

**THE 30TH ANNIVERSARY OF TRIBAL SELF-  
GOVERNANCE: SUCCESSES IN SELF-  
GOVERNANCE AND AN OUTLOOK FOR THE  
NEXT 30 YEARS**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

**SECOND SESSION**

APRIL 18, 2018

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WEDNESDAY, APRIL 18, 2018

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon. I call the hearing to order.

Before we start, I want to honor another member of the Senate Committee on Indian Affairs, former Chairman and Senator John Melcher of Montana, who passed away last Thursday at the age of 93.

Senator Melcher served in the Army during World War II and was a part of the Normandy invasion force in 1944. He graduated from veterinary school at Iowa State University in 1950 and settled in Forsyth, Montana.

He was elected the town's mayor three times and served in the State legislature before entering Congress. He served in this body from 1976 through 1988. He served as Chairman of the Indian Affairs Committee in the 96th Congress from 1979 to 1981.

Please join me in a moment of silence.

[Moment of silence.]

The CHAIRMAN. Thank you.

Today's hearing commemorates the 30th anniversary of the enactment of one of the most successful laws in Indian history, the Indian Self-Determination and Education Assistance Act Amendments of 1988.

This Act, passed by Congress in 1988, was the result of critical input and leadership from tribes across our country, and marked a significant turning point in tribal self-governance.

In 1987, tribal leaders testified before this Committee that the policy of self determination, which began with the Indian Self-Determination and Education Assistance Act of 1975, had resulted in greater utilization of services, increased access to education, stronger Indian families, and more effective tribal law enforcement.

However, though the law made many positive changes, inflexible bureaucracy and Federal inefficiencies restricted implementation of the 1975 Act. As a result, an alliance of tribes and tribal organizations joined forces to develop legislative proposals addressing these issues.

These proposals were incorporated into the Indian Self-Determination and Education Assistance Act Amendments of 1988 which increased the tribes' ability to redesign and tailor services to the specific needs of their communities.

While the amendments initially authorized a self governance demonstration project within the Bureau of Indian Affairs, this program was eventually made permanent at the Department of the Interior. Later, at the Indian Health Service, a similar program began and was subsequently made permanent.

Today, we will hear from our witnesses about the history of self-governance, its contributions to Indian Country and how this program can be improved to best help tribes chart their own course.

However, before we do that, I want to highlight that just last week, the Committee unanimously passed S. 2515, the Progress for Indian Tribes Act. This bill, which I sponsored along with a number of our members, further amends the 1975 Act incorporating tribal recommendations for improving the process for negotiating and finalizing compacts between tribes and the Secretary of the Interior for Bureau of Indian Affairs programs.

Previous iterations of this bill have been introduced since at least 2003. It is past the time that we pass the bill. I urge my colleagues to work together to get this important legislation to the President's desk.

I want to thank Vice Chairman Senator Udall for joining me in co-sponsoring the bill as well as Senators Murkowski, Barrasso, Sullivan and Cantwell.

Vice Chairman Udall, I will turn to you now for any opening statement.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Hoeven, for calling this oversight hearing to commemorate the 30th anniversary of tribal self-governance.

I would like to begin by welcoming Butch Blazer to his first Indian Affairs hearing as President of the Mescalero Apache Tribe. President Blazer has many years of experience in public service and his wealth of knowledge on tribal self-governance is invaluable to our discussion.

Thank you for being here.

Made permanent at the Department of the Interior and Health and Human Services through amendments to the Indian Self-Determination and Education Assistance Act, tribal self-government acknowledges that tribes have the right to govern themselves, with minimal Federal oversight, and maximum flexibility to meet local tribal needs.

Tribal self-governance has been so successful that over 50 percent of all Federal Indian programs are being carried out by approximately 360 of the 573 federally-recognized Indian tribes.

These self-governance tribes, including those represented by our witnesses here today, are fully responsible for Federal programs, functions, services and activities as well as associated funding resulting in effective self rule for participating tribes.

When the Self-Governance Compacting Program was made permanent in 1994, bureaucratic regulation and control of Indian programs administered by tribes should have been a thing of the past.

The reality is the road to the full exercise of tribal self determination in the 1970s, and now of tribal self governance, has not been swift or without detours. Congress passed the Indian Self-Determination Act in 1975 intending to provide tribes and tribal organizations with the option to step into the shoes of the Federal Government.

For years, Federal agencies continued to exercise heavy-handed control that inhibited tribes from adapting programs to local needs. In 1988, tribes, like the Mescalero Apache, persuaded Congress to strengthen the Act by including the Tribal Self-Governance Demonstration Project, an initiative that expanded programs tribes could take over and reduce Federal oversight after tribes assumed control.

Based on the success of the demonstration project, Congress acted again to improve the Act by making the DOI and the HHS self-governance programs permanent in 1994 and 2000, respectively.

Self-governance compacting continues to evolve. In 2015, President Obama expanded self governance to include Department of Transportation programs in addition to several non-BIA or non-IHS programs.

Today, self governance tribes have more options than ever to exercise self rule, but more needs to be done. I am proud to co-sponsor S. 2515, the Progress for Indian Tribes Act, with Chairman Hoeven.

Our bi-partisan bill makes a number of improvements to current law such as creating consistency and building efficiencies for tribes that operate both DOI and HHS self-governance programs.

Just last week, this Committee reported S. 2515 without amendment. It is now primed for floor action.

On another front, Chairman Hoeven and I are also working on bi-partisan farm bill-related legislation that would authorize tribes to exercise self governance for the U.S. Department of Agriculture programs such as food distribution and forestry.

In fact, Mescalero Apache is a leader in forestry management and has firsthand experience managing its own forest lands. It's Division of Resource Management and Protection provides high quality forestry services critical for watershed protection for the entire Basin.

In short, the future of self governance over the next 30 years is bright but, as our tribal witnesses today will attest, despite all the gains made over the past three decades, self-governance tribes continue to confront new challenges to old problems, problems such as agency inertia and historic resistance to expansion of the program, and inequitable access to BIA funds for new programs.

I look forward to the testimony of our witnesses today. Their leadership contributes to the continuing successes of tribal self governance and enables it to grow.

Thank you, Mr. Chairman.

The CHAIRMAN. I will turn to Senator Smith for the purpose of an introduction.

**STATEMENT OF HON. TINA SMITH,  
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Chairman Hoeven and Vice Chairman Udall, please allow me to thank you for holding this Committee hearing today on tribal self-governance.

It is my great pleasure to be able to introduce my friend, Melanie Benjamin, who has served as the Chief Executive of the Mille Lacs Band of Ojibwe for over 16 years. I also want to say, Melanie, I consider you to be a friend, an ally and a mentor. I know you to be a woman who speaks her mind and is a strong advocate. Thank you for being here today.

The Mille Lacs Band has been instrumental in shaping Federal policy on tribal self governance. This leadership continues under your leadership, Chief Executive Benjamin.

Mille Lacs was one of the first tribes to reach a compact and funding agreement with the Indian Health Service in order to design programs that work for your community. That agreement, I think, has allowed you to expand clinical services and also offer and create a better way of delivering care.

Mr. Chair, I have only been a member of this Committee a short time, as demonstrated by not knowing peoples' titles, but I have picked up a couple themes that come through all the time. One is that virtually every program we see in Indian Country, from health and education to housing, is woefully under-resourced. I appreciate hearing that over and over again.

We also hear over and over again that when we empower tribes to create solutions that work for your communities and members, we get better results and it works better for everyone. This is certainly a theme included in Chief Executive Benjamin's testimony.

Melanie, I look forward to hearing your testimony. Thank you so much for being with us today.

The CHAIRMAN. Thank you, Senator Smith.

Our other two witnesses are the Honorable James Floyd, Principal Chief, Muscogee Creek Nation of Oklahoma, Okmulgee. Oklahoma. Thank you for being here. We appreciate it.

We also have the Honorable Carlos Hisa, Governor, Ysleta del Sur Pueblo, El Paso, Texas. Thank you so much for being here as well.

I want to remind witnesses that your full testimony will be made a part of the official record. If you could, try to keep your opening comments to five minutes.

With that, we will turn to the Honorable Melanie Benjamin for your testimony.



**STATEMENT OF HON. MELANIE BENJAMIN, CHIEF EXECUTIVE,  
MILLE LACS TRIBE OF OJIBWE**

Ms. BENJAMIN. Thank you. Miigwetch for moving quickly last week to report out the Progress for Indian Tribes Act, S. 2515. Tribal leaders have worked for the past 18 years on this language and we urge its swift passage.

In the mid-1980s, our late Chief Executive, Art Gahbow, helped formed the Alliance of American Indian leaders. They were trail-blazing leaders who focused on strengthening the government-to-government relationship. They demanded the right to run their own programs and follow our own ways of governance.

Then, in 1987, a journalism investigation exposed rampant fraud that diverted BIA funding everywhere except to Indian reservations. The investigation claimed that just 11 cents of each dollar made it to the reservations. A special committee was created in the Senate to investigate.

In the meantime, Chairman Sid Yates of the House Interior Subcommittee on Appropriations invited Alliance leaders to testify about the BIA funding scandal. He asked them, if Congress required the BIA to simply give the tribes the funding directly, how would they handle it?

The tribal leaders worked around the clock and proposed what became the Self Governance Demonstration Project. Ten tribes, including the Mille Lacs Band of Ojibwe, were allocated \$100,000 each to plan how we could do a better job with BIA funding than the BIA was doing.

Instead of getting 11 cents of every dollar, what if we could get 80 cents? That was the focus of the Mille Lacs Band approach to self governance. In 1990, we became the first tribe to hold self governance compact negotiations with the BIA.

The idea of self governance was, and still is, that we negotiate for a tribal share of funding for programs the BIA or Indian Health Service would otherwise provide. Then we design program services and activities based on our priorities.

We faced many battles in those early years. Many Federal employees opposed self governance which they saw as a threat to their authority, budgets and jobs. We could not get complete budgetary information from the BIA and some officials were actually hiding money.

Also, we were not allowed to negotiate for anything that was an inherent Federal function, things that only the Secretary could carry out. Of course many Federal officials argued that nearly everything they did was an inherent Federal function.

We faced similar battles in 1990 with the Indian Health Service when it became a part of the self governance. We will have challenges today but self governance works. Here are a few examples.

Our Walleye Pike and Mille Lacs Lake are threatened due to invasive species. To help the Walleye recover, we wanted to start a fish hatchery but hatcheries can cost several million dollars. Instead, we scavenged parts from other hatcheries and junk yards and we built a hatchery for just \$10,000. We reprogrammed self-governance funding to support it because that was our priority.

Another example is as a part of the battle against opioids, we recently purchased a treatment facility from the State of Minnesota.

We wanted to create a culturally-sensitive recovery program at that facility. We were able to shift self-governance funds to support that priority.

Self governance allows us to more efficiently use Federal funds. Our local needs are determined by us and we dictate the use of funds, not a Federal official in Minneapolis or in Washington, D.C.

Challenges do remain. First, only \$160 million of the BIA's annual \$2.4 billion appropriation is being transferred to tribes under self governance. Second, after 30 years, the self governance is still only mandatory for the Indian Health Service and the BIA. The budgets in the BIA central office, the rest of Interior and HHS programs are all exempt.

We still have hope for growth. Thirty years ago our vision was that self governance would soon be applied across the entire Federal Government. That still is our vision.

In closing, Mr. Chairman and members of the Committee, I am very proud of my tribe's role over the past 30 years as a partner with the Congress in shaping self-governance policy. Self governance is second nature to my tribe. It is at the core of everything we do.

With your support, we seek to do much more in the next 30 years. The best government is a government closest to the governed. The best service delivery is done by government closest to those served. That is what self governance is about.

We urge swift passage of S. 2515. Miigwetch. Thank you.

[The prepared statement of Ms. Benjamin follows:]

PREPARED STATEMENT OF HON. MELANIE BENJAMIN, CHIEF EXECUTIVE, MILLE LACS TRIBE OF OJIBWE

Good afternoon! My name is Melanie Benjamin. I have had the honor of serving my people as the elected Chief Executive of the Mille Lacs Band of Ojibwe for over 16 years. Before I was elected, and during our initial self-governance negotiations, I served as the chief of staff to the Chief Executive, and as Commissioner of Administration for our Band. Our Reservation is located about one and one-half hours north of Minneapolis in east-central Minnesota, with approximately 4,500 tribal members.

Thank you for the invitation to testify today on Tribal Self-Governance, what we've done with it for the past 30 years and what more I and my colleagues and successors in tribal leadership hope to accomplish in the next 30 years.

I would be remiss at the outset of my testimony if I failed to thank this Committee for moving quickly last week to favorably report S. 2515, the "Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2018" (the "PROGRESS for Indian Tribes Act").

Mille Lacs and many other tribes have worked for the past 18 years to draft, shape, and negotiate its language, and to persuade Administration after Administration, House after House, and Senate after Senate to support its provisions. Now that this Committee has once again applied its jockey-whip to these Title IV amendments, we're down to the wire at the end of the final lap. We hope S. 2515 does not stumble on its way to the finish line in the coming weeks.

S. 2515 has been preceded by a long string of tribal self-governance accomplishments. I hope to point to some of those today in my testimony, as I briefly summarize the origins of Tribal Self-Governance policy and take a quick tour of how Tribal Self-Governance came to be, what stood in its way, what difference it makes, why it matters, and what keeps it from being more widespread.

*Scandalous Origins—How Tribal Self-Governance Came to Be.* The federal policy of Tribal Self-Governance was not conceived overnight. It was carefully crafted by some of the tribal leaders who had formed what they called the "Alliance of American Indian Leaders" and had met together in 1980s to, among other things, draw national attention during the 200th anniversary of the U.S. Constitution to the key

role Indian tribes played in the formation of the United States of America. These tribal leaders included one of my predecessors, Art Gahbow, Chief Executive, Mille Lacs Band of Ojibwe. He was joined by Joe American Horse, Chairman, Oglala Sioux Nation; Wendell Chino, President, Mescalero Apache Nation; Joe DeLaCruz, President Quinault Nation; Ernest House, Chairman, Ute Mountain Tribe; Roger Jourdain, Chairman, Red Lake Band of Chippewa Indians; Larry Kinley, Chairman, Lummi Tribe; Earl Old Person, Chairman, Blackfeet Nation; Richard Real Bird, Chairman, Crow Tribe; and Jack Thorpe, Principal Chief, Sac and Fox Tribe of Oklahoma. These leaders forcefully sought to restore a more robust government-to-government relationship between each Indian tribe and the United States. They insisted that Indian tribes should have the right to control their own programs and workforces, to prioritize where their federal funding should be applied, and to follow their own ways of governance. And they said it was imperative that the United States keep its promises it made to tribes in exchange for land and resources, and that the United States honor its trust responsibility to uphold, regulate and enforce its treaty obligations. Looking back at the 1980s today, these are indeed timeless messages and tribal leaders will accept no excuse from those who still, today, refuse to listen.

In early October, 1987, as the 200th anniversary celebrations were winding down, the *Arizona Republic* newspaper published an eight-day investigative series entitled "Fraud in Indian Country: A Billion Dollar Betrayal" that exposed the rampant and systemic diversion of Bureau of Indian Affairs (BIA) funding to everywhere but Indian reservations. The *Arizona Republic* series claimed that just eleven cents of every federal dollar appropriated for the benefit of Indians was reaching Indian communities.

The foul smell of that scandal led Senator Daniel Inouye, then Chairman of the predecessor to this Committee, to form a Special Committee on Investigations, to which he appointed Senator Dennis DeConcini (D 09AZ) (Chair), Senator John McCain (R-AZ) (Co-Chair), and Senator Tom Daschle (D-SD) (Member).

At about the same time, the voices of the Alliance of American Indian Leaders during the Constitution commemorations caught the ear of the House Interior Subcommittee on Appropriations, chaired by Rep. Sid Yates (D-IL), who asked leaders of the Alliance to testify in oversight hearings after the BIA funding scandals hit the headlines. The Alliance leaders were joined at those hearings by several younger tribal leaders like Edward K. Thomas, President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, and Ron Allen, Chairman of the Jamestown S'Klallam Tribe. At one point, Chairman Yates asked the tribal leader witnesses—if Congress required the BIA to simply give you the funding directly, how would you propose to handle it? What would be an effective, tribally-driven solution, he asked?

The tribal leaders worked around the clock to come up with appropriations bill and report language that sketched the outlines of the initial tribal self-governance demonstration project. They proposed a self-governance model by which tribes would have broad negotiation and operational authority to assume administrative responsibility for virtually all programs, functions, services and activities previously carried out for tribes by federal officials. The ten tribes told the Appropriations Committee they wanted to participate in this as a pilot project. They were named in the appropriations measure and each allocated \$100,000 to begin conducting planning activities.

The ten tribal leaders also worked with the Senate Committee on Indian Affairs and the House Interior Committee to add a new Title III to Public Law 93-638, that in 1991 provided a more detailed outline for the demonstration project, further describing how tribes would negotiate amounts and operate programs under the terms of a "compact" and funding agreement that replaced multiple federal program rules and reporting requirements with structures that were primarily accountable to the Indian tribe itself.

The goal at the time was to transform a historically dependency-ridden federal Indian services delivery system into a government-to-government relationship that returns power, authority, responsibility, accountability and funding to tribal governments at the local level. The result were a congressionally-imposed, tribally-driven set of self-governance authorities that stepped away from the rampant corruption, waste, inefficiency, and pointless regulatory burdens that dominated the Bureau of Indian Affairs bureaucracy. That work is not yet finished.

*Obstacles and Hurdles—What Initially Stood in the Way of Tribal Self-Governance?* Many federal officials and program staff openly and strenuously opposed tribal self-governance in its early days when it was being shaped by tribal leaders and their allies on Capitol Hill. The federal bureaucracy seemed to see self-governance as a threat to its exercise of power. Within some of the ten tribes there was internal opposition as well, fueled by a similar fear that self-governance would mean that

tribal program directors would have a new “boss”—the tribal government—rather than the federal program administrators. At its core, tribal self-governance was about shifting power to a tribe’s governing structure as the most legitimate, appropriate, and effective authority.

It should come as no surprise that tensions arise when a tribe seeks to assume a program, function, service or activity previously carried out by a federal agency office. Federal officials are understandably reluctant to sit down at the table to negotiate away their own authority, sphere of influence, and at times, even their own jobs. This is the dynamic that permeated many negotiations for self-governance agreements. Tribes typically have been faced with federal negotiating partners who act like their own jobs are at stake if the tribe succeeds in negotiating a self-governance agreement. It is true, sometimes their jobs are at issue. This raises some very delicate challenges for both the tribes and the federal officials. The human dimensions of career paths, home mortgages, children’s schools, and community ties overwhelm all thought of what is the most efficient and sound approach, which is tribal control of tribal service delivery systems. While federal workers’ personal situations can and do engender great sympathy, change like this is a normal and expected part of life. The priority must be to get the job done in the best possible fashion. The priority is not federal job protection. And there are ample provisions in federal statute to protect federal workers who are right-sized out of their present positions because of tribal self-governance assumptions.

One of the earliest battles in this struggle for power surfaced in the struggle to get accurate and complete budgetary information from the BIA. To maximize their power, federal bureaucrats would hide funding, reallocate it, and reward their favorite tribes and consultants with special year-end funding. The Self-Governance Demonstration tribes sent an army of lawyers and accountants with their tribal leaders to demand transparency, pouring over haystacks of information to find the needles necessary to determine fair tribal share allocations of funding appropriated by the Congress.

Another early battle dealt with what Congress meant when it said “all programs, activities, services, or activities, or portions thereof” were available for self-governance negotiations. Federal officials actively sought to hold back from negotiations and distribution virtually all federal funding because they argued it all supported what the Interior Secretary believed were unique, inherent federal functions that only a federal employee could fulfill. Protracted, line-by-line and function-by-function negotiations with tribal leaders helped to whittle away at the functions and money the BTA wanted to keep out of reach. Unfortunately, the BIA under President Bill Clinton Administration was able to persuade Senator Slade Gorton (R-WA) to include a rider in the annual Interior appropriations bill that kept all Central Office funding off limits to tribal self-governance negotiations. To this day, two decades later, that same restrictive rider reappears in each annual appropriations bill because tribal leaders have been unable to persuade the appropriators to stop including it. It should be removed today as the last vestige of an unenlightened and ill-advised distant past.

There were many other battle lines that remain. And similar battles have ensued with the Indian Health Service ever since Congress exposed its programs, functions, services and activities to tribal self-governance negotiations after 1990. For most of these battles, we cannot yet declare victory.

*Why Tribal Self-Governance Works.* The self-governance provisions authorize tribes to “compact” with the federal government, specifically the Departments of the Interior and the Department of Health and Human Services, to administer virtually all aspects of federal programs that are operated by those departments for the benefit of that tribe. The statute permits self-governance tribes to redesign the federal programs and, where necessary, redistribute funds among the different programs they operate. This flexibility, with authority transferred to the service-delivery level under the control of the tribal government beneficiaries themselves, is the hallmark of tribal self-governance.

The concept is similar to that of a block grant. Rather than the federal government micro-managing Indian tribes, it contracts with tribes to perform those functions. Like state governments, tribal governments tend to know best how federal programs and dollars can best serve their local communities and meet locally-determined priority needs.

Tribes are authorized in statute to plan, conduct, consolidate, and administer federally-funded programs, services, functions, and activities according to priorities established by tribal governments. Tribes have greater control and flexibility in the use of these funds, streamlined reporting requirements, and authority to redesign or consolidate programs, services, functions, and activities. In addition, tribes receive lump sum funding and may reallocate funds during the year and carryover

unspent funds to the next fiscal year. As a result, tribes are able to more efficiently and effectively use the funds to address unique tribal conditions and circumstances as they arise. Self-governance tribes are subject to annual trust evaluations to monitor the performance of trust functions they perform. They are also subject to annual audits pursuant to the Single Audit Act and OMB Circular A-133.

The rationale for tribal self-determination and self-governance has always been that the best government is the government closest to the governed, and the best service delivery is done by the government closest to those served. Both rationales fit the situation of tribal governments.

When a tribal government serves its own members—there are no cross-cultural or language barriers; there is more practical responsiveness to changing needs; there is far more direct accountability to those who are supposed to be served; and there is greater potential for maximum flexibility and efficiency.

*Why Tribal Self-Governance Has Yet to Fully Work.* It remains a bitter irony that, to this day, far too much of the federal funding appropriated each year does not reach the stark, socio-economic needs of many Native American Indian communities. Instead those funds are spent far away from Indian communities. One thing is for sure, once a tribal government receives federal dollars under a self-governance agreement, those funds are spent and churned right there in the targeted Indian community rather than in some distant city bureaucracy or research park.

One of the biggest fictions that has dogged the expansion of tribal self-governance is that an expensive and time-consuming federal monitoring, reporting, and oversight bureaucracy is needed to ensure that a tribe does not squander the scarce federal dollars it administers. What this fails to acknowledge is the tribal logic that persuaded the Congress to birth tribal self-governance policy in the late 1980s—there is no greater accountability pressure than that of the tribal voters themselves. If tribal members are not satisfied with the services they receive, they are able to organize and vote out the tribal leaders who have failed them. Tribal elections are an ultimate and effective accountability tool. No such accountability exists when a federal government staffer fails to provide satisfactory service or controls the delivery of services. Failing federal bureaucrats have the shelf-life of a nuclear fuel rod. They seemingly cannot be removed or disciplined. When the chain of command is far from the reach of the Indian community served, the quality and quantity of the federal service often deteriorates to that of an afterthought. Self-governance tribes must annually report on their performance objectives and submit to a comprehensive Single Audit Act audit. This bare minimum reporting and audit oversight structure verifies that funds are applied appropriately. Anything more is a waste of federal dollars and diverts funds necessary for direct services.

Another factor that has bedeviled the expansion of tribal self-governance is the fiction that good ideas only come from the top down. This ivory tower approach to federal Indian service delivery has trapped Indian Country in a status quo that should be rejected by Capitol Hill as unacceptable. This fiction has created federal careers. It has fueled a growth industry in consultants and study-makers. But, most critically, it has failed Indian Country. The answers that will work will come only from tribal leaders who are elected to answer to their own voters.

Still other crippling myths abound—most notably that a tribe's assumption of self-governance responsibilities must of necessity reduce the federal government's trust responsibilities. In the early days of self-governance, this notion was put forward by federal adversaries of tribal self-governance as a poison pill or as a shameless way to shirk a legal duty owed to tribes. Congress responded with a clear affirmation that nothing in the self-governance title "shall be construed to diminish the Federal trust responsibility to Indian tribes. . . ." This principle has been held inviolate in statute and in practice.

*What Difference Does Tribal Self-Governance Make?* Tribal Self-Governance for the Mille Lacs Band and many other Indian tribes has been like the difference between walking through the federal maze at midnight and walking through it at high noon. There is so much more opportunity available when you can see options and exercise your own decision-making authority.

Tribal Self-Governance means we can now design programs as we see fit. If we have a better way to provide chemical dependency treatment by using a sweat lodge, we can do it. It means we can reprogram federal funds the way we want based on our changing needs. For example, if unexpectedly we have exceptionally dry weather, we can allocate more funds to fire protection.

Tribal Self-Governance has meant we, as an Indian tribal government, sit as a *decision-maker* at the table when federal regulations are negotiated. The 1994 Amendment that made Tribal Self-Governance permanent for the BIA was the first federal Indian law that required negotiated rulemaking and for the first time brought federal and tribal officials together to negotiate the development of the

rules. As a result, they tie the hands of the federal administrators and untie the hands of tribal administrators.

Finally, with Tribal Self-Governance authorities, we use our funds more efficiently. Our local needs are determined by us and dictate the use of our funds, not a federal official located in Minneapolis or Washington, D.C. Our compacts and funding agreements with the federal government reflect a true government-to-government relationship that ensures we are not treated as just another federal contractor.

*Why Does Self-Governance Matter?* Years ago the Mille Lacs Band needed to expand our tribal business and governmental operations in order to accommodate economic growth on or near to our Reservation. We signed memoranda of agreement with a number of federal and state agencies for this development to occur. The Mille Lacs Band became the lead agency and started businesses that now employ thousands of people and established new schools, health clinics, a government center and elderly assisted-living units. Very little of this growth could have happened without tribal self-governance authority.

The Mille Lacs Band was one of the first Indian tribes to reach a compact and funding agreement with the Indian Health Service (IHS). We were able to leverage our self-governance funding to enable an expansion of our clinical services on a more efficient model. Most of the challenges we encountered in our negotiations with IHS mirrored our experience with the BIA; except that our federal counterparts on the IHS negotiating team kept showing up in military dress. At one point, we overheard them talking about how their Commissioned Corps officer uniforms presented a more imposing presence at the table. Given our history with the federal cavalry, we could not help being rather underwhelmed by that negotiation maneuver.

*What Keeps Self-Governance From Expanding?* By FY 2019, the Department of the Interior anticipates it will have entered into compacts serving over 270 tribes through about 125 separate funding agreements each year covering an estimated \$500 million. About \$ 160 million of that is comprised of funds appropriated directly to the BIA and the balance are funds transferred through BJA to Indian tribes from the Departments of Transportation, Labor, and Health and Human Services. By all accounts, self-governance has been successful in improving both the quality and quantity of services provided at the tribal level and in assisting tribal governments in developing administrative and managerial skills and acumen that are transferable to other tribal efforts to create sustainable tribal economies.

So, after 30 years, why aren't more of the 573 federally-recognized Indian tribes participating? And why is only \$ 160 million of the BIA's annual \$2.4 billion appropriation being transferred to Indian tribes under self-governance authority? And why, after 30 years is the mandatory reach of tribal self-governance authority still limited only to BIA and not to the U.S. Fish & Wildlife Service, the National Park Service, the Bureau of Land Management, and the rest of the Department of the Interior? Has Tribal Self-Governance stalled-out?

One answer may lie in the 18 year, energy-depleting battle we've been fighting to enact the Title IV amendments, which this Committee last week once again favorably reported in the form of S. 2515. The marathon battle to enact these changes, which for the most part simply mirror the excellent, tribally-driven changes the U.S. Congress applied to IHS Tribal Self-Governance 18-years ago, has diverted tribal energies away from the battle to expand the application of tribal self-governance authority.

Another reason may be that the focus given by tribal leaders to the task of creating the tribal self-governance movement in its first decade or two has become diluted by the many other areas of growth in Indian Country since the 1990s. In contrast to this competition of interests, self-governance in its early days was the constant theme of its boosters on Capitol Hill, when nearly everything our congressional allies did on federal Indian policy was infused with self-governance themes. Today, the federal Indian policy small diner of the 1980s and 1990s has turned into a mega-buffet with self-governance now one of hundreds of items vying for a place on the congressional plate.

We are not, however, without hope for renewed growth and support for tribal self-governance. If reclaimed, the original meaning and intention of self-governance would be directly relevant to every item on today's buffet line of federal Indian policy. In every aspect of the federal-tribal relationship, only the Congress with its plenary power can write federal statutes across every federal program and every federal agency that curb the power and ability of federal agencies and officials to interfere with tribal program authority, shifting power and authority from federal to tribal government hands. There is much more that can be done.

*Thirty Years of Conclusions.* Almost exactly ten years ago, I offered testimony to this very same Committee at a hearing entitled "The Success and Shortfall of Self-

Governance Under the Indian Self-Determination and Education Assistance Act After Twenty Years.” Much has changed since then. Much has not.

While this Committee has once again reported out the Title IV tribal amendments, in the form of S. 2515, the aptly-named PROGRESS For Indian Tribes Act of 2018, these amendments have yet to pass both the Senate and House in the same Congress and be signed into law. Will that finally change this year?

And while there are decades of experience and strengthened tribal capability and interest in self-governance, Congress has not expanded mandatory self-governance authority to other agencies within the Interior Department, to agencies in other federal departments other than IHS, or even to the BIA’s Central Office. Congress has so much more to do, and all kinds of reasons to do it. But first, Congress should immediately enact S. 2515 and once again put PROGRESS back into the self-governance word cloud of federal Indian law and policy.

Mr. Chairman, and Members of this Committee, I am very proud of my Tribe’s role over the past 30 years as a partner with you and your predecessors in the U.S. Congress as together we have shaped federal policy in support of tribal self-governance. This has led to unparalleled success for Mille Lacs Band and many other Indian tribes and no tribal mismanagement scandals anywhere near the scale of waste, inefficiency, and ineffectiveness that plagued the BTA and induced your predecessors to give tribal leaders a chance to show we could do better. We have. And, with your participation, we seek to do far more in the next 30 years.

The CHAIRMAN. Thank you, Chairman Benjamin.  
Chairman FLOYD.

**STATEMENT OF HON. JAMES FLOYD, PRINCIPAL CHIEF,  
MUSCOGEE (CREEK) NATION**

Mr. FLOYD. Thank you, Mr. Chairman and members of the Committee. It is a pleasure to be asked to come and speak this afternoon.

I would add we have reviewed the Progress Act and are very supportive of that. We appreciate the movement that it has made through the Committee.

I would like to begin by talking a bit about the Muscogee Creek Nation. We are the fourth largest federally-recognized tribe in the United States with more than 85,000 members. Our area encompasses 11 counties in the mid central part of the State of Oklahoma, approximately the size of the State of New Jersey.

Our progress in self governance really began with the Indian Self-Determination Act and contracting. It parallels my career as well. I first went to work for the Muscogee Creek Nation in 1978. We were putting plans together to contract from the Indian Health Service. We were one of the first tribes in the United States to contract an entire service unit consisting of a hospital and three outpatient clinics from the Indian Health Service.

I kind of learned that part, left the tribe and then had a Federal career built in the Indian Health Service and the Department of Veteran Affairs. I retired and am now back, in full circle, as the Principal Chief of the Muscogee Creek Nation.

We would like to say we were one of the first tribes in self governance for the Department of Interior but we were not. We came onboard in 1992. We do have a compact for all the BIA functions of then area office and work very closely with the regional office as well.

Overall, I think our experience has been very positive in the three years I have been Principal Chief. I like that self governance has given us both flexibility and stability. As you know, not having a budget and working off continuing resolutions, we have been able

to continue our programs uninterrupted during this time. That has helped to take out a lot of concern among staff and those people we serve. There are many parts that have been very beneficial to us.

Moving forward, I think there are things I see that should be expanded. That is why I am excited by the Progress Act because I think besides providing the service to the people, it adds accountability. I think we should be proud to show we are accountable for the money we receive.

Looking at the Department of the Interior, there are certain things I think we can improve upon. One is the benefit we have as self-governance tribes is that we can have stability, as I mentioned, and carry forward funds.

With the BIA, I see that at the end of the year, unspent monies are kind of cast out for grants to tribes. I think, in lieu of us generating proposals each year, that should be turned over to shares and we negotiate the shares or that be distributed, essentially how they are now among the tribes.

I think that would provide even more efficiency and eliminate some of the work we see right now to distribute the money that remains at the end of the year.

I think also as we go forward, we would like to see more in terms of possibly joint ventures, especially with the education programs. We rely upon BIE for quite a bit of our funds for students.

Among the Five Civilized Tribes, four of us operate boarding schools. We do have some facilities that need to be upgraded. In addition to the BIA funds, the BIE funds, we have put in tribal funds. I think it naturally lends itself to joint venturing so we can maintain the standards we feel obligated to provide to our students.

Last year, 100 percent of our seniors in our boarding school graduated. We are proud of that. We hope we will have the same again this year. I think that would add stability as well to the education component of it.

We appreciate the roads money. We would like to see that expanded as well, particularly with the Department of Transportation.

Mr. Chairman, that concludes my time. I would be glad to answer any questions you might have. Thank you.

[The prepared statement of Mr. Floyd follows:]

PREPARED STATEMENT OF HON. JAMES FLOYD, PRINCIPAL CHIEF, MUSCOGEE (CREEK)  
NATION

Good Afternoon Chairman Hoeven, Vice Chairman Udall, and Committee Members. It is my pleasure to be before you today to share the Muscogee (Creek) Nation's Self-Governance success story. This hearing is well timed as the Committee has just advanced the PROGRESS for Indians Act which modernizes Title IV of the Indian Self-Determination and Education Assistance Act and others weigh expansion of those Self-Governance tenets to other federally operated programs within the Departments of Agriculture and Health and Human Services.

Self-Governance changes the governing landscape for tribes, it providing tribal leaders with choices to expand services, to serve more citizens, and tailor opportunities based on local needs through innovative programmatic delivery, administrative efficiencies, and coordinated services. Muscogee (Creek) Nation has leveraged the flexibility within the program to provide expanded burial assistance services, to support additional child welfare and family programs, to offer policing services, and to execute complex land, title and record transactions. Though the Muscogee (Creek)



Nation has several great examples where Self-Governance has improved the delivery of federal programs for Muscogee citizens and other tribal citizens, today I am going to focus on the success of our Law Enforcement and Realty Department.

The Muscogee (Creek) Nation is the fourth largest federally recognized Tribe in the United States with a total population of 85,501 tribal citizens—more than half of whom live within the tribal jurisdiction. MCN tribal headquarters are centrally situated within the Nation's jurisdiction in the city of Okmulgee. The service area consists of urban, rural, and very remote areas and population densities vary from fewer than fifty (50) residents, to Tulsa, one of the largest urban areas within the State of Oklahoma. The Muscogee (Creek) Nation's Lighthorse Police Department ("Lighthorse") patrols and polices the entire MCN jurisdiction, which covers eleven (11) counties and nearly 5,000 square miles in the east central part of the state of Oklahoma.

Without Self-Governance, Muscogee (Creek) Nation would have to rely solely on the Federal Bureau of Investigations to patrol, police and investigate crime on tribal and individual trust and restricted properties. The sheer size of the Nation's needs greatly outweigh the human and capital resources available in the Muskogee Satellite Office. However, Self-Governance provides base funding to support the Criminal Investigation Division within the Lighthorse Police Department and empowers the Nation to work with other police departments to enhance the safety of communities across the entire jurisdiction.

The MCN Lighthorse Police Department employs more than 65 people, including 42 sworn officers, 12 reserve officers, and several criminal investigators who are responsible for patrolling an area larger than the state of New Jersey. MCN Lighthorse has primary policing responsibilities over all tribally-owned, restricted and trust properties totaling more than 150,000 acres, including 25 individual MCN Indian communities, 9 gaming and 9 tribal health facilities, five tribally-owned housing properties, many tribal offices and the College of the Muscogee Nation.

To best service MCN communities and assist cities within the Nation jurisdiction, Lighthorse maintains Cross Deputization Agreements with non-tribal law enforcement agencies across the MCN original jurisdiction, including county and city police departments. These Agreements allow Lighthorse officers, local law enforcement officers, state, county, and federal officials to cooperatively manage active scenes and provide policing services when necessary. Current Agreements include police departments for the cities of Tulsa, Bristow, Okmulgee, Morris, Dewar, Eufaula, Wetumka, Holdenville, Okemah, Weleetka, and the Sheriff Offices of Wagoner and McIntosh Counties.

An active Law enforcement division is foundational for any government, but for Tribal governments it is the only way to protect its citizens in an ever-growing and complex jurisdictional environment. Another critical function for tribal governments is related to land ownership, protection, and management as performed by the Nation's realty office. For nearly 22 years, the Muscogee (Creek) Nation has operated the Land, Title and Records Office functions. These functions are crucial to the Nation's restricted and trust property owners and essential to the economic vitality of tribal nations.

The Nation's Realty Department is the repository of information related to all trust and restricted property within the jurisdiction. The Department employs seventeen individuals to maintain land ownership records, to provide Title Status Reports, to execute and oversee all trust and restricted property leases, to assist citizens in the probate process, to perform onsite inspections and surveys, and to approve right-of-way and easements. The Nation's performance of nearly all matters related to trust and restricted property removes many bureaucratic barriers for tribal citizens and the tribal government.

The Realty Department houses all records related to restricted property onsite, which allows realty employees to research and provide available documents upon requests of a tribal citizen on the same day. The speed in document recovery and one-on-one assistance provided is critical during a family's probate procedure or leasing process. It also helps protect the interests of individual land owners, while provide clear and concise information to tribal landowners. The Department not only provides critical information to Muscogee citizens, it also maintains and sources records for the Bureau of Indian Affairs, oil and gas companies, and other municipalities. Maintenance of the land and title records within the Nation is a time intensive process that requires regular manual updates because the BIA system cannot currently support restricted land ownership. As such, Muscogee (Creek) Nation subsidizes the funds provided by the Department of the Interior to ensure that citizens and third parties have adequate and timely access to essential land records.

Since Muscogee (Creek) Nation first signed its compact more than twenty years ago, tribal leaders before me have worked persistently to create, maintain, and ex-

pand essential government functions. Today, like other governments, the Nation searches for opportunities to provide better services when, where and how citizens need them. Only through Self-Governance can I and others continue to pursue the goals leaders set before Congress in 1988 and only with your support can Tribal governments continue to claim their space among the family governments. I look forward to working this Committee and others to ensure that Tribes can continue serve the best interests of their citizens. Thank you for this opportunity. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you, Chairman Floyd. We appreciate it.  
Governor HISA.

**STATEMENT OF HON. CARLOS HISA, GOVERNOR, YSLETA DEL SUR PUEBLO**

Mr. HISA. Good afternoon, Chairman Hoeven, Vice Chairman Udall and members of the Committee.

My name is Carlos HISA. I am the Governor for Ysleta del Sur Pueblo. I have served in the capacity of Lieutenant Governor or Governor for close to 20 years now.

Before I go on, according to custom, may I introduce people here with me? Here with me is Councilman Candelaria and Linda Austin, Director of Operations. She is also here to help me answer some of the questions. She is the one who spearheads our self governance and data collection. I asked her to come along in case I get stuck for some reason.

You were provided a copy of my testimony. I am not going to read from it. It tells you a bit of the history of the Pueblo, where we come from as a people and our struggles in the past, our journey into self governance, the reason and why we focused on collecting data to make our decisions as a community to prioritize and go out and fund projects.

Our transition into self governance was a smooth one. We were recognized in 1987 as a Federal tribe. We always operated similar to self governance. BIA was at a distance from us. They really entrusted us to manage our programs.

When we decided to move forward and do a conversion into self governance, it was a smooth one. We identified the need to go to self governance but also we identified that the tribe was operating in a way that was not really productive.

We were chasing grants. We were out there chasing money and implementing programs not really created specifically for our community and our people. We decided to stop doing that and find a way to identify and prioritize our needs and fund them.

In addition to going to self governance, in conjunction with that, we developed a program to capture data and use this data to go out there and identify the internal needs and be able to use self governance monies to fund these projects.

If the money was not available through Federal assistance or programs, we needed to find other means to operate which is why we also include economic development as part of our study to reach out and get the information.

Throughout the years, we have slowly improved the way we gather information. We also provide you with a copy of our last social economic profile which identifies what we used to prioritize the needs for the community.

We use the Census model questionnaire that is done every ten years in the United States to sort of mirror our questions. We did that because to be able to compare where we stand as a Nation compared to the United States, compared to the county of El Paso and the City of El Paso.

We use these measurements to measure our success with our programs once we identify the need. Self governance has really turned the Pueblo around. We have identified the needs and focused on them. We have found a way to grade ourselves and hold ourselves accountable to be able to share our priorities with the community and move forward together as a Nation as we should.

We support your efforts. We want to say that we stand behind you in pushing these efforts in self governance. It is a good thing for Indian Country.

I would recommend that every funding agency out there or government agency adopt self governance and allow tribes to determine what is good for them and where they need the money to go, depending on the programs.

I am open to any questions. Thank you.

[The prepared statement of Mr. Hisa follows:]

PREPARED STATEMENT OF HON. CARLOS HISA, GOVERNOR, YSLETA DEL SUR PUEBLO

Good afternoon, Chairman Hoeven, Vice-Chairman Udall, and Members of the Committee. I am Carlos Hisa, Governor of the Ysleta del Sur Pueblo located in El Paso County, Texas. For the past 18 years I have served as Governor and Lt. Governor of the Pueblo. My term of office is one year. I am accompanied by Linda Austin, Director of Operations, who coordinates both self-governance and data management initiatives for our Pueblo. I am here today to share how data management has been an important piece in our self-governance journey. More specifically, I want to share that our notoriety has been an evolutionary process since our federal recognition in 1987.

**Brief History of YDSP**

YDSP is one of three federally recognized Native American tribes in Texas, and the only Pueblo. During the period of early Spanish settlement (1598–1680), relations between the Pueblo Indians and the Spaniards were strained, which brought fierce oppression of all Pueblo people. In 1680, New Mexico Pueblo Indians rebelled against the Spaniards. This caused many tribal factions to relocate to modern day northern New Mexico and west Texas, which includes the Tigua region. The Tigua people of Ysleta del Sur were industrious farmers who raised wheat, corn, cattle, and horses. The Tigua were also instrumental in building the Ysleta Mission. Today, Ysleta, Texas has been home to the Tigua people for over 300 years. That said, YDSP is the oldest community in the State of Texas as well as the oldest running government in the state since its establishment in 1682. The Pueblo's culture continues to flourish as each generation proudly promulgates its heritage. At the end of 2017, the YDSP population was 4,226.

**YDSP Data Management Philosophy**

The Pueblo's data management philosophy is better understood when coupled with our self-governance framework. Self-Governance is fundamentally designed to provide tribal governments with control and decisionmaking authority over the federal financial resources provided for the benefit of Indian people. From its federal recognition in the late 1980s, YDSP did not experience the traditional BIA contract support—typically the BIA would administer direct services such as enrollment, social services, education, and others. However, we assumed the responsibilities exclusively to create and maintain these direct services. Thereby, the Pueblo unknowingly initiated self-governance principles to address needs with limited resources. Not only was the Pueblo strategic in its design of its government, but also provided the experience to create and maintain its own data management systems. In short, the 2013 transition to self-governance for our Pueblo was seamless. At the time, YDSP was the 252nd tribe (out of 567) to join self-governance and only one of five Pueblos in the Southwest Region.

One of the tenets of self-governance is that it empowers tribes to prioritize needs and plan growth at their own tempo, in accordance with their unique cultures and traditions. One approach to prioritizing needs is to conduct community assessments on a regular basis. By embracing this philosophy, YDSP has realized material and substantial gains in its efforts to advance the socioeconomic and health outcomes of its citizens.

#### **YDSP Data Driven Outcomes**

Some of YDSP's more recent outcomes and successes can be attributed to its data administration practices. These practices have driven the Pueblo's management decisions effectively in planning, securing future funding, and resource allocation. For example, the Pueblo engaged in enrollment reform to remove blood quantum requirements in the 2000s which doubled the population. To prepare for the financial implications, YDSP conducted a budget study to determine the financial impact on direct services resulting from the potential population surge. This study highlighted the financial shortages especially related to health services and became the impetus for a healthcare planning study that ultimately led the Pueblo to apply for the Indian Health Service (IHS) Joint Venture Program. The Joint Venture Program enables tribes to construct new healthcare facilities with tribal funds, while IHS funds the staffing costs for the life of the program.

In addition, YDSP began publishing formal socioeconomic profiles of its citizenship in 2008. The most recent profile is the 2016 assessment and, like the others, serves as a periodic snapshot of the Pueblo containing an array of indicators such as education levels, employment, household size, and income. These data, and subsequent findings, are employed as a foundation for policy and/or resource management decisions. YDSP leads these efforts given that secondary data sources, such as the U.S. Census Bureau and other governmental agencies, often do not accurately reflect the Pueblo's characteristics and traits. Rainie et al. (2017) states that the "Indigenous nations in the United States face a 'data landscape' marred by sparse, inconsistent, and irrelevant information complicated by limited access and utility" (1). The YDSP Socioeconomic Profile aims to bridge these data gaps. Further, in the spirit of self-governance, it is imperative that tribal nations lead their own data studies to capture the nuances and culturally sensitive issues inherent to only them.<sup>1</sup>

YDSP's 2012 Socioeconomic Profile was successful in engaging Pueblo members and outlining its socioeconomic status. It played an important role, helping to assess needs and develop goals and objectives that drove grant writing efforts to support new programs and services while informing Pueblo leadership of current needs. The 2012 study employed a survey instrument, entitled *Tribal Member Questionnaire*, that has evolved since its inception in 1997. Building on these experiences, the Pueblo was able to revise and modernize the 2016 socioeconomic study. The questionnaire was updated to revise survey items and modernized to streamline the data collection process. The Pueblo leading its own studies has had several key advantages such as utilizing stakeholder feedback to ensure methodologies and processes are culturally relevant and sensitive.

The 2016 Socioeconomic study's findings indicated that the Pueblo has made strides in improving its socioeconomic status. For example, the percent of YDSP members with bachelor's degrees or higher has dramatically improved. In 2016, those reporting the same educational attainment notably increased—15 percent of YDSP members 25 years and older earned bachelor's degrees or higher compared to approximately 7 percent in 2008. While the improvement is encouraging, this remains half of state and national counterparts. Further, the 2016 study revealed that approximately 30 percent of YDSP members have attended college, however, they had not completed their degrees. A later analysis suggested that many of these members had dropped out. This in turn has prompted the Pueblo to reexamine how it supports members who are interested in going to college beyond financial assistance alone. In other words, the Pueblo is investing resources into developing a case management approach where YDSP staff will coach, mentor, and monitor higher education students.

The findings have identified and substantiated education needs, thus making higher education attainment a priority. It is understood that lower educational attainment most likely influences other factors such as income, financial security, and overall quality of life. Prioritizing education remains at the forefront of the Pueblo's

<sup>1</sup>References: Rainie, SC, Schultz, JL, Briggs, E, Riggs, P, and Palmanteer-Holder, NL. 2017. "Data as a Strategic Resource: Self-determination, Governance, and the Data Challenge for Indigenous Nations in the United States." *The International Indigenous Policy Journal*, Volume 8, Issue 2.

agenda as evidenced by investing in both continuing educational programming and creating high quality early learning programs. These programs aim to mitigate barriers to financial security while creating safe and stable households. Equally important, the Pueblo's economic development efforts—such as our Speaking Rock Entertainment Center—can create different avenues to achieve similar outcomes. Speaking Rock has been a true success story in our self-governance journey despite the State of Texas Attorney General's unwavering grievances. It is unfortunate that the State does not fully recognize us as a sovereign. These challenges obstruct our pathway to self-sufficiency. Thus, it is imperative that each sovereign collaborate in harmony to harvest the community's fullest potential.

### **Conclusion**

Ysleta del Sur Pueblo embodies the principles of self-governance. From its data management to resource allocation to service delivery, the Pueblo implements self-governance strategies to design future programs to address today's needs. The Pueblo's vision for the next 30 years holds no barriers to the success it stands to achieve. Tribes perform better when they set their own trajectories, allocate their own resources, and establish priorities based on tribal data and needs. It is also a tool to broaden self-determined efforts to spark innovation, courage, and resiliency. Self-governance is not a program with a beginning and end, it is paradigm shift that changes the thinking of status quo to that of endless potential. In essence, self-governance works when making data driven decisions.

The CHAIRMAN. Thank you, Governor Hisa.

I would turn to Senator Lankford. Did you want to offer a greeting before we have our final witness?

### **STATEMENT OF HON. JAMES LANKFORD, U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. I did. I appreciate that, Mr. Chairman.

I am, like several of us, on three different committees and three different times right now and having to bounce back and forth to be able to connect and pick up bits and pieces.

I did want to do both a greeting and a formal introduction of Principal Chief Floyd. It is good to see you again. We have the opportunity to be able to see each other back home in Oklahoma, but it is good to see you here.

Chief Floyd has been a great leader for a great tribe. The experience you bring here, both from what the tribe has done for so long with self governance and be able to bring that insight here is very valuable, not just in this conversation but your experience working before, as you mentioned, for so long in so many different entities and to be a pioneer in this area.

The Muscogee Creek established one of the earliest hospitals, if not the first, to be able to work and take care of health care issues. The College of the Muscogee Nation is an accredited college and doing extremely well.

That is something you did not mention in your testimony but I need to tell you that you need to lead with that because some remarkable education is going on there and also some of the things you continue to do. The interior system and cultural preservation, all those things have been exceptionally valuable.

I am grateful to see you here. Thanks for bringing your testimony today.

Mr. FLOYD. Thank you, Senator Lankford.

The CHAIRMAN. Thank you, Senator Lankford.

President Blazer, proceed with your testimony, please.

**STATEMENT OF HON. ARTHUR "BUTCH" BLAZER, PRESIDENT,  
MESCALERO APACHE TRIBE**

Mr. BLAZER. Good afternoon, Chairman Hoeven, Vice Chairman Udall, and members of the Committee.

My name is Butch Blazer and I serve as President of the Mescalero Apache Tribe located in southern New Mexico. Thank you for this opportunity to testify.

I would also like to extend a special thank you to Senator Udall for his efforts on behalf of the Mescalero people and the rest of Indian Country.

While Mescalero did not embrace Indian self determination programs or tribal self governance programs at first, we have entered into a number of BIA self-determination agreements over the years. Expanding self governance and self determination authority beyond BIA and the Indian Health Service to programs at USDA would strengthen tribal sovereignty and help preserve Native culture.

Our lands and our culture are fundamental to our way of life. Equally important is our connection to our ancestral lands now administered by Federal agencies like the U.S. Forest Service.

Our original reservation boundaries encompassed what is now the Lincoln National Forest and nearby Bureau of Land Management lands. Our reservation shares more than 40 miles of common border with them.

We have always maintained strong ties to these lands. We continue to gather plants and conduct ceremonies in the Lincoln National Forest. Evidence of our connections is found throughout the forest from rock art to our mescal pits. The mountains in Lincoln are sacred to our people.

In addition, since 1960, we have managed the Ski Apache Resort located in the Lincoln National Forest under special use permits. We invested nearly \$20 million to improve the resort and develop year round recreation, including world class zip lines.

Ski Apache generates 350 jobs, very important jobs for our people and contributes millions to the local economy.

We have worked with the Bureau of Indian Affairs for more than a century to make our forestry program one of the best in the Nation, maintaining a healthy tribal forest on a shoestring budget.

However, the 2012 Little Bear fire showed us that poor conditions on Federal lands endanger our forests. Our assets at Ski Apache and our sacred places, as I mentioned earlier, are in the forests.

The fire started with a lightning strike in the Lincoln. The Forest Service viewed it as a non-threatening fire and allowed it to smolder. The fire exploded and raged through the resort and to tribal lands. The fire burned more than 44,000 acres and destroyed 255 homes. Damages exceeded \$100 million. It could have been worse.

In 2008, the tribe completed a hazardous fuels reduction project on the Eagle Creek portion of the reservation. As the Little Bear fire spread, the previously treated Eagle Creek area provided space to turn the fire away helping to avoid complete devastation of the nearby village and local source waters.

Congress passed the Tribal Forestry Protection Act of 2004 to prevent exactly this type of threat posed by the unhealthy Federal lands near Indian Country. Mescalero uses the Act to treat Lincoln National Forest lands along our shared boundary, preserve our ancestral homelands and improve our relationship with the Lincoln.

However, our stewardship contract ended far too early. It was limited in scope and just did not fit. We were required to enter a goods-for-services contract basically as a vendor. The contract did not recognize tribal sovereignty.

Today, I ask you to expand the Tribal Forest Protection Act to authorize tribal agreements with the USDA and the Bureau of Land Management. This proposal is supported by many tribes across the country.

Legislative language to accomplish this goal is included in the House version of the 2018 Farm Bill. My written testimony contains suggestions to further strengthen that House Farm Bill. Expanding self determination and self governance to Forest Service programs will create synergies to better leverage limited resources and help to ensure the tribes, Forest Service, States and local governments better collaborate on forest-related issues.

I truly understand the importance of collaborative efforts from when I served as the first ever Native American State Forester for New Mexico.

Thank you.

[The prepared statement of Mr. Blazer follows:]

PREPARED STATEMENT OF HON. ARTHUR "BUTCH" BLAZER, PRESIDENT, MESCALERO APACHE TRIBE

### **Introduction**

Good afternoon Chairman Hoeven, Vice Chairman Udall and Members of the Committee. My name is Arthur "Butch" Blazer. I am President of the Mescalero Apache Tribe (Mescalero Apache or Tribe). Thank you for this opportunity to testify on the past success and the future of the Tribal Self-Governance program.

### **Background: the Mescalero Apache Tribe**

Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. Our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak, protected our Nation and nourished our people. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our ancestral homelands, the Mescalero Apache Tribe entered into the Treaty with the Apaches with the United States on July 1, 1852. The Treaty promised the Tribe a permanent homeland on small portion of our aboriginal territory. The Mescalero Apache Reservation (Reservation) was later established by a succession of Executive Orders in the 1870s and 1880s. Our Reservation spans 720 square miles (460,405 acres) across south-central New Mexico and is home to approximately 5,000 tribal citizens and 200 non-Indian residents.

The original Reservation boundaries encompassed lands that are now held in federal ownership, including the Lincoln National Forest (LNF) and Bureau of Land Management (BLM) lands bordering our Reservation. The Mescalero Apache people have maintained strong ties to these ancestral homelands. We continue to gather plants important to our traditions and conduct ceremonies on adjacent and nearby federal lands. To strengthen our ties to these lands and to exercise input into their management, the Tribe has entered into Memoranda of Understanding (MOUs) with federal agencies, including the U.S. military and U.S. Forest Service (USFS).

### **Indian Self-Determination and Tribal Self-Governance**

While the Mescalero Apache Tribe did not initially embrace Indian Self-Determination or Tribal Self-Governance, we have entered into a number of Self-Determination contracts with the Bureau of Indian Affairs (BIA) over the years, including agreements to operate our tribal forestry program and tribal court system.

Our leadership, like many treaty tribes, believes that the Treaty our ancestors signed with the United States, ceding vast areas of our ancestral homelands, compels on the United States sacred obligations to provide for the general health and welfare of our people. Far too often, the United States has directly abrogated or ignored these solemn treaty promises.

Congress enacted the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and later the Tribal Self-Governance Demonstration of 1988 (TSG) to offer tribal governments greater control over federal programs and services designed to meet the United States' treaty and trust obligations to Native communities. While these mechanisms sometimes ask Indian tribes to do more with less, the programs have improved over the years—thanks in large part to Supreme Court decisions that force the government to fully fund contract support costs, and congressional appropriations that have implemented those decisions.

### **Expand Indian Self-Determination and Tribal Self-Governance to USDA**

USDA administers a wide range of programs and activities that directly impact Indian tribes and tribal lands. Many USDA programs lend themselves well to tribal management under contracting and compacting authority. My testimony today focuses on expanding Self-Determination and Self-Governance authority for tribal governments to enter agreements with USDA-Forest Service. However, as noted below, we also urge Congress to consider extending Self-Determination and Self-Governance authority to a wide range of USDA programs.

Regarding federal forests, USDA has acknowledged that the vast majority of federal forest lands are carved out of the ancestral homelands of Indian tribes. The historical and spiritual connection of tribes to federal lands was never extinguished. Treaties, federal court decisions, Executive Orders, laws, and regulations affirm the retained right of Indian tribes to hunt, fish, gather, and access sacred places and exercise Native religion on off-reservation federal lands.

As noted above, the Mescalero Apache Tribe's initial Reservation and ancestral homelands include the Lincoln National Forest and nearby BLM lands. Evidence of our connection to LNF is found throughout the Forest, from rock art to mesquite pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers—holy beings that ensure our well-being. In addition, the Tribe has invested significant resources in Ski Apache, a resort owned and operated by the Tribe pursuant to a special use permit. Ski Apache is located on LNF lands bordering our Reservation.

Because of these historic ties and investments, the Mescalero Apache Tribe and many Tribal Nations similarly situated hold considerable interest in co-managing these nearby federal lands. One method of enhancing tribal control and management of such lands would be to enhance the Tribal Forest Protection Act to authorize USDA-Forest Service to enter into Self-Determination contracts or Self-Governance compacts with Indian tribes.

### *Mescalero Apache Forest Management Practices on Tribal and Federal Lands*

For centuries, the Mescalero Apache Tribe has managed our forests holistically to promote the growth of food and medicinal plants, to manage the wildlife in our forests, and to protect our lands from invaders. We view our forest as a dynamic living entity. It provides water, food, shelter and a means of employment and revenue for Tribal citizens. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation. While the local BIA agency oversees the overall management of the forest on the Reservation, many of the projects, such as thinning for hazardous fuels reduction and timber marking, are completed by the Tribe.

The progressive working relationship with BIA Forestry and the implementation of ISDEAA contracts to take on some forestry services has allowed the Tribe to ensure continued success in forest management.

The Tribe has treated approximately 42,000 acres, out of a total Reservation land base of 460,405 acres, through commercial harvest. Through funding allocated under the Interior Department's National Fire Plan and other federal programs starting in 1999, the Tribe has treated an additional 59,094 acres through hazardous fuels reduction projects.



While the Tribe has worked hard to maintain a healthy forest on our Reservation, for many years Tribal leadership has been concerned about the very dense forest conditions in LNF, which borders our Reservation on three sides. Due to the unhealthy condition of the LNF, we have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS lands die around us.

*Lessons Learned from the Little Bear Fire of 2012*

The Little Bear Fire of 2012 provided a prime example of the benefits of strong tribal government forest programs, and the need to strengthen tribal government management of federal lands.

The Little Bear Fire started modestly on June 4, 2012. Lightning in the White Mountain wilderness in LNF sparked the initial small fire. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only day shifts, air tanker resources were not utilized and helicopter water drops were minimal. On the fifth day, the fire jumped the fireline and high winds turned the fire into an inferno. That evening the fire blazed through the Ski Apache Resort, and crossed onto Tribal lands.

Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded \$100 million. It could have been much worse.

In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso, and prevented complete devastation of the Village of Ruidoso source waters.

A comparison of the impacts of the Little Bear Fire on the healthier tribal forests and much less healthy LNF provides ample justification to authorize USDA-FS to engage in Self-Governance contracting/compacting authority with Indian tribes to manage federal forests.

*Ski Apache: Mescalero Apache Investments in the LNF*

Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is located on the northern border of the Reservation.

Over the past 58 years, the Tribe has made significant improvements to the Resort. Recently, the Tribe invested \$15 million to triple the ski lift capacity at Ski Apache. In 2014, the Tribe invested more than \$2.6 million for non-ski, year-round recreation at Ski Apache, including several world-class zip lines. Ski Apache employs up to 350 people during the ski season and contributes millions of dollars to the local economy.

Ski Apache incurred more than \$1.5 million in damages from the Little Bear Fire. Because of the volume of trees that were burnt, there existed a real danger of flooding that could have destroyed buildings, completely re-shaped the existing ski runs, and taken out access roads. Due to additional investments and work conducted by the Tribe, major flooding was avoided.

The Forest Service gave little consideration to the importance of Ski Apache or the overall local economy in its response to the Little Bear Fire and in its forest management plans. Closure of Ski Apache for a single season would devastate the economies of both the Village of Ruidoso and the Tribe. Despite the importance of Ski Apache, even after the Fire, LNF prioritized other areas for fire rehabilitation efforts instead of Ski Apache.

Under the current arrangement, the U.S. Forest Service administers the lands that encompass Ski Apache and has the legal responsibility to respond to emergencies. However, it has been the Tribe that has acted as the primary first responder in many emergency situations.

At the same time, the Tribe, as a permittee, is solely responsible for rehabilitation and all related costs. When it came to the Little Bear Fire, the Tribe first had to gain approval from LNF before taking such action. Ski Apache quickly submitted a request to LNF to begin rehab efforts. It took LNF months to respond. While, LNF committed to cleaning piles of burned trees, it took over 18 months for that action to occur. If the Tribe had not taken the initiative to protect our assets, they would have been lost in the Little Bear Fire.

These delays would be avoided if the Tribe had an active Self-Determination/Self-Governance agreement with the Forest Service. To protect our investments and our

sacred places, the Tribe has a considerable interest in taking on a greater management role of the LNF and preventing future wildfires and resulting flooding that would devastate the Resort.

#### *USDA—Forest Service Programs*

Congress enacted the Tribal Forest Protection Act of 2004 in response to devastating wildfires that crossed from federal onto tribal land in the summer of 2003. TFPA provides a tool for Tribes to propose work and enter into stewardship contracts and other agreements with the Forest Service or Bureau of Land Management to reduce threats on federal lands adjacent to Indian lands. The Forest Service alone shares approximately 2,100 miles of contiguous boundaries with Indian tribes. The TFPA authorizes the Secretaries of Agriculture and Interior to give special consideration to tribally-proposed projects on federal land bordering Indian trust land.

From 2004–2008, only 10 TFPA contracts and agreements were awarded. These contracts and agreements covered 23,230 acres and 51.5 miles of boundary. USFS-tribal TFPA stewardship contracts have been limited in scope, focusing on hazardous fuels reduction and invasive species treatment. This disappointingly slow implementation of the TFPA continues to thwart the Act's intent, leaving tribal forests more vulnerable to catastrophic wildfire, disease and infestation from adjacent federal public lands. TFPA partnerships should be aggressively expanded.

A case in point of the positive but limited impact of the TFPA is the stewardship contract that the Mescalero Apache Tribe entered into with the USFS.

Through the "16 Springs Stewardship Contract" in 2006 with LNF, the Tribe conducted hazardous fuel treatment and reduction of more than 6,300 acres of LNF lands mostly located along the shared boundary between our Reservation and LNF. Due to the Tribe's efforts, these USFS lands are much healthier now than they were before. Added benefits of the stewardship contract included strengthening connections with our ancestral homelands, the resulting improved relationship between Mescalero forest personnel and LNF staff, and gaining a better understanding of the management constraints placed on the LNF.

However, the stewardship contract ended far too early. Many thousands of additional acres of dense forest within LNF remain untreated and continue to threaten the lives and property of Tribal members and the general public. Another major drawback of stewardship contracts is the contracting tool itself. We were required to enter into a "goods for services" contract, which does not recognize tribal sovereignty or the federal-tribal government-to-government relationship.

Authorizing USDA to enter into Self-Determination contracts and Self-Governance compacts with Indian tribes will improve on the TFPA, providing stability and consistency to tribal government's ability to access and implement the program. Because the LNF and other nearby federal lands are part of our ancestral homelands, the Tribe must be able to offer meaningful input into the management of these lands that goes before and beyond NEPA. Tribes need to have a greater presence in the development of forest management strategies.

*To accomplish this goal, we urge Congress to take the TFPA to the next level—and expand the program to authorize Self-Governance-type contracts and compacts between Indian tribes and the U.S. Forest Service and BLM.* Several recent bills include the authorization needed, including Sen. Daines' bill, S. 3014, the Tribal Forestry Participation and Protection Act (114th Congress), H.R. 2936, the House-passed Resilient Federal Forests Act (115th Congress), and Section 8403 of the Agriculture and Nutrition Act of 2018 ("the 2018 Farm Bill") as introduced by House Agriculture Committee Chairman, Rep. Michael Conaway (R-TX).

While the Mescalero Apache Tribe supports these provisions that would authorize Self-Determination/Self-Governance agreements with the USDA, we ask that bill text or report language be added to strengthen this proposal.

The TFPA Self-Governance program should carefully limit the agency's ability to reject tribal requests to compact or contract. The program should also ensure that the work produced by the tribal-run program is incorporated into the agency's decisionmaking process. As with ISDEAA programs, the program should convey Federal Tort Claims Act protection to the tribe and tribal employees. And finally, the program should be fully funded—including the provision of all contract support costs.

Once tribes are able to enter into contracts and compacts with USDA–FS, tribal governments and tribal government priorities will truly become a part of the agency decisionmaking process, which impacts the exercise of tribal treaty rights, protection of Native sacred places, and protection of tribal investments on federal lands.

#### *USDA Food Assistance Programs*

Another area that lends itself to tribal Self-Determination and Self-Governance authority is the USDA's food assistance programs. The mission of USDA's Food Nu-

trition Service (FNS) is to improve food security and reduce hunger by providing children and low-income individuals access to food, a healthy diet, and nutrition education. FNS administers 15 Federal nutrition assistance programs.

States (and in some cases local county governments), the District of Columbia, and at least some U.S. territories can directly manage FNS programs. FNS conveys a number of policy options that enable state agencies to adapt SNAP and other FNS programs. State agencies have developed innovative methods of integrating multiple human services programs, including using the same caseworkers for multiple programs to developing shared IT and eligibility systems. State and local governments also integrate SNAP with Medicaid, TANF, and other federal programs. This flexibility helps local governments better target benefits to those most in need, streamline program administration and field operations, and coordinate SNAP activities with those other federal need-based programs.

As a result, States have flexibility to adapt their organizational structure to administer SNAP, which allows the States to serve the unique needs of their populations. States may opt to centralize or to decentralize their administrative responsibilities for SNAP, including deciding whether to administer the program at the State, county, local, or regional level.

SNAP is by far the largest of the food assistance programs administered by USDA. FNS legal authority does not permit Indian tribal governments to directly manage SNAP or a variety of other FNS programs. (Note: tribes are eligible to administer the Food Distribution Program on Indian Reservations, the Commodity Supplemental Food Program, and the Women, Infants, and Child program).

Section 4004 of the 2014 Farm Bill, required USDA to review the feasibility of extending Tribal Self-Determination and Self-Governance to SNAP and several other USDA food assistance programs. USDA released its Final Report, "Feasibility of Tribal Administration of Federal Nutrition Assistance Programs", in July of 2016. <https://fns-prod.azureedge.net/sites/default/files/ops/TribalAdministration.pdf>.

The Report found that nearly all tribes participating expressed interest in administering federal nutrition assistance programs as an expression of sovereignty and to provide direct service to tribal citizens in need of food assistance. Tribes responded that the ability to provide flexibility in the management of nutritional quality of the food provided and culturally appropriate programming and service delivery were also critical. It also found that the great majority (70 percent) of tribal governments had the needed experience to take on this authority. Tribal government experiences stemmed from longstanding Self-Determination and Self-Governance agreements with Interior agencies as well as administration of federal assistance programs offered by the Departments of Health and Human Services, Education, HUD, and other agencies.

The U.S. Constitution acknowledges that Indian tribes are separate distinct governments, on par with the Foreign Nations and the Several states. The USDA's food assistance programs should acknowledge the governmental status of Indian tribes. Tribes should be afforded the ability to directly manage all federal nutrition and feeding programs. Elected tribal leaders and tribal program directors are best able to ensure that food security needs in their reservation, rural, and very remote communities are met. Allowing tribes to take over these functions from the federal government will improve efficiency, reduce regulatory burdens, and support tribal self-governance and self-determination.

This can be accomplished by either adding language modeled after the ISDEAA and TSG to authorize USDA to enter into contracts and compacts with federally recognized Indian tribes to active bills that seek to amend the ISDEAA (S. 2515 for example) and/or to the 2018 Farm Bill.

### **Conclusion**

We urge Congress to expand Self-Determination and Self-Governance authority to a wide array of USDA programs. Doing so will increase consistency and efficiency for tribes with all USDA agencies and programs and ensure tribal administration and control of the delivery of the wide array of these essential government functions.

The Mescalero Apache Tribe believes that expanding contracting and compacting authority to USDA agencies and programs holds the potential to strengthen tribal sovereignty. Authorizing USDA-FS to enter into compacts and contracts with Indian tribes, like the Mescalero Apache Tribe, that have deep connections to federal forests will improve access and connection to tribal ancestral homelands, help protect tribal assets on federal lands, and better protect Indian reservation lands.

The CHAIRMAN. Thank you.

Now we will have five minute rounds of questioning. I will begin with Chairman Benjamin.

You talked about expanding self governance and in your testimony, you also touched on accountability. My question is how do we make sure, as we provide more self governance, we also are making sure there is adequate accountability, particularly when Federal funding is involved?

Ms. BENJAMIN. At the tribal level, if you look across Indian Country, we are required to do our audits, of course, and that would show how the money is being expended. Also, even through our programs for the Mille Lacs Band of Ojibwe, we have in-house financial responsibilities. We are set up with legislative, executive and judicial branches.

Our legislative branch, there are always checks and balances for all the programs we do within the executive or judicial branches. There is that accountability at that level. Hopefully, at the Federal level, the OMB offices will set up those policies and procedures that all the different departments to follow as well. That is how our system is set up. It is very stringent.

For me, as the Tribal Chair or Chief Executive, I cannot spend a penny unless there are checks and balances for me to move anything forward. I do believe a lot of those tribes have those kinds of policies and procedures mandated to be followed.

The CHAIRMAN. Chairman Floyd, as someone who has worked with self governance, what further recommendations do you have for us as we work on the issue of self governance for tribes?

Mr. FLOYD. As we proceed to the next generation of it, I think with the Department of the Interior, BIA, HHS and the Indian Health Service, it is kind of cleaning up some of the things on which we may have differences.

I think the chairperson talked about the inherent Federal functions. I think we have gotten through that for the most part but there are still funds we could take. Within the Muscogee Creek Nation, we do not operate any national parks or have any Forest Service land.

Being a removed tribe from the southeast, forcefully removed to Indian Territory, we still have interests in 12 States of the southeastern part of the United States. At this point, all we can do is kind talk to them and engage them in conversation.

We do not have the resources to operate in a way to effectively protect and preserve cultural sites and historic sites in the southeast. Those are growing by the hundreds. We have well over 700 on our register right now from State parks to the national parks and lands.

There is a bill we are supporting right now that is the expansion of the Okmulgee Mounds in the State of Georgia. We support them; however, we do not have the funds for that.

I think one of the things they look forward to is digging deeper to see how we might be able to get those funds under self governance so we can work more in partnership instead of a consultative-type relationship.

The CHAIRMAN. Governor Hisa and President Blazer, as well, I will ask the same question. What would you like to see as we work on the issue of self governance?

Mr. HISA. When it comes to self governance, I would like to see support and promotion of self governance at all levels of government. I would also like to recommend that it expands, as I said earlier, to all the agency funding sources out there, including HUD and USDA so that tribes can determine what their need is and use that money to address specific issues affecting them and those they identify as something they need to address. That would be my recommendation.

The CHAIRMAN. President Blazer?

Mr. BLAZER. Thank you, Mr. Chairman.

Having had the opportunity to work within the U.S. Department of Agriculture, I was able to truly gain an understanding of the tremendous capabilities that reside in all of the programs there.

Just giving tribes the opportunity to partner with USDA and bring those resources onto the reservation to do the extremely important work we need to do, that reforestation work that needs to be done to not only protect our tribal lands but to protect the surrounding communities that lie outside of the reservation is very important.

Moving towards continued self governance, strengthening the ability to enter into self determination contracts, and allowing the tribe to partner with those Federal agencies is going to lend itself to natural resource benefits for all of us. I am truly hopeful that can happen.

The CHAIRMAN. Senator Udall.

Senator UDALL. Thank you, Chairman Hoeven.

President Blazer, your testimony details how Mescalero Apache has successfully managed its forests through a combination of the tribe's Division of Resource Management and Protection and 638 contracts with BIA. It seems that the ISDEAA model is a real success story for your tribe.

However, you also testified that it could be even more successful if the tribe took on a greater management role through self governance compacting. If self governance were to be expanded beyond BIA and the USDA Forest Service-managed lands, how would that improve your current management ability, particularly of the Lincoln National Forest?

Mr. BLAZER. Again, Senator Udall, look at the resources that lie within USDA, looking at the potential resources that lie within the upcoming Farm Bill, these are the types of funding we need in order to create effective partnerships, not only with our Federal agencies, but with our State agencies and local counties.

Together, through these partnerships, we can move mountains, literally. The attitude is we are all on the same page regarding the need to work together to improve the health of our forests. Mescalero demonstrated we are able to do that. Our limiting factor has always been limited resources.

If legislation could be achieved that would allow us more resources to work with, we can definitely play our role and strengthen those partnerships.

Senator UDALL. Thank you for that answer.

Governor HISA, your testimony details how Ysleta del Sur conducts and publishes a socioeconomic profile in order to make data-

driven decisions. That seems to be the crux of what you are doing, data-drive decisions. Do you pay for these studies out-of-pocket?

Mr. HISA. Correct.

Senator UDALL. How does that work?

Mr. HISA. How does that work? Revenue is coming in from our operations, other businesses such as TY Inc. and Speaking Rock Entertainment Center. When we identified the need to gather information, we also identified the need to have a system in place where it is electronic, first of all; easy to put together and make sense of it; and bring in an expert to get all the information translated into something a tribal council and the community can understand. All that does cost money and that is something the tribe pays for every year.

Senator UDALL. Do you believe the Federal Government could serve tribes better through self governance by improving its own data collection through the U.S. Census Bureau perhaps to capture those unique nuances you described in your testimony?

Mr. HISA. I think the Census survey is not the answer. I think each tribe needs to be responsible for gathering their information, analyzing it and making sense of it, but, again, it all costs money.

What would the Federal responsibility be? Maybe it would be funding for such projects to start, get them off the ground and then turn them over to each individual tribe to make it a norm.

That is what has happened in my pueblo. It is a norm. Every decision being made, whether at the director or tribal council level, is always driven by the provided data.

Instead of having each department get their own data, we have made it a tribal council responsibility to get all the data and sharing it with the departments to identify what we need to work on.

This forces our departments to identify needs where they can work together in unity instead of each one doing their own thing, identify the available resources and not duplicate services. It has really, really worked for us.

Senator UDALL. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

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

Senator MURKOWSKI. Thank you, Mr. Chairman.

I want to thank you and Ranking Member Udall for having this hearing on tribal self governance. I think it is fair to say that self governance has literally reshaped the way in which health care and other social services are delivered to the Native people in Alaska. Whenever we have a hearing on this topic, I take great interest in it.

We have clearly seen the success through the remarkable growth of the programs over the decades. I think we heard some of that today but recognizing that about 40 percent of all the federally-recognized tribes are self governance tribes under the DOI program just is testimony to the success of this.

However, again, whether it is delivery of health care, the quality of health care, resource management, or road systems, we have seen, in Alaska, really a strong success story in these areas.

I would note that you have indicated that you would like to see tribal self governance expanded to other areas. Right now, in Sitka, Alaska, the Sitka Tribe is compacting with the National Park Service.

It is my understanding that this is the first time we have had this relationship. I would like to tell you it has been easy and perfect, but it has been exploring new territory. I think we are all looking to make sure this is something that works for the tribe, the agency, and the community, but they are really a forerunner right now in how that is coming together.

I was very interested in your testimony, President Blazer, on the approach you have taken with the co-management with USDA and the Forest Service. There is some discussion relating to USDA and the Federal Nutrition Assistance Programs and the USDA Food Assistance Programs.

The question I have for you is, we recognize there is strength in these self governance programs and we want to see expansion of them to other agencies. We recognize there are bumps in the road.

Are there some agencies that are more receptive to the idea because I think some of the problems we are dealing with are it is not just a matter of resourcing. I know how important resourcing is because you have to have the dollars to help facilitate it.

However, we also know we have some pretty entrenched bureaucracies around here. It is what it is, bureaucracy. Some agencies are more willing, I think, to work with us on co-management and the compacts that are out there.

Can you speak to that and perhaps share some of the better practices where we say, this is where it is working well, this is an area where we are not working so well, and we need to address it?

Can you shine some light on this in terms of best practices we can look to and perhaps where we can make some improvements?

Mr. BLAZER. Thank you, Senator Murkowski. That is great insight and a great question.

In regards to agencies being willing to take on this added opportunity and working with tribes, I think a lot of that goes back to our tribal ability to help make that connection.

Senator MURKOWSKI. You have to have the capacity.

Mr. BLAZER. Yes, exactly. We are very fortunate to have organizations that have been around for quite some time like the Intertribal Ag Council that works with tribes and helps to have agencies understand the potential and need for these services in order that we can truly demonstrate effective and sustainable self determination. I applaud the efforts of the Intertribal Ag Council.

With regard to nutrition, I know the Mescalero were very interested in establishing a sustainable food program. This is something we are excited about and want to enter. We immediately turned to a program at the University of Arkansas at the School of Law that Janie Hipp, who is heading up that program, has established.

She is working with tribes around the country in developing the food policy that we are going to need to properly utilize in self determination through the self governance and Indian self determination authorities.

I guess what I am speaking toward is we have some very talented tribal support programs out there working with us and di-

rectly with tribes, which are going to help enable us to utilize these authorities.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

Thank you to the witnesses for being here.

I wanted to ask a broad question about health care. Fourteen of our 29 tribes in the Pacific Northwest use self governance. I am sure Ron Allen would have liked to be here to testify today since he is such a great advocate for self governance.

I have a really basic question. Do you think we deliver better and more efficient care through self governance than through the rest of Indian Health Services? Can you give me a yes or no, or can you please elaborate?

Ms. BENJAMIN. Melanie Benjamin, Mille Lacs Band of Ojibwe, yes. At the grassroots level, at the tribal level, we know our people. We know what their issues are and how to communicate and deal with them on all aspects from the cultural sense to what their day-to-day needs are, in a sense, and we can provide better care for them at that level.

Mr. FLOYD. Yes, Senator Cantwell. I am James Floyd from Muscogee Creek Nation. I agree. I think tribes can do a better job. I believe we have demonstrated that. Presently with our tribe, we are a contractor with the Department of Veterans Affairs under the CHOICE Act. We are a CHOICE provider. We are certified with Medicare and Medicaid. We meet those hurdles.

It also boils down to the fact when it is at the ground level with tribal citizens providing care to tribal citizens, it really is more meaningful. I think the relationships are stronger. I think the expectations are higher as well. We have to have that commitment. I believe we have that. All of our facilities are accredited.

I know there are parts of the Indian Health Service that are struggling. I recognize that. I was also the Area Director of the Portland Area. I negotiated with Ron Allen and we did his self governance compact.

I know ownership brings responsibilities that I think drives a higher standard. I think that is what tribes bring to the table.

Mr. HISA. Good afternoon.

Our Pueblo has not transitioned into self governance when it comes to IHS. Although we have a wonderful working relationship with IHS, we have identified certain needs that we need to address. We are doing that on our own. We are, hopefully, going to go into self governance pretty soon in that area.

I am going to use an example of diabetes. Diabetes something we have identified as a priority we need to look into in our community. I think IHS has identified through Indian Country.

They have some best practices that they are asking us, I do not want to say forcing us to follow, but when we look at the program, some of the best practices in there are not fitting into our community. We have modified the program to fit within our scope and our need.



Going into self governance and being able to determine what those best practices are, not only with diabetes but health care overall, I know will be beneficial if the tribe can make that decision.

Mr. BLAZER. Thank you for your question, Senator.

At Mescalero, we work quite well with the Indian Health Service. Over the years, we have contracted various programs to the tribe like our diabetes programs and others. It is working well because as we build our capacity to operate these programs, we are doing so in a very holistic manner.

We look at the total needs of our people, whether it is an addiction treatment program, a diabetes program, or child care program, we are developing our tribal capacity in a way where there are synergies being developed in the utilization of these resources.

As we continue to develop that capacity, we will be able to take more and more of that responsibility and resources from the Indian Health Service to develop strong, viable, sustainable tribal programs that we are all striving for.

Senator CANTWELL. I thank all of you for the input you gave because you each added a little bit of the equation of what regional health care delivered through tribal organizations is doing.

I can see it in my State and I guarantee you they are delivering better care at lower cost. Not only that, they are providing a resource for the larger community and for non-Indian individuals to also access that health care infrastructure. That is efficiency.

I just hope we continue to look at how much we save, that it is better quality care, and that we start thinking about how we can expand this to other tribes that are not doing self governance contracts on health care.

Thank you very much, Mr. Chairman.

The CHAIRMAN. I would like to thank all of our witnesses for being here today, for what you are doing in the area of self determination to benefit your tribes, the lead role all of you have played in this important initiative and continue to play, and for the ideas you have put forward that we will try to act on.

If there are no more questions today, members may also submit written follow-up questions. The hearing record will be open for two weeks for that purpose.

Again, to all of you, thanks so much for being here.

With that, we are adjourned.

[Whereupon, at 3:41 p.m., the Committee was adjourned.]



# A P P E N D I X

## PREPARED STATEMENT OF THE PORT GAMBLE S'KLALLAM TRIBE

Thank you, members of the Committee, on behalf of the Port Gamble S'Klallam Tribe, for the opportunity to present this written statement for the record of the April 18, 2018 oversight hearing entitled "The 30th Anniversary of Tribal Self-Governance: Successes in Tribal Self-Governance and an Outlook for Next 30 Years." We appreciate the Committee Members' recognition of such an important matter and look forward to further expansion of federal tribal self-determination and self-governance policies.

### **I. The Importance of Self-Governance**

Over 40 years have passed since Congress enacted the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA),<sup>1</sup> and this year we have reached the 30th anniversary of the 1988 amendments<sup>2</sup> to the ISDEAA that created the Tribal Self-Governance Demonstration Project. Through this legislation, and several later amendments, Congress initiated a federal policy of allowing tribal governments greater authority and control over the federal programs and services intended to fulfill the United States treaty obligations and trust responsibility. Tribal self-determination and self-governance has now become the hallmark of federal Indian policy after centuries of the devastating extermination, removal, and assimilation federal policies.

The Self-Governance Policy has proven so successful that today over 50 percent of all federal Indian programs are carried out by tribes rather than federal agencies.<sup>3</sup>

ISDEAA and the Self-Governance Policy are based on the proposition that tribes can provide better governmental services to their own members than can distant federal bureaucracies.<sup>4</sup> Indeed, Self-Governance is successful, in part, because Tribal Leaders have a better understanding of their members' needs than a distant federal official. By taking a localized community approach, instead of a uniform national one, Self-Governance allows Tribal Leaders the flexibility to tailor programs and services to the unique cultural traditions and specific needs of their tribal members and communities.

### **II. History of Port Gamble S'Klallam Tribe**

The Port Gamble S'Klallam Tribe is a federally-recognized, self-governing tribe with 100 percent of its reservation lands in trust. We are located on the northern tip of the Kitsap Peninsula in Kitsap County Washington. The Tribe's Reservation is home to about two-thirds of the Tribe's 1,200 enrolled members. We provide services to our members and approximately 800 other American Indians, Alaska Natives and non-Indians living on our Reservation.

The Tribe joined the Tribal Self-Governance Project, a consortium of self-governing Indian tribes, in 1990 with the Bureau of Indian Affairs (BIA) and in 1994 with the Indian Health Service (IHS). Through Self-Governance, the Tribe has seen continual expansion of services and many successes.

Some brief facts about the Port Gamble S'Klallam Tribe:

<sup>1</sup> Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93- 638, 88 Stat. 2203 (codified as amended at 25 U.S.C. § 450-450n, 455-458e, 458aa-458hh, 458aaa-458aaa-18 (2006)).

<sup>2</sup> Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100-472, 102 Stat. 2285, repealed by Tribal Self-Governance Amendments of 2000, Pub. L. No. 106-260, 114 Stat. 711 (codified at 25 U.S.C. § 458aaa-458aaa-18).

<sup>3</sup> Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1, 1 (2014-5).

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

- Talbot, of Puget Mill Co., arrives on Port Gamble Bay in 1853 and starts building a mill (Coman). S'Klallam on west side of the Bay are asked to move across the Bay.
- The Tribe is a signatory to the Point No Point Treaty of 1855.
- In 1860 houses are built on what is now known as Point Julia by Puget Mill Co., for the S'Klallam who work at the mill.
- We are 1 of 3 federally recognized Klallam Tribes, historically all the Klallams were one people but today we have separate federal recognition status.
- We ceded over 400,000 acres of land to the federal government in the Treaty, but reserved our rights to hunt, fish and gather, as we always had, along with other promises from the United States.
- We were without a reservation as promised in the treaty for over 88 years when the Tribe eventually purchased its own reservation out of settlement monies it won from a claims settlement against the federal government.

In 1958, the Tribe officially reported a bank balance of \$288.69. I share this information because it is an important piece of history to show the continual growth of Port Gamble S'Klallam since compacting services under Self-Governance. In 1991, the Tribe managed a budget of nearly \$1 million and had 45 employees. Today, the Tribe manages more than \$8 million in Self-Governance monies. The Tribe has approximately 294 employees; Tribal members and other Natives make up 63 percent of total employees.

The Tribe is governed by a six member Tribal Council who serve two year, staggered terms. The General Council delegated authority to the Tribal Council to conduct day-to-day operations in the Port Gamble S'Klallam Constitution. The Tribe has a federal Section 17 Charter, separating economic development from government. The Tribe has an Executive Team comprised of the Executive Director, legal counsel, human resources, internal auditors and CFO who meet monthly to review Council directives. The Tribe employees two Administrative Directors, assigned to oversee Tribal Services and Tribal Government and work directly with the executive team.

The Administrative Director of Tribal Services is responsible for the majority of Tribal departments that receive Self-Governance funding:

- Natural Resources
- Culture
- Career and Education
- Health
- Behavioral Health
- Children and Families Services
- Special Projects/Self-Governance
- Early Head Start

The Administrative Director of Tribal Government has departments that are compacted under Self-Governance as well and is responsible for:

- Court Services
- Finance
- Planning and Land Acquisition
- Utilities
- Facilities
- Grant Coordinator
- Information Technology
- Public Safety

### **III. Department Overview of Self-Governance**

#### *Health*

Our Self-Governance funding covers the administrative functions of Health and Behavioral Health, along with providing such things as swim passes, gas cards for specialty medical services, lab tests, ambulance contracting, insurance premiums and other services. We have reduced the number of write-offs by insuring Tribal members and increased the number of insured Tribal members, saving Purchased Referred Care funds and increasing services to youth by purchasing eyeglasses and providing orthodontics care.

#### *Natural Resources*

Natural Resources works diligently to protect Treaty Rights of Tribal members and oversees a variety of programs such as climate change impacts, water quality

monitoring, a fish hatchery and reseeded beaches with oysters and clams, and ensuring future generations have the opportunity to practice subsistence harvesting.

#### *Children and Families Services*

The Tribe's Children and Family Services (CFS) continues to be on the forefront and is proactive in obtaining funding to continue services for all Tribal members. CFS oversees our Foster Care program, Indian Child Welfare, youth program, Behavioral Health (to assist those with chemical dependency and mental health problems), Child Support Enforcement, TANF, Medicaid and Food Stamp services, and a food and clothing bank. The CFS also hosts a variety of events for Tribal members, such as the annual Health Fair and Bite of Boston to raise funds for our elders program and a summer food program for youth. CFS also coordinates services with the Tribal court and health programs.

#### *Education*

The Education Department assists Tribal and community members with a back-to-school back-pack distribution, college enrollment, GED services, family reading nights held in conjunction with the local district, and employment services such as resume writing, job search, and career mapping. It also employs four academic coaches who work with students in K-12 directly in the school setting to provide intervention services.

#### *Early Head Start*

The Early Head Start Program is funded with federal dollars and serves approximately 60 children from birth to 5 years. The Program provides school readiness with an emphasis on Tribal Culture into their programs from language, song and dance, and art. A cultural specialist works with teachers and children. The Tribal Council approved expanding the program in 2016 to serve an additional 8 children and fully funded the expansion with the Tribes revenues.

#### *Culture*

Our Culture Department provides S'Klallam language classes and is active in teaching different art forms, such as weaving and beading to Tribal members. The Culture Department hosts Family Cultural Events throughout the year that offer traditional cooking, weaving, drum making, beading and language. The S'Klallam Tribe has 4 certified language teachers who work with other departments as well to incorporate language and culture into the services provided.

#### *Court*

The Tribe operates our own court system. The Tribe has a prosecutor, public defender and probation officers. Court services received funding to operate a Re-entry program to help those with criminal backgrounds remove barriers to employment. The court has a domestic violence and sexual assault advocate, is planning a Healing-to-Wellness model and has a Court Appointed Special Advocate.

#### *Public Safety (Police)*

Public Safety provides 24-hour coverage to the Tribe. One officer is trained as an investigator to work with CFS to provide specialized investigation into minors who experience sexual assault and domestic violence. Officers participate in the Tribe's Tribal Healing Opioid Response (THOR) team and have undergone training in drug recognition. Public Safety also provides support in traffic collisions to the County Sheriff in the North end of Kitsap County.

#### *Other Programs*

The Tribe also operates its own Housing program, facilities maintenance, sewer system, utilities, planning, police and information technologies departments. The Tribe owns and operates Hersonswood Botanical Gardens, The Point Casino, and a 97-room hotel adjacent to the casino.

### **IV. Future Opportunities**

Further expansion of the Self-Governance model is essential, but fully funding contract support costs and providing adequate direct funding to administer the programs are key elements for continued success of Self-Governance. Contract support costs are an important funding mechanism for Self-Governing Tribes like ours to administer our programs and provide services. Adequate direct funding means reliable resources and flexibility for the Tribe to continue implementing our Self-Governance compacted programs. Additionally, adequate direct funding allows us to plan long-term for infrastructure development, program enrichment, and service enhancements necessary for the well-being of our members and local community. Direct funding through the self-governance model is a preferable alternative to funding in

the form of grants, which is challenging. Based on our experience, we caution against funding in the form of grants because competitive funding pits tribes against each other, and against local governments, all of which are struggling for access to limited resources when we should be working together.

Expanding Self-Governance will allow Tribes—such as ours—to continue to thrive and grow through our administration of more federal programs tailored to fit the needs of our people. We support expansion of tribal self-governance authority to all federal programs benefiting Tribes, tribal members and tribal communities. The following are just some examples of how expanding Self-Governance authority would help the Tribe.

Early Head Start (ECE) is one program where compacting to Self-Govern would benefit the Tribe. The program is heavily subsidized and, understandably heavily regulated. In the history of the ECE program, the Tribe has had 100 percent scoring of federal reviews to ensure compliance with regulations. The focus should be on the care and teaching of children. The Tribe cares for its future, its children, and has increased Tribal funds to ensure more children are being served and not excluded from these essential pre-K services.

The Tribe also receives multiple grants from the Environmental Protection Agency (EPA) each year. Instead of Individual Cooperative Agreements, we propose the EPA cooperate with the BIA to distribute the EPA funding through the Tribe's existing Self-Governance Compact.

As negotiations for reauthorizing the Farm Bill are underway, we also advocate for expanding Self-Governance to include all United States Department of Agriculture (USDA) programs. One of the most essential roles of a government is ensuring the well-being of its citizens, including access to quality and nutritious food, such as Supplemental Nutrition Assistance Program (SNAP) and Food Distribution Program on Indian Reservations (FDIPR). Our Tribe is the only tribe with a government-to-government waiver and contract with the USDA to operate a tribal SNAP. Our program provides services to both tribal and non-tribal members in our service area. Reports have indicated that participation of Native Americans in SNAP increased by 35 percent in the zip codes served by the Tribe. As our experience shows, tribal management of SNAP is a more effective use of federal dollars and has strengthened service delivery. SNAP, FDPIR and other USDA programs, so many of which are essential to tribes, should be subject to Self-Governance.

## **V. Conclusion**

In the 30 years of Self-Governance, the Tribe has grown significantly and services for Tribal members has increased. The Port Gamble S'Klallam Tribe has a proven track record of providing essential services to Tribal members and finding creative solutions to provide other services, such as clothing vouchers and food vouchers. We are a proud, self-governing Tribe that will continue to work hard to provide for our people. We ask this Committee to strongly support Self-Governance and to work to expand this successful policy.

The Port Gamble S'Klallam Tribe would like to once again thank you for this opportunity to showcase Self-Governance success. We invite you to visit us on our Reservation to witness our programs and services first-hand and see for yourself the importance of self-governing.

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PREPARED STATEMENT OF THE SELF-GOVERNANCE COMMUNICATION AND EDUCATION  
TRIBAL CONSORTIUM (SGCETC)

## **Why Self-Governance—Why Now?**

It is hard to imagine today, that prior to 1975, the Federal government administered and operated almost all programs serving American Indians and Alaska Natives (AI/AN). In 1975, Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA) was enacted with three primary goals: (1) to place the Federal government's Indian programs firmly in the hands of the local Indian people being served; (2) to enhance and empower local Tribal governments and their governmental institutions; and, (3) to correspondingly reduce the Federal bureaucracy.

The original Title I of the ISDEAA, still in operation today, allows Tribes to enter into contracts with the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) to assume the management of programs serving Indian Tribes within these two agencies. Frustrated by the stifling bureaucratic oversight imposed by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), in 1986, the Alliance of American Indian Leaders (AAIL) developed recommendations to secure the right of Indian Tribes to exist as Tribes in per-

petuity. These recommendations included Tribal governmental rights to exercise Tribal sovereignty, to seek elimination of arbitrary unilateral decisionmaking of the Federal government and to reaffirm that Tribes should have an effective voice, as governments, in all matters affecting their affairs.

On October 5, 1988, Congress passed the *Tribal Self-Governance Demonstration Project* (P.L. 100-472). Unlike Title I contracts—which subjected Tribes to Federal micromanagement of assumed programs and forced Tribes to expend funds as prioritized by BIA and IHS officials—DOI was authorized to negotiate Compacts with Tribes that would give Tribes more flexibility in the operation of Indian programs. Self-Governance Compacts and Funding Agreements allowed Tribes to set their own priorities, redesign programs and determine how program funds should be allocated. In 1992, the demonstration authority was expanded to the DHHS IHS under P.L. 102-573. Today, 26 years later, more than 365, or 64 percent, of the 573 Federally-recognized Tribes in the United States operate under a Compact of Self-Governance in the IHS.

The original Title III Demonstration Project proved to be a tremendous success, and in 1994, Congress enacted Title IV of the ISDEAA, thereby implementing permanent Tribal Self-Governance within DOI. In 2000, Congress once again determined that Self-Governance Tribes had demonstrated that they were better stewards of the funding and permanently authorized Self-Governance in the IHS.

*On this, the 30th Anniversary of Tribal Self-Governance in DOI*, we applaud the courageous Tribal Leadership, the support of dynamic intuitive legislators who took a leap of faith and the many inspiring and persistent individuals who were at the forefront of this remarkable historical Tribally-driven movement. Self-Governance works because it places management responsibility in the hands of those who care most about seeing Indian programs succeed: Indian Tribes themselves.

#### **The Success of Self-Governance**

Under Self-Governance, Tribes have assumed the management of a large number of programs, services, functions and activities (and portions thereof) in DOI such as roads, housing, education, law enforcement, court systems, and natural resources management. In the IHS, Tribes have immersed themselves in the business of health and operate and manage Tribal hospitals and clinics, provide services to their Tribal citizens and are receiving recognition for their health operations. The increasing number of Tribes that have opted to participate in Self-Governance on an annual basis reflects the success of the program.

In Fiscal Year 1991, the first year Self-Governance agreements were negotiated between the BIA and seven (7) Tribes including; Quinault Indian Nation, Lummi Indian Nation, Jamestown S'Klallam Tribe, Hoopa Valley Tribe, Cherokee Nation, Absentee Shawnee Tribe and the Mille Lacs Band of Ojibwe Indians. Today, in FY 2018, there are 275 Tribes and Tribal Consortia participating in Self-Governance representing all of the BIA regions with the exception of the Great Plains and Navajo for a total dollar amount of \$475 million.

In the IHS, originally there were fourteen (14) Tribes who negotiated and entered into Self-Governance Compacts in 1993-1994 representing six (6) of the IHS areas. These Tribes included Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, Confederated Salish and Kootenai Tribes of the Flathead Nation, Mille Lacs Band of Ojibwe Indians, Hoopa Valley Tribe, Absentee Shawnee Tribe, Cherokee Nation, Sac and Fox Nation, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Confederated Tribe of Siletz Indians of Oregon, Jamestown S'Klallam Tribe, Lummi Indian Nation, Makah Indian Tribe and the Port Gamble S'Klallam Tribe. Currently in FY 2018, the IHS Tribal Self-Governance Program represents 98 Compacts, 124 Funding Agreements, representing 365 Tribes and Tribal Consortia located in all 12 IHS areas and transfers over \$2.0 billion annually. Many Tribes and Tribal Consortia also participate in both DOI and IHS which validates that the local needs of Tribal citizens are best provided by the local Tribal governments.

One of the most successful efforts by Self-Governance Tribes has been to work in partnership with Congress, DOI and IHS to secure full contract support costs (CSC) funding. In addition, the continuance of an indefinite appropriation, allows both DOI and IHS to guarantee full CSC funding while protecting funding for non-Self-Governance Tribes.

#### *Simply put, Self-Governance:*

*Promotes Efficiency.* Devolving Federal administration from Washington, D.C. to Indian Tribes across the United States has strengthened the efficient management and delivery of Federal programs impacting Indian Tribes. As this Committee well knows, prior to Self-Governance, up to 90 percent of Federal funds earmarked for Indian Tribes were used by Federal agencies for administrative purposes. Under

Self-Governance, program responsibility and accountability has shifted from distant Federal personnel to elected Tribal leaders. In turn, program efficiency has increased as politically accountable Tribal leaders leverage their knowledge of local resources, conditions and trends to make cost-saving management decisions.

*Strengthens Tribal Planning and Management Capacities.* By placing Tribes in decision-making positions, Self-Governance vests Tribes with ownership of the critical ingredient necessary to plan our own futures—information. At the same time, Self-Governance has provided a generation of Tribal members with management experience beneficial for the continued effective stewardship of our resources.

*Allows for Flexibility.* Self-Governance allows Tribes great flexibility when making decisions concerning allocation of funds. Whether managing programs in a manner consistent with traditional values or allocating funds to meet changing priorities, Self-Governance Tribes are developing in ways consistent with their own needs and priorities.

*Affirms Sovereignty.* By utilizing signed compacts, Self-Governance affirms the fundamental government-to-government relationship between Indian Tribes and the U.S. Government. It also advances a political agenda of both the Congress and the Administration, i.e. shift Federal functions to local governmental control.

### **Challenges—Past, Present and Future**

Throughout the 30 year history, Tribes have benefitted from the support of countless advocates and they continue to forge the legacies of many. As with any new adventure, there were hurdles, compromises, mistakes and challenges. Despite that, Tribes have benefitted from them all since there was not a “blue print” to guide the journey. Because of great Tribal leadership and educated, experienced technicians helping to chart and document our movement, these challenges became accomplishments—the successes that Self-Governance Tribes enjoy today.

One challenge that Self-Governance Tribes continue to grapple with today is the hesitancy of non-BIA agencies within DOI to fully embrace the ISDEAA as intended and allow Tribes to take over management of programs and services outside of the BIA. Since the origin of the Self-Governance movement, the Non-BIA agencies were not happy with the expansion of Self-Governance and seized upon every opportunity to slow the Title IV negotiated rulemaking process down including coming up with onerous versions of the regulations. The stronghold that these agencies had on how the regulations were drafted led to a tedious drawn out regulatory process that lasted a number of years and which frankly contributed to the position Tribes are in today of having to advocate for a legislative fix. After over ten years of trying to attain small technical amendments to Title IV, Tribes were forced to bifurcate the legislative effort in order to keep the non-BIA agencies at bay. Despite this Administrative pushback, Self-Governance Tribes have not given up on pursuing the authority to contract for programs and services within these non-BIA agencies. Currently there are a handful of successes with approximately 11 Agreements between Tribes and non-BIA agencies that were successfully negotiated. All of these efforts are reflective of how Tribes have proven time and again that they can do a better job and that it can be done more effectively and efficiently at the local level.

#### 2018 FUNDING AGREEMENTS BETWEEN SELF-GOVERNANCE TRIBES AND NON-BIA BUREAUS IN THE DEPARTMENT OF THE INTERIOR

##### **National Park Service**

- Sitka Tribe
- Yurok Tribe
- Great Lakes Restoration Project, Grand Portage Band of Lake Superior Chippewa Indians

##### **Bureau of Land Management**

- Council of Athabascan Tribal Governments
- Duckwater Shoshone Tribe of the Duckwater Reservation

##### **Bureau of Reclamation**

- Karuk Tribe
- Yurok Tribe
- Hoopa Valley Tribe
- Chippewa Cree Tribe of the Rocky Boy's Reservation
- Gila River Indian Community

##### **Office of the Special Trustee for American Indians**

- Confederated Salish & Kootenai Tribes of the Flathead Reservation

##### **Fish & Wildlife Service**

- Council of Athabascan Tribal Governments



Within the Department of Health and Human Services (HHS), Tribes have faced similar resistance to expansion and implementation of Self-Governance. For nearly two decades, Tribal leadership has prioritized expanding Self-Governance to other programs within HHS. Sadly, bureaucrats within HHS have staunchly refused to entertain the idea of creating a pilot or demonstration project that would allow Self-Governance to be conducted on a trial basis outside of the IHS. Further, this resistance is despite a Congressional directive that required the HHS to conduct a study to determine the feasibility of extending Self-Governance into other HHS agencies, as authorized in P.L. 106-260, and the Department's subsequent publication of a 2003 Report signed by the HHS Secretary in which eleven (11) programs were found suitable for a Self-Governance Demonstration Project.

In 2011, Secretary Sebelius revived HHS's efforts to implement Title VI by convening the Self-Governance Tribal Federal Workgroup (SGTFW). The SGTFW process was productive and useful in identifying the obstacles that must be overcome, but progress toward solutions was frustrated by HHS representatives' professed inability to consider legislative measures. During the SGTFW process, Tribal representatives tried to confront this fundamental barrier by presenting a concrete legislative proposal as well as a Concept Paper describing its major design elements. But Federal members and staff did not respond to the proposal or even the Concept Paper, stating that they were not authorized to discuss any proposed legislation. Thus the dialogue was doomed to focus exclusively on barriers rather than how to overcome them through the vehicle all agreed was necessary: legislation to authorize a demonstration project.

Today, Tribes now celebrate Self-Governance in the Department of Transportation—pending the development of draft regulations. It is unfortunate that Tribes are often negatively impacted far more than any other population in this Country when there is a change in the Administration and Congress. Tribal protections, treaty rights and trust obligations by the United States are chiseled into the historical annals of the United States. Unfortunately, Tribes must always be required to “restart the clock, relive the broken promises and educate newcomers about the unfulfilled treaties and promises”.

As we look ahead. It is unfortunate that the intent of Congress may not be honored because the statutory authority for a Tribal Transportation Self-Governance Program (TTSGP) in DOT is in jeopardy of expiring in December 1, 2018 unless Congress intervenes and extends the time for the Negotiated Rulemaking Committee to complete its work. In Section 1121 of the FAST Act, Congress directed the Department to “adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.” 23 U.S.C. 207(n)(2)(C). The process has come to a halt, although DOT continues to say they will resume the Committee. The Committee Tribal representatives wish to be clear; a condensed Notice of Proposed Rulemaking, a program handbook, or departmental guidance are all unacceptable alternatives to comprehensive regulatory language implementing legislation enacted for the benefit of Tribes.

Recalcitrance continues to be a hurdle that Tribes have not mastered because of the institutional ignorance that remains in both the Federal government and Congress. Without the continued support of our friends and allies—which we are fortunate to have many on the Senate Committee on Indian Affairs, Tribes must continue to forge ahead and take it one challenge, one hurdle and one day at a time. We are excited about the possibilities of S. 2409, Tribal Nutrition Improvement Act of 2018—legislation that will enable Tribes to provide services, child nutrition programs, directly without going through the states—a Self-Governance like concept.

On behalf of the Self-Governance Tribes, SGCETC is proud of the many is proud of Tribal accomplishments under Self-Governance due to the control and ability of Tribal governments to redesign services and programs that fulfill the needs of our Tribal citizens. Tribes are destined to succeed because of the knowledge and determination inherited from our ancestors. They continue to guide us through the turbulent times, shield us from the wrath of political and career bureaucrats who did not want to endure the imminent change driven by Self-Governance and pave the way for the next seven generations. We are living in a great time in this Country, but we are not done. This is not a 30 year effort that needs to be heralded every anniversary date. It is an eternal way of life for AI/AN people. We were just fortunate that it happened on our watch—in our lifetime!

Finally, we raise our hands to “Self-Governance Pioneers and Warriors” committed to the journey and who have paved the way to this new Tribal-Federal relationship we enjoy today. While we may not have identified them all in the attached anthology, SGCETC acknowledges and appreciates their contributions that made this journey possible. It is befitting that they receive praise for believing that the

principles of Self-Governance, would in many ways, provide a roadmap to remedy some of the major fiscal impediments that have plagued not only American Indian and Alaska Native communities, but throughout the United States as well.

Thank you.

### **Attachment**

#### RECOGNITION OF SELF-GOVERNANCE PIONEERS AND WARRIORS

In 1986, the Alliance of American Indian Leaders (AAIL) developed recommendations to secure the right of Indian Tribes to exist as Tribes in perpetuity, to exercise Tribal sovereignty, to seek elimination of arbitrary unilateral decisionmaking of the Federal government and to reaffirm that Tribes should have an effective voice, as governments, in all matters affecting their affairs. On October 5, 1988, Congress passed the Tribal Self-Governance Demonstration Project (P.L. 100-472) which authorized the Bureau of Indian Affairs to negotiate Compacts with Tribes that would give Tribes more flexibility in the operation of Indian programs. *On this, the 30th Anniversary of Tribal Self-Governance*, we acknowledge the courageous Tribal Leadership, the support of dynamic intuitive legislators who took a leap of faith and the many inspiring and persistent individuals who were at the forefront of this remarkable historical Tribally-driven movement.

Throughout the 30-year history, Self-Governance Tribes have benefitted from the advocacy of countless and we continue to forge their legacies. These “Self-Governance Warriors” committed to the journey and have paved the way to this new Tribal-Federal relationship we enjoy today. While we may not have identified them all in this anthology, we appreciate their contributions. On behalf of the more than 360 Federally-recognized Tribes participating in Self-Governance today, we applaud the “Self-Governance Warriors” who have made this journey possible. We are eternally grateful.

SELF-GOVERNANCE WITHIN THE U.S. DEPARTMENT OF THE INTERIOR—INDIAN AFFAIRS  
(DOI-IA)

#### **THE ADMINISTRATION:**

- Emanuel “Manny” Lujan, U.S. Secretary of the Interior (1989–1993)
- William D. Bettenburg, Deputy Assistant Secretary—Indian Affairs and Special Assistant to the
- Secretary, DOI (1990 to 1993); (deceased)
- Ross O. Swimmer, Assistant Secretary—Indian Affairs, DOI (1985–1989)
- Eddie F. Brown, Assistant Secretary—Indian Affairs, DOI (1989–1993)
- Ada E. Deer, Assistant Secretary -Indian Affairs (1993–1997)

#### **Department of the Interior—Office of Self-Governance (OSG):**

- William Lavell (deceased), Director, OSG (1990–1994)
- Ron Brown (deceased), Acting Director, OSG (1994); OSG Northwest Field Office (1992–1994)
- Bill Sinclair, Compact Negotiations Manager, OSG (1991–1995); Director, OSG (1995–2005)
- Ken Reinfeld, Senior Policy Analyst, OSG (1991–2018 current); Acting Director, OSG (2006)
- Sharee Freeman, Assistant Solicitor—Indian Affairs (1988–1997); Director, OSG (2007–Current)
- Karole Overberg, (deceased), Manager, OSG Northwest Field Office (1995–1998)
- Tom Shirilla (deceased), Quinault IPA (1993); Compact Negotiator (1994–1998); Manager, OSG Northwest Field Office (1998–2007)
- Matt Kallappa, Makah Tribe, IPA (1995–1998; Compact Negotiator (1998–2007); Manager OSG Northwest Field Office (2007–2018 current)
- Arlene Brown, Finance Manager, OSG (1990–2006)
- Barry Roth, Assistant Solicitor—Parks and Wildlife (1988–2016)

#### **U.S. CONGRESS:**

- Congressman Sidney Yates (D-IL) (deceased)
- Congressman Morris Udall (D-AZ) introduced HR 1223 in 1987 which became PL 100-472
- Congressman George Miller (D-CA)
- Congressman Bill Richardson (D-NM) Co-Sponsor HR 1223

- Sen. Dan Inouye (D–HI) (deceased)
- Sen. John McCain (R–AZ)
- Senator Daniel J. Evans (R–WA) introduced S. 1703 (9/18/87), ISDEAA Amendments of 1987

Co-Sponsors: Dan Inouye (D–HI), John McCain (R–AZ) Quentin N. Burdick (D–ND), Dennis DeConcini (D–AZ), Frank H. Murkowski (R–AK), Thomas A. Daschle (D–SD), Pete V. Domenici (R–NM), Mark O. Hatfield (R–OR), Bob Packwood (R–OR), Thad Cochran (R–MS), Chic Hecht (R–NV), Jeff Bingaman (D–NM), Brock Adams (D–WA), John Melcher (D–MT), Albert Gore, Jr. (D–TN), John H. Chafee (R–RI), Max Baucus (D–MT), Alan Cranston (D–CA), Howell Heflin (D–AL) and Ted Stevens (R–AK)

**TRIBAL LEADERS (ORIGINAL 7 SELF-GOVERNANCE COMPACTS NEGOTIATED WITH DOI):**

- Chairman W. Ron Allen, Jamestown S’Klallam Tribe
- Chairman Larry Kinley, (deceased) Lummi Nation
- Chairman Dale Risling, Hoopa Valley Tribe
- President Joseph B. DeLaCruz (deceased), Quinault Indian Nation
- Chief Wilma Mankiller (deceased), Cherokee Nation
- Governor Dr. John Edwards, Absentee—Shawnee Tribe
- Chief Executive Marge Anderson (deceased), Mille Lacs Band of Ojibwe Indians

**OTHER TRIBAL ADVOCATES AND PIONEERS:**

- Joe Tallakson, (deceased), SENSE Incorporated
- C. Juliet Pittman, SENSE Incorporated
- Rudy Ryser, Quinault Indian Nation
- Paul Alexander, Attorney
- Phil Baker-Shenk, Attorney
- Fran Ayer (deceased), Attorney
- Tadd Johnson, Attorney
- Thomas P. Schlosser, Attorney
- Lloyd B. Miller, Sonosky, Chambers, Sachse, Miller & Monkman, LLP
- Bill Parkhurst, (deceased) Quinault Indian Nation
- Joe Melland, (deceased) Lummi Nation
- Will Mayo, Alaska Federation of Natives
- Vickie Hanvey, Cherokee Nation

**SELF-GOVERNANCE ADVISORY COMMITTEE (SGAC):**

- W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe, SGAC Chairman (1998—Present)

SELF-GOVERNANCE WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES—  
INDIAN HEALTH SERVICE

**THE ADMINISTRATION:**

- Donna Shalala, HHS Secretary (1993–2001)
- Dr. Michael Trujillo, IHS Director (1994–2002)
- Michel Lincoln, Acting IHS Director (1993 -2000)

**INDIAN HEALTH SERVICE OFFICE—OFFICE OF TRIBAL SELF-GOVERNANCE (OTSG):**

- Ruben Howard, Acting Director, (1993—1996)
- Paula Williams, First Permanent Director, OTSG (1996—2006)
- Tena Larney, Acting Director, (2006)
- Hankie Ortiz, Director, OTSG (2007–2012)
- P. Benjamin Smith, Director, OTSG (2012–2016)
- Jennifer Cooper, Acting Director, OTSG (2016–Current)

**INDIAN HEALTH SERVICE LEAD NEGOTIATORS**

- Eric B. Broderick, Agency Lead Negotiator

- Mark Downing, Agency Lead Negotiator
- Ron Ferguson, Agency Lead Negotiator
- Gary Hartz, Agency Lead Negotiator
- Steve Weaver, Agency Lead Negotiator

**U.S. CONGRESS:**

- Sen. Dan Inouye (deceased)
- Sen. John McCain Sen. Ben Nighthorse Campbell, Senate Committee on Indian Affairs
- Congressman George Miller (D-CA) Sponsor (PL 102-184—IHS Feasibility Study and P.L. 106-260 IHS Permanent Authority)
- Congressman John J. Rhodes (R-AZ)

*Also on P.L. 102-573 extending SG to Indian Health Service:* Senators Tom Daschle (D-SD), Pete Domenici (R-NM), Quentin Burdick (D-ND), Frank Murkowski (R-AK), Paul Simon (D-IL), Thad Cochran (R-MS), Ted Stevens (R-AK), Daniel Akaka (D-HI), Dennis DeConcini (R-AZ), Kent Conrad (D-ND), Nancy Landon Kassebaum (R-KS), Paul Wellstone (D-MN), Harry Reid (D-NV), Edward M. Kennedy (D-MA) and Don Nickles (R-OK)

*Permanent Self-Governance Authority in IHS:* Congressman George Miller (D-CA) and 29 Co-Sponsors: Don Young (R-AK), Dale E. Kildee (D-MI), Peter A DeFazio (D-OR), Eni F. H. Faleomavaega (D-AS), Neil Abercrombie (D-HI), Carlos A. Romero-Barcelo (D-PR), Robert A. Underwood (D-GU), Patrick J. Kennedy (D-RI), Jay Inslee (D-WA), J.D. Hayworth (R-AZ), Jim McDermott (D-WA), Nancy Pelosi (D-CA), George E. Brown, Jr. (D-CA), James L. Oberstar (D-MN), Bob Filner (D-CA), Ed Pastor (D-AZ), Barney Frank (D-MA), Matthew G. Martinez (D-CA), Debbie Stabenow (D-MI), Edolphus Towns (D-NY), Patsy T. Mink (D-HI), Charles W. “Chip” Pickering (R-MS), Thomas H. Allen (D-ME), Bart Stupak (D-MI), Martin Frost (D-TX), Henry A. Waxman (D-CA), Lois Capps (D-CA), Donna MC Christensen (D-VI) and Earl Blumenauer (D-OR)

**Tribal Leaders (Original 14 Self-Governance Compacts Negotiated with IHS):**

- Chief Merle Boyd, (deceased), Sac and Fox Nation and Tribal Self-Governance Advisory Committee (TSGAC) Chairman 1999–2003
- Chairman Joseph C. Raphael, Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
- Chief Wilma Mankiller, Cherokee Nation (deceased)
- Chairman W. Ron Allen, Jamestown S’Klallam Tribe
- Chairman Gerald “Jake” Jones, (deceased) Port Gamble S’Klallam Tribe
- Chief Executive Marge Anderson, (deceased) Mille Lacs Band of Ojibwe Indians
- Chairman Dale Risling, Hoopa Valley Tribe
- Governor Larry Nichols, Absentee Shawnee Tribe
- Chairman Lindsay Manning, Duckwater Shoshone Tribe
- Chairman Jerry Charles, Ely Shoshone Tribe
- Chairwoman Dee Pigsley, Confederated Tribe of Siletz Indians of Oregon
- Chairman Henry Cagey, Lummi Nation
- Chairman Hubert Markishtum, (deceased) Makah Tribe
- Chairman Mickey Pablo (deceased), Confederated Salish and Kootenai Tribes of the Flathead Nation

**OTHER TRIBAL ADVOCATES AND PIONEERS:**

- Ed Thomas, Tlingit and Haida Indian Tribes of Alaska
- Will Mayo, Tanana Chiefs Conference
- Dwayne Hughes (deceased), Absentee-Shawnee Tribe
- Mickey Peercy, Choctaw Nation of Oklahoma
- Sybil Sangrey-Colliflower, (deceased), Chippewa Cree Tribe of Rocky Boy Reservation
- Anna Sorrel, Confederated Tribes of Salish-Kootenai
- Cyndi Holmes Ferguson, Jamestown S’Klallam Tribe
- Karen Meyers, Mille Lacs Band of Ojibwe Indians

- Eugenia Tyner Dawson, Sac and Fox Nation
- Julie Johnson, Makah Tribe
- Melanie Fourkiller, Kaw Nation
- S. Bobo Dean, Hobbs, Straus, Dean & Wilder (now Hobbs, Straus, Dean & Walker, LLP)
- Geoff Strommer, Hobbs, Straus, Dean & Walker, LLP
- Myra M. Munson (retired), Sonosky, Chambers, Sachse, Miler & Monkman, LLP

**TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE (TSGAC)**

- Governor Larry Nichols, Absentee Shawnee Tribe (TSGAC Chairman 1996—2003)
- H. Sally Smith, (deceased) Bristol Bay Area Health Board Corporation (TSGAC Chair 2003–2004)
- Don Kashevaroff, Seldovia Village Tribe (TSGAC Chair 2004–2008)
- Jefferson Keel, Chickasaw Nation, (TSGAC Chairman 2008—2011)
- Chief Lynn Malerba, Mohegan Tribe of Connecticut, (TSGAC Chair 2012—Present)
- Alvin Windy Boyd, Chippewa Cree Tribe of Rocky Boy Reservations, (TSGAC Vice-Chairman)
- William E. Jones, Sr., Lummi Nation (TSGAC Vice-Chairman)

**SELF-GOVERNANCE COMMUNICATION AND EDUCATION (SGCE) PROJECT:**

Initial Self-Governance Coordinators and others who participated in formation of SGCE and development of communication and education materials:

- Maureen Kinley, Initial SGCE Executive Director (1996–2012)
- Raynette Finkbonner, deceased, Lummi Nation
- Danny Jordan, Hoopa Valley Tribe
- Cyndi Holmes Ferguson, Jamestown S'Klallam Tribe
- Lynda Jolly, Quinault Indian Nation
- Jerry Folsom, Lummi Nation
- Darren Jones, Lummi Nation

A special “Thank You” to SENSE Incorporated for compiling this list of Honored Self-Governance Pioneers and Warriors

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PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND (USET SPF)

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to provide the Senate Committee on Indian Affairs with the following testimony for the record of the Committee’s oversight hearing, “The 30th Anniversary of Tribal Self-Governance: Successes in Self-governance and an Outlook for the Next 30 Years,” held on April 18th, 2018.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas.<sup>1</sup> USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member

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<sup>1</sup>USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

USET SPF appreciates the Committee's efforts to commemorate a milestone anniversary of the passage of the 1988 Amendments which introduced a new phase in the evolution toward Tribal self-governance under the Indian Self-Determination and Education Assistance Act (ISDEAA). Tribal Nations are distinct, independent, political communities exercising powers of self-government by virtue of their own inherent sovereignty. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that in return for ceding the millions of acres that comprise the United States, the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. However, for hundreds of years, federal policymaking undermined our sovereignty, instead treating Tribal Nations as incompetent "wards." The landmark passage of ISDEAA and its subsequent amendments represented a fundamental change in federal policy and approach to Tribal Nations. It re-acknowledged that Tribal Nations are governments, fully capable of managing our own affairs and destiny. Below, USET SPF provides recommendations on how Congress must continue to improve and expand Tribal self-governance to meet the federal trust obligation, as well as provides an overview of the impact self-governance has had within the USET SPF region.

#### **Importance of Tribal Self-Governance**

Since time immemorial, Tribal Nations have engaged in sophisticated and established forms of self-government. This was initially recognized by the founders of the United States, although the federal government later moved on to an approach based upon the notion of domestic dependency and plenary authority. To this day, Tribal Nations have demonstrated that we are best-positioned to deliver essential government services to our citizens, including through the assumption of federal programs and services. This is because Tribal Nations are directly accountable to the people we represent, acutely aware of the problems our communities face, and can respond immediately and effectively to changing circumstances. Since 1968, every Congress and President has recognized that Tribal governments are the entities best suited to meet the needs of their communities, working to reject previous antiquated assumptions from the 19th century that Indian people were incompetent to handle their own affairs and that Tribal Nations would eventually become obsolete. Passage of the ISDEAA 30 years ago was a further recognition and partial restoration of our inherent sovereignty and self-determination.

The success of self-governance under the ISDEAA is reflected in the significant growth of Tribal self-governance programs over the years. A majority of USET SPF Tribal Nations engage in self-governance compacting or contracting to provide essential government services including providing vital services such as education, housing, health care, and public safety. For example, our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities, of which 22 are Tribally-operated through contracts and compacts. Through exercising this self-governance authority under ISDEAA, USET SPF Tribal Nations have greater flexibility and control over federally funded programs to more efficiently and effectively utilize funding to meet the unique conditions within our Tribal communities. ISDEAA provides a fiduciary model that acknowledges the inherent rights and self-governance authorities of Tribal Nations.

#### **Expansion of Tribal Self-Governance to all Federal Programs and Funding**

Despite the success of Tribal Nations in exercising authority under ISDEAA, the goals of self-governance have not fully been realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. USET SPF, along with Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. We urge the Committee and Congress to draft and approve legislation that would initiate this expansion. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decisionmaking in the management of their own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best their communities as well as have the authority to redistribute funds to administer services among different programs as needed. The Committee and Congress must modernize the current self-governance model in manner that is con-

sistent with Tribal self-determination in the 21st century and rooted in retained sovereign authority.

Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. USET SPF stresses to the Committee that if true expansion of self-governance is only possible through legislative action, the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize the federal fiduciary responsibility in a manner that is consistent with our sovereign status and capabilities. As an example, in 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (HHS), completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible but would require Congressional action. However, despite efforts on the part of Tribal representatives to the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were stymied by the lack of cooperation by federal representatives. USET SPF urges the Committee and Congress to use its authority to work to legislatively expand Tribal self-governance to all federal programs where Tribal Nations are eligible for funding, in fulfillment of the unique federal trust responsibility to Tribal Nations.

#### **Support for the PROGRESS for Indian Tribes Act**

USET SPF supports the enhancement of Tribal self-governance by making the DOI self-governance program consistent with its IHS counterpart in Title IV, which is included within S. 2515, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2018 (or PROGRESS for Indian Tribes Act). USET SPF also supports the goals and provisions within the legislation that seeks streamline the self-governance process within the Department of the Interior and provide greater flexibility to Tribal Nations to administer federal programs to the needs of our communities. The introduction of the PROGRESS for Indian Tribes is a step in the right direction when it comes to upholding the sovereign status of Tribal Nations and USET SPF encourages the Committee to continue to take these necessary steps to expanding these authorities to all federal programs under ISDEAA.

#### **Reporting Requirements do not Reflect Sovereign Status**

Further, USET SPF strongly recommends the Committee consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, "means testing," or other inapplicable standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. Because funding for federal Indian affairs is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to these extraneous standards. USET SPF points out that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

#### **Promoting Inter-Agency Transfers through Contracting and Compacting**

As Congress works to ensure all federal dollars are contractible and compactable, USET SPF calls upon the members of this Committee to ensure legislation fully supports inter-agency transfers through self-governance contracts and compacts. This is an opportunity to take steps toward self-governance within other federal agencies. For example, the Environmental Protection Agency (EPA) has a long track record of collaborating successfully with Tribal Nations and Tribal organizations, dating back at least to the agency's 1984 Indian Policy. This includes routinely collaborating with the Bureau of Indian Affairs, so that funding may be received through ISDEAA mechanisms. However, as USET SPF recently sought to utilize this model for the development of a Tribal risk and sustainability tool, there were differences in opinion between various agencies and operating divisions involved as to whether this was permitted. USET SPF urges that clarity be provided to ensure the use and promotion of this model in support of the continued expansion of self-governance.

#### **Conclusion**

Though the recognition of Tribal self-governance through the passage and implementation of ISDEAA was a major advancement in the recognition of our sovereign

status, USET SPF strongly encourages the Committee to move beyond its current limitations. Congress must recognize the inherent right of Tribal Nations to fully engage in self-governance and expand the authority of Tribal governments, so we may exercise real decisionmaking in the management of our own affairs and services provided to our citizens. USET SPF reminds the Committee that Tribal Nations each have unique capabilities, goals, and concerns, and when Tribal Nations serve our own communities, these objectives are addressed in a more targeted and efficient manner. We urge the Committee to explore opportunities to better recognize and promote Tribal self-governance and self-determination, and stand ready to assist to ensuring sovereignty is exercised to its fullest extent.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO  
HON. JAMES FLOYD

*Question 1.* In Montana, I've heard concerns from tribes about the cumbersome process associated with 638—in various programs and federal functions, especially with respect to the Fort Belknap Indian Community contract their detention facilities operations. What are some of the greatest challenges or successes you've experienced in contracting and compacting?

Answer. Muscogee (Creek) Nation (MCN) signed our first Self-Governance Compact and Funding Agreement in 1995 to assume the majority of functions we continue to operate today. Though we have not assumed many additional programs, services, functions, and activities since then, the Nation has heard that this process has become cumbersome from other Tribes. For example, MCN has offered support to Tribes who are working to assume realty functions. In those instances, Tribes have struggled to receive timely information from the Bureau of Indian Affairs (BIA) regarding current service levels, funding amounts and personnel. Missing information regarding current program operations, services, personnel and funds can make it very difficult for a Tribe to evaluate internal capacity and appropriate transitioning of the functions. In most cases, BIA employees play a critical role in facilitating the transfer of information, but the process used internally to the agency to produce and vet the information is cumbersome and lengthy. However, these employees have a vested interest in maintaining their current employment so the communication and transfer of programs is becoming increasingly difficult.

The other significant challenge Tribes face is the antiquated process the Department of the Interior (DOI) uses to transfer funds to Tribes. DOI's current internal accounting procedures significantly delay the receipt of funds. If Tribes desire to assume new or expanded functions from DOI, they often have to cash flow expenses for as many as 60–90 days. This greatly limits options available to Tribes and can be a significant deterrent to Tribes. Though MCN does not experience hardship funding programs while the agency works through the bureaucratic process to disseminate Congressional appropriations, it is an obstacle Tribes have to evaluate prior to assuming programs, services, functions, and activities.

Building capacity and preparing to operate federal programs takes time and significant effort. Encouraging DOI and BIA to change the current federal processes and procedures would make the transfer of federal programs to Tribal administration much easier.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO HON. JAMES FLOYD

*Question 1.* Based on your testimony it seems that you have had success in law enforcement and with your Realty Department. It seems like a daunting task to cover the round of an area size of New Jersey. What are some of the other goals the Muscogee hope to achieve through Self-Governance?

Answer. One primary success MCN has capitalized is the successful operation of many social service programs with more administrative efficiencies. The Nation's operation of service programs such as the Welfare Assistance Program, Indian Child Welfare, and Employment and Training has allowed the Tribe to assist the neediest of our families, while also providing case management to change the cycle. We continue to seek out ways to streamline tribal- and BIA-funded programs to meet the needs of citizens using the most efficient and effective means.

*Question 2.* How can Congress and this Committee assist you in achieving those goals?

Answer. Often tribally-driven initiatives meet consternation due to archaic BIA and DOI rules and regulations. When Tribes want to implement programs that vary



from the BIA programmatic rules, Tribes are required to submit a waiver and wait for a response. Thankfully, there is a timeline in which officials must respond, but the process is cumbersome and resulting decisions opaque. Tribes would have more flexibility if Congress created parity between Title IV and Title V of the Indian Self-Determination and Education Assistance Act to allow Tribes the flexibility to implement programs as they see fit. The process should not require a waiver, but allow adoption of the BIA regulation instead.

Muscogee (Creek) Nation looks forward to your continued partnership and the next 30 years of Self-Governance.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO HON. CARLOS HISA

*Question 1.* You assert the Ysleta del Sur Pueblo's commitment to data driven approaches and the increases you've seen in education attainment. It is impressive to hear that you have doubled the rate of college degrees in the last decade and your economic development efforts seem to be moving in an upward trajectory. You mentioned using your outcomes to harvest your full potential. How has the current self-governance structure affect your education initiatives and economic development?

Answer. The Ysleta del Sur Pueblo has the flexibility to prioritize education and economic development programs to meet the voids reported in our socioeconomic study. For example, some of the information in the report findings demonstrated that we have nearly 30 percent of our members with some college attainment, however, they are not completing degrees. While it is critical to maintain higher education scholarship funding; this alone is not a sustainable solution. Through self governance, we are able to allocate higher education funding in a manner that concentrates on mitigating barriers to members dropping out or preventing them from attaining their degrees. Case management and support services such as tutoring are now components to our higher education program meant to address our unique situation. In addition, our economic development department is incorporating the socioeconomic data into a vocational program aimed at building tribal member skills and workforce capabilities so that they are prepared for gainful employment opportunities associated with regional and tribal economic developments. Efforts are currently underway to align tribal member skill sets with future employment potentials in areas such as healthcare delivery, business administration and finance. The Pueblo has identified long-term community development plans that will yield these types of outcomes.

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**\*RESPONSES TO THE FOLLOWING QUESTIONS WERE NOT AVAILABLE  
AT THE TIME THIS HEARING WENT TO PRINT\***

WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO  
HON. ARTHUR "BUTCH" BLAZER

*Question 1.* A few weeks ago, Kevin Washburn, who served as Assistant Secretary for Indian Affairs under the Obama administration, published an article entitled *Everybody Does Better in Indian Country When Tribes are Empowered* in which he reinforces the case for self-governance and its positive impacts on jobs and the economy in Indian country.

Montana is home to two self-governance tribes: The Confederated Salish and Kootenai Tribes and the Chippewa Cree Tribes, who enjoy the flexibility and sovereignty that the Indian Self-Determination Act of 1975 made possible. Chairman Trahan of CSKT also happens to be in town and I look forward to meeting with him tomorrow.

President Blazer, what do you view as the next frontier for self-governance? What are the next functions that you see as most important for tribes to have the authority to contract or compact?

*Question 2.* What about USDA's SNAP program? As a member of both this committee and the Senate Committee on Agriculture, Nutrition, and Forestry, I've been hearing loud and clear from tribes that this is a policy they want to see included in the upcoming Farm Bill. How would having 638 or compacting authority over SNAP benefit your nation?