



Self-Governance Communication & Education Tribal Consortium

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**Written Testimony of W. Ron Allen, Tribal Chairman Jamestown S'Klallam Tribe and
Board Chairman, Self-Governance Communication & Education Tribal Consortium
Submitted to the Senate Committee on Indian Affairs
For the Record of the March 8, 2017 Oversight Hearing on "Identifying Indian Affairs
Priorities for the Trump Administration"**

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The Self-Governance Communication and Education Tribal Consortium (SGCETC), representing more than 360 Self-Governance Tribes, writes to express our strong support of an Indian Affairs budget and policy agenda that upholds the Federal Trust Responsibility, respects and strengthens Tribal sovereignty, and bolsters Tribal governments and economies. The SGCETC appreciates that the Senate Committee on Indian Affairs (SCIA) convened a hearing to "*Identify Indian Affairs Priorities for the Trump Administration*" and we submit this testimony to be included in the hearing record.

The Indian Self-Determination and Education Assistance Act (ISDEAA) marked a new era in Indian Policy, recognizing Tribal Nations' inherent authority and right to self-govern. This historic legislation marked a turn for Tribes from paternalistic Federal control to increased Tribal control over Federal programs, economic development, and governance. After years of frustration with the Federal government's slow, bureaucratic delivery of services guaranteed in hundreds of Treaties, Tribal leaders worked together to advocate for Tribal rights to deliver services to their citizens directly. In 1988, their advocacy led to the successful passage of the Tribal Self-Governance Demonstration Project within the Bureau of Indian Affairs (BIA). After Tribes proved to deliver services more efficiently and effectively, Congress permanently reauthorized the program at the Department of the Interior (DOI) and extended Self-Governance authority to the Indian Health Service (IHS), which was later made permanent in 2000. Tribes were successful once again in 2015, with the expansion of Self-Governance to the Department of Transportation (DOT).

After more than two decades, the number of Tribes and the quantity of programs and funding managed under this legislation has steadily increased. Today, 272 Federally-Recognized Tribes and Tribal organizations exercise Self-Governance authority within DOI. Likewise, 352 Tribes and Tribal organizations participate in the Tribal Self-Governance Program within IHS to operate and manage Health Programs. For Self-Governance Tribes, Federal agencies have become advisors and technical assistance providers, rather than day-to-day service delivery managers. Self-Governance Tribal leaders expect that the Trump Administration will work collaboratively to further our vision to preserve, protect, and advance Tribal sovereignty, culture, history, and treaty and self-governing rights. In general, Self-Governance Tribes encourage President Trump and his leadership to eliminate administrative barriers to economic development, to relieve burdensome administrative oversight created by competitive grants and other short-term funding, and to support the advancements critical to the health and welfare of Tribal citizens. Self-governance Tribes have identified the priorities that hold the most importance as President Trump and his administration work to fulfill the Trust Responsibility. We have outlined these priorities below and encourage Congressional members, the President, and his team to highly consider these

immediate requests during the transition, in his proposed budgets and as he works through his first 100 days in office. continue forward.

Personnel Appointments

The vitality and effectiveness of the government-to-government relationship depends on whom the President chooses to act on his behalf. Presidential appointees will assist in setting the agenda for Tribal Nations and certainly oversee realization of his vision and legacy with Tribal Nations. Every Cabinet member, appointees and senior level staff should also be knowledgeable of Tribes' sovereign status and the history of Federal relations with Tribal Nations. SGCETC requests that the Administration engage Tribal Leaders immediately to begin the process of identifying appropriate criteria for selection of the Department of the Interior Assistant Secretary of Indian Affairs, the Indian Health Service Director, and the Department of Transportation Deputy Assistant Secretary for Tribal Government Affairs in the Office of the Secretary. These appointments are critical in advancing the government-to-government relationship and the implementation of Self-Governance and as such, should have an established knowledge of Tribal governments, operations, and priorities, as well as, the capacity and commitment to create long-term strategies for change within their respective agencies.

Tribal Consultation

Tribal consultation is the cornerstone of the government-to-government relationship. Meaningful Tribal consultation occurs when there is reciprocal information exchange and cooperative problem solving toward a collective solution. Many agencies have worked over the last two decades to develop and adopt Tribal consultation policies that guide their interactions with Tribal Nations. Many of the policies are well thought out and have produced meaningful outcomes in Indian Country. We encourage this Administration to adopt and reinforce the principles of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" and to set the expectation that consultation outcomes must create meaningful changes in Tribal communities across the United States. Additionally, we respectfully request that Federal agencies whom have not yet adopted a Tribal consultation policy work with Tribes to develop and implement a consultation policy to guide their interactions with Tribal Nations and appoint liaisons to coordinate with Tribes. Two such Federal agencies are the Department of State and US Army Corp of Engineers, whom Tribal Nations have identified as top priorities for establishing a Tribal Consultation Policy.

Exempt Indian Affairs from Any Future Sequestrations, Rescissions, and Disproportionate Program Funding Decreases

The IHS and BIA have been underfunded for decades and the last time a sequestration was enacted these agencies were not exempted. Despite recent appropriation increases, Tribes have still not fully recovered from the effects of sequestration and underfunding remains a problem, which inevitably contributes to the ineffective delivery of services. The FY 2013 sequester cut over \$500 million from Federal programs in Indian Country. Much like then, President Trump's FY 2018 Proposed Budget reduction to Tribal programs will critically impact the most vulnerable beneficiaries in Tribal communities; young people, the elderly, the poor and the sick. The budget and appropriations choices before Congress now are of much consequence to the fulfillment of Trust and Treaty obligations due to Tribes. SGCETC respectfully requests that Indian Affairs be exempt from any future sequestration, rescissions, and disproportionate program funding decreases to Indian programs.

Implement the Indian Trust Asset Reform Act (ITARA), P.L. 114-178

The Indian Trust Asset Reform Act (ITARA) Title II provides for the establishment of Indian Trust Asset Management Demonstration Projects for Tribes and the Secretary of the Interior to jointly develop resource management plans. Tribal Self-Governance has proven that when Federal

agencies and Tribes form partnerships in the management of trust assets, Tribal conflicts and disagreements are significantly reduced. Therefore, we encourage DOI to work with Tribes to expeditiously implement Title II early in this Administration.

Additionally, DOI conducted consultation to hear from Tribes ways to implement Title III, Improving Efficiency and Streamlining Processes. Self-Governance Tribes made many recommendations to protect compactable functions and programs within the Office of the Special Trustee (OST). The transition should include actions to secure these compactable OST functions and programs and maximize the opportunity to expand Tribal Self-Governance activities.

Update the Indian Trader Regulations

SGCETC support updating 25 CFR part 140 (Licensed Indian Traders) in an effort to modernize the implementation of the Indian Trader statutes consistent with the Federal policies of Tribal Self-Determination and Self-Governance. Revisions will provide the opportunity and flexibility for Tribes to further develop and oversee local economic development. Economic development is critical to Tribal governments, not only because it strengthens Tribal sovereignty, but because it increases Tribal capacity to expand and support Tribal services and infrastructure. We encourage this Administration to support the revision of the Indian Trader Regulation, work with Tribes through meaningful consultation, and invest in the future of Tribal economic development.

Assign a High Level Tribal-Federal Task Force to Provide Recommendations for the Redesign of IHS

This Administration should establish a Tribal-Federal Task Force to conduct an analysis and make recommendations on a redesign plan for IHS. The plan should identify alternative business models, streamlined and efficacious internal IHS policies and processes, methods to maximize capture of third party revenue and access to alternative resources, and strategic workforce development ideas.

Support Administrative Actions to Conduct a Self-Governance Demonstration Project According to P.L. 106-260, Title VI, Self-Governance Demonstration Feasibility Study Recommendations in 2003 and Tribal Recommendations of the 2013 Health and Human Services Self-Governance Tribal-Federal Workgroup Reports

Self-Governance Tribes and HHS Have worked collaboratively to conduct a Self-Governance Demonstration Feasibility Study (Report completed in 2003) and again in 2013 to evaluate the expansion of Self-Governance to the 13 programs identified in the 2003 Study; programs other than in the IHS. The HHS determined that a demonstration would likely have a positive effect on programs and program beneficiaries, although some problems may exist which is to be expected when there is a program implementation and management change. In the course of conducting the 2003 study, BIA and IHS employees were interviewed and asked for their assessment of how Self-Governance had affected program beneficiaries. Most indicated that, although they lacked empirical data to support their conclusions, they believed Self-Governance overall had been positive.

This Administration should conduct a Demonstration Project for Self-Governance Tribes in the Administration for Children and Families, Administration for Community Living and Substance Abuse and Mental Health Services Administration.

Protect Modernizing Health Care Delivery and Quality Provisions Included in the Indian Health Care Improvement Act (IHCIA)

The IHCIA has provided significant progress in the IHS, Tribal and Urban (I/T/U) health system. IHCIA updates and modernizes health delivery services, such as cancer screenings, home and community based services, hospice care, and long-term care for the elderly and disabled. It establishes a continuum of care through integrated behavioral health programs that address

alcohol/substance abuse problems and the social service and mental health needs of Indian people. Additionally, there are many essential cost-saving provisions for IHS and Tribes, such as the authority for I/T/U health providers to be licensed in any state and practice at an I/T/U facility and the ability for Tribes to access the Federal Employee Health Benefits (FEHB) system. The law also authorizes IHS and Tribes to enter into arrangements with the Department of Veterans Affairs (VA) and Department of Defense to share medical facilities and services, which increases government efficiencies and ensures that veterans receive the care they deserve. IHCIA allows I/T/U providers to be eligible for participation in any Federal health care program and for reimbursement from third party payers, which is critical to increasing additional resources within the system. As the Administration considers a path forward on health care reform, we urge you to ensure that the advancements under IHCIA are preserved and the Indian health system can continue to operate under a framework appropriate for 21st century healthcare delivery to American Indian and Alaska Native (AI/AN) citizens.

Utilize the National VA-IHS MOU to Provide Care to Non-Native Veterans

Tribes assert that IHCIA Section 405(c) provides the authority for IHS and Tribal Health Programs (THPs) to receive reimbursement for services provided to non-Native veterans. While the Veterans Access, Choice and Accountability (Choice) Act is a means for VA to purchase services in addition to the IHS/THP-VA MOUs, Choice Act agreements cannot be viewed as a replacement for the existing MOUs. Together, we should strive to ensure that the Choice Act does not diminish existing agreements, but instead becomes a limited-use option for IHS and THPs to increase health care access for all veterans.

Improve Coordination of Care between Department of Veterans Affairs and Indian Health Care Systems

As VA, IHS, and THPs work to build greater partnerships, we must address issues with regard to coordination of care. Failing to adequately coordinate care is magnified by VA's unwillingness to reimburse referral services. For example, if a Native veteran goes to an IHS or THP facility for service and needs a referral, the same patient must then be seen within the VA system before a referral can be secured. This is not an efficient use of Federal funding, nor is it navigable for AI/AN veterans. This Administration should encourage VA leadership to leverage Tribal expertise to improve coordination of and access to care for veterans.

Fulfill Requirements under Section 221 of the Tribal Law and Order Act (TLOA)

Public Law 280 (P.L. 83-280), which delegated Federal criminal law enforcement authority to certain states, was enacted as part of the Federal Termination Policies in the 1950's. P.L. 280 degraded law enforcement services in many Tribal communities and as a result, has been a source of ongoing conflict between Tribes and States. However, Section 221 of TLOA sought to remedy these conflicts by mandating the Department of Justice (DOJ) to reassume Federal jurisdiction at a Tribes' request. Despite advocacy and requests from Tribes, DOJ has not consistently exercised its authority under Section 221. Therefore, Self-Governance Tribes join with the Affiliated Tribes of Northwest Indians and National Congress of American Indians to urge DOJ to implement the requirements of TLOA Section 221 when requested to do so by Tribes.

Ensure the Tribal Transportation Self-Governance Program (TTSGP) is Implemented in Accordance to the FAST Act, P.L. 114-94

The FAST Act, passed in December 2015, marked the first ever Self-Governance expansion outside of DOI and HHS. Due to the historic nature of this expansion and the rigorous work of the TTSGP Negotiated Rulemaking Committee, Self-Governance Tribes urge this Administration to complete regulation development as required by the FAST Act. Additionally, departmental leadership and program managers should receive training to fully understand Self-Governance tenets and to ensure appropriate implementation of the FAST Act.

In closing, SGCETC would like to thank the Committee for the opportunity to submit testimony. We look forward to working with you to initiate positive changes that will strengthen Tribal Sovereignty and advance Self-Governance tenets. If you have any questions or wish to discuss these priorities in greater detail, please contact Terra Branson, Self-Governance Communication and Education (SGCE) Director, at terrab@tribalseg.gov.