem to be some real striking examples of the success of the whole self-governance.

I was very impressed with Mr. Kallappa's testimony, that it doesn't seem that by this whole concept and procedurally that this has taken a lot of the bureaucratic layers of fumbling and bumbling or whatever goes on here in Washington, especially when you said that the scholarships have now tripled for your tribe in terms of them. This is certainly one of the areas that is so critically needed throughout Indian country, and I am glad you mentioned that.

Mr. Cagey, you noted also that it is not a question of dollars that is really the essence here; it is the question of control, with what limited resources that you are given. And as you well know, this is not just a BIA issue; this is a national problem.

I know from Mr. DeLaCruz's statement, or Mr. Risling, about phoney budget projections. Yes, that is the reason why we have got \$1.5 trillion debt and a \$400 billion deficit. And it is supposed to come from some of the most brilliant economists that we have here in our country. So, please, I call it phoney budget projections or what, but we still have to deal with some of these issues. They are very real.

And the Congress, as well as the President, there always seems to be the question of limited resources. And this is not just with the Bureau of Indian Affairs; this is throughout the entire Federal Government. And how that cut is going to be made is another issue.

I think our friend from Alaska wants to inquire.

Mr. YOUNG. Mr. Chairman, I appreciate it. I don't really want you to comment about it, but I want you to think about it, too. If, in fact, we pass this legislation and you are granted self-governing all the way through—and the success stories have been cited

here—I am concerned that that which we give, we will take away through other agencies. I want to remind you that can happen.

We have in Alaska, for instance, we received—and I am a white man, but I am partially related, my daughters are stockholders and my wife is, and I am a stockholder by the way. I like that; I can go to these deals. But now we have another agency coming in and, by definition, taking away 98 percent of the land we were granted by Congress; 98 percent of the lands that are owned by Alaskan natives are now being designated as wetlands.

And so what have we done? Now we are going to fight that. I think we will eventually win it, but be careful as you become governing; you had better be prepared to watch out for the White Father, because he will take away just as quick as what he has given you. Just a little something you have to be very much aware of.

Mr. FALCOMA. I appreciate the wisdom expressed by my friend from Alaska. I will take it—

Mr. DELACRUZ. Mr. Chairman, could I comment on that? Because we are very much concerned about that.

We had a very large water restoration meeting up in Tacoma, Washington, here a couple weeks ago. And I pointed out to Congressman Dicks and some of the people in the White House there—and I am always watching what is going on with budget as far as Indians go. I know we stand at a certain level for a long time; with inflation, we are going back. And I seen what happened in 1994 for these pots of money to take care of the spotted owl with the President's timber plan, now watershed restoration. There is no new money; that is coming from somewhere.

And I watched it happen all my life when there is a claims settlement and stuff, there is no new money, it comes out of all of us. As a student of history, I know that George Washington got paid Indian land for the battle. I know the Civil War, there was a pot of money to take care of the ceded lands for the treaty in paying the Indians, that went for that. And we are still paying for what has gone on in this country.

And I pointed out with this Endangered Species Act, the Marine Mammal Act, there is—people have got to watch out, our people. And it has got to the point where we can't tolerate. When a little pueblo is trying to put a golf course—they haven't touched that territory or land for 10,000 years; there is a snail in danger, you can't do that—something is wrong. You ain't going to do this on the backs of Indian people again, are you?

And we are very conscientious of that. And it is very hurtful, what we see happening. We have let the administration know, we have let Congress know, again, things are happening on the backs of our people.

Mr. FALCOMA. Well, I want to thank the gentleman from Alaska's sentiments, I think well taken. And certainly this committee would like to encourage all our participants of the different panels, the representatives from the various tribes, for your offered suggestions on how we may go about improving this legislation. And I think all of you should realize, this legislation was not written in heaven, and it can be changed.

If Jesus had written this, we might have a problem, but the fact of the matter is that we do it here on the Earth, and I sincerely

hope that you will take that and seriously consider that offer for your suggestions on how we might improve the legislation; and take into consideration the concerns that were expressed, especially by Mr. Whitish, for those tribes who may not necessarily want to participate in the self-governance concept. But how can we go about assuring that those nonparticipating tribes, their allotted resources are not going to be lessened because of that? And I think that is a point well taken.

Mr. FALEOMAVAEGA. Gentlemen, thank you very much for your testimony this morning.

[Whereupon, at 12:34 p.m., the subcommittee proceeded to other business.]

APPENDIX

FEBRUARY 25, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

DANIEL K. INOUYE, HAWAII, CHAIRMAN
JOHN MCCAIN, ARIZONA, VICE CHAIRMAN

DENNIS DUNCAN, ARIZONA
THOMAS A. DASCHLE, SOUTH DAKOTA
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DUN NICKLES, OKLAHOMA
MARK O. HATFIELD, OREGON

PATRICIA M. ZELL,
STAFF DIRECTOR/CHIEF COUNSEL
DANIEL H. LEWIS, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

February 25, 1994

The Honorable Bill Richardson
Chairman
Subcommittee on Native American Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Bill:

I appreciate your scheduling S.1618 and H.R.3508, bills to permanently establish self-governance within the Department of the Interior. I regret that I cannot testify before your committee in person, but I would respectfully request that this letter be made a part of the committee hearing record.

Like your bill, S.1618 would establish self-governance as a permanent policy within the Department of the Interior and would provide the opportunity for an annual increase in the number of tribes eligible to negotiate compacts and annual funding agreements. In addition, the bill would provide authority for the Secretary of the Interior to promulgate regulations by adapting the general requirements of the Negotiated Rulemaking Act of 1990, as amended (P.L. 101-648).

Since 1988 the Department of the Interior has conducted self governance under demonstration authority. The goal of this demonstration project was to examine the benefits of allowing Indian tribal governments to assume more control over programs and services to their members which are now largely provided through the Bureau of Indian Affairs (BIA). The project permits participating tribes to enter into compacts for self-governance and annual funding agreements with the federal government. Pursuant to these agreements, management authority over specific programs and services is transferred from the BIA to Indian tribal governments. In turn, each participating tribal government is allowed to redesign and operate those programs and services with minimal regulation and BIA involvement.

I have received numerous letters from self-governance tribes endorsing permanent self-governance legislation. These letters include examples of the many positive effects that

The Honorable Bill Richardson
February 25, 1994
Page Two

tribes have experienced under self-governance, such as improvements in: education, economic development, law enforcement, tribal courts, forestry, public works, community services, cultural programs, and tribal government operations. In general, self governance tribes testified before the Committee on Indian Affairs that:

- 1) they are able to more effectively design programs and services that meet the needs of tribal members;
- 2) self-governance has made tribal governments more responsive to the concerns of tribal members; and
- 3) self-governance has allowed them to be more independent of the Bureau of Indian Affairs.

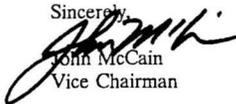
For too long the federal government has dictated the policies and procedures that govern federal Indian programs. Self-Governance, on the other hand, returns the management and decisionmaking authority to the tribes and gives the tribes the flexibility to design and allocate funding in a manner that each tribe determines will best meet the needs of its citizenry.

There is no doubt in my mind that self-governance has been a success. One of the ways that I measure the success of self-governance is to see how hard the federal bureaucracy will fight to maintain the old ways. In this instance, and notwithstanding Secretary Babbitt's support of the self-governance demonstration project, the BIA continues to fight for the status quo. As you correctly noted in your introductory statement, Mr. Chairman:

"The Self-Governance Act was a proposal developed in Indian country by Indian tribes themselves. It is the right direction at the right time. The bill is nothing less than the future of Indian Affairs."

I agree with your statement wholeheartedly, and I am proud that we have been able to work in a non-partisan fashion to pursue legislation that will allow Indian tribes to freely govern themselves. I look forward to working with you to pass permanent legislation this year.

Sincerely,



John McCain
Vice Chairman

**TESTIMONY OF WILMA P. MANKILLER,
PRINCIPAL CHIEF OF CHEROKEE NATION,
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 25, 1994**

Mr. Chairman, my name is Wilma Mankiller; I am the Principal Chief of Cherokee Nation, the second largest Indian tribe in the United States. I want to thank you for this opportunity to testify on behalf of my people on the importance of Self-Governance and what that term really means in Indian country. Before I begin I will point out that my written testimony addresses issues and problems that I will not get to in my oral testimony. So I refer the Chairman and the Subcommittee to my written testimony for a more complete statement of Cherokee Nation's concerns, especially in regard to Congressional support of Indian economic development programs.

We at Cherokee Nation applaud your commitment to advancing the policy of Self-Governance and your efforts to make it a permanent federal program. Cherokee Nation was among the first tribes to enter into a Self-Governance compact with the United States under Title III of the Indian Self-Determination and Education Assistance Act. Having just executed a compact for IHS programs last summer, Cherokee Nation has now assumed its responsibilities as a Self-Governance tribe to review and enhance the delivery of health services through restructuring of the Cherokee Rural Health Network. We believe it is essential to the long term success of our health programs that Self-Governance be made permanent. We urge you to consider including IHS within the scope of HR 3508 when mark-up begins.

The status of Indian tribes as sovereign governments, especially Self-Governance tribes, places a heavy responsibility on both the tribes and the federal government to assure that health programs for Indians are responsive to needs and lead to improvement of the overall health of persons served by the Indian health care system. The solemn covenants to provide adequate health care to the tribes made by the federal government were not merely gratuitous promises to Indian people. Rather, these are obligations of the government arising out of treaties, agreements, and statutory law in return for cessions of millions of acres of land and other significant considerations given by Indian people to the United States.

Despite Congress' lofty expressions in the Indian Health Care Improvement Act to promote the highest level of health care for Indians, Congress has failed to provide adequate funding to achieve the clearly-stated purposes of that Act. In Oklahoma, the average health care cost per person is approximately \$2700 per year. Less than \$900 is available to Indian clients through IHS and other federal programs.

We also feel that the complex funding mechanisms proposed by the President in his American Health Care Security Act may be inadequate to fully fund the cost of delivering health services by Indian Health Service or Self-Governance tribes undertaking IHS programs at levels

consistent with the government's trust obligations to Indian people. To be consistent with the principles of Self-Governance, we feel that the Administration should have consulted with the tribes in drafting the Indian and IHS sections of the bill. We hope Congress listens carefully to the tribes in the upcoming debate on national health care legislation and its impact on Indian people.

The recent elimination of funding through the Centers for Disease Control, interrupting a number of IHS AIDS programs, is an example of how funding cutbacks impact Indian country. We are faced with an alarming increase in HIV-positive Native Americans and patients who have developed AIDS. We are expanding our AIDS awareness programs just as the funding for AIDS programs through IHS is being reduced. Essential AIDS treatment drugs such as AZT have been eliminated from the IHS pharmaceutical formulary. The wisdom of putting tribes in control of their own destiny through Self-Governance will be seriously undermined if they are denied the very resources necessary to make adequate health care available to Indian people.

By assuming full responsibility for planning, designing and implementing health, social and educational programs and services previously undertaken by BIA or IHS, Self-Governance tribes have become acutely aware of the inadequacies in the funding and the allocation of funding appropriated by Congress for other Indian programs besides health care.

Chronic funding problems are by no means confined to Indian health care. Indian education programs have experienced a similar fate throughout the 20th Century. Since the birth of this country, the United States Senate approved some 400 treaties with Indian tribes, 120 of which contain education provisions. Nearly one billion acres of land were ceded by tribes in these treaties which the federal government viewed in part as agreements to acquire Indian land in exchange for education. Now, 125 years after the close of the treaty period, education programs for Indians remain critically underfunded.

For instance, funds allocated by BIA for operating Indian schools are simply insufficient to meet the basic education needs of Native American students. We have first-hand knowledge of this problem through our experience in operating Sequoyah Indian School on the highway just west of Cherokee Nation's offices near Tahlequah, Oklahoma. The formula used to allocate BIA school funds, based on the "Weighted Student Unit" ("WSU") formula, continues to use dollar figures that were determined to be grossly inadequate nearly four years ago. The national average of expenditures per student in non-Indian schools is \$5245, and in Oklahoma, \$3791. BIA schools are allocated a paltry \$2,619 per WSU. The present BIA allocation should be increased to at least the \$3499 per WSU recommended by a BIA Working Committee 2 1/2 years ago.

Similar funding deficiencies have occurred in the Johnson O'Malley Program. JOM has been a supplemental program since 1934. Since 1986, JOM has been experiencing a simultaneous steady decline in funding and steady increase in student participation. JOM funding should be increased by at least \$10 million per year from the current \$23 million to \$33 million per year in order to match this sharp increase in student participation.

Notwithstanding the general inadequacy of Indian education funding, our education programs always seem particularly vulnerable in the struggle for federal dollars. Each year, for example, desperately needed funds are set aside for Indian Adult Education programs. The mere \$3.5 million intended for FY 1994 has been diverted out of the program and into Flood Relief. We do not question the merits of the Flood Relief program, but we do question the wisdom of tapping of critically needed Indian education dollars.

Another area experiencing chronic problems is the funding of the government's contract support obligations under its annual funding agreements and 638 contracts with tribes. In past years, BIA has consistently underestimated contract support needs, a practice which leads to an inevitable shortfall in this item of cost. The shortfall in FY 1992 of approximately \$16 million was funded with FY 1993 programmatic dollars. Cherokee Nation feels that the BIA should not have to siphon program funds to pay indirect cost obligations. A recent announcement in the Federal Register indicates that the FY 1993 shortfall will be funded with 1994 contract support monies, and this, in turn, will contribute to a potentially greater shortfall in FY 1995. Part of the shortfall problem can be attributed to the lack of incentive to keep indirect cost rates as efficient as possible. Currently, the process actually tends to penalize those tribes with efficient contract support cost rates. The Subcommittee should consider requiring the agencies to develop a methodology for addressing the tribes' indirect cost needs.

The contract support cost shortfall problem is insidious, but the Bureau appears to be doing little about it. This Subcommittee should confront BIA and demand a solution. We recommend that BIA be required to prepare a 5-year forecast of contract support needs, that the forecast be revised annually, that each year the projected needs be reported to Congress and the tribes, and that the projected need be included within Interior's annual budget request to Congress. We suggest that you consider including language to this effect in H.R. 3508.

Cherokee Nation and several other Self-Governance tribes feel that the Subcommittee should also consider a clarifying change in Section 403(d) of H.R. 3508 relating to transfers of federal funds to the tribes under their annual funding agreements. The Senate Committee has interpreted this same language in Senator McCain's bill to authorize lump-sum payments to the tribes on semi-annual or quarterly basis, but the Bureau and IHS appear to be taking the position that they are nevertheless bound by Treasury regulations which would prohibit such payments. We disagree with the agencies' position but would request that you clarify Section 403(d) to expressly authorize lump-sum payments under funding agreements entered into under Title III or the new Title IV of P.L. 93-638. Accordingly, we propose that the following sentence be added at the end of §403(d)(1):

The funding agreements authorized by this Title and Title III of the Indian Self-Determination and Education Assistance Act may provide for advance payments to the tribes in the form of annual, semi-annual, or quarterly installments.

I would also request that the Subcommittee consider another clarifying change to Section 403(b)(1) of H.R. 3508, one which would expressly authorize tribes to include in their compacts employment and training programs undertaken pursuant to P.L. 102-477, the Indian Employment, Training and Related Services Demonstration Act. The Departments of Interior and Labor appear to be taking the position that these valuable programs cannot be integrated into a Self-Governance compact. Again, we disagree with their position but feel that the most expedient solution would be a clarifying change to Section 403(b) of H.R. 3508.

Again, Chairman Richardson, we greatly appreciate your interest in Indian issues and your support for the Self-Governance project. I for one feel that Self-Governance has the potential to occupy a central position in federal Indian policy in the coming century. Accordingly, the manner in which Self-Governance is implemented in these early years of the program, and the level of financial support it receives from Congress, will fix the course for the program over the next decade or longer and will determine whether it ultimately succeeds or becomes yet another wrong turn among the many, many wrong turns in the history of Indian affairs in our country. As this Subcommittee takes on the cause of Self-Governance, it should be aware that although the program has been federally mandated as a demonstration project for several years, it has not been accepted at all levels of BIA and IHS. We continue to experience agency resistance to implementation of Self-Governance, especially within IHS.

Because the purpose of the Self-Governance program is to enhance the inherent sovereignty of tribal governments and strengthen the government-to-government relationship between the United States and Indian tribal governments, the program should be strictly limited to specific, federally-recognized Indian tribes. Tribal organizations, alliances, and/or coalitions which are not federally recognized as tribes should not be admitted as direct participants in the program. The Subcommittee should consider adding language to the permanent Self-Governance bill making it clear that only federally-recognized tribes are eligible.

The success of the Self-Governance program depends upon Congressional support of offices of self-governance within Interior and Indian Health Service. For example, in the Interior's office, one staff person performs all budget functions and coordinates finance activities for more than \$100 million in self-governance funding. With the possibility of Navajo Nation and numerous smaller tribes entering the program, funding through the program soon may exceed \$500 million per year. Clearly, the staffing of the office must be increased and its operations adequately funded to accommodate the workload of such a rapidly expanding program. With the gradual expansion of the Self-Governance program over the next several years there should be proportionate increases in the financial support of the two offices of Self-Governance.

As more and more tribes are admitted into the Self-Governance program, and especially if Navajo Nation adopts Self-Governance, the need to restructure and streamline BIA and IHS will become unavoidable. I would like to ask the Subcommittee to keep two considerations in mind as the process of restructuring unfolds.

First, the growth of the Self-Governance program and the concomitant streamlining of the agencies should not be viewed as an opportunity to cut back the funding of Indian programs. Senator McCain has expressed his sensitivity to this danger and warned against it. I think this Subcommittee should also be vigilant against efforts to cut programmatic funding as the federal agencies, once our principal advocates of Indian programs, play a smaller roll in the management of Indian programs as a result of Self-Governance.

Second, the Subcommittee should ensure that the tribes themselves are consulted and participate in the planning and implementation of agency restructuring. There is real danger that the agencies will give only lip service to tribal participation.

An example of this has just occurred within the BIA here in Oklahoma. The Department of Interior, after consulting few if any affected tribes and with almost no planning, suddenly announced in January that the Anadarko Area Office would be consolidated with the Muskogee Area Office and the combined office moved to either Oklahoma City or Tulsa. Frankly, we were appalled that such a hasty, drastic move would be taken with little if any input from the tribes.

I have always advocated the streamlining of BIA. However, any streamlining should be carefully planned, equitable, and involve meaningful participation of affected tribes. Restructuring should occur across the board at all administrative levels of BIA, including the Central Office. What has happened here in Oklahoma was a rash, virtually unplanned act of budget slashing. We ask that this Subcommittee inquire into the Department's decision to combine the two area offices and determine whether any consideration was given to the Department's ability to discharge its trust responsibility to Oklahoma tribes and individual Indians.

Once again, on behalf of Cherokee Nation I want to thank the Subcommittee for this opportunity to submit written testimony even though I am unable to appear and testify in person. We appreciate the Subcommittee's concern for Indian peoples and its support for legislation strengthening tribal governments. I look forward to working with the Subcommittee and its staff in the future.

**Testimony of
Bill Anoatubby, Governor of the Chickasaw Nation
House Subcommittee on Native American Affairs
March 14, 1994**

Mr. Chairman, on behalf of the people of the unconquered and unconquerable Chickasaw Nation, I extend our appreciation for being given the opportunity to provide comments regarding House Resolution 3508.

My name is Bill Anoatubby, and I am the governor of the Chickasaw Nation. One of the Five Civilized Tribes, the Chickasaw Nation encompasses more than 7,648 square miles of south central Oklahoma. The Chickasaw Nation is unique among the relocated tribes of America in that we did not trade our homelands for new lands in the West; we purchased our lands from the Choctaw Nation. Our tribal population places us as the 13th largest Indian tribe in the United States, according to the 1990 Census.

We are pleased that the House Subcommittee on Native American Affairs is allowing us this opportunity to provide comments on this legislation. The Chickasaw Nation is fortunate to be one of the tribes selected to participate in the Bureau of Indian Affairs' self-governance program. The program provides autonomy for tribal governments at a level not known in Indian Country for hundreds of years. Making provisions for self-governance to become permanent for tribes is yet another step in assuring tribal governments the exercise of those responsibilities and authorities which are rightfully theirs.

In that process, we have found the Bureau of Indian Affairs to be most cooperative in providing assistance. Our experiences to date indicate that the BIA has taken self-governance seriously and that the commitment of the BIA to the program is without equal among other federal agencies. Should H.R. 3508 be enacted and signed into law, it will provide the opportunity for tribal governments to exercise true self-determination on a permanent and continual basis. Self-governance finally affords the tribal governments the ability, the opportunity and the authority to truly provide for their respective citizens by meeting the specific needs of the various tribal governments' constituencies. We commend the BIA for working so hard to make self-governance the reality that it has become. This measure shall surely ease and simplify the tasks which lie before both the U.S. Department of the Interior and the individual Indian tribal governments.

We are especially pleased that H.R. 3508 makes allowances and provides for the smooth transition between tribal self-governance demonstration projects and Title IV of this bill, permanent self-governance. By allowing the Secretary

to select up to 20 new tribes per year to participate in self-governance, the commitment of the United States to true government by a tribe is made clear.

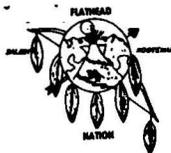
Perhaps our only disappointment with H.R. 3508 is the fact that it addresses only those programs administered by the U.S. Department of the Interior. The Indian Health Service, which is another federal agency of great importance and concern to tribal governments, is not addressed.

While the Bureau of Indian Affairs is certainly advancing quite rapidly in self-governance, the Indian Health Service is also embarking upon the road to self-governance with its programs and services; however, the IHS approach to self-governance is far different from that taken by the Bureau of Indian Affairs.

Beginning with the implementation of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, the IHS has set its own path, and that path has been one that is far different from other federal agencies. Until recently, the rules of operation for the Indian Health Service have been quite different from those rules of operation utilized by the Bureau of Indian Affairs, despite the fact that both were supposedly operating under the provisions of P.L. 93-638. With the new proposed rules under that law, both agencies should now be singing from the same songbook. However, such is not and will not be the same situation insofar as self-governance is concerned.

To the extent that H.R. 3508 affects the Tribal Self-Governance Program within the U.S. Department of the Interior, it is an extremely good bill, and we endorse it and its intent. We do, however, leave you with the challenge of doing the same favor for tribal governments in relation to the Indian Health Service.

Mr. Chairman, we appreciate being given the opportunity to provide our comments on H.R. 3508, and look forward to working with you and the members of the Subcommittee on these and other issues of importance in the years to come.



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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D. Fred Matt
Donald "Donny" Dupuis
Mary Lethland

TESTIMONY OF MICHAEL T. PABLO, CHAIRMAN

CONFEDERATED SALISH AND KOOTENAI TRIBES

OF THE FLATHEAD NATION

**ON TRIBAL SELF-GOVERNANCE AS A PROGRAM
AND THE NEED FOR PERMANENT LEGISLATION AUTHORIZING
SELF-GOVERNANCE AS A POLICY OF THE UNITED STATES**

**SUBMITTED TO
THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE HOUSE NATURAL RESOURCES COMMITTEE**

FEBRUARY 25, 1994

Representative Richardson; Thank you for introducing the "Tribal Self-Governance Act of 1993" and allowing me the opportunity to provide testimony. This very important piece of legislation is supported by the Confederated Salish and Kootenai Tribes. We are anxious to see its passage during this legislative session.

The Flathead Nation is located in northwestern Montana. As signatories to the Hellgate Treaty of 1855, we ceded over 20 million acres of what now comprises western Montana. In return, we reserved for ourselves, our children and future generations the 1.25 million acres that comprises the Flathead Indian Reservation and accepted that our land and our treaty rights would be protected forever. The Tribes of this reservation were self-governing at the time the treaty was signed. Although years of failed Indian policies have attempted to diminish our independence, we continue to work toward Self-Determination.

We began our involvement with self-governance at the very beginning as one of original ten tribes authorized to participate in the Tribal Self-Governance Demonstration Project. In fact, like today, the Tribes participated in drafting the legislation and then submitted testimony in support of it. The Tribes were awarded a planning grant and immediately began the extensive planning and researching process self-governance requires. After lengthy negotiations, an agreement between the Tribes and Bureau of Indian Affairs (BIA) was signed by both parties. It was not the "standard self-Governance agreement" but rather one which contained a mechanism for the Tribes to first assess the true costs to operate all BIA programs. Then, after an agreement was reached with the BIA on the amount required, it would be submitted to the Office of Management and Budget (OMB) for further discussion and inclusion in the President's annual budget request to Congress. In clear violation to the basic principles of Self-Governance, the BIA unilaterally cancelled the agreement. The Tribes felt betrayed by their trustee. It was clear the BIA was not ready to submit a budget to adequately meet the true costs of providing services authorized in law.

Over the next few years, the Confederated Salish and Kootenai Tribes continued to pursue the BIA's support of this agreement but to no avail. Yet, we continued to use the internal administrative procedures developed for the implementation of the Self-Governance Compact and the Annual Funding Agreement anticipating our eventual resolution of this issue. This did not occur and the Tribes were forced to negotiate a "standard Self-Governance agreement". The Tribes have been operating both an IHS and a BIA compact since October 1, 1993.

The Self-Governance Demonstration Project was enacted to forge a new government-to-government relationship between the tribes and the federal government. It is an acknowledgement of the need to change

the paternalistic nature of the other federal policies regarding Indian Country. It shifts the decision making responsibility back to the tribes where it rightfully belongs, putting the decision with those most directly affected. It provides the tribes the authority to plan, consolidate and administer functions, programs, services and activities previously administered by the federal government and to redesign the same if the tribes deems it necessary. Finally, it allows tribes to reallocate funds. The Flathead Nation has found its experience in compacting to be positive. It has provided the Tribes with the opportunity to achieve true Self-Determination.

Although the Tribes are supportive of the Self-Governance Demonstration Project and all of the possibilities it brings to tribes, we also have concerns which can be addressed in the legislation to make it a permanent option for tribes. For example, the Tribes are concerned that Indian Health Service (IHS) is not included in this legislation. IHS has been a reluctant participant since 1991 when they were forced by Congress to begin to examine the feasibility of tribes compacting IHS programs. Their reluctance is demonstrated by the IHS' refusal to extend Federal Tort Claim Act (FTCA) coverage to tribal compacted programs when the BIA has not viewed this extension as a problem nor has our own legal staff been able to identify a problem with its extension. By failing to include IHS sends a mixed message about the need to continue the good faith efforts especially with those tribes in the compacting process. That message is that if they drag their feet and wait out the 1996 time period when the demonstration component ends they won't have to go under Self-Governance. We do not see the IHS being very cooperative with tribes during the remainder of the demonstration project if they see it as a short term pain that will eventually go away. The tribes cannot afford during this time of health care reform to be on uncertain ground in their funding efforts.

A particular issue for the Flathead Nation is the continued inclusion of language excluding the Flathead Agency Irrigation Division or the Flathead Agency Power Division from the compacting process. There is no apparent reason for the exclusion to continue especially in light of the exemplary manner the Tribes, through contracting, have operated the power division. Furthermore, the Tribes support the inclusion of education funds available through the Tribally Controlled Community College Assistance Act of 1978 and those funds for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978.

One of the problems the Tribes have experienced in implementing the Self-Governance Compact is the uncertainty surrounding the indirect cost associated with the annual funding agreement. In FY94, we are being told by the BIA that we will receive only three-fourths of the amount we anticipated when we developed the Tribal FY94 budget based

on the rate negotiated by the Tribes and the U.S. Inspector General.

The proposed legislation requires the Secretary to submit a report to Congress each year that includes the separate views of the tribes involved in Self-Governance. The Flathead Nation recognizes the importance of this reporting process and encourages the inclusion of mutually agreed upon baseline measures as for the basis of the report. This gives the Tribes a fair and consistent method to evaluate the impact of self-governance as opposed to being at the mercy of IHS or BIA to determine its success. It also provides a mechanism to gather qualitative and quantitative data to support the Tribes efforts to determine unmet needs and additional funding requirements.

We are pleased to see the inclusion of a waiver process to be implemented by the Secretary in regards to Federal law and regulation. The Confederated Salish and Kootenai Tribes have for too long managed programs, services and activities for the benefit of the tribal membership to be hindered by unnecessary regulations such as the Federal Acquisition Regulations (FAR). We would like the legislation to include a clear appeals process, especially in regards to unresolved issues during the negotiation stage of the Compact and the Annual Funding Agreement.

The Flathead Nation is concerned about failure of IHS and the BIA to adequately address the issue of shortfall funding in their budget requests to Congress. Although shortfall funding is a temporary solution to the dilemma faced by the federal agencies as they are forced to downsize due to the reduced demand for Federal services by the tribes through compacting, it must be funded at an adequate level and it cannot be confused with the tribes need for full funding of its indirect cost rate or other administrative support costs. We find it interesting that BIA Central Office has not been able to determine a formula for the tribes to access its funds. Yet, they continue to attempt to force the tribes to shoulder the entire burden of budget cuts and forced BIA reductions.

The Flathead Nation stands behind the concept of Self-Governance and is pleased to support this legislation for it to move from a demonstration project to a permanent option for tribes as we move toward Self-Determination.

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE-PRESIDENT

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Written Testimony of the Navajo Nation
Regarding H.R. 3508, the
"Tribal Self-Governance Act of 1993"

March 17, 1994

Introduction

On behalf of President Peterson Zah, the Navajo Nation would like to thank the Subcommittee for allowing it to submit its written comments on Tribal Self-Governance for the hearing record. The Navajo Nation has only recently begun to explore the possibility of participating in the Tribal Self-Governance program; therefore, the Navajo Nation views this opportunity as an initial step to understand the Self-Governance process.

The Navajo Nation's View on Self-Governance

The Navajo Nation generally supports the concept of providing Tribal Self-Governance as a permanent option for American Indian tribes through legislation. The Self-Governance compacting process furthers the goal of a government-to-government relationship between Indian tribes and the United States. In addition, based on reports from tribes which have concluded funding agreements under the Demonstration Project phase of Self-Governance, it appears that the Self-Governance processes are working well.

However, it must be noted that these "Self-Governance" tribes usually have a significantly smaller land-base, less population, and accordingly smaller percentage of the Bureau of Indian Affairs ("BIA") budget and program operations than the Navajo Nation. In light of these differences and the potentially greater complexity for the Navajo Nation, it is the Nation's intent to take a measured and comprehensive approach to the planning phase.

The Navajo Nation Government

The Navajo Nation is a sovereign nation and operates an expansive tripartite government, composed of executive, legislative and judicial branches. This structure supports approximately 6,100 employees with four executive offices and

ten "divisions," analogous to state and federal departments and/or agencies. Each division has responsibilities for specific subject areas such as: Natural Resources, Community Development, Education, Public Safety and Social Services, and others.

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

In late 1993, the Nation received a \$250,000 planning grant from the Department of the Interior and is currently in the early phases of the Self-Governance Planning Phase. Given the breadth and complexity of our financial structure and federal expenditures, the Navajo Nation plans to proceed carefully and cautiously during the Self-Governance planning phase. In developing permanent Self-Governance legislation, the Navajo Nation respectfully requests Congress to consider tribes such as the Navajo Nation that are unique due to their size (land and population), extensive use of "638" contracts, and highly developed programs and service delivery systems.

Section-by-Section Analysis of H.R. 3508

What follows are specific section-by-section comments on H.R. 3508, from the Navajo Nation's perspective. Generally, while we understand the desire to provide unique provisions separate from the rest of the Indian Self-Determination and Education Assistance Act ("ISDA") for the Self-Governance operations, Self-Governance nonetheless remains a part of that Act. It would be beneficial to clarify through this legislation, which provisions of the remainder of the ISDA apply to Self-Governance. In the Navajo Nation's view, Self-Governance is an extension of the ISDA and therefore, the provisions of ISDA are also applicable to Self-Governance.

Section 3 Declaration of Policy

In subsection (4) of this section, the Navajo Nation recommends that a reference to the ISDA provision which protects the trust responsibility be included. Such a reference could incorporate by reference the provision found at Section 210 of ISDA (25 U.S.C. § 456n).

Section 4 Tribal Self-Governance

This section amends the Indian Self-Determination and Education Assistance Act by adding a new Title IV, encompassing the remainder of H.R. 3508. The comment on clarifying the applicability of ISDA provisions made above is probably best integrated here. This comment is made to avoid debates over various provisions, such as whether the Federal Tort Claims Act coverage, which is extended to contractors pursuant to ISDA, would also be extended to tribes which conclude a Self-Governance compact and funding agreement. Logically, it would seem that provisions which are viewed as beneficial to tribes within ISDA should also be available under Self-Governance.

Section 401

This section makes Self-Governance permanent, based on the Department of Interior demonstration projects. Currently, through other legislation, the Indian Health Service is engaged in the "demonstration project" phase of Self-Governance. Presumably when that demonstration phase is completed, the concepts contained herein can and will be extended to the Indian Health Service and the Department of Health and Human Services. Language in the legislative history for this Act should be considered to make this point clear.

Section 402 Selection of Participating Tribes

Subsection (a) of this section appears to define participation implicitly to mean only those tribes which have concluded compacts under the "Demonstration Project". However, reference is made to the Demonstration Project, which includes tribes which are at either the planning or negotiation phase. The Navajo Nation recommends that this section be revised to make clear what is meant, if participation is limited to those with compacts or if it means all tribes at any level within the Demonstration Project. Since the Navajo Nation is at the planning level, it would be our position that participation include any and all tribes located anywhere within the Self-Governance Demonstration Project.

Subsection (c)

This section defines the applicant pool. Here again, by making planning a prerequisite, it appears that tribes currently in the planning phase will not be participants. Subsection (2) requires a request to participate; this could best be done by reference to the process used to request an ISDA contract. Such an approach is familiar to both tribes and the BIA, Department of the Interior.

In subsection (3), it appears that a tribe must meet the "clean audit" test twice, first to receive a planning grant, then once again to become an "applicant". Further, though a minor point, the Navajo Nation recommends that line 18 be amended by adding the words "significant and " before material. This would make

the language consistent with the mature contract language in ISDA. (See Section 4 (h) of ISDA). Currently, the "mature contract" designation has been a requirement for planning grant applicants.

Subsection (d) Planning Phase

This section addresses the planning phase and establishes the planning grant process.

It appears an additional subsection should be considered requiring the federal agency, at no cost, to provide information to tribes to allow completion of planning in a comprehensive manner. As Self-Governance moves from the BIA to other Department of the Interior bureaus and agencies, some resistance to Self-Governance may well be encountered. Such a provision will make it clear that agencies are required to provide complete up-to-date information. Without such a requirement, the planning phase may well simply be incomplete and inadequate.

Finally, the Navajo Nation recommends that a provision be included in this subsection that makes it clear that while planning is a prerequisite to compacting, the receipt of a planning grant is not. In other words, if a tribe chooses to rely on its own funding to conduct planning, nothing should bar such an undertaking.

Section 403 Funding Agreements

Subsection (a) mentions the governing body of the tribe, presumably this would again refer to the ISDA provisions for contract authorization by the governing body of a tribe. Explicit reference to the ISDA provisions would make this requirement more clear procedurally.

Subsection (c) Submission for Review

Reference is made to the "Agency" in subsection (1) which may tend to be interpreted as the BIA Agency. Most, if not all, Navajo Nation activities will be conducted at the Area Office level, therefore a different term should be used or agency should be used with a lower case "a".

In light of the discussions involving BIA restructuring, it also becomes ever more important to indicate what the purpose of the referral to "other tribes" is designed to accomplish. The referral, while innocuous in itself, is problematic if it triggers unspecified rights in the "other tribes". Does this provision contemplate that one tribe may object to another's funding agreement? If so, what happens then? It appears that without more structure and substance here, inter-tribal disputes will be fostered by this provision. At an absolute minimum, the purpose of the referral should be articulated in this proposed Act.

Subsection (d) Payment

In subsection (2) an apparent oversight has occurred. That section addresses the amount of funds to be paid. However, there is no mention of either indirect costs or contract support costs. Indirect costs was included in S. 1618 (the Senate companion bill), so we assume this is an oversight. Here again, reference to the ISDA at Section 106 (25 U.S.C. § 450 J-1) might clarify this provision.

Subsection (e) Civil Actions

In subsection (2) there appears to be a waiver of the requirements of 25 U.S.C. §§ 81 and 476. It is not clear whether this applies to the tribe generally or only to the funds for the Self-Governance agreement.

The requirements of 25 U.S.C. § 81 are cumbersome and at times problematic, but since tribes may be operating with several sources of funds including, ISDA contract funds, trust resource funds, and Self-Governance agreement funds, a clarification as to the applicability of this provision may well avoid later problems.

Section 405 Reports

In subsection (b) (2) there appears to be a variance from the Senate companion version of this bill. S. 1618 provided that the report "Identify with particularity all funds..." whereas here it provides "identification of all funds...". The language in the Senate version appears to be more comprehensive and detailed, and is therefore preferable.

In (b) (3) there is a requirement that the report include the views of tribes. To make this provision effective, the Secretary must be required to share the draft report with tribes sufficiently in advance to allow the tribes to submit their views. Absent such a provision, it is unlikely that tribes will have an opportunity to submit material for inclusion in the report.

Section 407 Negotiated Rulemaking

These provisions appear to require some refinement. As written, the negotiation process appears to require that a majority of the committee be representatives of tribes with Self-Governance compacts. Since all tribes may have or develop an interest in Self-Governance, this may be problematic due to the omission of these tribes.

Further, there is no time in which rules must be promulgated. The

negotiated rulemaking process is to begin within 90 days of enactment but no deadline for conclusion is stated. It would be beneficial to impose such a deadline, and if included, it should be no longer than one year from enactment.

Conclusion

Generally, H.R. 3508 appears to be moving in the right direction; it makes Self-Governance permanent. Other actions are also needed. For example, S. 550 addressed the operations of the Office of Self-Governance and some corresponding House legislation in this area is also required.

Further, the structure, funding and activities of the BIA must be evaluated closely to ensure that the proposed BIA reorganization changes do not negatively impact on the Self-Governance options available to the Navajo Nation. BIA reorganization may well negatively impact upon the planning process since the BIA may become something of a "moving target".

The true test of Self-Governance may ultimately be how well the process can be adapted to meet the unique and developing structure of the Navajo Nation government. One part of our planning will be to determine how well Self-Governance can complement the Navajo Nation's growth and refinement of its internal structure. Any federal initiative must include sufficient flexibility to adapt to the needs of all tribes, large and small. Federal legislation cannot dictate a particular tribal structure order to meet the federal needs. It currently appears that Self-Governance includes that flexibility, but only upon completion of the Planning Phase can the Nation be sure. In many respects, it appears that this analysis may well become the determinative factor for the Navajo Nation in the Self-Governance processes.

As noted earlier, our views are those of a tribe which has only recently entered the Self-Governance arena. As our planning process develops, it is possible that these views may change. Ultimately, our measure of the successful design of this or any other Self-Governance legislation will be how well Self-Governance meets the needs of the Navajo Nation. The Navajo Nation appreciates the opportunity to present its views on Tribal Self-Governance and looks forward to working with the Subcommittee in the near future.


KAWERAK, INC.

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 February 8, 1993

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The Honorable Bill Richardson, Chairman
 Native American Affairs Subcommittee
 House Committee on Natural Resources
 1522 Longworth House Office Building
 Washington, D. C. 20515

Re: Testimony in Support of HR 3508 - "Tribal Self-Governance Act of 1994"

Dear Chairman Richardson:

I am writing on behalf of Kawerak, Inc., a consortium of 20 member tribes located in the Bering Straits region of Alaska and a current Self-Governance Demonstration Project participant under Title III of P.L. 100-472, to add our full support to H.R. 3508 - "Tribal Self-Governance Act of 1993."

I urge that this legislation be moved swiftly through the hearing and mark up process, and on to an early vote in the 103rd Congress. I also request that all efforts be made to prevent any dilution or compromise of the broad policy and principle statements found in HR 3508 and the companion bill S. 1618.

Kawerak fully agrees with your statement made upon introducing H.R. 3508: "[The Self-Governance Act] is the right direction at the right time. The bill is nothing less than the future of Indian Affairs."

In our view, it is critical that we secure permanent legislation *soon* - and the future of Self-Governance - *and then* work on refining the details of implementation. A clear message needs to be sent to those who continue to oppose the Self-Governance initiative that it is here to stay. Opponents should not be allowed to thwart permanent legislation by raising complex (as they see it) implementation issues and policy concerns. Implementation details can and should be addressed *within the context of permanency*, through the negotiated rule-making and amendment process.

Kawerak would rate Self-Governance as implemented thus far an unqualified success. It provides a considerably improved environment for meeting the needs of our respective tribal governments and individual tribal members. The basis for this improved environment is directly related to three key factors which are truly unique to the Self-Governance initiative.

First, is the ability to gather greater resources under the control of tribal leaders through the Annual Funding Agreement negotiation process; second, is the flexibility to direct those resources to tribally determined needs and priorities; third, is the programmatic and administrative flexibility associated with the Project. These are real and extremely significant changes and improvements from 638 contracting, and Kawerak is actively moving to take full advantage in all 3 areas. This fact is clearly illustrated by an examination of Kawerak's FY 93 and FY 94 budgets.

Excepting programs with earmarked funding, every FY 93 Kawerak program budget was modified - many several times - over the course of the fiscal year. This is now accomplished through an internal budgeting process set up in response to the SGDP. Budgetary changes are now made quickly, and efficiently in response to changing tribal needs and circumstances.

Had these changes been made under the old 638 contracting system, the time, effort and paperwork involved would have been tremendous. A process that used to take weeks or months has been reduced to minutes, hours or in some cases perhaps days. In short, because of the administrative and bureaucratic burdens imposed under the old system the changes simply would not occur at all, or certainly would not occur at anything close to the same level that is now possible. It is clear that the Self-Governance Project goal of allowing tribal needs and priorities to be reflected by tribally determined budgets is occurring. Changes may not be dramatic in many cases, but there is no question that significant change is taking place.

In the area of administrative and programmatic flexibility, Kawerak has seen a significant reduction in processed paperwork and reporting. The goal of freeing program personnel from unnecessary administrative tasks, thereby allowing increased time for service delivery is being met. There is also a greater sense that the reporting that is done serves a more tangible benefit.

The changes and improvements brought about by the SGDP are subjective as well as objective. The subjective changes may be harder to document, but are also clearly noticeable even after our first two years in the Project. Attitudes are changing in a positive way. The empowerment which takes place when a tribe fully participates under the SGDP is a potent force. The consequences will take time to be fully realized and appreciated, but these subjective attitudinal changes will continue to drive positive objective action. Tribal members are beginning to look to themselves and their own

institutions for solutions, with the realization that there is real meaning and opportunity in doing so.

In closing, we thank you once again for your support of the Self-Governance and other important Alaska Native/Indian initiatives. We urge swift passage of HR 3508 and call for the continuing support of the Native American Affairs Subcommittee as we then move toward positive implementation.

Sincerely,

A handwritten signature in cursive script that reads "L. Bullard".

Loretta Bullard
President

LOWER ELWAH TRIBAL COUNCIL



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February 18, 1994

The Honorable Bill Richardson, Chairman
Native American Affairs Subcommittee
House Committee on Natural Resources
1522 Longworth House Office Building
Washington, DC 20515

Dear Chairman Richardson,

I write to you today because I regret that I will be unable to attend the hearing your Subcommittee has scheduled for February 25 on legislation which will amend Title III of the Indian Self Determination and Education Assistance Act, PL 93-638, to make the Self Governance Demonstration Project permanent. I would very much like to have appeared in person on behalf of the Lower Elwha S'Klallam Tribe to testify in support of H.R. 3508.

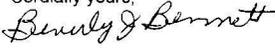
The Lower Elwha S'Klallam Tribe became a self governance tribe in 1993, after many years of experience in contracting under PL 93-638. We have experienced many benefits under self governance, the foremost of which I can mention is the ability to design and fund tribal programs which we would not otherwise be able to offer our youth.

As the Committee is well aware, the lure of drug and alcohol abuse among our young people is one of the gravest problems we face. Under self governance, we can support programs in cultural, educational and recreational activities, which we call Prevention Programs. These are highly successful in diverting children and adolescents from drug and alcohol abuse, while providing them educational enhancement, building pride in their tribal heritage, and developing and strengthening their minds and bodies. Without the flexibility of self governance reprogramming of tribal funds, we would be unable to provide these valuable programs for our young people. As well, we were able to provide financial support to our tribal day care program from self governance funds, which we were able to do only through reprogramming.

Chairman Richardson, 2/18/94, p.2

The Self Governance Demonstration Project has worked well for the Lower Elwha S'Klallam Tribe. We are into our second year of administering our Bureau of Indian Affairs Programs under our Department of Interior Compact of Self Governance. At this time we are in the planning stages, as well, for our Indian Health Services programs. It seems clear to the tribal community that we can do a better job of running our tribal health programs on our own, as we are successfully doing with the BIA programs.

We thank your Subcommittee for conducting hearings on this legislation. We strongly support making the Self Governance Demonstration Project permanent. The Lower Elwha S'Klallam Tribe looks forward to being able to administer our Tribal programs under Self Governance Compacts into perpetuity. Thank you, Chairman Richardson, for considering this expression of support for H.R. 3508.

Cordially yours,

Beverly J. Bennett,
Chairperson

cc: The Honorable Norman Dicks



JAMESTOWN S'KLALLAM TRIBE

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**Testimony of W. Ron Allen,
Tribal Chairman and Executive Director
of the Jamestown S'Klallam Tribe
before the
House Native American Affairs Subcommittee
Oversight Hearing on H.R. 3508,
The "Tribal Self Governance Act"
February 25, 1994**

Mr. Chairman, I am W. Ron Allen, Chairman of the Jamestown S'Klallam Tribe. On behalf of the Tribe, I thank you for the opportunity to express our thoughts and experiences on this historic initiative and to consider legislation that will establish the Self-Governance concept as a permanent legal mechanism in implementing the Tribes' governmental status. As we have not been able to review official Administration amendment recommendations to H.R. 3508, we would appreciate to opportunity to respond to these amendments when available.

The Jamestown S'Klallam Tribe concurs with the testimony of the Quinault Indian Nation regarding the presentation by Assistant Secretary-Indian Affairs Ada Deer at this hearing on H.R. 3508. We also support the Quinault Indian Nation and reject the presentation justifications by the Shoalwater Bay Indian Tribe in any attempt to diminish or restrict the governmental authority of another Tribal government. The Title III Self-Governance Demonstration Project and proposed Title IV of H.R. 3508 clearly protect the rights and resources of other Tribal governments not participating in Self-Governance or individual Indians with Trust resources. Accommodations for specific Tribal or individual concerns can either be negotiated into a Tribal Compact and Annual Funding Agreement or by review through an established administrative appeals process.

SELF-GOVERNANCE AT THE TRIBAL LEVEL:

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

We take strong exception to the criticism and concerns addressed by the Shoalwater Tribe at the February 25, hearing that small Tribes are disadvantaged through the Self Governance approach. As the smallest (234 members) and youngest (federally recognized in 1981) Tribe involved in the Self-Governance initiative, we have clearly exhibited that we can manage our governmental affairs with the same integrity and responsibility as the larger Tribes.

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

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

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

PROBLEMS ENCOUNTERED IN IMPLEMENTING SELF-GOVERNANCE:

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

Another issue of great concern to us is the attitude and expressed objections of newly-appointed executive level staff within the BIA regarding the level of funding secured by some existing Self Governance Tribes. These individuals lack the experience and background on the basis for negotiating these amounts by each Tribe, and comments conveying these views are unacceptable. There are a wide array of circumstances, conditions, and levels of responsibility throughout Indian country that justify different levels of funding for Tribal operations. It is not the role of executive level staff within the Administration to make determinations regarding equity of funds and resources provided to each of the Tribes. One of our concerns is this attitude at key policy level positions will perpetuate the old guard bureaucratic mentality to preserve the status quo system.

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

Additionally, the inclusion of a negotiated lump-sum amount for contract support costs establishes a base amount for indirect costs associated with those programs included in the Self-Governance Annual Funding Agreement. In our judgement, the inclusion of support cost funds as part of the funding base provides stability for both the direct and indirect components of Tribal services and programs. This lump-sum approach is particularly attractive to the stable Tribal operations who are willing to manage within a set amount of direct and indirect funds. The Self-Governance concept is intended to eliminate the BIA propensity to miscalculate budget projections, including Contract Support funding levels, which have resulted in undue hardship to

Tribal governments; and to provide protection against future potential BIA errant projections for these funds.

The BIA has failed to restructure administratively to transfer funds negotiated under Compacts of Self Governance. Instead, the bureaucracy has forced Tribes to rely on shortfall supplemental funds. This prolonged demand on the shortfall account to avoid restructuring could potentially halt any new Tribes from entering Self-Governance. With additional Tribes participating in this initiative, it is essential for the BIA and the IHS to begin actively restructuring to release funds to allow these stable bases to be established.

The Self-Governance Tribes negotiated ten OMB Cost Exceptions into their Compacts. OMB subsequently approved eight of them for the Demonstration period only; and, only for Self-Governance Tribes. These logical exemptions were included in S.1410, the "Indian Self-Determination Act Amendments of 1993." We proposed these attached cost exceptions be included in H.R. 3508.

The BIA has further confused and exacerbated the situation by applying Administrative Cost Savings and FTE reductions disproportionately against Area/Agency offices with extensive Self-Governance activities. The administratively imposed reductions in the BIA field capabilities has been blamed on Self-Governance. This blatant misrepresentation by the BIA is an old tactic used by the bureaucracy creating anti-Self-Governance animosity by other Tribes.

RECOMMENDATIONS FOR PERMANENT SELF-GOVERNANCE LEGISLATION:

The key purpose of this proposed Self-Governance legislation is to establish a clear message to the Administration that the negotiated transfer of resources and management to the Tribes is sufficient evidence to justify making it a permanent option. There are a number of reasons why this legislation is necessary. The Administration must be given a clear message that the current system is not sufficient. The Self-Governance concept and approach has been accepted by the Congress and is a vehicle to transport President Clinton's "Mandate for Change" and "Reinventing Government" ideas into reality. This approach must be seriously implemented by planning and making meaningful changes to administer this mandate. We firmly believe that unless the Administration understands that it must accept this approach, it will not take the necessary steps to implement this concept.

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

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

Finally, the treatment of Tribal similar to state and federal governments as outlined in OMB Circular A-87 unduly restricts Tribes in fully utilizing their resources. Circumstances are significantly different for Tribal governments than for state and federal governments; in many cases, Tribal revenue bases are non-existent. The implementing Tribes have proposed special waiver conditions in our Compacts that outline essential Tribal needs in utilizing federal resources efficiently and effectively. The proposed regulations for P.L. 93-638 and P.L. 100-472 are not reasonable and the Tribes have had to weave through a maze of OMB bureaucracy that has very little compassion and understanding of Tribal needs and requests. We urge the Committee to recognize the need to legislate our proposed regulation waivers to OMB Circular A-87 and a rule making process that allows Tribes to participate in the process to identify additional waivers allowing adequate Tribal control and management of their resources.

In conclusion, we believe this bill is a positive initiative for the obvious reasons stated in this testimony and strongly support and urge its passage during this Congressional session. Now is the time to set the foundation for which we will build our future. We believe in our vision and have moved forward in making the goals of Self-Governance a reality. I would like to thank this Committee for its active involvement and commitment in Self-Governance, and we look forward to continuing our work with you.

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**OMB Cost Exception Provisions for Self-Governance
Compacts Proposed for Inclusion in Self-Governance
Permanent Authorization**

"() A tribal organization may use funds provided under a Self-Governance Compact to meet matching or cost participation requirements under other Federal and non-Federal programs.

"() Without intending any limitation, a tribal organization may, without approval, expend funds provided under a Self-Governance Compact for the following purposes:

"(1) depreciation and use allowances not otherwise specifically prohibited by law, including depreciation of facilities owned by the Tribe and Tribal organization and constructed with Federal financial assistance;

"(2) publication and printing costs;

"(3) building, realty and facilities costs, including rental costs or mortgage expenses;

"(4) automated data processing and similar equipment or services;

"(5) cost of capital assets and repairs;

"(6) management studies;

"(7) professional services other than services provided in connection with judicial proceedings by or against the United States;

"(8) insurance and indemnification, including insurance

covering the risk of loss

or of damage to property used in connection with the Compact without regard to the ownership or such property;

"(9) cost incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of a Self-Governance Compact;

"(10) interest expenses paid on capital expenditures such as buildings; building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to Secretarial delays in providing funds under an Annual Funding Agreement; and

"(11) expenses of a Tribal organization's governing body to the extent attributable to the management or operation of Compacts authorized under this Act.

The Honorable Congressman George Miller
U.S. House Of Representatives
Washington, D.C. 20515

February 14, 1994

RE: H.B. 3508, etc.

Dear Representative Miller:

I watch C-Span more than other T.V. combined. I very much appreciate the speech on Bosnia last evening and agree with and support what was said. No ethnic group or people should be suppressed in the ways of human genocide. You see, I am descended from Bosnian ancestors as well as being Native American Indian and a member of the Chinook Tribe located in Chinook Indian Country (what is commonly known as S.W. Washington State).

House Bill 3508 establishing Indian Self-Governance on Indian Reservations sounds good and noble, but if passed as introduced, will rob Chinook Indian people and tribal members of our say in treaty and property rights (trees, fish, and a voice in participation of tribal government) in the Quinault Indian Reservation.

Do you even realize that the Bureau Of Indian Affairs (BIA) inserts paragraphs into Congressional legislation with no regard to other tribal rights in Reservation's such as Quinault?

The following is part of the Quinault Tribe's Title 99 which the BIA plans to insert when H.B. 3508 passes Congress:

"99.09.010: (a) the Quinault Indian Nation is immune suit, (b) No current or former member of the Quinault Business Committee, including the executive officers(...) may be subpoenaed or otherwise compelled to appear or testify in the Quinault Tribal Court or any proceeding which is under the jurisdiction of the Quinault Tribal Court concerning any matter involving such official's actions pursuant to his/hers official duties."

"99.02.020: No temporary or preliminary restraining order may be signed or entered by the Quinault Tribal Court in any action against the Quianult Indian Nation or it's officer's, employees or agents."

This enables a dictatorial reservation government from which over 77% of the land owning population and over 70% of the people have no recourse.

The Chinook Tribe and its members have equal right's in the enlarged Quinault Reservation; see Halbert v. United States, 283 US 753 (1931), Wahkiakum Band Of Chinook v. Bateman, 655 F.2d 176, 9th Cir. (1981), and Williams v. Clark 724 F. 2d 549, 9th Cir.(1984); cert. denied 471 US 1015, 105 S.Ct.R. 2017(1984).

If the Indian Self-Governance Act passes without proper amendments the Quinault Tribe will usurp all authority and self-governance rights unto itself within the Quinault Indian Reservation. I do not believe the U.S. Congress is intending to abrogate Chinook, Chehalis, Cowlitz, Quileute tribal right's in the Quinault Reservation. I therefore strongly urge you to add appropriate amendants to H.B. 3508 to protect our tribal rights as Chinook Indians.

Respectfully yours,



Tim Tarabochia,
Chinook Tribal member,
P.O. Box 72, Chinook Indian
Country, Skamokawa. 98647

enc. Washington State Congressional Delegation
House Natural Resources Committee

Letter to the Honorable Rep. George Miller
U.S. House of Representatives
Feb. 9, 1994, Page (2)



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