



Self-Governance Communication & Education Tribal Consortium

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**Testimony of W. Ron Allen, Tribal Chairman Jamestown S’Klallam Tribe and
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Submitted to the House Committee on Oversight and Government Reform Subcommittee
on Interior, Energy, and Environment
For the Record of the February 15, 2017 Hearing Entitled, “Examining Federal Programs
that Serve Tribes and their Members”**

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On behalf of the Self-Governance Communication & Education Tribal Consortium (SGCETC)¹ and more than 360 Self-Governance Tribes, I write to provide the House Oversight and Government Reform Committee Subcommittee on Interior, Energy, and Environment the following testimony for the record of its February 15, 2017 hearing entitled, “Examining Federal Programs that Serve Tribes and their Members.” We appreciate the Subcommittee’s interest in improving the execution of the Federal Trust Responsibility and look forward to opportunities for Congress and Tribes to collectively work together to uphold this legal responsibility.

This hearing followed the public release of the 2017 Government Accountability Office (GAO) “High Risk” Report, which, for the first time, includes the Indian Health Service (IHS), the Bureau of Indian Education (BIE), and the Office of Indian Energy. SGCETC agrees that the provision of services to American Indians and Alaska Natives (AI/ANs) and the efficiency and timeliness with which services are provided by Federal agencies can and should be improved. However, as explained below, the GAO report fails to acknowledge the unique circumstances associated with the execution of the Federal trust responsibility and obligations to AI/ANs, as well as successes related to Tribal management and operation assumption of Federal government programs under Self-Governance Compacts.

Tribal Self-Governance

In 1987, national Indian Affairs, managed and dominated by Federal bureaucracies were shaken by revelations of gross mismanagement which had been uncovered by a bi-partisan Congressional committee conducting a two-year investigation. The Congressional report called for an end to more than a century of government “paternalism” toward American Indians and the time for its replacement by full Tribal self-rule was now. Self-Governance – a Tribally-driven initiative - was the next chapter in the history of the Tribal-Federal relationship. Self-Governance is not the “termination” of the Federal trust obligation to AI/ANs; safeguards protecting the trust responsibility of the United States to our people, including our sacred treaties, are contained in the enabling legislation as well as each negotiated Compact of Self-Governance.

Self-Governance is fundamentally designed to provide Tribal governments with more control and decision-making authority over the Federal financial resources provided for the benefit of Indian people. Self-Governance has fostered the shaping of a new partnership between Indian

¹ The Self-Governance Communication and Education Tribal Consortium consists of Tribal Leadership whose mission is to ensure that the implementation of the Tribal Self-Governance legislation and authorities in the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) are in compliance with the Tribal Self-Governance Program policies, regulations and guidelines.

Tribes and the United States in their government-to-government relationship. It provides, administratively, the opportunity for Tribal governments to exercise our sovereignty with minimal Federal intrusion and involvement.

As envisioned by the bi-partisan Congressional committee, when Tribes are afforded true self-government within the Federal system, we can and will continue to achieve success assuring that the billions that continue to be wasted on self-perpetuating Federal bureaucracies will belong to Tribes to determine our own destinies.

The Federal Trust Responsibility to Tribal Nations

Tribes and the United States were engaged in governmental relations long before the founding of the United States, including more than 370 treaties, recognition in the Constitution, hundreds of statutes, Federal case law, regulations and executive orders. Each affirms the Federal government's trust obligations to provide benefits and services in perpetuity in exchange for millions of acres of land and significant resources ceded to the U.S. Collectively they represent a relationship between sovereigns and established the "government-to-government" principle and Federal Trust Responsibility, which is grounded in the United States Constitution and Tribal programs.

This principle has and continues to shape the long history of government-to-government relations between the Federal Government and Tribal Nations. As such, funding for Tribal programs should be in the mandatory spending of the Congressional budgets, not a discretionary decision, nor should it be subject to the same types of justification as funds distributed to non-profits or other government programs. Considering this unique relationship, the Subcommittee should recognize that Tribal programs should not be grouped with other programs examined by GAO. Tribal programs are the direct delivery of the Federal Trust Responsibility and should be considered separately from programs like the 2020 Census, weather satellites, and surface transportation. They should be reflective of the Federal Government's relationship with Tribes.

Additionally, as the Subcommittee and Congress seek solutions to the current shortcomings within the agencies, the Federal Trust Relationship must be a governing principle. During the hearing, there were suggestions made that perhaps states should assume the management of some of the functions the Bureau of Indian Affairs (BIA). SGCETC and Self-Governance Tribes strongly oppose the transfer of the Federal Trust Responsibility to states. Tribal Nations are sovereign governments and, in general, are not subject to state law or jurisdiction. Additionally, states are not appropriately positioned to understand the complex historical, jurisdictional, and legal challenges Tribes face under the Federal Trust Relationship. Transferring the Federal Government's responsibility to states would be in opposition to the Constitution, incongruent with U.S. relations with Tribes and be oxymoronic for one sovereign to reign supreme over another to manage.

In fact, the Self-Governance Program is an excellent example of how the Federal Government can maintain the Federal Trust Responsibility and support more efficient and effective service delivery for AI/ANs. Tribal management of Federal programs under the Indian Self-Determination and Education Assistance Act (P.L. 93-638)² put Tribal Nations in the position of

² P.L. 93-638, January 4, 1975, Indian Self-Determination and Education Assistance Act - To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Federal employees to deliver Federal programs locally to Tribal citizens. Self-Governance Tribes are directly accountable to the people they represent and serve, more aware of the problems their communities face, and more agile in responding to changing circumstances. While the High Risk Report does reveal failures in the Federal government's administration of programs, empirical evidence shows that when Tribal Nations are empowered to manage their own affairs—including Federal programs, success follows. SGCETC urges the Subcommittee and this Congress to consider the expansion of Self-Governance as you seek solutions to the issues raised in the High Risk Report.

The Chronic Underfunding of Federal Indian Programs

The High Risk Report describes significant weaknesses and inefficiencies in the management of Federal Indian Programs, but largely fails to describe how the long-standing chronic underfunding of these programs contributes to these persistent issues. The IHS and BIA have been underfunded for decades and despite recent appropriation increases, underfunding remains a problem and inevitably contributes to the ineffective delivery of services. SGCETC maintains that many of the weaknesses described in the High Risk Report can be attributed, at least in part, to the persistent and chronic underfunding of these agencies. As long as they remain dramatically underfunded, they will never overcome many of these challenges and Congress' fiduciary responsibility to Tribal Nations will go unfulfilled.

SGCETC respectfully requests that this Subcommittee ensures the underfunding of these agencies is recognized during future discussions of the High Risk Report and that GAO estimates the costs associated with implementation of each of their recommendations for review by the Subcommittee.

The Importance of Tribal Consultation

SGCETC would like to thank the Subcommittee for holding the February 15th hearing and recommends that this begins a more extensive conversation surrounding the improved management of Federal Indian Programs. We further recommend that any Federal Indian policy, no matter its origin, must be developed in ongoing consultation with Tribal Nations. Tribal governments and their citizens are in the best position to measure how well Federal Indian Programs are being delivered and to identify solutions to improve those programs. Additionally, many Self-Governance Tribes have more than three decades of experience managing and operating Tribal Programs successfully. We look forward to sharing our experiences and best practices with this Subcommittee in future listening sessions or roundtable discussions regarding the GAO recommendations.

Self-Governance Tribes foresee many opportunities in this Congress – particularly in the area of Tribal infrastructure investments – to improve delivery and quality of care, to streamline Indian Energy development, and to strengthen education for both Native youth and adults. Funding for Tribal infrastructure and maintenance, like other Indian Programs, is underfunded. This results in deficient and defunct systems that cannot provide adequate services and care, access modern educational tools, or efficient use of natural resources. Failing to include Indian Country in infrastructure investment plans will only increase the gaps in service delivery.

Conclusion

The issues raised in GAO's High Risk Report and previous reports are chronic, complex, and identifiable. SGCETC supports the Subcommittee's interest in seeing that they are addressed and that collaborative, innovative recommendations are implemented. We thank the Subcommittee for the opportunity to provide comments on this issue and look forward to partnering on solutions that reflect both the Federal Trust Responsibility and commitment to the expansion of Self-Governance.