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# **TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT**

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**HEARING**  
BEFORE THE  
**SELECT COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SECOND CONGRESS**  
**FIRST SESSION**  
ON  
**S. 1287**  
**TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION**  
**ASSISTANCE ACT**

JULY 18, 1991  
WASHINGTON, DC



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1992

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# TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT

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THURSDAY, JULY 18, 1991

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

The committee met, pursuant to other business, at 1:31 p.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, McCain, Nickles, DeConcini, Kassebaum, Cochran, Daschle, Akaka, Wellstone, and Gorton.

## STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Now we will begin the hearing on S. 1287, The Tribal Self-Governance Demonstration Project Act.

Senator GORTON. Mr. Chairman.

The CHAIRMAN. Yes.

Senator GORTON. Because of the length of the markup I am not going to be able to stay for this hearing, but as you have already noted, three of the seven tribes that have engaged in this experiment are from the State of Washington, and I think they have made a success of it. Therefore I wanted to say that I think this is a good idea which should be pursued. I will have some written questions, mostly for the Administration, which we will submit, but I want to commend you for three successful experiments in this direction in the State of Washington.

[Questions to be submitted by Senator Gorton, and the answers, appear in appendix.]

Senator McCAIN. Do you have information that so far it has been successful?

Senator GORTON. It seems to me that it has. They will report to you on their own.

I think what we really ought to do is set up some methodology, Mr. Vice Chairman, for determining what it is that we mean by success, some way in which we can measure this in the future in the lives of the members of the tribes themselves as we move forward. We may have suggestions on that, and that will be in the nature of my questions.

Senator NICKLES. Mr. Chairman.

The CHAIRMAN. Senator Nickles.

Senator NICKLES. I, like Senator Gorton, will not be able to stay for the duration of the hearing. We do have a couple of Oklaho-

mans testifying. We actually have two tribes that have tried it and one tribe that will be trying it. Chief Manatowa will be representing the Sac and Fox Tribe that is beginning it. Chief Wilma Man-killer's tribe has been doing it and doing it quite well. So these experiments look like they could be quite a success, and I look forward to hearing the testimony. I want to stay for a few minutes to catch Dr. Brown's statement. I want to apologize to our witnesses that I won't be able to stay for the duration, but this does seem to be a successful project and one that we might be able to encourage and further develop throughout the country.

The CHAIRMAN. Thank you very much.

The Self-Governance Demonstration Project, I believe, is one of the brightest spots on the horizon of Indian affairs because I believe it has already proved what many of us have long believed, that tribal governments should be in the driver's seat when it comes to determining how Federal programs can best be adapted to serve the unique needs of each tribal government and the citizens and reservation residents that they serve.

The former chairman of this committee, Senator Dan Evans, and I had the pleasure of sponsoring similar amendments and worked closely together to draft title 3 language, and I am pleased with the results so far. I believe that all the participating tribes, as well as BIA, should be gratified with the initial successes. As we know, these have not been easily won, but I anticipate that the testimony today will show that the effort has been worthwhile.

Without objection, I would like to put the rest of my statement in the record.

[Prepared statement of Senator Inouye appears in appendix.]

[Text of S. 1287 follows:]

102D CONGRESS  
1ST SESSION

# S. 1287

To amend the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

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## IN THE SENATE OF THE UNITED STATES

JUNE 13 (legislative day, JUNE 11), 1991

Mr. MCCAIN (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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## A BILL

To amend the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Tribal Self-Governance  
5       Demonstration Project Act".

6       **SEC. 2. EXTENSION OF TIME FOR TRIBAL SELF-GOVERN-**  
7       **ANCE DEMONSTRATION PROJECT.**

8       Section 301 of the Indian Self-Determination and  
9       Education Assistance Act (25 U.S.C. 450f note) (hereaf-



1 ter in this Act referred to as the "Act") is amended by  
2 deleting "five" and inserting in lieu thereof "eight".

3 **SEC. 3. INCREASE IN NUMBER OF TRIBES PARTICIPATING**  
4 **IN PROJECT.**

5 Section 302(a) of the Act is amended by deleting  
6 "twenty" and inserting in lieu thereof "thirty".

7 **SEC. 4. COMPLETION OF GRANTS AS A PRECONDITION TO**  
8 **NEGOTIATION OF WRITTEN ANNUAL FUND-**  
9 **ING AGREEMENTS.**

10 Section 303(a) of the Act is amended by deleting  
11 "which—" and inserting in lieu thereof "that successfully  
12 completes its Self-Governance Planning Grant; such annu-  
13 al written funding agreement—".

14 **SEC. 5. ADDITIONAL FUNDING FOR SELF-GOVERNANCE**  
15 **PLANNING GRANTS.**

16 Title III of the Act is amended by adding at the end  
17 thereof the following new section:

18 "SEC. 307. For the purpose of providing planning  
19 and negotiation grants to the ten tribes added by section  
20 3 of the Tribal Self-Governance Demonstration Project  
21 Act to the number of tribes set forth by section 302 of  
22 this Act, there is authorized to be appropriated  
23 \$700,000.".

The CHAIRMAN. Now, if I may, may I call upon the author of this measure, the vice chairman of the Select Committee on Indian Affairs, Senator McCain, and if I may ask, will you please assume the Chair.

**STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS**

Senator MCCAIN [assuming Chair]. Yes, sir; thank you, Mr. Chairman.

Mr. Chairman, I would like to thank you for your support of this concept. I would like to make my complete statement part of the record, and just take a few seconds to say that Indian self-determination is what we have been aiming toward. I appreciate Assistant Secretary Brown's and Secretary Lujan's assistance in this effort.

I don't think there's any doubt that if we expect Indian tribes to be economically viable, we have to give them the ability to govern themselves and the ability to dispense their own funds in the best manner in which they see fit. I see a very bright future for this. I would like to see it expanded, and I would like to see the day when every Indian tribe in America is able to truly govern itself, which they can only do through dispensation of their own tribal funds in whatever manner they see as being best for their own people, through the functioning of the tribal government.

[Prepared statement of Senator McCain appears in appendix.]

Senator MCCAIN. With that, I would like to ask Secretary Brown if he would please come forward as our first witness.

Welcome, Secretary Brown. I recognize the individual with you, Mr. Lavell, a former resident of Arizona.

**STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY WILLIAM LAVELL, DIRECTOR, OFFICE OF SELF-GOVERNANCE**

Mr. BROWN. Thank you, Mr. Chairman. Let me say, Mr. Chairman and members of the committee, that I appreciate the opportunity to testify on S. 1287, The Tribal Self-Governance Demonstration Project Act. As you have indicated, I have Mr. William Lavell, who is Director of the Office of Self-Governance, with me here this morning.

I have already submitted my testimony for the record and would like to just take a few minutes to summarize it, if I may.

Let me start by saying that a great deal of progress has been made in demonstrating a new way for tribal governments to work with the Federal Government. Further, I think that this demonstration project has been a good example of what can happen when Indian tribes, the Congress, and the Administration cooperate to the fullest extent possible. Tribal leaders and staff have exhibited statesman-like qualities in the development of this program. First they initiated the concept, as you are probably well aware, some 4 years ago. Since passage of the act in 1988 they have conducted research, held workshops, and recommended numerous changes in the structure and implementation of current Government programs, at their own expense. The actions of these leaders, I think,

will most assuredly affect many Indian tribes very positively in the future.

In regard to Congress, you know that Congress has responded by authorizing the project and then by funding tribal planning grants. In 1991, Congress provided \$3 million to assist with tribal startup costs and program adjustment funding due to the difficulties involved with dividing some of the Bureau of Indian Affairs resources without adversely affecting other tribes. Now Congress is sponsoring amendments to title III to extend the project and to require interested tribes to complete a planning process prior to entering a self-governance agreement.

The administration has given this project a very high priority. President Bush in a recently issued statement reaffirmed the government-to-government relationship, saying,

This is a partnership in which an Office of Self-Governance has been established within the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decisionmaking powers over tribal government functions from the Department to tribal governments.

Secretary Lujan indicated in May, at the National Tribal Leaders' Forum here in Washington, that the self-governance program is here to stay for those tribes who wish to participate. During fiscal year 1990, the Department negotiated seven self-governance funding agreements which resulted in 58 BIA programs, totalling about \$26.8 million, being rolled into 7 annual funding agreements for fiscal year 1991.

This year, renegotiations have been completed on the original funding agreements, as well as for 1992, and negotiations are soon to start on another group of compacts that will commence on January 1, 1992.

The cooperative efforts by tribal governments, Congress, and the Administration have brought the project this far. It is my hope that this three-way partnership can continue for many years to come.

Now, regarding specifics of S. 1287, the Department strongly supports the intent of S. 1287 to extend the Self-Governance Demonstration Project. We support extending the project for an additional three years and expanding by 10 the number of tribes that participate. We also believe that it is beneficial for tribes to successfully complete a planning process before entering into negotiations with the Department.

That concludes my testimony, and I would be pleased to answer any questions that the committee might have, Mr. Chairman.

[Prepared statement of Mr. Brown appears in appendix.]

Senator McCAIN. Thank you very much, Secretary Brown, and thank you for your support of these projects.

Senator Gorton raised an excellent point. We should have some criteria for success or failure, and I hope you are working on that particular aspect so that we can have some benchmarks.

Mr. BROWN. Yes; we are, Senator.

Senator McCAIN. Have you heard any complaints from any of the seven tribes that are presently under this project?

Mr. BROWN. We have heard a number of concerns expressed to us. To deal with those, we have an oversight committee within the Secretary's office, which I chair. I am a member of the Special

Council for the Secretary, which has as well, representatives from the Department and the Bureau. As issues come up in the negotiations, we have been able to address those and come out with policies in a timely manner and get those responses back to the tribes. We will continue to do this as we break new ground in this project.

Senator McCAIN. Are there tribes that are nonparticipating that have concerns?

Mr. BROWN. Yes; perhaps the greatest concern that I have heard thus far is the concern that has been expressed externally, and in some cases internally, as we begin to break new ground in reviewing this, as I indicated. Perhaps the greatest concern expressed was the idea of having any type of negative impact on those tribes that are nonparticipating, particularly those that are found in the multi-tribal agencies.

Senator McCAIN. Do you think that it makes any difference whether it's a large tribe or a small tribe?

Mr. BROWN. At this time no, I don't, because the way the process works in negotiating the compacts is that one looks at and breaks out the amount of dollars that would go to a tribe. Participating in that is the Agency Superintendent, and the Area Director as well. Once that number is looked at and arrived at, the question then asked is, does this have any negative impact on other tribes or the remaining nonparticipating tribes? If it does, then that issue must be addressed and resolved before the compact goes forward.

Senator McCAIN. Do you foresee self-governance someday involving all Federal Indian programs?

Mr. BROWN. I can speak most specifically to the Department of the Interior. Secretary Manuel Lujan has come forward with a strong statement, as we have reviewed and prepared and put together amendments to Public Law 93-638 that do not just apply to the Bureau but to the total Department. With that effort, we are moving forward to include, as we move to amend Public Law 93-638 and eventually expand the self-governance, we would see within the Department of the Interior that that would affect all the divisions within the Department.

Senator McCAIN. As happens in all bureaucracies, Dr. Brown, we have top official support, and yet lower down, we've got some problems. I'm sure that you've heard of that, and I wonder if you or Bill would like to comment on that.

Mr. BROWN. Let me comment, and then if Bill has additional comments, I would certainly allow him time.

As we said, this is breaking new ground. This is a demonstration project. We are entering new territory in some areas. There have been concerns expressed by not only the nonparticipating tribes, but some people internally. What we have found, however, as we have proceeded in the first round of negotiations where we had the seven compact tribes come aboard, there were many unanswered questions. The Bureau had been reluctant up until that time to move quickly into this program. So we found ourselves negotiating and cutting policy on a very short time frame. That raised some administrative concerns internally; however, as we've involved the superintendents and the area directors in the negotiations, as we've had other training and as I have spoken and as Secretary Manuel Lujan has indicated strong support and movement toward

that, we have found—particularly in the second round of negotiations—very strong support and cooperation. For instance, in the Portland Area Office and the Alaska Area Office, particularly in these last negotiations, there has been strong support, with the realization that these are programs that are going to decide, and have a major impact on, the future of tribes. So I feel we are making headway on that.

As I indicated, we continue to break new ground. There will be issues and concerns brought up internally and externally which we will be answering and prepared to address in an effective way.

Senator McCAIN. Bill, do you have anything to add?

Mr. LAVELL. I would add this. This is a learning process for us as well as for the tribes. We are evolving this process as we go. We are trying not to lock anything into place up front. We are trying to find out what works and what doesn't work.

In that process, people are doing things they've never done before. There is always a hesitation, a resistance to change; that's evident. I have personally participated in every negotiation this year but one, and I've observed a very painstaking, thorough analysis of the budget, and wonderful things are happening. The tribes are seeing better what's happening in the Bureau, and the Bureau is seeing better why the tribes are concerned.

Senator McCAIN. It must be a frightening experience. [Laughter.]

Please keep us informed. We have several questions that we would like you to respond to in writing. We appreciate your support and involvement in this, and please know that the committee views this with the highest priority and we appreciate all your efforts as we see this as one way out of the endemic problems that we're all too keenly aware of. Thank you very much.

Mr. BROWN. Thank you, Senator. We appreciate your interest and support.

Senator McCAIN. Thank you.

[Questions and answers appear in appendix.]

Senator McCAIN. Our next panel will be Joe DeLaCruz, who is President of the Quinault Business Committee; Henry Cagey, who is Chairman of the Lummi Indian Business Council—I believe that Chairman Cagey will be accompanied by Gerald James; Dale Risl- ing, who is Chairman of the Hoopa Indian Tribe; and William Ron Allen, who is Chairman of the Jamestown Band of Klallam Indians.

Welcome, gentlemen. If we could perhaps begin in order of appearance. Welcome back, Joe, and please proceed in whatever fashion you wish to proceed. Your written statements will clearly be made part of the record. Thank you.

#### STATEMENT OF JOSEPH B. DELACRUZ, PRESIDENT, QUINAULT INDIAN NATION, AND PRESIDENT, QUINAULT BUSINESS COMMITTEE, TAHOLAH, WA

Mr. DELACRUZ. Thank you, Mr. Chairman. I am Joseph B. DeLaCruz, President of the Quinault Indian Nation. My written statement is quite lengthy and will be part of the record, and I will try to highlight some of the things that I point out in my written state-

ment as far as the Self-Governance Demonstration Project is concerned.

I want to thank the chairman and the committee for introducing S. 1287. Our enthusiasm for the Self-Governance Demonstration Project continues. We support extending the project for 3 years.

Tribal self-governance is not a new idea. As I served two terms as President of the National Congress of American Indians in researching National Congress resolutions, I found tribes passing resolutions in 1947 for self-determination, and into the 1970's, resolutions for government-to-government relations with the U.S., so it is not a new idea.

The Self-Governance Demonstration Project elevates the government-to-government relationship and builds a new way of doing business between the tribes and the United States. We are building a model which Congress and the tribes may someday consider as a policy alternative.

Extension of the project will allow participating tribes, other tribes, the administration, and Congress the opportunity to study and evaluate the implementation of the project and our experiences. We are in the first year of implementation at Quinault, and it has been 1 year of transition. We have discovered that the BIA has no monopoly on bureaucrats. Our program managers and staff can also be entrenched, and it has taken time for them to adjust and learn to operate under self-governance as opposed to BIA contracts.

Key provisions from title 3, our compacts, and our annual funding agreements are the trust relationship that the United States has to the tribes, and that it is protected. Tribes may redesign, consolidate, or change BIA programs to meet tribal needs and priorities. Secretarial waivers and unnecessary bureaucratic regulations can be replaced by tribal guidance documents. This is one area where a question was raised by Senator Gorton. We have developed mutually-determined baseline measures, established for semiannual progress reports by the BIA and the tribes to Congress which will provide documentation and data for evaluation of longer-term policy considerations. Most importantly, tribal councils now determine our program priorities and allocations of resources.

It was during the development of the baseline measurement report requirements that we realized that 3 years of implementation would not be sufficient to explore the project and logically evaluate our experiences. Our Quinault budget process and adoption this year was truly an historically significant event. The Quinault vision of the Self-Governance Demonstration Project is that it should evolve at a pace and direction established by the tribal council and community, and for success, it needs to continue as a tribally-driven initiative. Tribal decisionmaking authority, flexibility, control, and priority-setting are the heart and substance of the demonstration project. Accountability and responsibility for revisions of general government service to our tribal members are paramount, and recognition of the government-to-government relationship of our status as a government is in the foremost of our goals for the project.

Mr. Chairman, I appreciate the opportunity to highlight some of the things that I point out in my testimony. I will answer any ques-

tions, and we will move on to the next panel members. We have laid out our testimony to kind of cover this project, as we have been working very closely together for the last 3 years.

[Prepared statement of Mr. DeLaCruz appears in appendix.]

Senator McCAIN. Thank you. Thank you very much.

Mr. Cagey.

**STATEMENT OF HENRY CAGEY, CHAIRMAN, LUMMI INDIAN NATION, AND CHAIRMAN, LUMMI INDIAN BUSINESS COUNCIL, BELLINGHAM, WA, ACCOMPANIED BY GERALD JAMES, PROGRAM MANAGER, LUMMI INDIAN BUSINESS COUNCIL**

Mr. CAGEY. Thank you, Mr. Chairman. My name is Henry Cagey, newly-elected tribal chairman for the Lummi Tribe. Basically I have been in this term for the last 6 to 8 months.

What I've seen of the project is that our people and our community are beginning to see some of the impact of the project. Mr. James has been the initial key tribal member in working with the project from the beginning. What I would like to do is turn it over to him, and have him start where we are submitting our testimony.

**STATEMENT OF GERALD JAMES, PROGRAM MANAGER, LUMMI INDIAN BUSINESS COUNCIL**

Mr. JAMES. Thank you, Mr. Chairman, committee members.

I would like to key on two specific areas within our testimony to emphasize a couple of things that we feel are very important: The need for research and planning, and communication and education on the project.

We often use a short statement from our tribe that we have put into our testimony several times, that if you don't know where you're going, how will you know when you get there? The Lummi Tribe formulated a comprehensive internal planning process that included the community in almost all the areas of the revisions that we felt were needed to take this project on. One that has been going on for several years and still has not come to conclusion is constitution revision that we feel is ultimately needed not only for us to take on this project, but to move on into the future.

We have also done a comprehensive needs assessment, not limited just to the community, but we have done the community; we have done an assessment of the tribal government; we have brought in two universities, three professors, to analyze how we do business at the tribe and make some recommendations to us; and have developed a plan to go along with some of those recommendations.

We have also gone into all of our tribal programs, and our program directors were involved in developing comprehensive goals and objectives based on current funding, minimal funding, and ideal funding levels, so that we could assess what our needs were, what they are, and how they should be, so that when we enter into negotiations we know where the shortfalls are going to be.

As I mentioned, we did an internal reorganization plan, taking into consideration the added responsibilities involved with the Self-Governance Demonstration Project. We have developed a balanced budget ordinance. Involved in that is a new appropriations commit-

tee that deals with matching the tribal goals and objectives with the funding needs and requests. We have developed an Office of Management and Budget that oversees the expenditure of funds to ensure that not only are they not overspent, but they are not underspent. We have included several changes within our tribal council, one being for the first time a full-time paid chairman to assist in developing policy for the tribal council.

Legal research, internal as well as external, needed to be done and still needs to be done. We have done some of that work internally, developing new ordinances, developing regulations, because under the compact that we have entered into with the Department of the Interior, the Federal regulations that now exist on all programs stay in place until we replace them with others.

There needs to be external review and research on the status of statutes and regulations that may impede the progress of this project, and that is ongoing.

On budget research, internal needs-based dollars need to be known by the tribe for us to know and be able to negotiate and determine the dollars that we are able to negotiate, and the difference between that and what our needs are. That's the flexibility that we get with this project, the ability to change the regulations and the amount of dollars, to tell us if that's enough for us to be able to take that program on. That needs to be there.

External research needs to be done by the tribes involved on the BIA budget—not just the tribally-specific budget; that is, specific to them; but they need to know the Central Office budget, they need to know the Area Office's budgets, they need to know the Agency Office budgets so that they can be better prepared to know what they are getting into.

On communication, education, and public relations, there is also an internal and external faction of this. Internal communication has been a chronic need of our tribe since the early 1940s that has been identified in our goals and objectives as an area that needs tremendous work so that our staff and our programs and our counsel are continuously updated as to what is going on with the project.

External is also very important. We have initiated and held six conferences since January in trying to relate our experiences of the tribes that are involved in the project, and what we have developed and what we are able to share that we have developed under the compact. We have developed an annual agreement format. We have developed baseline measures for the project and the ability to measure what we are doing. We have been trying to deal with non-participating tribes' concerns and what the possible negative and positive impacts of this project are. It is very important, and we are very appreciative of the Congressional support that we have gotten to implement an actual communications and education project along with this Self-Governance Demonstration Project, to keep everybody informed as much as possible so that if there are concerns, we are able to address them. If there are misconceptions there, we are able to deal with them. If there are problems there, we are also able to deal with those. And we are very much in support of the bill and the extension and the need for extra time to be able to actually evaluate this project.



Thank you.

[Prepared statement of Mr. Cagey appears in appendix.]

Senator McCAIN. Thank you very much.

Mr. Risling.

**STATEMENT OF DALE RISLING, CHAIRMAN, HOOPA INDIAN  
TRIBE, HOOPA, CA**

Mr. RISLING. Thank you. I, too, have submitted written testimony and I will try to be as brief as I can in summarizing some of the highlights of my testimony.

For over two decades prior to participating in the Self-Governance Demonstration Project, the Hoopa Tribe was involved in litigation that challenged ownership and management of our reservation. During this time, Federal interpretation of this litigation suppressed and stymied the development and advancement of our tribe and created a combative relationship and atmosphere on our reservation.

In 1988 Congress passed Public Law 100-580, The Hoopa-Yurok Settlement Act, which returned the ownership and management authority of the Hoopa Valley Indian Reservation to the Hoopa Tribe. This was the beginning of a new era for our tribe, and participation in the Self-Governance Demonstration Project was an easy choice, and also a timely one.

It is important to emphasize that the concept of self-governance is that it is an optional program for Indian tribes. We are hoping that under this Self-Governance Demonstration Project we can create a more positive environment and atmosphere and partnership in the future with the Federal Government.

During the first 2 years of planning and preparation for the Self-Governance Demonstration Project, we implemented changes and reform within our government to strengthen it, bring about accountability, checks and balances, and sound management through the adoption of appropriate ordinances and referendums. Some of the activities include constitutional amendments; development and advancement of our court and law enforcement; creation of a tribal grand jury; budget ordinances; legislative procedures; a labor relations commission; mandatory drug testing; conservation laws; and setting formal tribal goals and objectives. Currently we are designing a new method to interface our commercial timber operation with our tribal forestry functions that we have contracted from the Bureau of Indian Affairs. This will increase tribal timber revenues; overcome cumbersome and restrictive Federal regulations and obstacles; eliminate the duplication of activities between our two tribal entities, and maintain trust obligation over our timber resources.

We are also creating new ways to address law enforcement funding and problems that tribes have in Public Law 83-280 States.

These are some of the examples of the new tribal-Federal relations that we are attempting to develop under the Self-Governance Demonstration Project.

Some of the obstacles that we have encountered during this period of participating in the project, besides being a tribe that is involved with a multi-tribal agency, are the fact that we had diffi-

culty in receiving adequate and timely budget information to do the planning required for this project. Once we did receive this information, we had a hard time proving the validity of it. Also, one of the great difficulties we are having is trying to identify what the Hoopa Tribe's share of the BIA budget is, from the Agency all the way up to the Central Office.

Our first year of negotiations resulted in an increase in our set-aside budget of roughly \$56,000, \$45,000 of it coming from the Central Office in Washington, DC. Although the top Interior and BIA officials have supported our efforts and supported the project, we received a lot of opposition from the lower level staff people. This has made it quite difficult for our negotiation planning and implementation.

Our first year of implementation involved the transfer of the functions and activities and services from the BIA to the tribe, and the refining of our internal reporting and evaluation systems and tribal goal-setting. The uncertainty of funding for remaining years of the project, however, has caused a lot of anxiety and doubt within our tribe. Financial stability is an essential element of the Self-Governance Demonstration Project. Tribal governments should be looked at no differently than other governments in the country when it comes to establishing a Federal base for our budgets.

The Hoopa Tribe supports the provisions of S. 1287, which extends the Self-Governance Demonstration Project another three years and provides \$50,000 planning grants. We do, however, have some concerns with the expansion of the Self-Governance Demonstration Project to more than 30 tribes. We are afraid that the demonstration concept of the project may become diluted or lose its characteristic. It is important to the Hoopa Tribe that this focus be maintained. We are sincere in our role and in our efforts as a demonstration tribe, to design or to pioneer a new Federal-tribal relationship for other tribes to follow.

Finally, the Hoopa Tribe looks ahead at the concept of New Federalism with caution and interest. We plan and intend to use self-governance as a vehicle to prepare us and move us in that direction at our own pace.

Thank you.

[Prepared statement of Mr. Risling appears in appendix.]

Senator McCain. Thank you very much.

William Ron Allen.

#### STATEMENT OF WILLIAM RON ALLEN, CHAIRMAN, JAMESTOWN KLALLAM TRIBE, SEQUIM, WA

Mr. ALLEN. Thank you, Mr. Chairman. For the record, my name is William Ron Allen. I am Chairman of the Jamestown Klallam Tribe in Washington State.

You have my written testimony, too, and I also will try to highlight what I consider important points in our testimony.

My tribe also is one of the first tribes that entered into compacts, and we are very excited about this project. We are very excited about the very theme of the tribes taking control over a new way of approaching the Federal-tribal relationship. We feel that if anybody is going to do it, it is going to come from us, that creativity is

going to come from us, the new ideas and the new approaches will come from us.

We often hear some misnomers about the project, "Does this mean the elimination of the BIA?" I think that is quite important right up front, to make sure that everyone understands that this is not going to be the elimination of BIA, it is going to be the redefinition of the BIA in terms of their role. Many tribes will continue to use the BIA. But as Chairman Risling has mentioned, this is a new opportunity that we will be looking at that many tribes will select.

My tribe participated in this because we are a very small tribe of only 250 people. We felt it was critical that if we were going to look at a new way of conducting business, taking ourselves out of the current 638 contracting/granting process, that we need to show Congress and the administration that small tribes of our magnitude can also do this kind of a project and pursue this approach in an effective and responsible manner, and that we, too, function fully as governments. We have all the same responsibilities as any other tribal government.

We also felt it was important for a tribe of our size to be involved in this process from the perspective that as we design the approach and the techniques or formulas of how we are going to consider this project and how it will be developed into our permanent way of doing business, that it would have to take into consideration small tribes, small populations, small land bases, very limited resources, and that we would need to be extensively involved to assure that it is designed in a fair and reasonable process.

Despite the many obstacles that we have experienced since we began implementing it on October 1, we have had many successes. I think it has a lot to do with our attitude. We believe in this project. We believe it is going to work, and we are looking for creative ways to make this project work and show Congress and the Administration that there are better ways to use what resources Congress authorizes to us. We have taken the education programs and consolidated them and made them more flexible. We have provided additional housing or made available housing that we didn't have available to us before, additional planning, the procurement of computer equipment with less bureaucratic intervention. These are just a few examples of successes that we already have.

Let me turn to another aspect of this project that we think is also important, the actual implementation cost. What does it take in order to do this job? We keep trying to remind everybody that whenever you come up with a new way of doing business or a new approach, they forget how much work it takes, how many hours the chairman has to put in, how many hours the staff have to put into this. You all have been assured that we spent countless of our own dollars before we ever got any dollars from Congress in terms of assisting us in this process. But we know we are the ones who have to come up with approaches of how to analyze this project, how to compare it with the current process that we are currently using, and to do it in a methodical way. We are the ones that are going to be assisting the Bureau of Indian Affairs in terms of how they are going to propose to redesign the Bureau. If 150 tribes or 200 tribes walk across this threshold, if large tribes like the Nava-

jos and the Cherokees are involved, then it has a significant impact on the Bureau. There needs to be a way to coordinate that, and we will probably be in the forefront of how to design that process.

We know that there are 14,000 people in this bureaucracy who are concerned about this. If I might make a footnote, if there is any word that sends chills down the spine of Indian country, it's "termination." That same word sends chills down the spine of any bureaucracy and all the people who are in it.

We feel that to achieve this objective in terms of implementing cost, it is not just the cost of communicating within our own communities why this process is better than the current process we use. We have to reach out to the other tribes. We believe that in order to design permanent legislation, somebody has to take the lead in terms of conducting workshops and conducting seminars and fora that will cause a greater enlightenment and understanding in Indian country. What is going to be necessary in order to provide permanent legislation is to make this a permanent opportunity, and that is going to be very tough when you're dealing with 500 tribes across the Nation and a bureaucracy of 14,000 people.

So we know that those implementation costs are going to be quite extensive, and it is going to be quite important that the leadership who has paved that way continue to be involved, and the leadership who has become involved because of active participation in the compacts themselves need to be there. Those who don't choose to be there need to be involved.

We think that as we entertain this bill and any future consideration, we would like to see it conducted with greater flexibility and greater liberty. We feel that as we design compacts we find that they have certain "sidebars," if you will, in them because of certain kinds of laws or certain kinds of regulations that they feel they cannot waive, and that this doesn't really test the integrity of tribal governments in terms of us discerning what are the appropriate priorities for the utilization of the resources that are allocated to us by Congress. If we go through a project that has certain "sidebars" on it, like the housing improvement program, then of course the naysayers can say, "Well, of course you didn't make any mistakes, because you couldn't." We feel that if those are removed, that's the best way to demonstrate that we can address those areas of need, whether it's in education or whether it's in housing, et cetera, and do it responsibly.

Another area that might be of good consideration, just within the framework of this law, is to extend it within the Bureau. Dr. Brown had mentioned that Secretary Lujan is very supportive of the Bureau of Indian Affairs through Public Law 100-472, that all programs within the Bureau that apply to Indian tribes should be a part of the package. We may need additional language in there that would allow them to become a part of the compact, not just the Bureau of Indian Affairs.

In order to be effective, we feel—as Chairman Risling mentioned—that this project needs to be conducted cautiously, it needs to be conducted deliberately, and it needs to be conducted in a controlled environment so that there are not "too many cooks with the stew," that we can get the proposals out on the table and get suggestions and recommendations in terms of how they would be im-

plemented, and then coordinate with all the other parties in terms of their recommendations, very similar to the BIA Tribal Reorganization process where you have a smaller group working with it, and they are reaching out to the tribal leadership in terms of other ideas, good ideas or not.

I can tell you that as a member of the committee who has been trying to implement Public Law 100-472 in terms of regulations within the Public Law 93-638 law, it is not going to be easy. Change is not going to be easy, and it's very difficult for them to accept the notion of tribes being at the table, resolving this problem, resolving the answers on a government-to-government basis. It will take time for those adjustments to take place.

We feel that the goals of this project and the goals of this bill and the amendment bills like this one are consistent with what our goals are. It's tribal sovereignty. It's elevating our relationship with the Federal Government on a true government-to-government basis, and it's going to take time for that to evolve. It's protection of our treaty rights and protection of our trust responsibilities. It's enhancement of our culture and our religion and the jurisdiction in the homelands that we have. It's a way to develop them in ways that will be successful. We have been consistently reminded by the Congress that it's going to be us that is going to do it, but we need the framework which allows us the discretion to use those resources, make our own mistakes, and learn our own priorities for ourselves. Only if Congress provides that mechanism can it take place.

In conclusion, a couple of comments. We certainly agree with Dr. Brown that partnership is the theme. There are many wounds between tribes and the bureaucracy because of all the atrocities that have taken place, but we need to reshape our relationship, and we really do need to join hands. We need to let those wounds heal and we need to move forward together. We need to develop a positive attitude, and we can only do that by tribal and BIA bureaucracy enlightenment. We can do it, and we can work together, and it's in our best interest, and it is the goal of Indian country and is the goal of the Congress, in our judgment, and the Administration. It is a better way to use resources.

What is the downside with regard to the project? People have asked that. Well, in our judgment it is uncertainty. It is the fact that we are treading new waters, charting new waters that no one has charted before. It's lack of understanding that creates uncertainty. It's fear of change. Somebody has to test that fear, and we believe we're the ones that can test that fear and are willing to take the risk to do that. We believe in self-determination. We believe in self-sufficiency. We believe in self-governance, which is the foundation of it all. We are the ones who are going to provide because we have the creativity, we have the motivation, and we believe in ourselves.

With those comments, Mr. Chairman, I thank you and I am here for questions, if you have them.

[Prepared statement of Mr. Allen appears in appendix.]

Senator McCAIN. I thank all the witnesses for some very important input into this process.

I guess I would have several questions I would like to submit to you in writing because they require some research in order to provide answers.

[Questions and the answers appear in appendix.]

Senator McCAIN. I would like to ask a couple of general questions, starting with you, President DeLaCruz. If you had to make some changes right now, what would they be? If you would like to see this program be improved, how could it best be improved? What would be your top priority?

Mr. DELACRUZ. Right now, I think the key thing that would probably help us most is still some of the identified obstacles that we've been dealing with in prior statutes and legislation. We have identified some, working with Bill Lavell. Some can be waived. But those are the things that end up being hindrances, and some of the things we are trying to do as we move forward. There are still going to be obstacles as we move forward in this that are either statutory or by legislation.

Senator McCAIN. Thank you.

Chairman Cagey or Mr. James, how would you answer that question?

Mr. JAMES. Well, I think that for us, developing the stable base budget. We've got to know what our funding base is. It can't be fluctuating and we can't be negotiating a new base every year. Firming that up will allow us to do be able to do the planning that we need to do at home.

Senator McCAIN. Mr. Risling.

Mr. RISLING. Yes; the major change, I guess, would be to appropriately identify the tribe's share of funding from within the Bureau system and attempt to turn that pyramid back around so that more money is given to the tribal government to operate the program. And of course, identifying obstacles and creating the proper legislation required to make management of our resources a little smoother on our reservations, such as timber. Those would be a couple of major concerns.

Senator McCAIN. Chairman Allen.

Mr. ALLEN. Mr. Chairman, I guess from some of my latter comments about greater liberty, greater discretion, broaden it out as far as we can go within the framework within which the project is designed to be conducted. There are a few things that could be done within this stage, and we certainly envision this as a stepping-stone. So if we can broaden that out, I think that we can control this and be successful.

Senator McCAIN. Well, let me emphasize how important you all are. You are the test tube people here. We need this to succeed, and I think the way we're going to be able to have it succeed is by giving you the responsibility, and I think you are the parents of what is really a major step toward the meaning of self-determination. We need your input not just at annual hearings but at all times. When you see something that needs to be corrected, how this system can be improved, and action that you think we can take to help this process along, we want to hear from you—personally, or through the committee staff, or whatever way you can; because frankly, if we fail in this effort, I'm not sure what the way

out of this situation of dependency is. So please have no doubt as to how critical we view this situation.

Yes, Joe.

Mr. DELACRUZ. I think one thing I wanted to point out with my colleagues here, since we went into this research and demonstration project for two years, and our implementation, it has cost our tribes in our own dollars besides what was appropriated for demonstration. Myself, I think it has taken about a third of my time just with this Self-Governance Demonstration Project, and I think I can speak for the rest of these people. So it has been time-consuming, not only on us, but our staffs have been working with us on this project. It has taken a lot of time.

Senator McCAIN. Let me suggest you do what the Senate just did, and that's vote yourself a pay raise. [Laughter.]

I want to thank you all for appearing here today. As I emphasized, please keep in contact with us because we cannot improve or make this thing work unless we have this constant input, and I mean that in the strongest and most sincere fashion.

Thank you all very much.

Our next panel will be Wilma Mankiller; Richard Stitt; Marge Anderson; and Ed Manatowa.

I understand, Wilma, that either condolences or congratulations are in order on your recent reelection.

Ms. MANKILLER. The good news is that I won, and the bad news is that there's lots of work to do.

Senator McCAIN. Thank you. Could I also make just one aside, Wilma, while you are here?

The meeting at which Chief Mankiller was present with President Bush, she made a very strong argument for a reaffirmation of a declaration by the Bush administration of a government-to-government relationship. I would suggest that your persuasive presentation probably was a key factor in making sure that that happened.

I think it's also important that the other agenda item that you and the other tribal leaders had, that a person on the White House staff be assigned to Native American issues, also happened. So I view that as a good beginning, and thank you for your continued participation.

So I thank all of the witnesses for being here today, and if you would like to proceed, Chief Mankiller, please do so, remembering that your complete statements will be made part of the record.

I regret to say that in about 5 minutes we are going to have a vote, and then I'm going to—I might as well do this now. We're going to have a vote in about 5 minutes, which means that I can stay about 5 minutes longer, but it's going to take about 15 minutes to get back. So what I would like to do, if you can remain, I'd like to stop this hearing when I have to and reconvene the hearing at 2 p.m. this afternoon, if you can remain. If you cannot remain, then I would like to hear your statement now, and we'll get on with it.

Are you able to come back at 2 p.m. if necessary?

Ms. ANDERSON. I'm not able to come back at 2 p.m.

Senator McCAIN. Then we'll begin with your statement.

Wilma, are you able to come back at 2 p.m.?

Ms. MANKILLER. No.

Senator McCAIN. Mr. Stitt?

Mr. STITT. Yes; I'd be delighted to.

Senator McCAIN. And Mr. Manatowa?

Mr. MANATOWA. Yes.

Senator McCAIN. Good. Then we will let the ladies proceed first. We will proceed with Wilma.

Before I go any further, I note that Ken Smith is in the audience, and also Dale Phillips. Are you able to come back about 2 p.m.?

Mr. SMITH. No.

Senator McCAIN. I don't know how else we can do this, except maybe accept his written statement, and maybe if he is here I could walk over to vote with him and at least get his views. As you know, I have known Mr. Smith for many years in his previous incarnations, and I would be more than happy to do that. Maybe that would be the best way to do it, and accept his written statement. I apologize for this. I cannot account for the vagaries of the voting patterns of the Senate. I wish I were the Majority Leader; then we would have no problem whatsoever.

Please proceed, Chief Mankiller, and then we will go on to you after that, Ms. Anderson.

#### STATEMENT OF WILMA MANKILLER, PRINCIPAL CHIEF, CHEROKEE NATION, TAHLEQUAH, OK

Ms. MANKILLER. Thank you. We have quite a lengthy statement that we have submitted for the record, so I will just touch on some of the highlights here and be as brief as possible.

I am very pleased to be able to testify on behalf of this bill. For the past 25 years I have been involved in Indian issues, and I have repeatedly asked for, requested, and sometimes even demanded reform in the system in the way in which the United States Government deals with Indian tribes. I believe this bill is of a great deal of significance and is a good start in the right direction.

The Cherokee Nation has a history of treaty-making that began in 1785, and we view this self-governance compact basically as our newest treaty with the United States. It's a very important initiative for us.

Based on our compact success thus far we not only endorse the extension of this bill for another 3 years, but we would like to see it made a permanent part of the system.

Just a couple of highlights here that I would like to point out that I think that are important.

I think that flexibility is the key to the self-governance process, and I really enjoyed listening to the tribes from the Northwest who have taken a lead in this effort and also helped us get our project started. The flexibility that allows them to do it one way and allows us to do it another way, I think, is the key.

I have no problem with other tribes being able to participate in the demonstration project at all. They should be welcome provided they meet acceptable standards of governmental and financial stability. With a demonstration project, where we are trying to prove that this is a good project, we don't want to just open the door for



any organization which could not demonstrate it is accountable and stable.

I have lots of other information relative to that in my testimony.

Whether the tribes should be required to go through the grant planning process should basically be left to the judgment of the tribal leadership. In our case, because we had already contracted everything in sight and had also participated in the consolidated tribal government program, it wasn't a giant leap for us to get into the self-governance project; therefore, we did not go through the planning process. Other tribes may want to go through the planning process, so I think that should be an individual tribal process.

I recently went through a tribal election in which I talked with literally hundreds of tribal members in rural communities throughout eastern Oklahoma, and they are wholeheartedly in support of this project, as are many other Indian people in Oklahoma.

Finally, I think the self-governance compact is an important acknowledgment by the Federal Government that the Cherokee Nation represents all Indians residing within the Cherokee territory in Oklahoma. I am very pleased to be a part of it. I support it. I am a little concerned—I just wanted to say this—that this is going to be another demonstration project, that we realign all kinds of things in our tribe, we get our hopes up, get enthusiastic, and then it's going to go away. I am very, very concerned about that. I ask that there at least be some consideration given to those tribes that are doing well with this project by making it a permanent project, as well as extending the demonstration project by three years.

[Prepared statement of Ms. Mankiller appears in appendix.]

Senator McCAIN. I think you make a very valid point, and I think we should consider that as we pursue this legislation. Your last point is excellent. Thank you very much, Wilma.

Ms. MANKILLER. You're welcome.

Senator McCAIN. Ms. Anderson.

**STATEMENT OF MARGE ANDERSON, CHIEF EXECUTIVE, MILLE LACS BAND OF CHIPPEWA INDIANS, ONAMIA, MN, ACCOMPANIED BY MELANIE BENJAMIN, COMMISSIONER OF ADMINISTRATION, MILLE LACS BAND OF CHIPPEWA INDIANS**

Ms. ANDERSON. My name is Margie Anderson. I am the newly-appointed Chairman for the Mille Lacs Chippewa Indians for the last 3 months. I have with me Melanie Benjamin, who has been with the project almost since its inception.

Senator McCAIN. And her function or duties are?

Ms. BENJAMIN. I am Commissioner of Administration with the Mille Lacs Band, within the executive branch of government.

Senator McCAIN. Welcome.

Ms. BENJAMIN. Thank you.

Ms. ANDERSON. The Mille Lacs Band has been involved with the Self-Governance Demonstration Project since its inception, and the Mille Lacs Band views this project as a mechanism to strengthen the sovereignty of the Band. We strive for self-governance and totality. To strengthen the Mille Lacs Band's government-to-govern-

ment relationship with the Federal system, continued Congressional support is needed.

People of the Mille Lacs Band spent several years debating the pros and cons of different modes of self-governance. Arriving at a plan which addresses both the political and economic structure that will serve all members of the Band in an equitable fashion has been difficult. Planning is crucial. The Self-Governance Demonstration Project has many phases. Self-governance is a mechanism for tribal empowerment, and this legislation allows tribes to exit the bureaucracy. This project allows more funds to be received at the grass roots level, allowing more members to receive more services.

The Mille Lacs Reservation is one of the six member reservations that make up the Minnesota Chippewa Tribe. The complexities of the Minnesota Chippewa Tribe have caused difficulties with implementation of the Self-Governance Demonstration Project for the Mille Lacs Band as a multi-agency tribe. The Mille Lacs Band has experienced a lack of commitment on the part of the Bureau, the BIA. The BIA seems threatened by the concept that a small tribe like the Mille Lacs Band could administer programs effectively and efficiently which historically were administered at the Bureau, Agency, or Area levels.

Based on experience, the Mille Lacs Band has experience with BIA involvement, and we feel that they have not worked with my tribe adequately and in a timely fashion. How will the BIA improve by adding additional tribes? For example, in 1991, our short-fall funding negotiations started in December 1990. We completed the negotiations. We had a visit by Lavell in which he stated that negotiations should be concluded by April 1. Already 6 months have expired in our compact year, and delays and no action occurred. In communications with the Self-Governance Office, they stated that the Band is not eligible for one-third of the funding. We have lost approximately \$300,000. These were services that could have been provided for our children and our elders. The Office of Self-Governance should deal fairly with current Self-Governance Demonstration Project tribes instead of adding more tribes.

The Mille Lacs Band of Chippewa Indians has had to deal with many struggles and barriers in implementing our efforts toward strengthening our self-governance under the Self-Governance Demonstration Project, but the end results so far outweigh any of the struggles and barriers we have experienced.

I would like to add the Mille Lacs priorities. We would like to change to a line item budget from the Congress for the Mille Lacs Band of Chippewa, bypassing the bureaucracy of the Bureau.

Thank you.

[Prepared statement of Ms. Anderson appears in appendix.]

Senator McCAIN. Thank you very much.

Ken, I understand that you can't come back at 2 p.m., so do you want to come forward and give us a brief statement at this time?

I want to apologize to all the witnesses for the delay this morning. As you saw, the markup of these bills took a lot longer than we had anticipated, which caused this delay. Please accept our apologies for that.

Please go ahead, Ken. I am sorry for the delay. It's nice to see you.

**STATEMENT OF KEN SMITH, CHIEF EXECUTIVE OFFICER, WARM SPRINGS TRIBE, WARM SPRINGS, OR**

Mr. SMITH. Mr. Chairman, I am Ken Smith, Chief Executive Officer of the Confederated Tribes of Warm Springs, and also Secretary-Treasurer of the tribal council. It is a pleasure for me to be here today to discuss S. 1287, to extend and expand the Self-Governance Demonstration Project.

I would like to make a few comments on it, and I have a couple of recommendations, and also I would like to talk in general about the self-governance program. As people have said, it's breaking new ground, and I think that is good.

The Warm Springs Tribe supports S. 1287 within the following suggestions:

First, changing section 2 to give all self-governance participants a 5-year period. Just extending it by 3 years would be unfair, because, you've got tribes that initially started that will be in there for maybe 6 years; tribes that are just going in may only be in there for 4 years; and some may only be in there for 2 to 3 years. From what I'm hearing, there are some problems that you have to go through in moving into the self-governance program some adjustments, funding problems, and so forth. We feel very strongly that each tribe should have a 5-year period—

Senator McCAIN. If I might interrupt, you are basically saying the same thing that Wilma is saying?

Mr. SMITH. Yes; we agree. I am saying the same thing; they should have 5 years to move into it. I think after the 5-year period if it is working well with that particular tribe, then I think the tribe should stay on the self-governance program, because then it's workable.

That was one item, and since Wilma already covered that, I'll just move on.

Second, we recommend that the number of participating tribes be limited to 30 until such time as we can determine the real measure of success, because I think that was brought out earlier, whether it is working and what are the benefits to Indian people on our reservations. I think that's key.

So with those two recommendations, we support S. 1287.

Now, some general comments that I would like to make. As we all know, tribes are striving constantly to try to improve conditions on our reservations in our homelands. I see self-governance as a way to take tribal control and further move into self-determination and improve our conditions on the reservation. I would like to applaud all the tribes that have taken this on. I'm sure it has taken a lot of time and a lot of extra money, and I would like to thank them for doing that. But I would say that there are some things that we would like to point out.

First, nonparticipating tribes and the services that they receive must not be harmed or diminished.

Second, distribution of funding must be there for all tribes, whether you're a participating or a nonparticipating tribe. I think that just makes commonsense.

Third, self-determination should be maintained as a basic policy in guiding tribal-Federal relations, since I think that self-determi-

nation is one of the most successful U.S. policies that there is on the books at this particular time.

So those are the three items that we had some concerns on.

I really see the self-governance program as an evolution out of self-determination. It's another branch that you take, and you just move at a little faster pace. I know a number of tribes probably are already contracting all the programs, and it just makes sense maybe to move over to self-governance.

So I see these two things running parallel, and they really mean the same thing. Now, some tribes want to move faster than others. Some tribes, like Warm Springs—I think we're very capable of taking over a number of these programs, but we want to do it a step at a time. We're a large tribe. We have a large organization. I don't think we have the capabilities to take everything over at this particular time. We want to take a step at a time in doing it, and that's self-determination. We have decided to do that. Before we take some of these programs on—and of course, you've heard some of this before, Senator—a lot of these programs don't have the necessary resources to even run the program or to carry the service out. We're very concerned about it. I guess we would want to add money to the program, then contract it.

Also, we want to make sure our trustee is right beside us all the way on this particular program. In the meantime we hope to observe and we hope to learn from self-governance. If it remains an open and fair process, I think it can help us all.

I might add one thing, Mr. Chairman. As we learn through self-governance, there are a number of things that benefit the tribes. I think we should move those things over immediately to the tribes that are contracting. For instance, being flexible with your funding base on the reservation and shifting funds within the tribe's authority—I can see that working with tribes that are contracting a number of programs, if they are able to shift. That would take legislation. It would probably take appropriation legislation, and you can actually do that. I can see some other things, too, that I think the new tribes are getting into that we are learning from them, but I wouldn't want to wait for 5 to 8 years before we start to implement some of the things we're learning.

I think self-determination is an evolving process. We are moving at a pretty fast pace right now, which is good. We're making changes.

That concludes my testimony.

[Prepared statement of Mr. Smith appears in appendix.]

Senator MCCAIN. You and I talked about this 7 or 8 years ago, if I remember, Ken.

Mr. SMITH. Yes.

Senator MCCAIN. Back then, I think we thought it was possible to be where we are now. Do you think it's possible to have almost every tribe in America under this concept at any time in the future?

Mr. SMITH. I think it's possible. Anything is possible if it's the desire of the tribe itself, and the capabilities of the tribe. But I think you have to go with the pace of the tribe. A number of tribes might take a little bit longer to get to that point, but I think that over time a number of tribes will move in that direction. They

want to govern, they want to control, they want to determine their own destiny, and I think that this is one way to do it.

Senator McCAIN. Do you think these lessons could be applied to 638 contracts?

Mr. SMITH. Yes; they can. I think the lessons we have learned through self-governance—that's what I think I'm saying, that we need to learn what's good and apply those to 638 contracting.

Senator McCAIN. Mr. Stitt, we are pleased to have you with us. We know you've come a long way. Please proceed.

**STATEMENT OF RICHARD STITT, SELF-GOVERNANCE COORDINATOR, CENTRAL COUNCIL, TLINGIT AND HAIDA TRIBES OF ALASKA, JUNEAU, AK**

Mr. STITT. Good morning, Mr. Chairman. I am Richard Stitt, a Tlingit Indian employed by the Central Council and appearing on behalf of the Tlingit and Haida Central Council. I thank this committee for this opportunity to testify on this legislation.

Mr. Chairman, the message I bring from the Central Council is that we are in total support of the demonstration project, because through our planning experience we have seen the number of opportunities that are possible in implementing this act.

I recall back in 1970, when the Central Council was organizing after having been given a judgment award, we had heard that the Zunis had taken over the Agency under a Buy Indian Act, and we decided that we would want to do the same thing. We were successful in obtaining that contract under the Buy Indian Act to take over the Southeast Agency. Unfortunately, when we took it over they had again reduplicated the Agency on the basis of what they felt was their trust responsibility, and we were somewhat disappointed because it appeared to be a duplication. I am quite pleased that, after 20 years, we seem to be getting back to where we originally intended to go.

We have recently concluded our negotiations with the Bureau of Indian Affairs and have a verbal understanding, and have come to conclusions regarding the numbers. We are quite pleased and excited about the opportunity to go ahead and eventually sign the documents and proceed on in implementing the program. As a result of our numbers of years of contracting, we have developed a very capable management and financial capability.

Like other tribes, we have experienced the delays that were encountered as a result of dealing with the Bureau of Indian Affairs. However, we successfully overcame that and have managed to finalize a verbal agreement.

Anticipating that there would be other tribes engaging in the demonstration program, we requested the Alaska delegation to support a request for an additional \$6 million in the add-on or the shortfall category, and I wanted to take the opportunity to thank Senator Murkowski for supporting our request.

At the conclusion of our negotiations with the Bureau, we computed that we would need about \$1.7 million to add as shortfall to take over the programs, but understanding the difficulty of getting funds, we have agreed to accept \$750,000. We won't know for cer-

tain until probably in October whether this will be made available to us or not.

The comments I have regarding the bill that is before us, under consideration, I have included in my written statement.

Before I conclude, I want to thank the Bureau for their help in our achieving the final agreement, Secretary Lujan, Assistant Secretary Edward Brown, and the Director of Self-Governance, William Lavell, and also Niles Caesar, who is the newly-appointed Area Director and his staff in the BIA Area Office in Juneau.

And now, Mr. Chairman, our program managers are anxious to get started to implement the project, and so are our tribal people.

Thank you.

[Prepared statement of Mr. Stitt appears in appendix.]

Senator McCAIN. Thank you, Mr. Stitt.

Chairman Phillips, would you join us? I think we'll be able to finish up before the vote comes.

Mr. Stitt, thank you for coming from such a long way. We appreciate your being here.

Chief Manatowa, welcome.

#### STATEMENT OF ELMER MANATOWA, PRINCIPAL CHIEF, SAC AND FOX TRIBE OF OKLAHOMA, STROUD, OK

Mr. MANATOWA. Thank you, Mr. Chairman. For the record, I am Elmer Manatowa, Principal Chief of the Sac and Fox Nation. I am very happy to appear before you today and give you some verbal comments. You have my written statement, and I will just hit some highlights and some additions, probably, that are not in there.

The Sac and Fox Nation is the newest, I believe, of the compact tribes, the self-determination and self-governance tribes. We signed our documents June 26, so I believe we may be the newest to come into the fold.

Senator McCAIN. Congratulations.

Mr. MANATOWA. Thank you very much.

Senator McCAIN. Did you know this was going to be part of your duties?

Mr. MANATOWA. No; I didn't know.

We actually began this process 10 to 12 years ago, the process of infrastructure within our nation, development of our laws and codes, and today we have some 22 laws that have been codified that we operate under.

Senator McCAIN. Can I interrupt you for 1 second? You heard the discussion that we had earlier, on recognition of tribes. Do you agree or disagree with my point of view that we've got to streamline this process and get it done in order to be fair?

Mr. MANATOWA. Yes; I do. I know that there are several tribes that have applied for the process to the Bureau of Indian Affairs that have been sitting there for a number of years, and I think something has to be done. We've got to do something with it, because I don't see them circumventing the process that is set up right now, coming directly to this committee to ask for recognition.

Senator McCAIN. Will you look at my legislation and if you have an input or ways to make it better, I'd love to hear from you.

Mr. MANATOWA. Sure. I will study it, sir.

Senator McCAIN. Please proceed.

Mr. MANATOWA. Okay. I just wanted to let you know that we started many years ago. We didn't know what was going to happen exactly at that point, but we knew that there was something that we wanted changed within the Bureau of Indian Affairs. So we began the process of doing infrastructure work. We completed that.

In 1988, we contracted the Shawnee Agency of the Bureau of Indian Affairs—it's a multi-tribe agency—and we worked out a formula. It's the first time that these five tribes really came close together and worked together. We've dealt with that formula now for three years and do not deviate away from it at all, even though the Bureau of Indian Affairs has tried to get that formula away from us. So it was an easy project for us.

Now, in the back of our testimony you will see some graphs that we have prepared of the programs that we have operated over the years and see the difference between the time that we operated and what the Bureau of Indian Affairs operated at the time. Improvements have been tremendous. So the step now into self-governance is not a long step for us. We have been planning it for 2 years now, and actually implementing much of it, to get where we are today. It's very short for us to do and we're very confident that we can handle it because we have the staff already in place and they're doing most of this work right now.

We did run into some problems, and I think most of the people who have testified here today have indicated much of that to you. A lot of it came from the BIA not wanting to turn over to us the information that was needed to complete our studies and negotiations for funding. I characterize it as this. Have you ever tried to pull a tooth out of a live alligator? [Laughter.]

Well, if you haven't, or if you try, you will know about what kind of a problem we had in getting all of the information that we needed to work out the funding schedules. The Office of Self-Governance has been most valuable to us. We had no problem with the compact, the agreement itself. It's kind of generic; a lot of people have used it, but of course we changed it to fit our nation. We asked for certain waivers. We asked for certain programs that we have not been able to put into it yet, and we're still waiting on some waivers that we feel would make our program work a lot better.

Senator McCAIN. I am happy to tell you that Mr. Lavell is sitting right behind you, and he has nothing else to do after this hearing except to listen to your concerns, and I'm sure he will expedite the process.

Won't you, William?

Mr. LAVELL. Yes, sir. [Laughter.]

Mr. MANATOWA. Some of the programs and waivers, of course, we are still working on. Part of it has to do with attorneys' contracts and approvals. We don't see why the Secretary has to do that. Attorney invoices—we don't see why that has to come through them. There are minor things in that area, but it is a tremendous help for us. We don't have to go through the long process of waiting and paperwork.

The other thing in which we want more flexibility is in purchasing and putting lands into trust. We have an ongoing program to

purchase our lands back. That has been a hard process for us. We have some lands that have taken up to five years to get into trust, and they are not gaming businesses on these things. We just want to get it back into trust. I've talked to the Assistant Secretary, and he assures me that he is working on regulations now that will help us out in that area.

One area in the program that we did not receive at this point, and that's roads and road maintenance. We would like to see those in there, because I think the act states that any program administered by the BIA—well, the roads program is administered by the BIA, and we feel that we should be able to have those funds available to us. We have been told for years and years, not only by the BIA but by other Departments, that Oklahoma has no reservation, that the Sac and Fox Nation has no reservation. We have pointed out for years that our treaties, starting from 1779 up to 1867, did not extinguish any part of the reservation language within it, and we feel that our reservation is still intact today.

The Federal Judge in Oklahoma City, just in May, in a tax case, *Sac and Fox Indians v. Tax Commission of Oklahoma*—among other things where he ruled in our favor, he said, "Yes, the Sac and Fox Nation has a reservation that has never been extinguished." So we were happy to hear that we are back in the reservation status. We feel that BIA cannot now say to us, "Because you are not a reservation, you cannot have road maintenance funds or construction funds." So we hope to get over that hurdle.

Shortfall moneys are a problem, and I think that needs to be addressed in future funding.

Let me assure you that our nation fully supports the bill, S. 1287, and we will strive to help and give you suggestions as we go along for improvement. We will enter into the compact on October 1, but we have already been contracting for almost 3 years now.

Thank you very much.

[Prepared statement of Mr. Manatowa appears in appendix.]

Senator McCAIN. Thank you very much.

Are you considering gambling as an enterprise on your reservation?

Mr. MANATOWA. What type of gambling? Class 3?

Senator McCAIN. Any kind.

Mr. MANATOWA. No; we are not at this time, because the State of Oklahoma does not allow Class 3 gaming. I am of the opinion that even though they do not have legislation to allow it, they do not have legislation to disallow it.

Senator McCAIN. I don't mean to be moralistic here, but I hope it's the last resort rather than the first one.

Mr. MANATOWA. Well, we think there are better things to do, also, at this point.

Senator McCAIN. Thank you, Chief.

Last but certainly not least, the Chairman of the Cocopah Tribal Council, Chairman Phillips. Welcome back. It's nice to see you again.



**STATEMENT OF HON. DALE PHILLIPS, CHAIRMAN, COCOPAH  
TRIBAL COUNCIL, SOMERTON, AZ**

Mr. PHILLIPS. Mr. Chairman and distinguished members of the committee, my name is Dale Phillips, and I'm Chairman of the Cocopah Tribe. It is an honor and a privilege to be invited to speak before this committee and share insights, as well as the future plans of my tribe.

The Cocopah Tribe has 665 enrolled members. Our people reside on three parcels of land that total 6,000 acres that comprise our reservation. The reservation is located in the western corner of Arizona. We are bordered on the west by California, and on the south by Mexico.

Mr. Chairman, the last time the tribe appeared before your committee we were requesting that an additional 3,500 acres of land be added to our reservation. In 1986 we received the new lands. The time since then has been a period of intense growth and development for the tribe as a whole. The new lands allowed us not only to better use our natural resources, but also gave us an economic shot in the arm, beginning the walk toward becoming a self-sufficient tribal government, designed to benefit and prosper our people.

Let me give you specific examples of three major areas of economic development that the Cocopah Tribe has pursued since receiving the lands in 1986.

First of all, we have built an 800-space Cocopah R.V. Park. Our part of Arizona is flourishing with winter visitors.

We have also built an excellent Bingo hall, which is showing a positive economic return.

In addition—

Senator McCAIN. Mr. Chairman, how much are you making on your Bingo operation, roughly, in 1 week?

Mr. PHILLIPS. In 1 week?

Senator McCAIN. Or in 1 month, or whatever you use.

Mr. PHILLIPS. The tribe makes about \$75,000 in 1 month.

Senator McCAIN. About \$75,000 in 1 month? That's a lot of snowbirds, isn't it? [Laughter.]

Mr. PHILLIPS. Yes.

In addition, approximately 160 acres of the new, undeveloped land has been added to our ongoing successful tribal agricultural programs.

In July 1991, the Cocopah Tribe completed negotiations with local municipalities and the County of Yuma to operate and manage the existing landfill, located on the Cocopah Reservation. The questions surrounding the landfill were not easy to solve. However, after careful evaluation, the tribe decided that the value of the enterprise was in the local employment opportunities.

At the present time the Cocopah Tribe is carefully exploring additional avenues of economic development. We firmly believe that careful short- and long-term planning in the area of economic development will benefit us in the long run.

We stand at a very important point in our history. The tribe has already carried out the fundamental precepts of self-governance. We govern for the express benefit of our people, particularly in the areas of economic, social, political, and cultural development. From

these basic strands that we weave together comes the fabric of a strong and far-seeing tribe.

I remember an article in the May 1967 issue of Look Magazine. It stated that the Cocopah Tribe was one of the poorest in the Nation. It cited high unemployment and income far below the poverty level. It also could have cited high infant mortality rates and high rates of other serious health problems. The times were indeed bad. But I stand before you today to say that our people have not only survived, but they are now a stable tribe, ready for self-sufficiency. The ability to make our own decisions, negotiate with others on our own, and develop businesses are very basic principles of self-governance, and they are all vital to today's Indian tribes, including the Cocopah.

We firmly believe that the bill before you, S. 1287, will allow Indian tribes—including our tribe—to further the concept of self-governance. We feel that the results of this demonstration will be that, with a real government-to-government relationship, Indian tribes will show evidence that they are able to plan, develop, and operate their own affairs.

By replacing suspicion and interference with trust and cooperation, you will find that our tribal governments are as viable as, if not more viable than, local municipalities or counties.

The addition of 10 tribes to the demonstration project and the extension of time by three years could be the beginning of allowing tribes to return to their original governmental operation, where they had full authority and responsibility for their destinies. Their control is the proper one, the vote of their people.

We make efforts in this country to ensure that freedom continues throughout the world. The bill is an opportunity for you to take a positive step toward ensuring that same freedom for the natives of this country. Our tribe wants to enter the 21st century along with the rest of the people in the world, and with your support, we may even lead the way.

Again I thank you, Mr. Chairman, for the opportunity to share my views with this committee. Thank you.

[Prepared statement of Mr. Phillips appears in appendix.]

Senator McCAIN. Thank you.

Ms. Anderson, we thank you for coming all this way and providing us with this important testimony. We are very grateful.

Elmer, congratulations or condolences, whichever is appropriate, on your chairmanship. We look forward to helping you in the weeks and months and years that lie ahead.

Mr. Stitt, thank you for coming such a long way. We realize very clearly that Alaskan people have some unique requirements and some unique sets of circumstances. I had the opportunity once of visiting one of the villages up on the Arctic Circle, and I fully appreciate that sometimes this legislation has to be shaped in order to take into consideration some of the unique needs of the Alaskan native people. Whatever information and advice you can give us, we would appreciate very much.

Wilma, I know I don't have to seek your advice. You always give it to me. [Laughter.]

With great frequency, and it is always appreciated very much.

I want to thank you very much, Dale, for being here. I am glad to hear of some of the successes your tribe is achieving. I want you to be very careful on this hazardous waste issue, and we want to talk to you about that. It's a very difficult issue, as you know, and we want to help out in every way that we can. I will send some people down for a game of Bingo from time to time, also.

Mr. MANATOWA. Thank you.

Senator MCCAIN. Finally, I want to thank you for being here, but, as I said to the last panel, I view this as perhaps our only opportunity to provide the kind of economic health to Native Americans that they need and deserve and are entitled to by solemn treaty. That's why it is of the utmost importance that you provide us with information, with guidance, and with counsel. This idea did not come from Washington, DC, as you know. If we are going to be able to help Native Americans, I think we will only be able to do so through projects like these.

By the way, Bill, thank you for sitting through this hearing and listening to the witnesses. A number of them would like to chat with you after the hearing is over. I know how loath you are to miss lunch. [Laughter.]

Thank you for your involvement in this Bill.

One of the finest people I have had the opportunity of knowing is Mr. Lavell, who has had a long-time commitment to this whole idea of self-determination.

So I want to thank you all again for being here, and with that, we will adjourn this hearing. Thanks very much.

[Prepared statement of Senator Murkowski, appears in appendix.]

[Whereupon, at 1:05 p.m., the committee adjourned, to reconvene at the call of the Chair.]

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# APPENDIX

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## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII,  
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Good morning. the committee is meeting today to receive testimony on S. 1287, a bill to amend the Tribal Self-Governance Project that was originally authorized in Title III of the 1988 amendments to the Indian Self-Determination Act.

The project provides those tribes that participate with the opportunity to operate all programs and services funded through the BIA under a single funding agreement with the BIA. The trust responsibility of the Federal Government is maintained in the process but tribes have more autonomy in managing the programs that Congress has designed and funded for their benefit.

Funding for the agreements or compacts, as they are more often called, are derived from all accounts of the BIA agency, area and central office. The compacts give participating tribes greater flexibility in designing, planning, and carrying out programs at the local level so that they more nearly meet the needs of the people they are intended to benefit.

Former Senator Dan Evans and I had the pleasure of sponsoring these amendments and worked closely together to draft the title III language. I am pleased with the results so far and I believe that all the participating tribes, as well as the BIA, are also gratified with the initial successes. These have not been easily won, but I anticipate that the testimony today will show that the effort has been worthwhile.

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, VICE  
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Today's hearing is to receive testimony on S. 1287, the Tribal Self Governance Demonstration Project Act and to receive the views of the Administration and tribal witnesses on the implementation of the Self Governance Demonstration Project.

The Self Governance Demonstration Project was authorized under Title III of the Indian Self-Determination and Education Assistance Act Amendments (P.L. 100-472) in 1988. Title III authorizes participating tribes, under an annual funding agreement with the Secretary of the Interior, to plan, consolidate, and administer programs, services and functions administered by the Bureau of Indian Affairs and to redesign programs, activities, functions or services and reallocate Federal funds.

Funds for the annual agreements are allocated out of agency, area, and central office accounts of the BIA to the tribe on the basis of what that tribe would have received in funds and services in the absence of the agreement.

The potential advantages of a self-governance compact are two-fold. The first is the flexibility that the tribe has to redesign programs to meet the needs of the tribe and use the funds where it determines they are needed, with two restrictions. First, funds that are received by a tribe on a competitive basis (For example, Indian Child Welfare Act) must be used for that purpose. Second, certain transfers intended for trust protection services must receive approval.

The second potential advantage is that the Congress has appropriated funds for tribes to study whether they want to participate in the project and additional "shortfall" funds for those tribes that do participate. Several tribes have received planning grants but have later decided not to negotiate a compact. The shortfall funds are intended to cover start up expenses of the project and shortfalls in program funds occasioned by the inability to split out funds from programs on a precise basis. The purpose here is to give the participating tribe its share of all BIA funds to see if the tribe can more effectively design and deliver services to its members in a way more responsive to direct input from the members.

I wish to express my appreciation to Secretary Lujan and Assistant Secretary Brown for the time and attention they have devoted to this Project. While there still remain many issues to resolve, I think their efforts have been instrumental in overcoming initial bureaucratic inertia to the project.

I want to thank all the witnesses for being here today. I want to especially acknowledge the presence of the Honorable Dale Phillips, Chairman of the Cocopah Tribe in Arizona.

#### PREPARED STATEMENT OF FRANK H. MURKOWSKI, U.S. SEANTOR FROM ALASKA

I am pleased to offer my support for S. 1287, the Tribal Self-Governance Demonstration Project Act. I believe that this demonstration project will help us to develop a more effective means of providing services to American Indians and Alaska Natives.

Congress authorized the Self-Governance Demonstration Project under the Indian Self-Determination and Education Assistance Act Amendments of 1988. The project is designed to allow participating tribes to plan, consolidate and administer programs, services and functions normally administered by the Bureau of Indian Affairs.

The program will allow capable tribes to take over the administration of important services. I have long held that it is the people closest to problems that are most effective in solving them.

The amendments offered in S. 1287 will improve the program and enable us to accurately evaluate its effectiveness in providing tribal services. One very important aspect of these amendments is that they will extend the program for an additional three years. The Self-Governance Demonstration Project was to run for five years. However, no self-governance compacts were negotiated until last year.

The Tlingit and Haida Central Council, the only Alaskan organization participating in the project, are negotiating a compact this year. Under the original terms of the Act they would only have 2 years to truly test this program.

It is important that we allow the Tlingit and Haida Central Council and other tribes the opportunity to participate in a full 5-year program to test the pros and cons of this approach. S. 1287 will allow us to fully explore the effectiveness of Self-Governance compacts.

TESTIMONY OF DR. EDDIE F. BROWN  
ASSISTANT SECRETARY - INDIAN AFFAIRS  
BEFORE THE  
SELECT COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
ON  
S.1287, "TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT"

JULY 18, 1991

I appreciate the opportunity to testify on S.1287, the "Tribal Self-Governance Demonstration Project Act", which would amend Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note). I would like to comment on the progress that Indian tribes and the Department have made in implementing the Self-Governance Demonstration Project (the Project). Allow me first to discuss the Project in general and then address the specific provisions of the proposed amendments.

Since the founding of the United States, Federal policies toward American Indians have vacillated between separation and assimilation, and from conquering to protection. Over the last 110 years, Federal policy has gone from tribal termination with the Allotment Act of 1887 to the Indian Reorganization Act's renunciation of that policy in 1934 back to a policy of termination and assimilation in the 1950's.

In the last months of his Administration, President Johnson rejected the policy of termination and two years later President Nixon sent a milestone message to Congress that accepted the policy of Indian self-determination. In 1975, the Congress enacted the Indian Self-Determination and Education Assistance Act. In 1988, the Congress authorized the Self-Governance Demonstration Project in Title III of the Indian Self-Determination and Education Act Amendments (P.L. 93-638, 25 U.S.C. 450, et seq). President Reagan in 1983 reaffirmed the policy of Indian self-determination and emphasized a government-to-government relationship between Indian tribes and the Federal government.

President Bush, in a recently issued statement, reaffirmed the government-to-government relationship, saying: "This government-to-government relationship has been the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation".

He went on to say: "This is a partnership in which an Office of Self-Governance has been established within the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments."

The creation and implementation of the Self-Governance Demonstration Project has been an important step in Indian self-determination, in improving the government-to-government relationship, and in helping Indian tribes to develop independence.

The Project has become a good example of what can happen when Indian tribes, the Congress and the Administration cooperate to the fullest extent possible.

Tribal leaders and staff have exhibited statesman-like qualities in the development of this program. At their own expense, they have conducted research, held workshops and recommended numerous changes in the structure and implementation of current government programs. These actions most surely will affect many Indian tribes positively in the future.

The Congress has responded by authorizing the Project and then by funding tribal planning grants. In FY 1991, Congress provided \$3 million to assist with tribal start-up costs and program adjustments funding, due to the indivisibility of some Bureau of Indian Affairs (BIA) resources. Now Congress is sponsoring amendments to Title III to extend the Project and require interested tribes to complete a planning process prior to entering a Self-Governance Agreement.

During FY 1990, the Administration negotiated seven self-governance funding agreements which resulted in 58 BIA programs totalling about \$26.8 million being rolled into the seven annual funding agreements for FY 1991. This year, renegotiations have been completed on the original funding agreements for FY 1992 and negotiations are soon to start on another 10 funding agreements that will commence on January 1, 1992.

Last year, a Self-Governance Demonstration Project Council was formed. I chair this Council which includes the Deputy Commissioner - Bureau of Indian Affairs, the Counselor to the Secretary, the Solicitor and the Deputy Assistant Secretary - Indian Affairs. These individuals were selected to ensure that the highest level of Departmental attention is given to the Project. A new Office of Self-Governance was created and a Director, Deputy Director and a staff of three are now working in that office.

Cooperative efforts by Tribal Governments, Congress and the Administration have brought the Project this far. It is my hope that this three-way partnership can continue for many years to come.

As I turn to the specifics of S.1287, let me reiterate what Secretary Lujan said in May at the National Tribal Leaders Forum here in Washington -- the Self-Governance Program is here to stay for those tribes who wish to participate. In that vein, the Department strongly supports the intent of S.1287 to extend the Self-Governance Demonstration Project. We support extending the project for an additional three years and requiring tribes to successfully complete a planning process before entering into negotiations with the Department or a Self-Governance agreement.

The Self-Governance Demonstration Project represents a natural extension of the self-determination and government-to-government policies initiated over 20 years ago. For those tribes who desire it, self-governance agreements offer an opportunity for tribal governments to gain maximum discretion over the use of Federal resources. Developing this Demonstration project to its fullest potential remains one of the highest priorities of the Department.



We look forward to sharing with the committee the relative costs and benefits of the Project.

We have determined that S.1287 is not affected by the Pay-As-You-Go (PAYGO) provision of the Budget Enforcement Act (BEA) of 1990, but is subject to the domestic discretionary funding caps mandated by the BEA.



## **Quinault Indian Nation**

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**Testimony of  
Joseph B. DeLaCruz, President  
Quinault Indian Nation  
Before the  
Senate Select Committee on Indian Affairs  
Oversight Hearing On the  
Tribal Self-Governance Demonstration Project  
And S. 1287 Extending the Authorization of  
Title III of P.L. 100-472**

**July 18, 1991**

I am Joseph B. DeLaCruz, President of the Quinault Indian Nation. The Quinault Nation was one of the original ten Tribes authorized to participate in the Tribal Self-Governance Demonstration Project. After two years of planning, research, and communication efforts, we were one of seven Tribes nationally to cross the threshold to implementation of the Tribal Self-Governance Demonstration Project for Fiscal Year 1991. Recently, in June, we successfully completed negotiations with the Department of the Interior for our second year of implementation of this historic initiative. Based on our experience with the Self-Governance Demonstration Project, I appreciate the opportunity to testify in support of S. 1287 which will extend the authorization of Title III of P.L. 100-472.

As you are aware, Title III of P.L. 100-472 authorized the Tribal Self-Governance Project as a demonstration project, an experimental opportunity which initially allowed up to ten Tribes to negotiate for the transfer of selected Bureau of Indian Affairs (BIA) "programs, services, functions, and activities" to the Tribal governments while maintaining the trust relationship the United States has with Tribes and Indian people. The intention of the original legislation was to allow the Project Tribes to conduct planning and research regarding the assumption of BIA responsibilities and based on Tribal decisions to eventually negotiate for those "programs, services, functions, and activities" which were to be assumed by the Tribes.

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### **Tribal Flexibility, Control, and Political Autonomy The Attraction of the Self-Governance Demonstration Project**

From the Quinault perspective the direct benefits of the project are: the provision of flexibility and control to the Tribe; the freedom to consolidate or redesign the Bureau programs to meet the needs and priorities of the Tribe, the expanded opportunities to waive unnecessary bureaucratic regulations; and, the opportunity to realize increased funding available for the delivery of on Reservation services rather than continuing to support the multiple layers of the BIA bureaucracy. Political autonomy and empowerment and to be recognized on a government-to-government basis are among the political realities we seek to achieve by our participation in this Demonstration Project. In some respects we are talking about political authority which had been displaced for more than a century.

### **Forced BIA Participation in this Tribally Driven Initiative**

The BIA restructuring, outlined in the original legislation and legislative history has not occurred. In due time, this Tribally driven initiative and the incremental increase of participating Tribes will leave the BIA with no other option than to comply with the Congressional directives. The reluctance of the BIA to plan, prepare, or cooperate with the provision of useful budget information for the Self-Governance Project have impeded our progress, forced us to accept key assumptions on blind faith during negotiations, and limited our own ability to plan for the Quinault Self-Governance Project.

### **Key BIA and Interior Department Officials Have Been Supportive**

This is not to suggest we have not had support from the key officials within the Department of the Interior or the BIA. Secretary Lujan, Assistant Secretary for Indian Affairs, Dr. Brown, and the first Director of the Office of Self-Governance, William Lavell, have been instrumental in establishing policy direction and involvement during critical junctures of the Project. We have also received courageous support from Stan Speaks, our Area Director during his tenure as "Acting Deputy Commissioner of Indian Affairs" and Ron Brown, who served as "Acting Area Director" in his absence. The problem lies with the soldiers, not the generals. BIA staff in key positions at the Agency, Area, and Central Office are opposed to the project on principle, feel personally threatened, or refuse to accept the fundamental concepts of Tribes making their own decisions. We want to be allowed to develop our own solutions and learn from our own mistakes. In concept and in practice, the Self-Governance Project expands our capacity to perform as independent Tribal governments and we expect to be granted the same recognition that is afforded to other forms of government.

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**Self-Governance Demonstration Project - An Evolving Process;  
Not Radical Reform**

Implementation of our Self-Governance Demonstration Project has been a gradual process. Still in the process of transition, during this, our first year of implementation, I look forward with excitement as we adapt to our new roles and responsibilities in our government-to-government relationship. As we continue to explore and expand this project, I am anxious for us to begin creatively addressing our problems and needs. Although I am eager, I am also patient and somewhat cautious, as there will be successes and disappointments. The Self-Governance Project should evolve at the pace and direction determined by the Tribal Councils.

Congress, Tribes, and the American public are searching for solutions to address Indian problems. While I believe we are moving in the right direction, we must test the Self-Governance concept. We must maintain the experimental and exploratory nature of the Demonstration Project. We should not get so enthralled in the positive enthusiasm which we bring to the Project and initiate long term solutions until we have the opportunity to study and examine the results. Indian Country has been deceived by great promises and unfulfilled expectations in the past. This time we want to control the Project, we do not want the Project to control us.

We must accept the reality that there are no panaceas to the many problems we face on the Reservations across the Country. We can not institutionalize immediate reforms. At Quinault, we do think something like the Self-Governance Project, or, something shaped from our experiences may likely be one of the policy alternatives available to Tribes in the future. We will proceed cautiously, and we will continue to emphasize the critical importance of the planning phase of the Project. The planning and budgeting requirements do not stop with implementation of the Project, but are in fact functions more important for effective implementation.

**Support Planning for Self-Governance;  
Preparation and Stability - Prerequisites for Success**

Tribes must take seriously the planning component of the Demonstration Project and Congress should ensure reasonable funding. The BIA must also initiate their own internal planning in response to the Self-Governance Demonstration Project and to comply with provisions contained in Title III of P.L. 100-472. For Tribes, the planning and research spent in preparation for the Demonstration Project can be an invaluable opportunity to examine the organizational, legal, fiscal, political, and cultural structures which shape our

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Tribal governments. Without the time and resources to prepare for participation in the Self-Governance project, some Tribes may be induced into participation based on misconceived notions that the Project value is dollars rather than the principles of Tribal authority to make decisions.

The foundation of the Quinault Self-Governance Project was built upon our own internal planning and research efforts. Today, I am convinced that the potential of Self-Governance is established by a combination of the planning efforts and the stability of Tribal governments. As we began our efforts we were confronted by naysayers and rumors of termination. Congress and Tribes asked the BIA for budget data and received little or no cooperation. Until this year the BIA Budget Justification contained no funding for Self-Governance planning or negotiations. Each year Congress provided support for our efforts. The BIA provided no resources on behalf of the Project and made no effort to plan for any changes to their organization until after we negotiated our Compacts and first Annual Funding Agreements. It was not until after the Compacts and Annual Agreements were signed for Fiscal Year 91 that a staff person was even assigned any responsibilities for the Project.

The Demonstration Project provides a means to establish the administrative and programmatic framework from which to provide general governmental services to our people. Last September, I watched my Tribal Council during budget hearings, setting funding priorities, and making the difficult decisions which have to be made during an appropriations process. This, to me, is the essence of the Self-Governance Demonstration Project.

#### **Tribally Driven Initiative - Shaping a New Partnership**

The Self-Governance Demonstration Project came to fruition because of Congressional authorization and appropriations support. The development of this initiative has come from Tribes, particularly those whose Chairmen sit here beside me. We have confronted obstacles from the BIA, rumors about termination, and challenges to the integrity of our Tribal governments. We have faced adversity from those who make their living off of the miseries of Indian people and we have responded with the facts and reasonable expectations. We have worked together in our efforts and developed creative solutions while the BIA creatively invented problems. With support from this Committee, Chairman Yates of the House Interior and Related Agencies Subcommittee on Appropriations, and the current leadership in the Administration, we are constructing a new relationship, a new Federal/Indian partnership.

**Proceed Cautiously,  
Let the Experiences Define Policy Implications**

In order for Congress, the Tribes, and the BIA to examine the long range implications of this Project, Title III called for semi-annual reports to Congress based on "mutually determined baseline measures". Ignored by the BIA during the first two and 1/2 years of the Project, we were able to negotiate a process for establishing these measures and guidelines for these reports. While developing these guidelines, it became apparent that with only three years of implementation, as authorized by Title III, we would have very limited information or documentation about the experiences of Tribes participating in the Demonstration Project. The reports to Congress should tell the story of our experiences and provide a sound basis for future Federal/Indian policy decisions.

The extension of the Project for three more years will provide valuable information which can be used to evaluate the Tribal Self-Governance Demonstration Project, and to explore Self-Governance as a viable option for some Tribes in the future. Given the differences which exists among Tribes, it is likely many tribes will want to maintain the status quo of their relationship with the BIA albeit under P.L. 93-638 Contracts or allowing the BIA to provide all the services. As the details associated with the Self-Governance Project implementation begin to emerge and become refined, many Tribes may see the Project as a means to assume greater accountability and responsibility in their governmental affairs and in providing services to their people.

The participating Tribes in the Self-Governance Demonstration Project have been the pioneers in forcing the BIA bureaucracy to accept a changing role as the Project has developed. Although the BIA is not yet established in the role of Trust Advocate and Trust Manager as opposed to an intervenor in Tribal Affairs, we have their attention. We have opened the door to be welcomed at the table as equals.

**Demonstration Project Should Remain a Controlled Experiment**

Expansion of the Self-Governance Demonstration Project needs to be well conceived and thought out. As I stated previously, we are testing uncharted waters and we do not want to be drowned by our enthusiasm, the promise of our success, or the desperation in response to the BIA problems and the problems in Indian Country. The Project is dynamic and easily misunderstood by Tribal members, non-participating Tribes, and others who have interests in Indian Country.

Expanding the Project to include up to thirty Tribes may allow greater geographical representation, diversity among participating Tribes, and lead to more significance in the findings and conclusions drawn from experiences in the Project. Expansion beyond thirty tribes may be problematic in terms of organizational capabilities of the Office of Self-Governance and the BIA's ability to cooperate and prepare for Tribes entering into negotiations and implementation. It may also result in purposeful or even unintentional damage to the Project, by the BIA convincing Tribes to become involve without proper preparation, forethought, internal Tribal instabilities, or recognition of the uncertainties which exist in an experimental demonstration. For many Tribes, decisions regarding Self-Governance should be delayed until the experiences have been documented and assessed by the Baseline Measures Reports and other proposed policy studies.

Opening the Demonstration Project up to include other Federal Agencies, also needs to be carefully explored. We would suggest including the legislatively excluded BIA Programs first, and clarify with instructive language eligibility to negotiate BIA competitive grants, discretionary programs, and project based programs where funding is pipelined several years in advance and where criteria is nebulous.

#### **Extension to Other Federal Agencies Should be a Logical and Staged Process**

Perhaps, it is time to approach the Indian Health Service and direct them to prepare for involvement in the Demonstration Project, to initiate internal planning and restructuring activities, and to cooperate with Self-Governance Tribes. Given our experience with the BIA, we would suggest that the involvement with other agencies be based on some kind of staged process. For example, IHS could feasibly be available for consideration by Demonstration Tribes after three years of implementation of Annual Funding Agreements with the Department of the Interior and BIA programs.

Congress and the Tribes must work together to force IHS to respond, to provide useful and complete information on administrative infrastructure and budget distributions. We must learn from our recent experiences with the BIA and this joint effort would be necessary so that we can also avoid the problems and obstacles we have faced with IHS in the past. Administration for Native Americans and other Department of the Interior Agencies would be logical to follow the BIA and IHS. After that, perhaps there is a trail to "New Federalism" as the doors to other Federal Agencies can then be explored.

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**Base Funding for Self-Governance Demonstration Project Tribes;  
Fiscal Certainty and Stability - A Consideration for the Future**

As we make progress in our understanding of the BIA Budget and how dollars flow from the Central Office, Area Offices, and Agencies, and, how dollars flow horizontally across programs within and between BIA levels, we can begin to isolate dollars which are associated with the "programs, services, functions, and activities" which we assumed. As we further define and isolate these dollars we can begin to determine the establishment of base funding for our Self-Governance Project. The purpose of base funding would be to eliminate fluctuations of funding for particular programs based on arbitrary bureaucratic decision making in the Central Office. While we made headway this year in our negotiations, it is a laborious and challenging task to safeguard our interests across the entire BIA Budget. Once base funding is established with some kind of inflationary indexing, negotiations could then focus on our share of new programs and the addition of existing programs previously not assumed by the Tribe or included in our Agreements. The establishment of base funding with inflationary indexing provides fiscal certainty and stability which presently does not exist under "638 Contracts". We seek to achieve simplicity in budgeting and distribution of funds for Self-Governance Tribes and the Office of Self-Governance. The unresolved issues are timing for the establishment of the base funding amount, making sure programmatic increases are shared with Self-Governance Tribes, and developing assurances that artificial budget manipulations are not used to the detriment of the Self-Governance Tribes.

The question at Quinault becomes: when is it appropriate to assume we have isolated all the dollars associated with the programs and services we have assumed? We know we are not there yet and even with the supplemental funds provided for Fiscal Year 91, we are not sure. As we continue to make progress in our negotiations, we believe that in the next two or three years we may reach a confidence level which will enable us and the Administration to jointly establish a base funding agreement for the Quinault Self-Governance Project.

**Self-Governance is Not Termination of BIA**

The restoration of decision making authority to Tribes via the Self-Governance Project is not going to destroy the need for the BIA. Many Tribes will want to continue in the Self-Determination Contract mode or allow the BIA to continue to be the service provider. The Self-Governance Demonstration Project in the long term could allow the BIA the opportunity to refine and target their role. The role of Trust Advocate and Trust Manager for trust oversight by the BIA needs to be explored and developed. The BIA



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as a Tribal Advocate with other Federal Agencies should also be assessed, if for no other reason then to penetrate the "them vs. us" mentality which has been institutionalized by both the Tribes and the BIA. The BIA as a Tribal Advocate, the "new partnership" between Tribes and the BIA, can be developed without paternalism and historic mistrust.

**The Self-Governance Project Is Experimental;  
It Is Not An Equity Project and It Is Not Needs Based**

Among the misunderstandings and confusion about the Self-Governance Project by the BIA, by Tribes, and by high level officials is that the Self-Governance Project can be used to address some ill defined issues of equity between Tribes and even between Area Offices. The Self-Governance Demonstration Project is about a new way of doing business between participating Tribes and the Federal Government. Attempts to thrust the equity issue on to the Project is considered an effort to hide historic BIA mismanagement and distort the real issue of lack of funding at the Tribal level. The Demonstration Project can not be responsible for BIA budget shortfalls.

The other misconception is that the Demonstration Project is needs based. At Quinault, we too undertook an initial planning exercise to estimate our programmatic needs. A useful planning tool but an unrealistic political and fiscal objective given the Federal budget constraints. What became the concern during our planning and negotiation was what will it take to provide a minimum level of satisfactory service and can we do it better than the existing BIA and "638 Contracting" process. This to us was a responsible and reasonable approach to our Self-Governance Project. The Demonstration Project, however, is clearly not founded on needs based budgets.

In conclusion, at Quinault we will build our project incrementally from the foundations we have established. We want to test our beliefs, new service delivery mechanisms, more cost effective operations before permanent legislation is shaped or before we cross the bridge to "New Federalism". We do not want to be overwhelmed by something which we do not have the opportunity to shape or test. We believe the Self-Governance Project is worth the risks but it also requires careful and critical examination before Congress and Tribes embrace it as a long term alternative.

As always, we appreciate the opportunity to present our views to the Senate Select Committee on Indian Affairs. And, we appreciate your support in authorization of Title III and your consideration of S.1287 to authorize the extension of the Tribal Self-Governance Demonstration Project.

**Quinault Indian Nation  
July 18, 1991**

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**Attachments:**

- Attachment 1.**      **January 2, 1991 Memorandum to Dr. Eddie Brown, subject Baseline Measures Recommendations.**
- Attachment 2.**      **June 30, 1991, The Seattle Times/Seattle Post Intelligencer, "A New Declaration of Independence: Some Native American Tribes Begin Push for Self-Determination".**

## MEMORANDUM

TO: Dr. Eddie Brown, Assistant Secretary - Indian Affairs  
William Lavell, Director - Office of Self-Governance  
Self-Governance - Federal Designated Officials  
Self-Governance - Tribal Designated Officials

FROM: Self-Governance Demonstration Project - Baseline  
Measures Task Force

SUBJECT: Baseline Measures Recommendations

DATE: January 2, 1991

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The Baseline Measures Task Force is pleased to inform you that we have completed the development of guidelines and recommendations which should enable the Bureau of Indian Affairs and the participating Self-Governance Demonstration Project Tribes to satisfy the requirements of Section 305 of Title III, P.L. 100-472 and the *Compacts of Self-Governance*. The Baseline Measures Task Force developed the "Self-Governance Demonstration Project - Baseline Measures Report Requirements" which includes recommended goals and objectives for the Self-Governance Demonstration Project, report outlines, and instructions for those responsible for preparation of the reports. The Baseline Measures Task Force also developed several recommendations, attached, which should facilitate the reporting requirements and provide documentation on this historic initiative.

The Baseline Measures Task Force recommendations and guidelines clearly support the concepts and principles embodied in the Tribal Self-Governance Demonstration Project. Through cooperation, coordination, and communication the participating Tribes and the Bureau of Indian Affairs will have the best opportunity to effectively measure the accomplishments of the Self-Governance Demonstration Project and provide factual data for future Indian self-determination advancements.

The Baseline Measures Task Force looks forward with enthusiasm to the implementation phase of the Self-Governance Demonstration Project. The Self-Governance Demonstration Project provides new horizons and new challenges to the participating Tribes and the Bureau of Indian Affairs and we wish you well as you move towards that future, perhaps establishing new relationships and developing a new way of doing business in Indian Country between Tribes and the Federal government; a new partnership.

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# BASELINE MEASURES TASK FORCE RECOMMENDATIONS

## TRIBAL/FEDERAL DESIGNATED OFFICIALS MUST REACH TIMELY AGREEMENT ON BASELINE MEASURES/EXPECTATIONS.

The Tribal and Federal Designated Officials need to meet as soon as possible to reach agreement on the final baseline measures or expectations for the participating Tribes and the Bureau of Indian Affairs. Once the baseline measures/expectations are established for those programs assumed by the Tribe and those retained by the BIA, the Designated Officials should approve them as attachments to the Compacts/Annual Agreements. The exchange of drafts of the first report between the Tribes and the BIA/DOI is targeted for completion by January 31, 1991 so time is of the essence.

## FIRST TRIBAL/BIA BASELINE MEASURES REPORT TARGET FOR SUBMISSION TO CONGRESS ON 3/1/91.

Even though a report on the baseline measures is due to Congress on January 1, 1991, the Task Force recommends this report be targeted for completion on March 1, 1991. The baseline measures/expectations for each participating Tribe and the BIA have not yet been established and it is more important for the initial report under the Task Force recommendations to be thoughtfully prepared and organized. The initial report will contain the mutually determined baseline measures and the history of the project up to the beginning of the implementation phase.

## BIA EVALUATIONS INCORPORATED INTO SEMI-ANNUAL REPORTS

The Compacts/Annual Agreements require Program Outcome Evaluations for programs retained by the BIA and annual Trust Evaluations for trust activities assumed by the Tribes. These evaluations should be incorporated into the Semi-Annual Reports which satisfy the Baseline Measures requirements. No other evaluations or reports should be necessary and the duplication of effort is avoided. As these evaluations provide critical data, the BIA, Office of Self-Governance, should make preparations for their completion.

## COORDINATION FOR TRIBAL/FEDERAL REPORT PREPARATION IS MOST IMPORTANT.

Coordination in the preparation of reports is paramount. For the Federal government, the Designated Officials or the Office of Self-Governance should take responsibility for coordination between their offices and the Central Office, Area Office, and Agency for

each participating Tribe where appropriate. Coordination between the participating Tribe and the Federal government is built into the scheduling of reports with a sharing of draft reports thirty (30) days prior to the target/due dates. This allows time for disputed facts and misunderstandings to be resolved and for differences of opinion to be aired prior to submission of final reports to Congress. This does not assume all differences will be worked out and the Tribes and the BIA/DOI do have the right to disagree. The Office of Self-Governance should also be adequately staffed to handle the coordination activities.

#### INTERIOR/BIA AUTHORITIES AND RESPONSIBILITIES NEED TO BE CLEARLY DEFINED

The Bureau of Indian Affairs needs to clarify authority with respect to the Office of Self-Governance, the Assistant Secretary, the Assistant to the Secretary, the Self-Governance Council, and Federal Designated Officials in relation to the operations of the Self-Governance Tribes. The lines of authority, roles and responsibilities, duties, and relationships need to be clearly and explicitly established for participating Tribes and BIA staff. Who makes what kinds of decisions, who may negotiate, and who may amend the Annual Agreements are examples of the multiple authority issues which need to be resolved. The participating Tribes should be involved in these decisions.

#### INDEPENDENT "THIRD PARTY" TO PROVIDE ANNUAL ASSESSMENT OF TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT.

The SGDP Annual Assessment Report should be prepared by independent "third parties" outside of the BIA, DOI or participating Tribes. This will provide for an objective assessment of the Self-Governance Demonstration Project. The draft SGDP Annual Assessment Report would be prepared and workshops involving participating Tribes and the BIA/DOI would be held to review and discuss the draft report. The report would then be finalized by the independent "third parties" taking the review and comments into consideration. After the report is completed and submitted to Congress, another workshop would be held to disseminate information and to share the Self-Governance experience with all interested Tribes and BIA/DOI officials. The expenses for completion of the SGDP Annual Assessment Report and the two workshops should be covered by the BIA/DOI. The Task Force recommends the Office of Self-Governance budget for these activities.

**INTERIOR DEPARTMENT SHOULD SUPPORT EDUCATION AND  
INFORMATION ACTIVITIES FOR DURATION OF PROJECT**

Education and public information is critical to the Tribal Self-Governance Demonstration Project. Although the Tribes obtained funds for education and public information for FY 91, the need for these activities to reduce misinformation and misunderstandings about the Self-Governance Demonstration Project will continue until the project is established by permanent legislation or is terminated. While the activities could be contracted to participating Tribes, the BIA/DOI should accept responsibilities for the costs of education and public information and should include these costs in their budgets.

# A NEW DECLARATION OF INDEPENDENCE



Bridgett Finkbonner, 10, whose mother is directing the Lummi tribal move to self-rule, reads a report outlining the project.

Alan Barrer / Seattle Times

## Some Native American tribes begin push for self-determination

by Maria Williams  
Times staff reporter

**A**s America prepares to celebrate the Fourth of July with a crescendo of fireworks, seven Indian tribes are quietly declaring their independence. Asserting a right to exist as sovereign nations, the tribes are undertaking a historic, three-year experiment in self-government.

Leading this national initiative are three Washington state tribes: the Quinault Indian Nation, on the Olympic Peninsula; the Lummi Indian Tribe, near Bellingham; and the Jamestown Klallam Tribe, east of Sequim.

After more than a century of federal domination and neglect, tribal leaders say this could be the first step toward self-determination.

"For generations we've lived in crisis, unwanted dependents of a domineering government agency," says Raynette Finkbonner, director of the Lummi self-governance project. "It's time to end this life of crisis."

The tribes hope to shatter stereotypes and end a pattern of paternalism born of forced dependency on the Bureau of Indian Affairs, the chronically troubled agency that has governed reservation life since 1824.

"We're the most regulated

people on Earth, and worse for it," says G.I. James of the Lummi Tribe. "We're tired of getting the blame and none of the authority."

"We want to make our own mistakes."

With the backing of Congress and the Bush administration, the tribes are now setting their own spending priorities and contracting for services — tiresome responsibilities tribal leaders are nonetheless assuming with enthusiasm. For good reason.

Under the present system, barely 11 cents of every dollar appropriated by Congress to the nation's 310 tribes is spent in Indian country. The rest of the

money is spent for Bureau of Indian Affairs administration — or it is simply unaccounted for.

Recent investigations conducted by the Interior Department and the White House Office of Management and Budget (OMB) found the Bureau of Indian Affairs accounting system to be rife with gross mismanagement. According to one audit, the bureau could not account for \$95 million — or one-tenth of its budget — for the last fiscal year.

The Bureau of Indian Affairs denies its problems are serious but the OMB has demanded.

Please see **TRIBES** on A 4



# Self-government campaign is under way

## TRIBES

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massive reorganization of the agency. That process is under way. Although self-governance tribes still must negotiate with the bureau in order to receive much needed federal funds, the tests are conducted as governments-to-governments. In the simplest of terms, the tribes' status approaches that of a trust territory, such as Puerto Rico or Guam.

"Far from a symbolic shift in government relations, the experiment could reshape the future for generations of Native Americans."

"They are calling us pioneer tribes," says Quinault tribal President Joe DeLaCruz, who has spent years lobbying for self-governance. "The future is up to us."

In addition to the Quinault, Lummi and Jamestown Klallam tribes, the success of the project rests with the Hoopa Valley Tribe in California, the Mille Lacs Chippewa Band in Minnesota and the Absentee-Shawnee and Cherokee, both in Oklahoma.

The importance of their effort was affirmed this month by President Bush after White House meetings with Native American leaders. In a prepared statement, the president said, "Today we move forward toward a permanent relationship of understanding and trust, a relationship in which the tribes of the nation sit in positions of sovereignty along with the other governments that compose the fabric that is America."

"The invitation to sit at the table comes none too soon — relations have been desperately strained for decades. Despite some improvements, many Native Americans still say the Bureau of Indian Affairs treats them as unwashed, unruly stepchildren. They say federal policy regarding Indian affairs is at best one of benign neglect — and often, one colored with malicious prejudice."

History bears out much of their complaint.

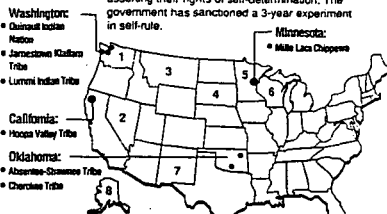
Repeatedly, federal government has encouraged the breakup of Indian reservations by allowing tribal lands to be sold off piecemeal. At times, it has also tried to force Native Americans to assimilate by requiring reservation children attend bureau-run boarding schools. Adults have been urged to give up traditional jobs as hunters or fishermen and take up farming; skills such as totem carving have been denigrated.

"If self-governance works, it will be our opportunity to get rid of the people who thrive on the miseries of Indians," DeLaCruz says.

The shift to self-government does not restore lost lands, or even mean more money to the tribes,

## Tribes embrace self-rule to shape a new future

After a century of federal domination, 7 tribes are asserting their rights of self-determination. The government has sanctioned a 3-year experiment in self-rule.



### Tribes negotiating to join the project

- |  |  |                                   |
|--|--|-----------------------------------|
| 1. Washington<br>Pon Garretts Klallam<br>Lower Elwha               | 3. Montana<br>Kootenai Tribe                             | 6. Wisconsin<br>Menominee Tribe   |
| 2. Nevada<br>Shoshone Paiute<br>Duckwater Shoshone<br>Ely Shoshone | 4. South Dakota<br>Cheyenne River Sioux<br>Rosebud Sioux | 7. New Mexico<br>Mescalero Apache |
|  | 5. Minnesota<br>Red Lake Chippewa<br>Leech Lake Chippewa | 8. Alaska<br>Tlingit and Haida    |

Source: From "Red Paper" issued by Jamestown Klallam, Lummi Indian Tribes and Quinault Indian Nation.

Ed Walker / Seattle Times

however. That fact has led to skepticism, and speculation on the part of some Native Americans that the federal government does not intend for self-governance to work.

The National Congress of American Indians, headquartered in Washington, D.C., has adopted a wait-and-see position on the project. "We question whether the tribes will receive sufficient resources," says A. Gay Kingman, the group's executive director. "Will they get enough money?"

"Truly, that is our concern. We already know there are tribal leaders capable of governing."

At the end of 1993, Congress and the Interior Department will evaluate the project and decide whether a policy of self-governance should be adopted. Or, they may extend the project another three years.

The challenges over the next two years appear staggering. Self-governance advocates must not only convince entrenched bureaucrats that Indians can govern themselves, but also convince Native Americans themselves.

Altogether, some 80 Indian tribes and Alaska native corporations have expressed a desire to participate in the project; close to 20 are ready to sign on as part of a second test group. But some of the largest tribes in the country have yet to endorse the project.

"We have a love-hate relationship," Kingman says. "We want the bureau to be streamlined and more responsive and more accountable. But quite honestly, there are tribes that need the

bureau."

The project has divided Indian Country for other reasons, as well. Some Native Americans fear tribal leaders will prove no better at managing their money than the bureau. Others are nervous about severing ties with the one agency that has been a constant through decades of upheaval.

"People are scared, I'm scared, it's difficult to break with the past," DeLaCruz says. "For five generations we have been dependent upon, and under the thumb of, the Bureau of Indian Affairs."

"For many people, the bureau is a convenient scapegoat. They do not want to give it up. It means having to confront ourselves."

Even within participating tribes, there is disagreement. Some tribal leaders wonder if the promise of self-governance is nothing more than false hope.

"I'm very concerned about where this is leading — if it's leading anywhere at all," says Quinault Mike "Duff" Mail. A member of the Tribal Council, Mail voted against participating in the self-governance project.

"Are we creating economic opportunity? Or, are we simply changing the nature of our dependency?" he asks. "We need economic parity, who cares about political standing?"

Unemployment in Indian Country is sometimes as high as 80 percent, according to figures provided by the National Congress of American Indians. The average annual income on reservations is reported to be less than \$4,000.





Raynette Finkbonner and her daughter Bridgett at the Lummi Indian tribal center.

Alan Bernier / Seattle Times

Economic independence is a long way off, but already the seven tribes, with their new authority, have begun creating new jobs, building ~~centers, increasing police and fire~~ centers, increasing police and fire

protection and arranging for regular garbage collection.

"For the first time in decades, we don't have to ask permission to make life better," says DeLaCruz. "If we want to patch the potholes

in our roads, we can do it. If we want to build a new road, we can do it.

"And we are building roads," he says. "We're building roads to the future."


**LUMMI INDIAN BUSINESS COUNCIL**

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DEPARTMENT: \_\_\_\_\_

EXT. \_\_\_\_\_

**Testimony of Henry Cagey, Chairman  
 of the  
 Lummi Indian Nation  
 Before the  
 Senate Select Committee on Indian Affairs  
 Oversight Hearing  
 on the Self-Governance Demonstration Project  
 and S.1287 Extending the Authorization of  
 Title III of P.L. 100-472**

I am Henry Cagey, Chairman of the Lummi Indian Nation. Mr. Chairman and Members of the Committee, I am pleased to testify today on this historic initiative, "The Tribal Self-Governance Demonstration Project." The Lummi Nation entered into the Project with high expectations and view this initiative as one of the most important events in modern Indian Affairs legislative history. The Lummi Nation has participated in the Project since it's inception in October 1987 when Larry Kinley, then Tribal Chairman, presented testimony, before the House Interior Appropriations Subcommittee, regarding problems and solutions in the Tribal-Federal Relationship. We entered into Phase I of the Project for legal and budgetary research, internal Tribal government planning and organizational preparation in March of 1988. We began Phase II, the Compact Negotiations, in April 1990 and completed these negotiations in late June, 1990 with a signed Fiscal Year 1991 Compact of Self-Governance and Annual Funding Agreement; Phase III, the actual implementation of the Demonstration Project began with the new Fiscal Year in October 1990. The second year of Compact Negotiations for an Annual Funding Agreement were initiated in April of 1991 and were completed in June of 1991 for Fiscal Year 1992.

The Lummi Indian Nation is located in the most Northwestern corner of the Continental United States, approximately 50 miles, South of Vancouver, British Columbia. We have a Tribal enrollment of slightly over 3000 members. We are one of the 42 Tribes in the BIA Portland Area Office, and one of 12 Tribes in the BIA Puget Sound Agency. Due to our Multi-Tribe/Agency situation, the Lummi Nation chose to participate in the Project.

In the mid-1980's the Nation has tried to contract various functions from the Puget Sound Agency however, were unable to, due to the fact that the Agency Superintendent determined those functions uncontractable, due to his justification that

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only a limited number of agency personnel perform functions for the 12 Tribes. We were able to prove, in the instance of law enforcement criminal investigation, that the Agency investigators weren't providing services to Tribes according to documented need, but rather due to geographical convenience. We were unable to change this obviously unfair situation. This is but one example of our frustrations with an unresponsive bureaucracy. Self-Governance was our opportunity to manage our own affairs and set our own service priorities, rather than continue to depend on the needs of an unresponsive bureaucracy. Tribal Governments, through their participation in the Self-Governance Demonstration Project, have entered a process that will allow the Tribe to regain control and to exercise the authority to govern ourselves free of the BIA domination.

The Lummi Self-Governance office formulated a comprehensive internal planning process that included Community participation, in the following areas:

1. **Constitution Revision**
2. **Comprehensive Needs Assessment of:**
  - a. The Tribal Government
  - b. All Tribal Programs
  - c. The Tribal Community
3. **Internal Reorganization**
4. **Legal Research**
5. **Budgetary Data Research:**
  - a. Internally - Tribal
  - b. Externally - BIA
6. **Communications, Public Relations, and Education**

Various activities were conducted during the planning phase to include and ensure community participation; six community meetings were held not only to inform Tribal members of the Project but to also to receive feedback and input on the programs, services, and resources that the Tribal Government was currently operating. Several public hearings and meetings were held on the new Tribal budget ordinance, the Constitution Revision, and program operations. Interviews were conducted with a scientific random sample of the Tribal population that included, youth of 15 years and

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older. An 11 page questionnaire was completed on what the community wants and needs. Through this process the social, political, cultural, and economic needs of the community and the Tribal Government, were clearly identified.

Prior to the initial negotiations, Department Heads were required to review their programs and to specifically describe program goals, obstacles, and cost relative to attaining those program goals. Based on this review, programs were developed for 3 levels of funding: current; minimal; and ideal. This information was used during the negotiation phase to allow Tribal negotiators to identify what programs that the Lummi Nation could accept responsibility for at identified funding levels.

Through the planning phase, we critically reviewed existing conditions in our Tribal community and Tribal government and developed new organizational structures and service delivery options for a more comprehensive, Tribally-determined approach for our government. Tribal needs and priorities were determined based upon the direct input of the Tribal Community Members. To ensure fiscal accountability, a Budget Ordinance was developed and has been implemented, that requires a balanced Tribal budget and provides for community participation in the planning and development of ALL Tribal budgets and programs, not simply those operated by the Bureau of Indian Affairs. To accomplish this task, the entire Tribal administrative structure had to be redesigned to support the additional responsibilities associated with these commitments and new Self-Governance responsibilities.

However, there are still several factors that will have direct impact on the success or failure of this Demonstration Project. Tribes need the time and afforded the opportunity to demonstrate a more efficient and cost effective way of doing business with the federal government. We would hope that the BIA and Interior Department will be supportive of our experiments and innovations. Time is needed to allow us to evaluate the effects of change in our Tribal communities and to prove that there is a better way to do business.

A key focus of the implementation of the Project for the Lummi Nation is the ability and need to stabilize the Tribal Governmental Structure. To accomplish this fundamental task will require the establishment of a funding base and the revision of our Tribal Constitution. A major component of this for Lummi will be to create an innovative approach to the indirect funding of the Tribal government. Funding mechanisms, thus far, consisted of 638 contract processes, the very same system and entrenched bureaucracy that the project is designed to change. However, the bureaucracy has not been able to spend the time and energy necessary to develop alternative and new ways of doing business.

As clearly stated in our joint written testimony presented to the Committee on behalf of Lummi, Jamestown Klallam, Hoopa, and Quinault Tribes; "We believe there will always be a need for the Bureau of Indian Affairs." We want the opportunity to change the Tribe-BIA relationship, so that the bureaucracy will not intrude and unduly effect our day to day governmental functions. We need the Bureau to protect the trust responsibilities of the United States. We need the BIA to protect and resolve our many inherent land base issues. We want to establish a new relationship based upon trust and cooperation.

This project is only a small step. It has taken over a century of changing policy, fraud and mismanagement in a bureaucratic system to get us where we are today. It is going to take time to make changes and we must proceed with caution. It is now proposed to add more Tribes into the project when the BIA is having difficulties simply dealing with the current Project Tribes. Serious analysis needs to be done for the resources needed to initiate more Tribes into the Project.

We will make mistakes, however, they will be our mistakes from which to learn and change to learn from. We are making decisions for the future not simply the here and now.

This Project has been characterized by some as only a way for the Tribes to get more money from the Federal government. The Lummi Nation has always envisioned this project as a major step towards re-establishing the government-to-government relationship. But also demonstrating the ability to better identify prioritize and utilize the available resources. The Self-Governance process has been challenging and it has been frustrating, but we look at this project as an opportunity for our Tribe to make some positive changes in our community.

As G.I. James, our Tribal Program Manager once stated, "We have our feet firmly planted in the present, looking at the past while planning for the future."

In summary, Congressional oversight, on the Project and direction of the Department of the Interior, Bureau of Indian Affairs, and the Office of Self-Governance will be a continuing need. Resistance and even opposition to change is a real threat to the Project. The legislative intent is clear, but the BIA must be constantly reminded of the Title III provision.

In May, 1989, a concept paper on the Lummi Self-Governance Demonstration Project was written, which states:

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*"The Self-Governance Demonstration Project is an historic effort to break a pattern of dominance and dependency. While some Federal programs in the past have allowed Indian Tribes to implement certain limited programs, Self-Governance offers the chance for us to assume total control of our economic, political, and social futures, and to demonstrate that we can accomplish what the BIA has not been willing or able to do in 120 years."*

I would like to thank the Senate Select Committee on Indian Affairs for this opportunity to provide testimony. We appreciate the Committee's support of the Tribal Self-Governance Demonstration Project. The Lummi Nation encourages enactment of S.1287 to extend the Title III authorization.

*Hoop Valley Tribal Council*

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**Dale Risling**  
Chairman**HOOPA VALLEY TRIBE**Regular meetings on 1st & 3rd  
Thursdays of each Month

**TESTIMONY OF DALE RISLING, CHAIRMAN  
OF THE HOOPA VALLEY TRIBE OF CALIFORNIA  
BEFORE THE  
THE SENATE SELECT COMMITTEE  
ON INDIAN AFFAIRS OVERSIGHT HEARING  
ON THE SELF-GOVERNANCE DEMONSTRATION PROJECT  
AND S. 1287 EXTENDING THE AUTHORIZATION OF  
TITLE III OF P.L. 100-472  
JULY 18, 1991**

Good Morning, Mr. Chairman. I am Dale Risling, Chairman of the Hoopa Valley Tribe of California. As one of the original ten tribes to participate in the Self-Governance Demonstration Project, I am honored to be here today to testify on our experiences in the developments and implementation of Title III of P.L. 100-472. We appreciate the leadership demonstrated by this Committee, especially that of Senators Inouye and McCain for your support for this Project, as well as that of Chairman Yates of the House Appropriations Subcommittee on Interior and Related Agencies. We support S. 1287 and urge its enactment at the earliest possible date.

The Self-Governance Demonstration Project is the beginning of a new era in a partnership relationship between the United States and Indian Tribes. The concept of the Project is that tribes can assist in crafting the definition to their government-to-government relationship with the United States. Participation in the Project is optional and for those tribes that do join, each has the flexibility to assume and redesign BIA programs, services, functions and activities based on tribal priorities and needs, internal capability, political and economic considerations that were historically conducted by the BIA. For the Hoopa Tribe, the Project has created new opportunities never before available to the Tribe.

**HISTORY OF HOOPA TRIBE/BIA RELATIONSHIP**

Prior to passage of the Hoopa-Yurok Settlement Act in 1988, P.L. 100-580, the relationship between the Hoopa Valley Tribe and the Bureau of Indian Affairs was combative, primarily due to inconsistent and unclear interpretations of the various legal matters pertaining to the Hoopa Reservation. Since 1955, the Tribe has faced challenges from outside groups relating to Reservation lands, jurisdiction, tribal governmental

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stability, as well as the use of Reservation revenues for governmental purposes. The BIA made most of the resource management decisions, only some of those decisions were due to legal requirements. Most of the management decisions were for simple convenience of the BIA decision makers, and still others were intended to influence and interfere in the internal activities of the Hoopa Tribe.

The control over Hoopa Tribal affairs was implemented through the use of BIA "discretionary" judgements to which only the BIA had control over their interpretations and scope. In 1985, the Tribe estimated that for almost every management decision involving Reservation resources and assets; at least 32 federal employees spent 25% or more of their time; at least 15 lawyers were involved; there were more than 16 separate, yet related, lawsuits pertaining to Reservation rights and jurisdiction filed between 1963 and 1985; and almost every management decision was made at the Central Office and Justice Department levels. Although most of the actions of the BIA were administrative in nature and not required by any court order, the Tribe contended that the BIA could have had a more cooperative working relationship with the Tribe. Finally, after becoming frustrated with the endless Reservation problems in 1986, the BIA moved the Northern California Agency without consultation with the Tribe from its 120 year location on the Hoopa Reservation to Redding, California, where it is located today. Most of the expenses to move the Agency were paid for with funds that were allocated for delivering services to Indian people.

For years, the Tribe worked with the Congress and Administration to develop a comprehensive legislative solution to the underlying legal and political problems of the Hoopa Valley Reservation. After several hearings and continuous work with the BIA and members of the Yurok Tribe, the President signed into law the Hoopa-Yurok Settlement Act, Public Law 100-580, over the recommended veto by the Assistant Secretary of Indian Affairs for no legitimate reason. The Hoopa-Yurok Settlement Act helped to pave the way for implementing the Self-Governance Demonstration Project on the Hoopa Reservation. It is against this background that the Hoopa Self-Governance Demonstration Project must be understood, analyzed, and evaluated.

#### **SELF-GOVERNANCE DEMONSTRATION PROJECT PLANNING IS ESSENTIAL**

Being one of the first Self-Governance Demonstration tribes, beginning in 1988 the Hoopa Tribe received 2 annual planning grants which totaled \$200,000. During the first 18 months of the planning grant process, the Tribe reviewed past BIA/Tribal activities and relationships to determine what effects, if any, the Self-Governance Project would have on existing and future Federal/Tribal relations and program operations.



Prior to the Self-Governance Demonstration Project, due to the multi-Tribe Agency Indian Priority System (IPS) during a five year period the Tribe's natural resource programs were reduced by over 50% by diverting Hoopaa funds into programs more beneficial to the smaller non-resource tribes. Because of this problem, in 1988, the Tribe, Agency Superintendent and Area Director established a "Hoopaa Set-Aside" budget that could not be accessed by other tribes. While the Tribe continues to have concerns with the Tribal set-aside funding allocation criteria, the Hoopaa Agency budget was already determined prior to the Self-Governance Project, most of the problems concerning the Tribe's share of the Agency budget were already resolved. However, now, if the Hoopaa Tribe were to re-direct the funds from the 50% reduction back to the original accounts from which they came, the other tribes would be "negatively affected" which is not allowed under Title III. Therefore, the Hoopaa Tribe must suffer with limited budgets and try to identify other funding sources outside of the Northern California Agency budget if we are to achieve our share of BIA funding.

Most of the work during the planning phase was concentrated on developing concepts and scenarios for the Self-Governance Compact and developing internal mechanisms for assuming the new policy and implementation role of our Tribal Government. Knowing that the Tribe would assume the role of the "funding agency", the Tribe placed heavy emphasis on developing our internal infrastructure. As part of the infrastructure building process, the Tribe either developed or planned internal Tribal laws and procedures for areas, such as: Amendments to the Tribal Constitution; Revision and update of the Tribal Court procedures and rules; establishment of a Legislative Procedures Act; enactment of a uniform travel and expense ordinance; development of a comprehensive land ordinance; revision and update of the election procedures; revision the Tribal Employment Rights Ordinance and establishment of an Employment Relations Commission; enactment of a Reservation-wide Conservation/Trespass Act; development of a Tribal Grand Jury; development of a long and short range planning process through Management by Objectives; development of a long range plan for reorganization of the Tribal structure and service delivery; development of an endowment plan for long-term Tribal financial self-sufficiency; and development of a comprehensive planning and regulatory process for Reservation development.

The selection process for identifying these areas involved such criteria as; the impact and influence of problems and issues on the overall stability of the Tribal Government; facilitating long range planning and eliminate crisis management; developing internal problem solving capability; establishment of procedures for addressing concerns regarding various rights and legal matters involving the Tribe's exercise of sovereign authority; and, reduce the influence on Tribal and Reservation affairs by outside agencies.

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## OBSTACLES ENCOUNTERED DURING THE PROJECT

Most of the problems that we encountered during the initial phases of the Project were in the areas of funding information and the BIA decision-making process. First, in the area of funding information, three problems came to light: (1), that the BIA could not provide adequate and timely budget information to the Tribe; (2), that the Tribe did not have a method of assessing the validity of the information that we did receive; and (3), without knowing the ability of the BIA to reorganize, the Tribe had no method of determining with any accuracy our fair share of funding within the BIA. After the first year's negotiations were concluded the Tribe received a total of \$56,000 in additional funds; \$45,000 from the Central Office, \$3,000 from the Area Office, and \$8,000 from the Agency. Most of the funds available from the Area Office level were divided based on a 1/94th share, regardless of whether a program, service, activity or function could be implemented within each of the 94 tribes in the State. We are also experiencing funding problems in the areas of roads and law enforcement.

Regarding roads, even through the BIA has agreed to the amount of funding that the Tribe is entitled to from the Area Office roads 1992 budget, such funds have not been made available because the BIA needs the Hoopa share of the budget to stabilize their program. Concerning law enforcement, BIA officials are well aware of the law enforcement problems on the Hoopa Reservation, including the Tribe losing over 1 million board feet of merchantable timber from trust lands each year due to theft. Task Forces have been dispatched to Hoopa to assess the situation, however, to our knowledge no written reports have ever been filed concerning their findings. As part of the Tribe's effort to control the situation, we enacted a conservation/trespass law, hired our own police officers, and have attempted to stabilize our police force by contracting such programs as the Marijuana Eradication and Reconnaissance Team (MERT). The BIA response has been "sympathetic" at best, however, in a May 15, 1991 report from GAO, they stated that the BIA's management of the MERT program is "vulnerable to fraud, waste, and abuse and that internal controls should be strengthened".

The Self-Governance Demonstration Project is forcing issues to the surface that the BIA has typically ignored in California. The fact that the Sacramento Area Office receives the lowest BIA Area Office funding in the Nation is a perennial problem exposed by the Project. For example, the Hoopa Tribe is the largest in the State, and is the only Tribe with significant resources in the Northern California Area. The majority of the funding at the Agency and large portions of Area Office funding is directly attributable to the Hoopa land and resource base. However, because Title III mandates no negative impacts to other tribes, our Tribe must forego funds for which we would be otherwise eligible to receive simply because no other funds are available to offset the reduction in funding if the Hoopa Tribe takes its share. Therefore, the Hoopa Tribe will never receive all the

funding for which we are entitled. The Self-Governance Demonstration Project is raising serious questions for the BIA within California regarding limited funding and violations of trust obligations. It has become obvious that there has been more cost to the responsibilities of the Tribe under the programs, functions, services and activities assumed than funds to pay for those responsibilities.

Concerning the decision-making process, based on our past relationship with the BIA, it has been clearly understood by the Hoopa Tribe that if the SGDP is to be successful, it will require changing the existing decision-making system to one that is more pro-active to tribal concerns. For example, based upon past Hoopa/BIA negotiations there is little incentive for the BIA to make any decisions that are not typical in nature. Anything outside the normal course of business (and not clearly authorized by regulations) seems to become a chore to work through the approval process. Given that the SGDP is not a typical program, it became apparent early that a different decision-making process must be developed in order to develop and implement a "new" way of doing business. Also, because of the inherent problems and conflicts in the BIA, it would be very beneficial to have a new decision-making process that did not carry with it the existing bureaucratic process of the BIA. Therefore, the Hoopa Compact of Self-Governance contains a streamlined decision-making and negotiation process that is designed to achieve more timely decision on management and operational matters.

We are encouraged by the support demonstrated by Secretary Lujan, Assistant Secretary Brown and William Lavell, Director of the Office of Self-Governance, each of whom have helped to create a cooperative atmosphere for the Project. However, this is not to say that all problems with the BIA have been resolved. Even in 1991, we continue to have to subsidize with Tribal funds every BIA program which we have assumed on at least a dollar-for-dollar basis just to maintain minimum service delivery. It has been suggested to us by BIA officials that rather than funding these programs that we should invest in litigation that would force the BIA to honor their trust obligation to the Tribe.

## **IMPLEMENTATION OF THE PROJECT**

Most of the activities surrounding implementation of the Project during the first year have been concentrated on the transition of programs, functions, services and activities from the BIA to the Tribe. Many internal mechanisms have been incorporated into our Tribal Governmental infrastructure. During this transition phase, the Tribe is still developing and refining our internal systems in areas of reporting, Tribal goal setting and evaluation procedures, and funding priority setting. The Tribe remains concerned, however, about the uncertainty of future funding since we have not yet stabilized, or even know, what the base funding and short-fall possibilities hold for the future.

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## RECOGNITION OF THE NEED FOR STABLE TRIBAL GOVERNMENTS

In order to fully implement the opportunities that were created by the Self-Governance Project, tribes must be able to stabilize their governments, both financially and politically. Oftentimes, political problems are created because of the lack of sufficient funding to fulfill the responsibilities Tribal Governments have assumed. Tribal governments must be treated by the Congress with the same recognition and respect that are afforded to other governments in this Country. Obviously, the Federal Government has helped to stabilize state and local units of governments by providing secure funding bases. Tribes need financial and political stability to achieve their goals.

## RECOGNIZING THE NEED FOR INTERNAL TRIBAL STABILITY

While financial stability can be addressed by the support of the Federal Government and the Congress, Tribal political stability will come only as a matter of a tribally initiated efforts. Again, the Self-Governance Demonstration Project creates new opportunities through the development of a "partnership", the parties of which are the Congress, the Federal Government and the Tribe. In order to maintain this partnership relationship, the Tribe must be able to effectively manage its affairs with accountability and responsibility. We have reviewed our internal strengths and weaknesses as a government. During the planning stage of this Project, as well as our initial implementation, we have instituted many internal measures for improved Tribal accountability both for our people and to our partnership relationship.

Tribes participating in the Self-Governance Demonstration Project must conduct honest assessments of the financial and political stability of their governments. As self-governing tribes, we have the responsibility for correcting the weaknesses within our governments. We fully support the provision of S. 1287 that requires a planning phase before negotiating with the United States to develop and implement a Self-Governance Demonstration Project. We also believe that to be successful in implementing the Self-Governance Demonstration Project, tribes need to be assured a minimum planning grant, at least as implied in S. 1287 at \$50,000. The insight gained by a tribe during the planning phase can be a tremendous benefit in preparation for the negotiation and implementation phases of the Project.

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**TRIBAL VISIONS FOR THE SELF-GOVERNANCE DEMONSTRATION PROJECT**

The Tribe believes that the Self-Governance Demonstration Project holds many of the keys for addressing Reservation problems by providing a mechanism for looking at Tribal priorities rather than federal regulations. However, there are certain fundamental needs for continued success of the Project.

The Self-Governance Demonstration Project needs to be kept in focus as to its demonstration nature. We do not believe it wise to broaden the project in a manner that would create an overwhelming number of new tribes as the BIA and Office of Self-Governance are simply unprepared for major structural changes. We are concerned that broadening the project to include more than the 30 tribes proposed will provide the BIA with weapons to create sizeable non-participating tribal opposition. We believe that the Self-Governance Demonstration Project will have tremendous benefit for all tribes, the federal government, and Congress if it is allowed sufficient time to create a good foundation including an analysis of the strengths and weaknesses of the operation.

The Self-Governance Demonstration Project provides a mechanism whereby fundamental problems that inhibit Reservation development within the framework of the federal regulatory process can be addressed. For example, federal regulations that are intended to maximize revenues from Tribal timber sales to outside buyers become obstacles that prevent the Tribe from increasing profits if those regulations are applied in the same manner to our Tribal business enterprises. In effect, the Tribe is placed into a position of competing against our own enterprise, which in turn undermines our Reservation economy. To correct this problem, the Tribe is considering the development of a Tribal Trust Administration Office that would oversee, not undermine, the new responsibilities for which the Tribe has assumed.

There is a need for participating tribes to become involved and understand the federal budget process. We believe that the BIA budget process is plagued by a maze bureaucracy that only a few individuals understand. If tribes are to be the real beneficiaries of funds allocated by the Congress for their benefit, then a deliberate effort must be made by the BIA to empower Indian tribes by providing understandable and timely budget information so they can participate in the process. Until such events occur we believe that the Self-Governance Demonstration Project provides an excellent opportunity to simplify the budget process by eliminating unnecessary layers of bureaucracy from the process. In addition, the Tribe is becoming concerned that in recent correspondence with the Tribe concerning funding, the BIA seems to be staging an "equity" fight between tribes. We believe this is an irrational position for the "trustee" to place themselves into, simply to bury its internal management problems under

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a smokescreen of controversy. As you know, the obligations of the United States to Indian tribes are not based on equity, but rather is based on the obligations to which it is committed under the principles of trust responsibility. We urge this Committee to continue its pressure on the Administration to increase Indian appropriations to a level that meets their trust obligations to all Indian tribes.

We request that this Committee send a signal to other agencies, including the Indian Health Service, that clearly identifies them as potential new agencies for participating in the Project. We realize that we still have not resolved all the problems which we have encountered with the BIA during the implementation phase of this Project, however, when the time comes to begin looking at other agencies it should be a smooth procedural flow and should not require monumental changes to legislation.

Finally, we continue to be interested in the concept of "New Federalism". Like the Self-Governance Demonstration Project, the New Federalism concept carries the same ideals of empowering Indian tribes to become active participants in designing programs, activities, functions and services that have the greatest opportunity for addressing the priorities and needs of Indian people.

## **CONCLUSION**

When considering the success of the Self-Governance Demonstration Project, the Federal Government and the Congress should keep in mind the amount of expense, time and effort that has been put into solving problems in Indian Country over the past several decades. Of course, many of the identified solutions have not been implemented. The bottom line is that the solutions to Indian Country, first and foremost, must be founded on the recognition of a partnership relationship between the United States, as trustee, and the tribes, as the beneficiaries. The Self-Governance Demonstration Project is real, is Tribally driven, and is being implemented in spite of the obstacles that we have encountered over the past 3 years. We are encouraged that the Project provides our Tribe opportunities to look at new and innovative methods of addressing age old problems.

Again, we appreciate the leadership provided by this Committee on the Self-Governance Demonstration Project and for providing us an opportunity to express our experiences regarding the Self-Governance Demonstration Project. We support passage of S. 1287.



## **Jamestown Klallam Tribe**

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**Testimony of  
W. Ron Allen, Chairman  
Jamestown Klallam Tribe  
Before the  
Senate Select Committee on Indian Affairs  
Oversight Hearing on the  
Tribal Self-Governance Demonstration Project  
and S. 1287 extending the authorization of  
Title III of P.L. 100-472**

**July 18, 1991**

I am William Ron Allen, Chairman of the Jamestown Klallam Tribe. Our Tribe was one of the original ten Tribes selected to participate in the Self-Governance Demonstration Project authorized under P.L. 100-472, Title III. We are now one of the seven Tribes in the nation to have entered into a Self-Governance Compact and Annual Funding Agreement with the Department of the Interior for Fiscal Year 1991. We appreciate the opportunity to testify before this Committee on our experiences with the Project and to support S.1287, extending authorization for Title III of P.L. 100-472.

In being one of the first ten tribes to participate in the Self-Governance Demonstration Project, the Jamestown Klallam Tribe successfully completed a two year planning period prior to negotiations to determine our own capabilities for implementing the Project. We then joined forces with the Quinault, Lummi, and Hoopa Valley Tribes in establishing the framework for negotiations and have also worked with these three Tribes on a nation-wide Self-Governance Communication/Education Project. Negotiations for a Fiscal 1991 Compact and Annual Funding Agreement were completed on June 30, 1990, and we are now in our tenth month of implementing the Agreement. Our experiences to date have had both positive and negative aspects. As we move forward, however, we anticipate a process that will continually improve by resolving many of the problems and obstacles experienced in implementing the Compacts during the first year.

### **CONSIDERATION OF SMALL TRIBES IN THE NEGOTIATIONS PROCESS**

The Jamestown Klallam Tribe achieved Federal recognition on February 10, 1981 and has 240 enrolled tribal members. With a 2.12 acre Reservation and a total landbase of 18 acres, we are the smallest and the youngest Tribe to participate in the Self-Governance Demonstration Project. We believe the Self-Governance Demonstration Project is critical to very small Tribes such as ours. With small operations and limited

resources, it is important for us to be able to consolidate programs and services and creatively use our available resources in order to completely fulfill our tribal governmental responsibilities. Our objective is to exhibit to Congress, the Federal agencies, and other small Indian Tribes that Tribes with our membership and resource conditions can effectively manage our governmental affairs with the same integrity and responsibility as the larger Tribes.

Our Tribe has had a greater capacity for taking over management and allocation of resources under Self-Governance due to the ease with which a smaller scale operation can adapt to such a change. We have also been able to educate our Tribal Council, staff and community in a more thorough manner than has been experienced by other Self-Governance Tribes because of our ability to reach out to a large percent of our total population regarding the Project. This has allowed us to avoid many pitfalls and virtually eliminated local rumors and termination/miscommunication fears that have proven to be obstacles for larger Tribes.

Our Tribe's size was detrimental during the negotiations process for FY91, however, as allocations were based on theoretical distributions of "eligible" BIA funds by a mixture of population, acreage, and Tribe formulas. For example, in the FY91 negotiations, the Jamestown Klallam Tribe received \$2,222 in additional BIA Social Services; for BIA Area Trust Services - \$140; and, for BIA Area Adult Vocational Training - \$162. The Project can only be successful for smaller Tribes such as ours if allocation formulas are designed in a way to ensure that Tribal administrative responsibilities can be sufficiently met if resources are transferred from the BIA to the Tribe.

During FY92 negotiations, a reasonable method for addressing small Tribes' needs was introduced for the Tribe's share of BIA Central Office funds. This method could be used as a framework for future negotiations with existing Compact Tribes as well as new Tribes entering negotiations. A base was established for all Tribes, with existing allocation formulas being used in addition to the base to meet the more costly administrative needs of larger Tribes. This provided smaller Tribes a protected base to help in carrying out the functions of specific programs, yet allowed larger Tribes the necessary funds necessary to carry out their more complex responsibilities. While Jamestown Klallam is much smaller than the Cherokee Nation, size does not minimize nor diminish the Tribe's responsibilities nor the complexities of completely administering new programs and services that are identified in the Annual Funding Agreement. This issue is one which will continue to remain a concern unless adequately addressed as the Project continues.



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### SUCCESSES IN IMPLEMENTING THE SELF-GOVERNANCE PROJECT

The Self-Governance Demonstration Project allows Tribes to consolidate, reprogram or redesign Bureau programs to meet more unique, local situations. In implementing the Project, the Jamestown Klallam Tribal Council has had the opportunity to become more flexible with greater opportunity for creative responses to specific Tribal needs.

For example, the Tribal Council approved additional funds to be reprogrammed into the Tribe's housing program, and construction of a Tribal member's home can now be completed this fiscal year. A modest economic development program has also been established with the hiring of one economic planner that can assist the Tribe in enhancing its business opportunities. Our Social and Cultural Program has the flexibility to incorporate cultural restoration and enhancement activities that were not previously allowed in the BIA programs. The Higher, Vocational, and Adult Education Programs were consolidated to more effectively utilize the funds and the true needs of the tribal members. We have also been able to expeditiously provide upgrades to equipment necessary to Tribal operations with less bureaucratic intervention or obstruction due to lack of expertise or processing procedures.

These are a few examples of how Self-Governance can work to the benefit of Tribes. Given the opportunity of budgetary flexibility, our Tribal governments will creatively deliver services much more efficiently and effectively than a Federal bureaucracy. We envision a strong, stable, and more responsive government that can promote greater social, economic, and political self-sufficiency for our Tribe through the Self-Governance Demonstration Project.

### ONGOING COSTS OF IMPLEMENTING THE PROJECT

There are numerous costs in implementing an innovative and overwhelming Project such as Self-Governance above and beyond the normal ones associated with a new project, particularly when the Tribe is one of the initial ones conducting this experiment. The participating Tribes must take the responsibility to examine and analyze the differences in the Self-Governance approach as opposed to the P.L. 93-638 contracting system. Additional responsibilities include the internal monitoring and evaluating, and communicating with the Tribal Council and community regarding the impact of this demonstration project on Tribal programs and services. The governing council and the community must be kept fully informed on the progress and effects of this new approach

to assure that there is no misunderstanding of the value of this new approach.

The Jamestown Klallam Tribe believes the first Tribes to enter into Compacts, those that are paving the way, should not be responsible for bearing the costs of streamlining and improving the use of federal dollars as they are intended by Congress through Title III for Tribes through its existing and/or negotiated program funds. These special project functions must be supported by the federal government to encourage the development of a comprehensive plan and system to implement this approach in permanent legislation and implementation procedures.

There are also implementation costs in terms of coordinating, communicating, education and developing a cooperative attitude and spirit with a reluctant BIA, particularly at the Agency/Area levels but also at the Central office level where policy is primarily developed. These costs would include the development of approaches and recommendations towards redesigning the Bureau's existing programs and operations. Research and development are another example of Project-associated activities such as developing formulas to allow the Tribes to receive their fair share of budget line items that are designed for Bureau-wide/nation-wide use (i.e., Agency, Area and Central Offices) that are not included in programs, functions, and services negotiated by the Tribes, but should be included in the Tribe's total share. Other research areas include fair allocating formulas for competitive grants, technical assistance, or unique one-time only services which should be eligible for Tribal consideration and negotiated inclusion in its Annual Funding Agreement. In other words, we are blazing a trail for others and we should be recognized for these endeavors with adequate resources to carry out these objectives. In our judgement, if we didn't conduct these studies, analysis, and develop these innovative approaches to this historic initiative, it wouldn't happen.

#### SELF-GOVERNANCE PROJECT FLEXIBILITY WILL REQUIRE CLARIFICATION AND EXPANSION

The basic Title III provisions authorize the transfer of BIA "programs, services, functions and activities" to the Tribes with some exceptions. The straight forward and simple concept, however, becomes vulnerable to BIA interpretations and exclusions. This Committee should reaffirm clearly the legislative intent that all BIA operations are eligible for negotiated transfer, and I emphasize all so that there is no future wiggle room for interpretation.

The underlying intent of P.L. 100-472, Title III was to authorize innovative Tribal

uses of federal dollars more effectively and efficiently to meet tribally-specific priorities that were not necessarily the omniscient vision of the federal administration nor identified in BIA administrative manuals. The Tribes have proceeded with their own priorities, so this has not yet proven to be a problem. The potential for future difficulties exists, however, and based on past experiences in the Project, the Tribe believes it is an issue that needs to be addressed before it evolves into a problem. The Tribes should clearly be allowed every opportunity in their unique circumstance to creatively and innovatively provide services and develop their economies. BIA intervention and/or obstructive capabilities should be clearly eliminated with the exception of Compact authorized activities.

The Tribe believes the mission and intent of Title III is to allow Tribal governments to act independently and identify Tribal program priorities necessary to conduct and carry out responsibilities to our people and our Tribe's future. This mission is also intended to allow the Tribes to conduct our affairs in a truly governmental process, as opposed to being steered by the BIA regarding what activities we should be conducting or how we should be administering them. Admittedly, many of these services in the initial years will be consistent with BIA programs and services. But the environment for Tribal decision-making must allow for creative solutions to our unique issues, unencumbered by BIA prescribed notions.

An additional area that we are requesting the Congress to assist us is in the area of appropriate authorized financial/cost recovery conditions. We are currently awaiting a formal response from OMB regarding specific waivers from OMB Circular A-87 that guides the allowable cost recovery of expenditures, but these regulations are primarily designed for State and Local governments and not Tribes. Currently there is an effort to adjust these conditions in the developing regulations for P.L. 93-638 and P.L. 100-472 the amendment act, but the requests by the Tribes are not receiving favorable or supportive assistance from OMB or the Federal departments. This project is an opportunity to incorporate these appropriate and fair conditions in a funding mechanism that should allow for the easy incorporation of these financial expenditure conditions.

Another area is the need to eliminate the restrictive conditions of other laws that obstruct the Project from being administered consistent with its legislative intent. If the Project cannot be administered freely, then it will not be tested in its best political and regulatory conditions to prove that the Tribe(s) will be able to use the funds responsibly. An example is the restrictions of how the BIA Housing Improvement Program (HIP) funds can be used. Currently, they can only be used for the legislative purpose. The theory is that Tribes will not be able to prove that they will address these needs in an

unrestrictive regulatory environment. The Federal officials view will be that the Indian leaders could not make a mistake because we restricted them from using the funds for any other purpose. The problem is that these conditions can and do obstruct the Tribe from utilizing the funds in creative approaches that could and would still address the need and purpose, e.g. purchase land for homes or other infrastructural needs for the development of improved homes or home conditions on or off the reservations.

**SUPPORT OF S.1287: THE PROJECT SHOULD MOVE FORWARD  
CONSISTENTLY AND CONTROLLED, YET CAUTIOUSLY**

Before expansion of the Demonstration Project, the documented results should be thoroughly analyzed. The Jamestown Klallam Tribe is concerned that this Project be allowed to continue and evolve in its experimental stages before it is expanded into permanent legislation, other federal agencies, and more than thirty participant Tribes. This will take time, both at the Tribal level and the Federal level. We believe thirty Tribes is an acceptable number to be allowed to participate in the Project; any more would be detrimental to the experiment. To move forward too quickly with permanent legislation and expansion of the Project into the transfer of funds to Tribes from other Federal agencies would not allow the possibilities of the experiment to be fully tested. We must proceed steadily, but deliberately, with planned goals and objectives for this historic initiative. In our judgment, the project must be conducted in a controlled set of conditions to address the problems and needs in the administrative and legislative areas to prepare for a permanent law that authorizes this approach. Another implementation objective is the plan and process to reorganize/restructure the BIA when the project becomes permanent and a large number of Tribes choose to utilize this Self-Governance Compact mechanism. The transition and reallocation of federal funds appropriated will need to be carefully thought-out and planned.

One of the primary reasons this demonstration should be restricted to a maximum of thirty Tribes is to maintain a manageable framework of participating Tribes necessary to conduct a demonstration project. All participants are Tribes with unique conditions. Thirty would be an appropriate cross-section of Tribes throughout the country to allow the involvement of appropriate Congressional policy to address future needs for all Tribes. A concern that we would have is that the number of participating Tribes be expanded to a level that would create an unmanageable forum to resolve the problems and needs for permanent implementation and/or expansion to other Indian programs.

In order to create an administrative structure capable of sustaining the Project, a

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manageable number of Tribes is essential to its success. Initially, to establish a solid administrative foundation, the Project will need to continue on a cautious path in order for a structure to be designed that will meet what will be the growing needs of Self-Governance Tribes without turning into a counter-productive bureaucracy itself. To increase the number of Tribes involved in the Project at this time would minimize the effectiveness of analyzing the most innovative ways of establishing this structure.

Another concern in future Self-Governance efforts is the reduction and redesign of the Bureau of Indian Affairs. If Self-Governance does become a permanent reality, it will require much planning to redesign the Bureau's role in Indian Affairs without adversely affecting those Tribes that choose to remain in under the P.L. 93-638 contracting process.

We believe the Project can still successfully move forward by adding 10 tribes to the Project; any more additions would take away from its demonstration nature. A participation/demonstration framework needs to be maintained in order for the Tribes and the federal government to fulfill the intents and purposes of the Project.

#### RECOMMENDATIONS

The Jamestown Klallam Tribe supports S.1287. From our Tribal perspective, the bill is very important to the success of the project. As we continue to implement our Self-Governance Compact and Annual Funding Agreement, we have come to understand the magnitude of necessary change. The Project will take time before it is successful, and the extension of the Project for three more years will provide that time. Not only will wrinkles (i.e., administrative and implementation needs and techniques) need to be ironed out as we implement our agreements and measure our successes and failures, but an extended timeframe will be necessary to design and develop appropriate legislation to allow the Project to become a permanent opportunity.

In implementing the Project, there are areas of complexities that vary from region to region in terms of how current programs are administered, such as Indian Child Welfare, Social Services, and programs administered by consortiums that must still be reviewed in relation to the Project. Additionally, consideration must still be given to issues such as authorization of special conditions to modify OMB Circulars that are particular to Tribes; i.e., cost recoveries that are legitimate and fair in conducting federal program services and obligations. These are just a sample of the complexities involved in the creation of this New Federal - Tribal relationship. As you well know, established

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systems don't change very easily or quickly to new situations.

There is a continuing, and possibly increasing need for nation-wide education and communication about the Project, for the BIA as well as Tribes. Indian Country will need to be educated on the Self-Governance purposes, opportunities, strengths and weaknesses to ensure that Tribes fully understand their options when future permanent legislation is considered. Confronting the rumors and misconceptions about Self-Governance in Indian Country has become a major task and responsibility. With the establishment of the Office of Self-Governance and through the continued opportunities through the Self-Governance Demonstration Education/Communication Project, I believe we can keep Indian Country apprised if this Demonstration Project. It will take time and resources.

In conclusion, I would like to urge this Committee to continue to remain actively involved in the Self-Governance Demonstration Project. We do believe this bill is a positive initiative for the obvious reasons stated in our testimony and urge its passage during the 102nd Congress. We hope that more restrictive conditions are not entertained in the legislation. In fact, more liberal conditions are needed to demonstrate Congressional trust that Tribes can be operate as governments in a very responsible manner. It is clear that the Tribal leadership will have to work diligently with the Congress and the Administration to prove unquestionably that we can be trusted and are capable to responsibly and effectively utilize federal funds which replaces Federal Indian operations that have been institutionalized over the last 150 years. We appreciate the commitment and full support the Committee has provided us and this Project, and we look forward to continuing our work with you.

JTKTEST-349



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**JOINT TESTIMONY OF THE  
 QUINAUT, HOOPA VALLEY, LUMMI AND JAMESTOWN KLALLAM  
 INDIAN TRIBES FOR THE  
 SENATE SELECT COMMITTEE ON INDIAN AFFAIRS'  
 OVERSIGHT HEARING  
 ON THE SELF-GOVERNANCE DEMONSTRATION PROJECT  
 AND S.1287 EXTENDING THE AUTHORIZATION OF  
 TITLE III OF P.L. 100-472  
 July 18, 1991**

This joint testimony provides the shared view of the Quinault, Hoopa Valley, Lummi, and Jamestown Klallam Indian Tribes regarding the Self-Governance Demonstration Project and S.1287. Individual testimonies for each Tribe are submitted separately to provide for each of our Tribes to present our unique perspectives and positions.

Our Tribes were among the original ten Tribes to participate in the Self-Governance two year planning period and represent four of the seven Tribes to successfully negotiate Compacts of Self-Governance and Annual Funding Agreements with the Interior Department for Fiscal Year 1991. Based on our experiences, we appreciate the opportunity to testify on the historic Self-Governance Demonstration Project, to express our support for S.1287 to extend the authorization for Title III of P.L. 100-472, and to offer some proposed amendments to S.1287.

The Self-Governance Demonstration Project authorizes Tribal governments at their option, to negotiate with the Interior Department to transfer Bureau of Indian Affairs "programs, services, functions and activities" to the Tribe through Compacts of Self-Governance and Annual Funding Agreements. These Compacts and Annual Funding Agreements: (1) protect the trust relationship that the United States has to the Tribes; (2) allow Tribes to consolidate, redesign, or otherwise change the Bureau programs; (3) provide for financial resource transfers in a simplified form; (4) allow for Secretarial waiver of inhibiting rules and regulations to be replaced by Tribal guidance documents; (5) require mutually determined baseline measure of progress reported semi-annually by the BIA and Tribes to Congress; and, (6) create the opportunity for Tribal Councils to determine their own program priorities and allocate resources accordingly.



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This Demonstration Project, still in its first implementation year, is intended to empower Tribal governments with the decision-making authority and responsibilities which sovereign governments are rightfully entitled to exercise. It is also intended to reduce the BIA bureaucracy and assure that a greater proportion of federal funds actually get to the local tribal levels.

**I. The Self-Governance Demonstration Project has been a Tribally driven initiative made possible through Congressional authorization and appropriation support.**

The Self-Governance Demonstration Project was proposed by Tribes frustrated with a BIA bureaucracy still reluctant to change its role from a service provider and manager of Tribal affairs to a government contractor twelve years after passage of P.L. 93-638, the Indian Self-Determination and Educational Assistance Act of 1975.

In the Fall, 1987, while the draft amendments to the Indian Self-Determination Act were in the early legislative process, a series of Arizona newspaper articles blasted the federal Indian bureaucracy. The Arizona Republic's "Fraud in Indian Country" series portrayed an inept, wasteful BIA. Chairman Yates of the House Interior and Related Agencies Appropriations Subcommittee held an oversight hearing in late November on the Arizona Republic's charges. Then Interior Secretary Hodel and Assistant Secretary for Indian Affairs Swimmer attempted to explain away the newspaper allegations. In obvious frustration and perhaps to divert Chairman Yates displeasure, Swimmer suggested that the BIA monies should be turned over to the Tribes to let them manage their own affairs. After Chairman Yates met with Tribal representatives on the Swimmer proposal and further dialogue at the Interior Department the following day, ten Tribes, including our four Tribes, volunteered to test the proposal.

Without consulting with the Tribes, however, the Interior Department proposed Section 209 as an addition to the Indian Self-Determination Act amendments in December, 1987. Section 209 contained a resource transfer of funds which the Tribes currently contracted with minimal impact to the existing bureaucracy. An alarming element of Section 209 was language waiving the trust responsibility of the United States for programs assumed by participating Tribes.

The ten Tribes, acting collectively countered this damaging and unacceptable Section 209 with the Title III Self-Governance Demonstration Project designed deliberately by the



Tribes to maintain the Trust responsibility and to provide a Demonstration Project rather than permanent legislation. In the ensuing political process, the Demonstration Project was: (1) expanded from ten to twenty Tribes; (2) some BIA programs were excluded from the Project; (3) a Secretarial waiver of conflicting laws and regulations was modified to provide an interpretation preference for Self-Governance along with the existing Secretary's waiver authority; and, (4) a provision was added to prohibit the Project from negatively affecting other Tribes. The basic Tribal purposes for Title III were preserved; namely, (1) the transfer of BIA resources to Tribal management; (2) broad flexibility for Tribal utilization of those resources; (3) the ability to consolidate and redesign programs; and, (4) a stream lined budget process through the Bureau accounting system. Multiple P.L. 93-638 contracts and grants were replaced by a single Compact of Self-Governance and Annual Funding Agreement.

**II. The Self-Governance Tribes successfully complete the planning and negotiation stages and implement the Demonstration Project despite bureaucratic resistance**

Change from the norm is a difficult aspect of life. In Indian Affairs, change is threatening at the Tribal level and next to impossible in the bureaucracy. The planning phase of Self-Governance, we believe is critically important in order to successfully pursue Self-Governance. This planning phase was greeted with BIA benign neglect and rumors of potential termination. The Congress and the Tribes repeatedly asked the Bureau for budget data for planning purposes, but only one set of useless computer print-outs was made available. The Bureau's lack of support and assistance in the Project is reflected by the fact that annually, the BIA Budget Justification would include no funding for Self-Governance, and Congress would annually provide appropriations. As the BIA supplied no official statement on the Demonstration Project, rumors and innuendos flourished in Indian Country. BIA Central Office personnel in charge of the Project kept changing and slowly the Self-Governance Demonstration began to merge with Bureau programs. The BIA produced no planning documents, rejected proposed regulations to govern negotiations and Project implementation drafted by the Tribes, and provided no technical assistance. Moreover, the BIA attempted to dilute the Demonstration nature of the Project, and gut Tribal planning, by proposing to take the Congressional Planning appropriation for the 10 Tribes and divide it among 50 Tribes. Intervention by the Appropriations Committee and this Committee was necessary to reverse this duplicitous chicanery.

Our Tribes with Congressional support requested a meeting with Secretary Lujan. We met with Interior Secretary Lujan on April 2, 1990 appealing for an independent negotiator for the approaching Compact of Self-Governance negotiations between the tribes and the BIA. Secretary Lujan, after direct discussion with the Tribes, indicated his personal support for the Self-Governance Project and on April 28th appointed his Assistant, William Bettenberg, as the Self-Governance negotiator.

Title III requires a Congressional review of each Tribes negotiated Compact of Self-Governance ninety days prior to implementation meaning these Compacts had to be submitted by July 1 for an October 1 or Fiscal Year 1991 implementation. When our four Tribes met with Bettenberg on May 17, 1990, his first time available, to determine a negotiations process, no BIA budget data was available nor had any discernable BIA planning for the Project been accomplished. Through our Tribal planning efforts, model Compacts of Self-Governance and Annual Funding Agreements had been drafted. In those six weeks, a virtual BIA scramble ensued to produce Area/Agency budgets and allocations criteria. Although we did not have the opportunity to review the BIA budgets in detail and were forced by the press of time to accept the numbers as presented, negotiations were completed and Compacts/Agreements were submitted on time. As a footnote, the BIA Central Office was also finally convinced at the last minute of the negotiations to participate in the Project with a contribution of \$45,000 per Tribe.

Seven Tribal Compacts of Self-Governance were negotiated by Bettenberg including our four Tribes', the Mille Lacs Band of Chippewa Tribe, Absentee - Shawnee Tribe and Cherokee Nation of Oklahoma.

At the request of our Tribes, the Congress provided funding for an Office of Self-Governance in the Office of the Secretary of the Interior for Fiscal Year 1991 managed by the Assistant Secretary for Indian Affairs. Secretary Lujan established a Self-Governance Policy Council in August 1991 comprised of representatives from the Solicitor's Office and Secretary Lujan's Office headed by Assistant Secretary Brown for policy guidance. The Office of Self-Governance with William Lavell as Director began operations in January 1991.

In the last six months, the Office of Self-Governance has significantly improved the Department of the Interior's performance and attitude towards the Self-Governance Demonstration Project. Seven Self-Governance second year Compacts and ten new first year Compacts have been successfully negotiated and submitted for Congressional review for Fiscal Year 1992. For the first time, since the Project began in 1987, the BIA Fiscal

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Year 1992 Budget Justification requested support for the Self-Governance Demonstration Project of \$3 million for planning, negotiations, Project implementations and shortfalls. And, the Office of the Secretary requested \$700,000 to continue the Office of Self-Governance operations and role.

**III. Self-Governance Demonstration Project has confronted varied obstacles; particularly from the BIA.**

There is an inherent conflict between the Self-Governance Demonstration Project purpose and the BIA institutional self-preservation norm. Finding altruistic qualities in individuals is rare; attributing altruism to an entrenched bureaucracy would be absurd. The BIA hasn't been expected to be helpful as a successful Project will certainly reduce the employment level and funding available to the BIA as an institution. With exception of irresponsible BIA administration manipulations around planning and research grants, the Bureau, to date, has not exhibited direct opposition to Self-Governance, but rather covert maneuvers and neglect.

The BIA, during the first three years, did not develop any plans for the Project implementation phase despite repeated Congressional directives for budget research and organizational restructuring. The Agency, Area, & Central Offices did not ask or inquire with the participating Tribes as to what we thought they should be doing or providing to facilitate the Project. No budget analysis was initiated prior to the second year negotiation stage for the first tier tribes. The Project is approaching a point in terms of the number of tribes negotiating Compacts that reorganization and restructuring is inevitable. This pressure point coincides with the BIA Reorganization Task Force recommendations and is indeed serendipitous.

The BIA during the initial years requested no appropriations for the Demonstration Project planning and negotiation activities. Each year, release of Congressional appropriations to the Tribes was a difficult adventure with annual lapses in funding. As noted earlier, at one point, the BIA suggested distributing the planning monies among fifty Tribes diminishing each Tribe's financial assistance. With no information available to non-participating Tribes about the Project from the Bureau, various negative rumors circulated through Indian Country concerning Self-Governance; at least some of which were traceable to mid-level BIA staff. BIA Agency staff generated rumors and misinformation continue to be bothersome at the Tribal level.

Self-Governance planning, negotiation and implementation has not been an easy task at the Tribal level. BIA misinformation and inter-Tribal rumors have been a constant harassment, particularly in multi-Tribe/Agency situations. The degree to which individual Tribal members maintain ties to the BIA and fear change has been an unknown dimension up to now. The time necessary to reorganize the Tribal government, orient Tribal staff to new responsibilities, establish operational mechanisms, and provide for adequate community information and involvement was underestimated. Changing the Tribal government from a contract service provider to a policy-maker and direct service provider is a substantial undertaking at the tribal level.

**IV. The Self-Governance Demonstration Project should move steadily and deliberately forward at a tribally-determined pace prior to perfecting a permanent Self-Governance Statute**

Self-Governance in terms of tribal government empowerment, staff implementation, and community understanding and support will require time and experience. We're in the tenth month of the first year implementation phase with our Fiscal Year 1991 Annual Agreements yet to be finalized. The Project has proceeded quite rapidly to this stage, but we caution that the next year will be critical in establishing our Tribal processes and programs. Substantial time, repetition, exploration of options, and the creation of Tribally-designed government operations will be required before tribal communities, both their electorate and the service bureaucracy, are comfortable with Self-Governance.

Moving forward too quickly with Self-Governance, however well intentioned, will create political opposition nationally, regionally and at the Tribal level. Self-Governance, a concept often misunderstood and easily distorted, has already created political controversy in a number of Tribal elections. We believe in the Self-Governance process, but time will be necessary to build the required foundations through education and understanding.

We are at an important transition point in the implementation phase of the Self-Governance Demonstration Project. The number of Tribes in the implementation phase will increase from seven to seventeen in the next year. There are no guideposts of experience established in this Project. The BIA selection criteria for Tribal participation in the planning process is still a mystery. The Bureau's capability for undermining and tenacity for self-preservation is well known. The Project's back stage status has changed to front stage spotlight with our initial success and the converging of events in Indian

Country. There are many more unknowns in our individual and collective Self-Governance Demonstration future than there are knowns.

A number of well-intentioned proposals have been introduced to provide a universal remedy to the problems and needs that beset Indian Country, including the New Federalism concept and the DOI/BIA/Tribal Reorganization effort. We envision these ideas have definite merit in their goals, but caution that Indian Affairs is a very complex world not receptive to superimposed solutions. The solutions need to be developed, tested and implemented by Tribal governments at their own pace in order to be successful.

**V. Our Tribal Vision is that Self-Governance should proceed in stages with Extensive Planning**

We urge that the Self-Governance Demonstration Project advance with a manageable number of Tribal governments. The Tribes, ourselves, have conducted the necessary research, instigated the innovations, and designed the implementation approach to this stage in the Project. Significant tribal efforts and coordination will be necessary in the next two years to establish support and educational mechanisms at both the Tribal and Federal level as well as to expand to new programs in our Annual Funding Agreements. We need to build a sound structural foundation to support Self-Governance at the Tribal and Federal levels. We have the baseline measures in place to document what works, what does not work and why, to guide future Congressional policy considerations. These baseline measures will also have to be reviewed and analyzed to determine if they are sufficient and effective in measuring the success of the Project.

A flood gate increase of Tribes into the Self-Governance Demonstration Project would require a major restructure and reorganization of the BIA which would remove an understood process and foundation with a structure still in the formative stage. This would create unnecessary confusion in Indian Country and instability in the BIA. The result could be chaos, not progress. The BIA needs to change, and the results of a "controlled" demonstration will provide guideposts for that change.

We believe a clear understanding of the Self-Governance Demonstration Projects' strengths and weaknesses should be realized with major problems resolved administratively or legislatively before significant expansion occurs. A detailed plan should be established for a permanent Self-Governance relationship between the tribes and

the Interior Department. Other Tribes should have the opportunity to determine with full knowledge of our experiences whether they desire to enter a Self-Governance Compact relationship or continue their Self-Determination contract relationship. Based on these collective Tribal preferences, we should then understand what a reorganized BIA should look like and would be in a position to recommend changes and a plan to proceed.. The Bureau, then, would be reorganized according to Tribally determined needs.

The Self-Governance Demonstration Project should expand step-by-step by Federal program, Agency and Department. For the reauthorization and extension of Title III, we recommend the Congress:

- 1) include all BIA programs previously excluded in Title III;
- 2) include BIA programs where eligibility is at all open to question, for example construction and competitive grant programs;
- 3) direct the Indian Health Service to initiate a two year planning phase in preparation for future inclusion under Title III with the establishment of an Office of Self-Governance in the Office of the Secretary of HHS; and,
- 4) recognize the operations and functions of the Office of Self-Governance in the Office of the Secretary of the Interior.

After IHS Self-Governance Compacts have been implemented, we suggest that other "Indian Programs" in the Federal Departments be directed to enter shorter planning stages depending on the size and diversity of the program. These would include other programs in the Department of Health and Human Services such as Administration for Native Americans, Administration on Aging and Head Start, the Departments of Housing and Urban Development, Commerce, and Labor. And, future consideration should then be given the EPA, Department of Agriculture, Department of Energy, Department of Transportation and others.

## VI. THE FUTURE OF THE BIA

We believe there will always be a need for the Bureau of Indian Affairs. A key issue as a result of this Project will be the redefining of the role and responsibility of the Bureau as defined by the Tribes. A fundamental function will be to serve as the Trust Advocate

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and Trust Manager for all Tribes and the lead Federal Agency for implementing Federal Indian Policy. The Bureau should continue as a service provider and Self-Determination contractor for those tribes choosing to remain in the BIA system. And, the BIA could feasibility provide a cost effective service for "some" tribally agreed upon "National" Indian programs such as a data bank for child abuse programs, manage a Law Enforcement or Court Personnel Training Center, a coordination unit for technical assistance, and other logical operations. The Bureau's role, responsibility, structure and operations, however, would be determined by the Tribes.

**VII. Self-Governance Education and Communication should be Maintained to Ensure Understanding by Other Tribes and BIA Personnel as to the Project Purpose and Progress**

As stated previously, the BIA has made no effort to educate other tribes or their own personnel as to the Self-Governance Demonstration Project. In the middle of our second planning year, the rumors and misinformation had reached a threatening level requiring response. Our four Tribes developed a "Red Paper" entitled Shaping Our Own Future: The Promise of Self-Governance to explain the history, legislative provisions, and plans for the Project. Informational brochures were also developed to highlight Project issues. We held a seminar in Seattle for Pacific Northwest Tribes and in Phoenix, Arizona, for Southwest Tribes, made presentations to neighboring Tribal Councils, and mailed information packets to interested Tribes and individuals. We are presently preparing to conduct additional seminars in the Minneapolis, USET, Aberdeen, Albuquerque and Billings areas.

Congress recognized the need for continued Self-Governance education and communication by providing financial support in Fiscal Year 1991. We held a workshop for other Self-Governance tribes in the planning and negotiation stages and have initiated regional seminars for interested tribes. In the near future, we've been invited to give presentations in BIA Areas and at a pending Agency Superintendent's conference to enhance the understanding of the Project as well as attempt to build a partnership and constructive attitudes to assist in our efforts. Tribal confusion over Title III seems to be abating and support is growing. As the Project evolves, however, the education and communication effort should continue to insure an understanding of the Project purposes and progress are maintained.

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Responses we have received during our Education Project indicate that Tribes are becoming more interested in the Demonstration Project. Tribes are very interested in receiving more information about the Project, including the pros and cons from our perspectives as first tier Tribes, and receiving more information about the BIA budget process. In addition, Tribes want to receive timely, accurate, and complete information from the BIA regarding programs, services, functions, and activities that they could assume under Self-Governance and the funds they would be entitled to receive if they participated in the Self-Governance Demonstration Project.

#### **VIII. Recommendations for Amendments to Title III**

Basically, our Tribes support S.1287 as introduced. As mentioned previously, we recommend deletion of current BIA exclusions from Title III coverage and clarification on other BIA programs in a questionable status. We recommend adding other Interior Department Programs that benefit Indians. We also recommend some technical amendments on regulatory waiver and 25 U.S.C. section 81 coverage, direction to IHS to begin a two year planning phase for Title III coverage including the establishment of an Office of Self-Governance in the Office of the Secretary for the Department of Health and Human Services. And, we urge consideration of an oversight hearing in 1992 to address the issue of expansion of Title III to other "Indian Programs" in Federal Agencies beginning with the Department of Health and Human Services.

**In conclusion**, we appreciate the Senate Select Committee on Indian Affairs support in the authorization of Title III; assistance in implementation of the Project at critical stages, and the consideration of S.1287 to authorize the extension of Title III.



## TESTIMONY

By

PRINCIPAL CHIEF WILMA MANKILLER  
CHEROKEE NATION

ON

S. 1287, THE TRIBAL SELF-GOVERNANCE  
DEMONSTRATION PROJECT ACT

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

July 18, 1991

Mr. Chairman and members of the Senate Select Committee, I am very pleased to have the opportunity to testify today on S. 1287, the Tribal Self-Governance Demonstration Project Act and the Cherokee Nation's experience with its own Self-Governance Compact. Our Nation recently submitted to the Assistant Secretary for Indian Affairs a semi-annual report on our self-governance project, a copy of the primary text is attached as background for my testimony.

I enthusiastically support the self-governance concept. By way of background, it is interesting to note the continued discussion and effort to reorganize the administration of Indian affairs to make the federal government more responsive. While I support the initiative, I believe the self-governance authorization contained in the Indian Self-Determination Act Amendments in 1988 and the self-governance process may do more to reform federal administration. I believe the federal government and the tribes have the best opportunity of this century to finally bring about a

mature relationship between our governments which has been often promised but up until now, only a dream. The challenge for the federal and tribal governments is to use this opportunity properly and chart a wise course for the future.

Since colonial times, the Cherokee Nation has continued a government to government and trust relationship with the United States. Our first treaty of peace, friendship, and protection was in 1785. Since then we have engaged in over twenty treaties and numerous agreements ratified by the Senate and passed by both the Senate and the House of Representatives of the Congress. Last summer we negotiated a Compact of Self-Governance with the Secretary of Interior and the Congress was notified pursuant to the authorizing federal law. The Cherokee Nation views the Compact as our newest "treaty" with the United States of America. The Cherokee Nation has faith that the federal government will honor this treaty compact in utmost good faith. Of course our faith in the federal government must be tempered by our actual experience between the federal government and Indian tribes. Hopefully, we can be more optimistic about the future having learned the lessons of history.

I am advised the committee is particularly interested that I address four questions. First, should the Congress extend the self-governance authorization for the self-governance demonstration project for several more years? Second, should additional tribes beyond the number of twenty be authorized to participate? Third, should an Indian tribe be required to go through a grant planning

process prior to negotiating a compact with the Department of Interior? Fourth, what has been the Cherokee Nation's experience with the self-governance compact process?

In answer to the first question, the Cherokee Nation's experience under self-governance has been successful and therefore, we endorse an extension of the self-governance demonstration authority. The project should be given adequate time for everyone involved to assess the experience.

The Cherokee Nation's compact was destined to be successful because it is consistent with our long sought goal of self-determination. I recommend that the self-governance authorization be made permanent with the Cherokee Nation and for any other tribe already participating in the demonstration project which has determined by its own achievements that the project is a success and is comfortable with the arrangement. At the same time, I respect that other tribes may want and need a longer demonstration period to be comfortable with making this assessment.

An additional point is there are a number of ways to fashion self-governance projects and measure their success. I suppose what constitutes success of a particular project could be debated from various view points. I hope the Congress and the Executive Branches recognize that some flexibility must be instilled in the process to accommodate the diversity in ways and means Tribes may desire to approach self-governance. The bottom line should be that the tribe, guided by responsible governmental leadership has demonstrated sustained stability, efficient and satisfactory

delivery of services, and financial integrity.

As to the second question, if additional tribes express an interest in participating, the federal government should make every effort to accommodate them. The current participating tribes had to meet acceptable standards of governmental and financial accountability. Additional tribes can also demonstrate the maintenance of these standards. If they desire to participate, they should not be denied because of a limited authorization of the total number allowed.

I believe there are many tribes ready, willing, and able to be successful compacting partners with the federal government. The leaders of tribes and their memberships need to be confident in their government's ability to administer independently the additional responsibilities.

It is also important that the Department be required to state its reasons for declining a tribal governance project request. Those reasons should be limited to specific criteria. Any determination by the Department not to compact should be supported by evidence that shows beyond doubt that a tribe is not ready, for example, because it had not observed acceptable financial standards over a reasonable period of time. Another example, if it was absolutely clear and evident that a tribal government was unstable and failed to be accountable to its members through the established tribal institutions of government then it should not be allowed to participate. In both cases, the criteria should be very clear and easily understood.

In response to the third question, relative to whether an Indian tribe should be required to go through a grant planning process prior to becoming a self-governance participant. The Cherokee Nation did not have the benefit of a grant prior to entry. While it might be useful and helpful, the judgement to do so should be the decision of the tribal leadership. As long as it is evident that the applicant tribe has a record of sustained accountability of its tribal systems and the tribal government ensures the rule of law, a deserving tribe should be able to proceed directly to the negotiation of its compact with the Department.

In answer to the fourth, the Cherokee Nation's very positive experience with self-governance is summarized in the attached semi-annual report. Our recent tribal election is a testament to the support of the Cherokee Nation's membership for our self-governance project and its continued success.

As a final point, the Self-Governance Project is in essence an important acknowledgment by the Department of the Interior that it is the Cherokee Nation which represents and serves the Indians residing within the Cherokees original treaty lands in the Indian Territory that today comprises the fourteen northeast counties in Oklahoma. The foundation of the Cherokee Nation's Self-Governance Compact is the numerous treaties and statutes acknowledging the Cherokee Nation as the tribal governing authority in Cherokee territory. I hope the Committee will work with the Secretary to take whatever action, if any, is needed to make the compact a permanent bi-lateral agreement for self-governance between the

United States and the Cherokee Nation.

Thank you, Mr. Chairman, for the opportunity you and your colleagues have given me to testify today. I will be pleased to answer any questions the Select Committee may have.



**CHEROKEE NATION**  
P.O. Box 948 • Tahlequah, Okla. 74465 • (918) 556-0671

Wilma P. Mankiller  
Principal Chief

John A. Ketcher  
Deputy Chief

July 10, 1991

Mr. Eddie Brown  
Assistant Secretary - Indian Affairs  
U.S. Department of Interior  
Washington, DC 20240

Through:

Merritt Youngdeer  
Muskogee Area Director  
U.S. Bureau of Indian Affairs  
Muskogee, OK 74401

RE: Semi-Annual Report to Congress

Dear Mr. Secretary:

I am pleased to transmit to you the Cherokee Nation's Semi-Annual Report on the Self-Governance Project authorized by the Indian Self-Determination Act.

Please contact me if you have any questions or comments about the report which will be forwarded to the Congress by your office. My lead staff person for the project is Pat Ragsdale who may be reached by calling 918-456-0671, Extension 208.

Thank you for supporting this special opportunity to achieve a greater measure of self-determination and please thank your staff for their assistance.

Sincerely yours,

Wilma P. Mankiller  
Principal Chief

SEMI-ANNUAL REPORT  
of the  
CHEROKEE NATION'S SELF-GOVERNANCE PROJECT  
Authorized by 25 USC 450 et seq.

## HISTORY

During the colonial period the Cherokee Nation had both governmental relations and treated with England. The Nation continues the government to government relationship with the United States of America which began when the United States of America was organized under the Articles of Confederation. The first treaty between the United States and the Cherokees was in 1785, four years before the U.S. Constitution was adopted. Almost all treaties between the United States were for the purpose of "the establishment of peace, mutual friendship, and protection." During the course of official governmental relations with the Cherokee Nation, there have been over twenty treaties and numerous agreements made between the U.S. and the Cherokee Nation. The United States pledged peace, protection, and friendship. In return, the Cherokee Nation exchanged vast amounts of its real property for the United States pledge to continue the relationship and honor its commitments to Cherokee people.

The principles of Indian law were established with the decisions of Supreme Court Chief Justice Marshall in the famous Cherokee cases of the 1830's. This early history of Indian affairs became the mortar and stone for the foundation which became the legal doctrine supporting the present day government to government and trust relationships.

At the beginning of the 20th Century, the federal government attempted to abolish the Cherokee Nation's governmental institutions including its free press, the Cherokee Advocate. For decades the light of the tribal government was dimmed including the basic right to elect our own tribal chief. Slowly but resolutely, the Cherokee people and their leaders have put the structure in place for the modern day Cherokee Nation. In the 90's as the 20th Century closes, the Cherokee Nation has reassumed its place in the family of American governments. The self-governance project authorized by Congress has served to provide a primary mechanism to achieve a greater measure of self-determination, the long promised goal of the Congress and numerous Presidents, Republican and Democrat alike. Anyone familiar with Cherokee history realizes self-governance as practiced by the Cherokee Nation is not a foreign concept. The self-governance project offers a real opportunity for the federal government to let go without diminishing or abrogating its trust and inter-governmental relations with the Cherokee Nation.



### DEVELOPMENT OF THE SELF GOVERNANCE COMPACT

During the latter part of 1989, the concept was reviewed with the tribal council membership. In the early months of 1990 the tribal council authorized the application. It was accepted, approved by the Secretary and Congress was notified. Commencing in October of 1990, the Cherokee Nation was authorized to implement the Self-Governance Project pursuant to the applicable federal law and the Compact of July 2, 1990, between the Nation and the U.S. Department of Interior, Bureau of Indian Affairs. Under the Compact, the first annual funding agreement was approved for 1991 which authorized the expenditure of \$7,757,599. The second annual funding agreement has been negotiated and has been forwarded to the Congress. The estimated amount is \$6,990,991 based on the President's budget.

### TRANSITION

The transition from a federally directed operation to a tribally directed operation utilizing federal funding has been gradual. Change in the status quo is hardly ever easy whether it is directed to tribal administrators or federal administrators. Accordingly, the Nation's administration has taken the most practical approach to ensure success of this effort.

The Compact increased the financial responsibility from \$4,528,628 in 1989 to \$7,757,599 in 1991. Prospectively, in 1992 the amount is \$6,990,991. The increases reflect greater tribal responsibility for Compact and program administration. Correspondingly, the Bureau of Indian Affairs has been relieved of a significant amount of their responsibility to maintain personnel and other federal systems necessary for a direct operation.

The coordination and direction of the effort to assume the responsibility and accountability for results has been based on a strategy to utilize by in large the federal standards applicable to the old 638 programs and as process and experience dictates, develop tribal standards to be codified in tribal law or by the chief executive of the Nation promulgating executive rules to substitute as a replacement of the old BIA rules. Care is being taken not to violate any statutory or appropriation act mandate for use of federal funds. However, it must be kept in mind that the philosophy of self-governance is one that encourages maximum initiative and innovative approach to solve and address the needs of Cherokee people.

A great amount of time has been spent in the development of baseline measures and evaluation processes which will be used to monitor programs and make prioritized decisions on the use of funds for the programs most needed. The foundation for accountability is the audit system in which the Nation takes great pride. It is realized that without financial integrity that a self-governance

project or expenditure of tribal money is not possible. It is our view that most internal problems experienced by tribal governments or any government for that matter is because the citizens may feel that government officials are not accountable. One example of how the Nation tries to address individual accountability is the Nation publishes annually the travel and per diem records of all elected leaders of the tribe in the Cherokee Advocate. The Advocate is one of the oldest Indian newspapers in the United States and is published monthly. (It is also the same newspaper that the United States attempted to close at the turn of the century.) Audit information is also available to the membership and financial accountability is stressed.

#### SCOPE OF THE SELF-GOVERNANCE PROJECT

The project initiated in October of 1991, eliminated the need to have an agency present at the headquarters of the Nation. The area office is within close geographic proximity (27 miles) and the former superintendent now serves as the self-governance officer and maintains liaison with the executive branch of the Cherokee Nation.

Prior to the implementation of the project, the Cherokee Nation had contracted the majority of the agency BIA programs including those considered trust responsibility programs. Therefore, there was minimal disruption and change with the transition to self-governance. Approximately seven BIA employees jobs were affected. The Nation had previously worked towards dovetailing and consolidating its programs towards specific tribal goals to provide community based sufficiency and promote economic development. In the human service and social service activities, the Nation has developed an impressive array of services for the youth, the indigent, and the elderly needing governmental assistance. This has led the Nation in many endeavors to contract health care, to sponsor self-help community projects, and engage in the promotion of industries for tribal and private sector purposes throughout the northeastern Oklahoma area.

The Bureau of Indian Affairs programs covered under this project include most aspects of a typical BIA agency operation. Organizationally, the Nation's executive branch administers the former BIA program under the self-governance project. The "Baseline Measures" report provided to the BIA prescribes the goals and objectives for approximately twenty-six activities which range from providing timely communications to the tribal membership, to providing basic social and trust responsibility service to the constituents eligible to receive such service.

These activities are each monitored and evaluated by those in the federal and tribal governments involved with this project. Ultimately both the Congress and the Cherokee Nation's legislative body, the Tribal Council, must approve the final appropriation of the funds for the continuation of the project. It is believed by

the advocates of this effort that this process will ensure accountability by the people for whom the appropriations are intended to directly benefit. (See Appendix 1, Baseline Measures Report dated December 15, 1990 and revised on March 20, 1991.)

#### HIGHLIGHTS OF ACCOMPLISHMENTS

It is believed the single most important accomplishment is the assumption of the direct administration of federal responsibilities overall. This reflects at last a mature relationship between the two sovereignties involved, the Cherokee Nation and the United States of America. Specific accomplishments however, have been realized. The more notable are:

- O The development of the baseline measures and an evaluation system for testing program performance. (See Appendix 1)
- O The development of a criminal law code consistent with the state of Oklahoma's criminal code. (Copy on file with the Muskogee Area Director and provided to the relevant State agencies.)
- O The creation and development of a new criminal court and marshal/ police protection service. (Established by tribal enactment of the council and approved by the Principal Chief.)
- O The development of a multi-jurisdictional cooperative agreement with the State of Oklahoma to be utilized by State and Tribal social and law enforcement agencies of the 14 counties of northeast Oklahoma. (See Appendix 2)
- O The implementation of a budget and program decision making system that provides a process to ensure allocating financial resources to the most critical needs. (See Appendix 3)
- O The development of an environmental protection agency within Cherokee Nation funded with BIA, EPA, and Tribal financial resources to deal with environmental concerns of the region. (Planning document submitted and approved by the BIA.)
- O A special inter-tribal initiative to analyze, revise and reform archaic land laws which have plagued federal administrators and tribal administrators alike and which have fallen short of providing adequate protection to Indian beneficiaries under the trust doctrine.

#### ON-GOING PROJECTS

- O Codification of tribal rules for the administration of programs previously operated under federal rules.

- O Implementation of evaluation systems to monitor program performance based on the baseline measures.
- O Outreach to the Indian communities and development of community awareness program to inform and educate members about the self-governance project.

#### MONITORING DATA

The self-governance project is currently monitored by the Area Director and a Self-Governance Specialist. The Area Director is supportive of the philosophy and the policy of self-governance. Although there are disagreements from time to time between the BIA and the Nation the relationship overall has been cooperative. The most difficult concept to understand and accept is that the role of the Nation changes from being a contractor of federal programs to the Nation becoming the administrator of tribal programs utilizing federal funds within the statutory parameters.

#### INSTITUTIONAL IMPEDIMENTS TO SGDP AND ACTION TAKEN AND PROPOSED

No specific institutional impediments have been identified at this particular stage. In the future, broad federal requirements that are woven into federal law may need to be reformed; however, it is recognized that in those instances legislation may be required. With respect to federal regulations that are not based on statute, at the appropriate time when the Nation is ready to embody the tribal requirements to replace federal requirements, then BIA would be notified and consulted as necessary. It is not surprising that some tribal and federal employees may still view the programs as federal contracted programs. In time this attitudinal perception will change or it may become an institutional impediment.

#### ADMINISTRATIVE ASPECTS OF SGDP COMPARED WITH 638 CONTRACTS

Although the day to day interface between the Nation and the BIA has not changed dramatically, the administrative workload and required monitoring reports attached to the normal federal contract process has been greatly reduced. To the Nation's knowledge, this has not caused any real concern. Program officials try to keep the federal officials informed and try to be responsive to informational requests for the various purposes of supporting the program or inquiries about case work, etc. The upshot of this project has greatly reduced voluminous paperwork and has greatly simplified the process without reducing overall accountability for the use of these funds to support Indian programs.

TRIBAL/BUREAU OF INDIAN AFFAIRS CHANGES UNDER SGDP

The greatest change and transition for the Nation is to assume full management control of the programs under the compact. This means that programs which were guided by contract mechanisms and procurement type requirements are now the prime responsibility of tribal program managers rather than the role of a tribal employee serving as a contractor of the federal government. It is believed the result will be improved program performance and better response to constituent needs. Again, the key to success in this area is the willingness of the federal government to let go and allow the tribal government to perform and be accountable to the constituents served. At the same time, it is imperative that tribal governmental systems ensure that the rule of tribal law ensures fairness and provides due process to the membership and constituents being served.

SHORTFALLS

Short falls resulting from the unintended consequence of a tribe taking on this additional responsibility need to continue to be addressed. BIA self-governance officials such as Mr. Lavelle, have been very sensitive and practical in their approach. On the development of future budgets for the BIA Cherokee self-governance program, additional consideration needs to be given to unmet needs and the equity of funding distribution of various programs and the eligibility criteria used to derive such distribution. (See Appendix 4)

CONCLUSION

As noted above, the cooperation with the Bureau of Indian Affairs has been good. There is reason however, to ensure that program officials are aware that self-governance tribes are not excluded from communications about new program initiatives. Furthermore, it is common that new programs with new appropriations are often added to the BIA budget outside of the normal budget planning process and self-governance tribes should be re-ensured that they are not denied opportunity to participate. Communications should be reinforced to ensure that self-governance tribes are not denied technical assistance because it is perceived by some bureau officials that self-governance tribes are not eligible for routine technical assistance. This sensitivity needs to be occasionally emphasized so that all levels of the respective tribal and federal governments understand the project is about good governance and not just self-governance.

For the Cherokee Nation, the Self-Governance Project is the realization of an ideal to return the power of governing back to the Cherokees. The ways and means of governing through the institutions of government which are acceptable to Cherokee members are not perfect or always the most cost efficient. Moreover, the

progress is real. The government of the Cherokees is a representative body; there is a separation of powers doctrine with separate branches of judiciary, legislative, and executive. This system provides the checks and balances to ensure rights of the membership are protected. It seems to work very well.

The short term result of the self-government project is noticeable, but not overly dramatic. It is believed the long term result of this project is to help the full restoration of the Cherokee Nation as an equal partner in the society of American governments which over the course of the history of the United States has seemed to serve the Country so well. It is hoped that the Indian Nations and Tribes can finally become an integral part of this great American dream.

**Testimony of Marge Anderson, Chief Executive****Mille Lacs Band of Chippewa Indians before****Select Committee on Indian Affairs**

Chairman Inuoye, Members of the Committee, my name is Marge Anderson. I am the Chief Executive of the Mille Lacs Band of Chippewa Indians located in east-central Minnesota. The exterior boundaries of the Mille Lacs Reservation is 61,000 acres with trust land of approximately 4,000 acres. Tribal membership is approximately 2,400. I thank you for upholding the United States' commitment to government-to-government relations with Tribes as stated in House Concurrent Resolution 331, and by honoring my request to testify before the Select Committee on Indian Affairs.

Mr. Chairman, in 1987, the Mille Lacs Band of Chippewa was one of the original ten Tribes to participate in the Self-Governance Demonstration Project. The Mille Lacs Band viewed the Self-Governance Demonstration Project as a mechanism to recognize the unique and separate relationship it has with the United States.

Since time immemorial, the people of Mille Lacs have been self-governing. For decades, the Mille Lacs Band has proven itself to be one of the most outspoken tribes in the state of Minnesota and perhaps in the nation when defending and protecting its sovereignty. For the Mille Lacs Band, sovereignty is the right and the ability to controls its own destiny. It is also the right to regulate its own internal affairs without foreign dictation. Sovereignty is the center of the Band's political unity and of

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central importance in all daily governmental affairs. The Mille Lacs Band derives its sovereignty from the internal authority of its people. Throughout its history, the Band has maintained a governmental system which protects the interests of its people. The United States recognized the sovereign status of the Mille Lacs Band in a series of treaties and negotiated agreements. The Band strives for self-governance in totality which is the right to establish government-to-government relations within the federal system. To the Mille Lacs Band of Chippewa, self-governance can only be achieved with continued congressional support.

The people of the Mille Lacs Band have spent several years debating the pros and cons of different modes of self-governance. Because of circumstances which are unique only to the Mille Lacs Band of Chippewa, arriving at a plan which addresses both the political and economic structure which will serve all members of the Band in an equitable fashion has been extraordinarily difficult. The Mille Lacs Band has come a long way in planning and practicing our own self-governance. Planning is crucial to any project's survival. The Self-Governance Demonstration Project has many phases which planning is the first step. To proceed to an implementation phase before an planning phase has the possibilities of endangering the project. The Mille Lacs Band would like to again stress that the planning phase is extremely crucial and all



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Tribes should proceed with a well-thought out plan.

The Self-Governance Demonstration Project is a mechanism for tribal empowerment and this legislation allows tribes to exit the bureaucracy to afford the measure of self-government.

The Band was one of the first tribe to sign the compact agreement with the United States and is currently in its fourth year of the Self-Governance Demonstration Project.

The Mille Lacs Band of Chippewa views the Self-Governance Demonstration Project as a mechanism to strengthen its sovereignty and provide adequate services to its members. The Reservation consists of three districts with landholdings spread over a wide geographical area: District I is where the tribal headquarters are located and has the largest population; District II is over 60 miles northeast of the Mille Lacs Tribal headquarters and District III is located 85 miles east of the Tribal headquarters. The block grant concept allows more funds to be received at the reservation level which in turn allows the Mille Lacs Band to provide more services to its members in all of its districts.

The Mille Lacs Band is one of the six-member reservations that is the composite of the Minnesota Chippewa Tribe. The complexities of the Minnesota Chippewa Tribe has caused difficulties with the implementation of the Self-Governance Demonstration Project for the Mille Lacs Band as a multi-agency tribe. There has been a lot of opposition and misunderstanding of the other reservations of the

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Minnesota Chippewa Tribe. It has been the position of the Band never to adversely effect the other Bands of the Minnesota Chippewa tribe and have strived to continuously communicate and educate the other Bands on how the Self-Governance Demonstration Project is one step closer to renewing its government-to-government relations with both the federal and state governments. The Mille Lacs Band feels any progress it can achieve will be in turn benefit the other reservations of the Minnesota Chippewa Tribe.

This Self-Governance Demonstration Project from the beginning has been tribally-initiated and should be tribal-determined throughout the duration of the project. The Bureau of Indian Affairs has not participating in this project enthusiastically. The Mille Lacs Band has experienced a perpetual lack of cooperation and commitment on the part of the Bureau of Indian Affairs. The Band has been very displeased and concerned over the constant unilateral decision making the BIA engages in. The BIA seemed threaten by the concept that a small tribe like the Mille Lacs Band could conceivably administer programs effectively and efficiently which historically were administered at the BIA area and agency levels. We see the Bureau's bureaucracy trying to implement self-governance but also trying to implement additional bureauracy. The Band has experience a constant change in approaches to how self-governance will be implemented. The Bureau makes fundamental decisions that restrict tribes and therefore, implementing bureauracy. An example is that any program that is

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termed, "grant" is not subject to negotiation under the Self-Governance Demonstraion Project and various administration functions are termed as trust reserved activities. Of the \$136 million dollars held at the BIA central office, \$28.8 million (21 percent) are identified that the source of funds that a Self-Governance Demonstration Project Tribe could access. The other \$107.2 million (79 percent) is reserved at the Central level. The Self-Governance Demonstration Project will succeed from the commitment and hardwork of the tribes. The Mille Lacs Band is recommending that the Self-Governance Demonstration Project Tribes have a separate line-item in the Bureau of Indians Affairs' budget.

Because of the lack of commitment from the BIA with the Self-Governance-Demonstration Project, will increasing the number of tribes participating in the project cause undue hardships for the new tier of participating tribes? The Mille Lacs Band's concern is not with the number of participating tribes but how the BIA commits itself to the Self-Governance Demonstration Project Tribes and feels that the BIA should assist tribes into this new era of independence instead of creating another bureacracy for tribes to deal with. The Band's recommendations is to limit the participating tribes to 30 tribes to ensure that the BIA will assist all Self-Governance Tribes in a adequate manner.

Throughout history, the Mille Lacs Band of Chippewa has learned the lesson of building and rebuilding our existence as a sovereign nation and adapting to these changes but yet remaining true to our

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cultural values. The Self-Governance Demonstration Project is the another mechanism to strengthen our identity as a tribal government. The continued support and cooperation of the Select Committee on Indian Affairs and Congress as a whole is appreciated and essential for the implementation of self-governance for Indian Tribes.

The Mille Lacs Band of Chippewa has had to deal with many struggles and barriers in implementing our efforts towards strengthening our self-governance under the Self-Governance Demonstration Project and the end results of our efforts will far outweigh any of the struggles and barriers we have experienced.

To summarize our views on self-governance is as follow:

1. That the unique, separate and special relationship the American Indian Tribal governments have with the Federal and State governments be recognized;
2. The implementation of a government-to-government relations is a key to successful tribal governments and
3. The Mille Lacs Band views self-governance as an additional recognition of tribal sovereignty.

The implications of an age of federalism for tribes are both exhilarating and complex; the positive aspects of finally being given the opportunity to participate in the federalist system as an equal government entity, whose sovereign status is both acknowledged and respected are limitless. The future of Tribes is one of hope.

Warm Springs, Oregon 97761 / 503 553-1161



**TESTIMONY OF MR. KEN SMITH,  
CHIEF EXECUTIVE OFFICER OF THE CONFEDERATED TRIBES  
OF THE WARM SPRINGS RESERVATION OF OREGON,  
ON S. 1287,  
THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT,  
BEFORE THE  
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,  
JULY 18, 1991.**

Mr. Chairman, I am Ken Smith, Chief Executive Officer of the Confederated Tribes of the Warm Springs Reservation of Oregon. I appreciate the opportunity to be here today to comment on S. 1287, the bill to extend and expand the Tribal Self-Governance Demonstration Project. I would also like to make a few observations on the underlying Self-Governance Project itself.

**COMMENTS ON S. 1287.**

The Confederated Tribes of Warm Springs support S. 1287, with the following suggestions.

Section 2 of the bill proposes to extend the conclusion date of the Self-Governance demonstration project to eight years from the October, 1988 date of its enactment. That extended date, October, 1996, would provide a six year active participation period for the initial Tribes, whose Self-Governance compacts commenced October, 1990. Unfortunately, it could give late starters as little as two years of active participation. Should planning grants for new Tribes not become available until the October 1, 1991 start of FY 1992, and if it takes newly participating Tribes two years thereafter (until October 1, 1993) to complete the planning process and negotiations, those Tribes would only have a three year period of participation. Should the planning funds not be appropriated until FY 1993, the newly participating Tribes would only have two years.

We suggest that, rather than just extend authorization to eight years, the legislation be amended to provide each participating Tribe with a five year demonstration term commencing on the first year of funding received by the Tribe pursuant to its negotiated agreement.

This would accomplish several things. First, it provides a

uniform demonstration participation period for all the involved Tribes, regardless of when they start. Second, it gives Tribes a better opportunity to conduct their planning process and engage in negotiations without the prospect of cutting into their time to actually operate the demonstration project. Finally, it would give each participant a five year period to become familiar with the project before deciding to continue it, should it become a permanent policy.

We are aware that providing all participants a five year active participation period would lead to staggered conclusion dates among participants. That would allow a gradual shift to adoption of full-time Self-Governance, should it be legislated as formally adopted policy. Assuming the project is determined to be a success, legislation to extend Self-Governance will have to be enacted before the demonstration period ends for the first participants, if a disruptive gap is to be avoided in the progress of the Self-Governance process.

In Section 3 of the bill, we do not object to expanding the number of participating Tribes from twenty to thirty. We do want to note, however, that the expansion of the number of participating Tribes could magnify the Self-Governance project's possibility of affecting B.I.A. delivery of services and support to non-participating Tribes, particularly if larger Tribes become involved in the project.

Also, after this expansion of the project to thirty Tribes, we must express caution about any further expansions during the life of the demonstration project. The Self-Governance project is, after all, experimental. It was born in controversy, and it remains controversial. Its policy implications are substantial, and the initial participants are still only in their first year of actual program operations. The results and findings of this project are a long way from being finally determined. The practices engaged in under the Self-Governance demonstration project are tentative during the project's life, and are not intended to presently supplant established Federal Indian policy. However, if too many Tribes jump into this program, it could prove more difficult to undo, should that be necessary, or it could be interpreted at some later point in time as established policy due to the number of Tribes or volume of B.I.A. funds tied up in it.

To avoid such unintended consequences, and to retain the demonstration nature of this project, we urge that the number of participants be limited to thirty.

We support Section 4, which would have the affect of requiring all participating Tribes to successfully complete the Self-Governance planning process prior to entering negotiations. Currently, Section 302 of P.L. 100-472 only requires that the

ten initial Tribes complete such a planning grant.

Also, we have no objection to Section 5, which would authorize \$700,000 in appropriations for the planning and negotiations of the ten new Tribes, even though the Snyder Act already provides sufficient authority and the present Act is silent on such authorizations for currently participating Tribes.

#### **COMMENTS ON THE SELF-GOVERNANCE PROJECT GENERALLY.**

The Warm Springs Tribes understand the Self-Governance Tribes' frustrations with the present B.I.A. system, and fully respect their efforts, as sovereign governments, to try to find a better way to meet the needs of their people and their reservations through this project. They have made a bold, new departure from the established practices of the Tribal-Federal relationship, and we hope that benefits for all Tribes will flow from this effort. But because the Self-Governance project is untested and could hold the seeds of substantial change for the Tribal-Federal relationship, we feel obliged to point out several concerns we have with the undertaking. We originally noted these issues in 1988, when the Self-Governance project was being initially discussed as an amendment to the Self-Determination Act Amendments. Our concerns are -

- 1.) that non-participating Tribes not be harmed in any manner by this experiment,
- 2.) that participating Tribes not gain some financial advantage over non-participating Tribes by virtue of taking part in the demonstration project, and
- 3.) that the demonstration nature of this project be emphasized while the well-established current BIA policy of Self-Determination be reaffirmed.

We believe the Self-Governance trial run, and the future prospects for Self-Governance generally, will be greatly helped if these three matters can be satisfactorily addressed.

#### **NO REDUCTION OF SERVICES TO NON-PARTICIPATING TRIBES.**

Our first point of concern is that non-participating Tribes and the B.I.A. services provided them not be harmed or disadvantaged by the Self-Governance project. We are aware that safeguard language has been included in Section 306 of P.L. 100-472, but unfortunately, there is often a gap between the intention of legislation and the realities of its practice. Should larger Tribes or more Tribes beyond the thirty become involved in the Self-Governance project, the Bureau's capability to maintain services to non-participating Tribes could be severely strained. Large amounts of Agency, Area and Central Office funds and activities could be subjected to negotiation and transfer to Self-Governance, with uncertain results for non-participating Tribes. These prospects remain a concern to us, and although there is no current B.I.A. plan to keep non-

participating Tribes regularly abreast of Self-Governance developments, we are trying to keep informed on the implementation of the project.

**FAIR APPROPRIATIONS ALLOCATIONS AMONG ALL TRIBES.**

In 1988, the Warm Springs Tribes also expressed concern that participants in the Self-Governance project not gain some monetary increase or advantage over non-participating Tribes by virtue of engaging in the project. Today, that remains a very real concern.

We note that, as the Self-Governance project unfolds, substantial amounts of additional Federal appropriations are being dedicated to the project. \$3 million was appropriated in FY 1991, and for FY 1992, the House has recommended a total of \$5 million be available to the participating Tribes.

We have been informed that these additional appropriations are to cover start-up costs and funding shortfalls that occur when, if a B.I.A. position is to be divided between Self-Governance and non-Self-Governance Tribes, the B.I.A. retains full funding for the position and the Self-Governance Tribe is shorted its share of the funds. The difference to the Self-Governance Tribe is then made up from the \$3 million fund.

We recognize that the first years of a program such as Self-Governance are bound to be filled with unusual, shifting and uncertain finances, but annual appropriations of \$3 million or \$5 million are substantial, and such large amounts require close monitoring.

It is especially important that the distribution of funds between participating and non-participating Tribes in this demonstration project be fair and that the expenditure of supplemental funds be fully explained and documented. As we understand it, the Self-Governance project is intended to see if Tribes, given all or most of the funds that the Bureau would otherwise expend on or for them, can make better use of those funds in the delivery of services for their members and their resources. Should participating Tribes receive a greater than equitable share of B.I.A. funds, the project could render skewed findings indicating that Tribes do better under Self-Governance than would really be the case if it were applied Bureau-wide.

In addition, a certifiably fair and even-handed division of funds is necessary if the project and its findings are to be accepted among Tribes. Should there ever be a perception that participating Tribes are gaining funds or advantage as a consequence of being in the project, distrust and dissatisfaction among the Tribes could cloud the issue, be divisive, and lead to a lost opportunity for all Tribes to learn from this project.



**REAFFIRMATION OF CURRENT SELF-DETERMINATION POLICY.**

We believe the current policy of Self Determination should be reaffirmed as the basic Tribal - Federal policy both now and after the conclusion of the Self-Governance demonstration period. Even if Self-Governance is found to be successful, it should not replace Self-Determination, but perhaps be added to it as an option available to those Tribes ready and willing to make use of it.

It must be remembered that Self-Governance is, at this time, just a demonstration project. It is not established Federal policy. In it's infancy, it is still unproven. Self-Determination, on the other hand, has become one of the most successful Federal Indian policies in history. Since Self-Determination's inception, it has taken years to be accepted by Tribes. It is, admittedly, a gradual process that allows individual Tribes to proceed at their own pace, trying assumption of Federal programs while still maintaining the Bureau and the Indian Health Service as viable entities to assist us.

Self-Determination, with the amendments in Public Law 100-472, still offers tremendous potential for many Tribes. It is the next step in what we consider the continuing evolution of Self-Determination. The demonstration project is itself part of that evolution, serving as a testing ground for many new ideas. During the course of the experiment, concepts that prove valuable could be adopted into the Self Determination policy. Some of these could include:

1. Provide maximum flexibility in the shifting of funds between contracted programs, just as they are in the Self-Governance project. Reprogramming requests should not be necessary and are costly both to the Tribes and the B.I.A..
2. Eliminate a variety of approvals currently required in contracting activities. For example, expenditure of funds for computer equipment requires a special approval. In the case of the I.H.S., the approvals are being made in Rockville. This oversight and approval are simply not appropriate to Self-Determination.
3. In the B.I.A. budget, separately identify each Tribe's base funds that are under Self-Determination contract, as currently under discussion by the BIA Reorganization Task Force.
4. Avoid expensive funding delays we've had to live with, by providing quarterly or even annual advances of funds, from the highest level possible for established ongoing contracts.
5. Identify the funds available for the benefit of each Tribe,

which Tribes, particularly in multi-Tribe agencies, have been unable to do.

6. Identify these funds, by Tribe, within the B.I.A. budget to provide security of base funding, which we have all sought unsuccessfully for many years.
7. One of the key ingredients of this Self-Governance project is the division of programs serving multiple Tribes. This "division" issue has been the source of major arguments as the Tribes have worked with the agencies in the development of the draft regulations to implement the 1988 amendments. This issue should also be addressed in amendments to Title I of the Act, by amending the contract support funding provisions.

These changes should be adopted item by item, as they are tested and become accepted. For instance, such items as flexible contract funding and streamlined approvals could be adopted today and most Tribes would find them helpful. Regular reviews and amendments to Title I of P.L. 100-472 would facilitate this process.

By making these changes to Title I, all Tribes can enjoy the benefits of what has been learned to date and move closer to "self-governance" and "self-determination".

I want to stress that many Tribes, including Warm Springs, are very capable but do not wish to participate in the Self Governance project at this time. They prefer taking it a step at a time, rather than taking over all the programs all at once. The phase-in approach should not be seen as a reason for not granting these additional decision making powers and removing present obstacles to such Tribes, consistent with the spirit of the Self-Determination" policy.

Really, down the road, there could be two tracks, one for Self-Determination and another for Self-Governance, and eventually they would merge, allowing Tribes under either program to accomplish the same thing.

So, we suggest that Self-Governance be given its trial period as the demonstration it is, as a recognized part of the evolution of Self Determination policy.

#### **AT WARM SPRINGS.**

We at Warm Springs look forward to also expanding our assumption of B.I.A. programs and functions. We plan to expand our 638 contracting and hopefully take advantage of appropriate contracting benefits when they are implemented. However, we intend to do this in developmental stages. We want to be cautious, and fairly comfortable, in our programs and

relationship with the Federal government as we move forward.

In making these changes, Warm Springs believes there are two necessary ingredients. First, there must be adequate financial resources to allow us to take over Federal responsibilities without doing so at a financial burden to ourselves. More contract support is required if more contracting is to be undertaken. The fact that many of the provisions of the 1988 amendments, particularly the contract support funding provisions, have not been implemented by the B.I.A., is discouraging our Tribes from additional contracting at this time.

Second, we want to make certain that our trustee, the Bureau of Indian Affairs, will be with us at every step of the way, a strong, able and responsible partner.

These are times of change and uncertainty. A lot of uncharted ground is laying before us. The Tribes and the B.I.A. are seriously examining reorganization of that agency and the manner it serves the Tribes. The Self-Governance project, as Tribes claim their share and step away from the Bureau, is also having an impact on that agency. Federal Indian budgets are looking rather sparse for the near-term future, and the courts are trying to whittle down our sovereign powers. For us, it seems that these are times for to be careful and thoughtful in our progress.

Too often in the past, Tribes have been swept up in untried Federal Indian policy, and it has not always worked out well for the Tribes, despite initial perceptions. So, at this point, we urge a cautious approach.

Let's test Self-Governance and apply what we learn as appropriate to the continued evolution of the broader policy of Self Determination.

This concludes my testimony. Thank you very much.



**CENTRAL COUNCIL**  
 tlingit and haida indian tribes of alaska  
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**TESTIMONY OF THE CENTRAL COUNCIL OF TLINGIT AND HAIDA  
 INDIAN TRIBES OF ALASKA  
 CONCERNING S. 1287 (SELF-GOVERNANCE)**

**PRESENTED BY**

**RICHARD STITT  
 SELF-GOVERNANCE COORDINATOR  
 CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA**

**BEFORE THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
 JULY 18, 1991**

Good morning Mr. Chairman and Members of this Committee. I am Richard Stitt, appearing on behalf of the Central Council of Tlingit and Haida Indian Tribes of Alaska. I previously have served as an elected Vice-President of the Central Council's Executive Committee, and now am on the Central Council's staff as Self-Governance Coordinator. I am here today in the place of Central Council's President, Edward K. Thomas, who despite his best efforts was unable to attend this important hearing. Ed and I thank this Committee for this opportunity to address what are, for Central Council, the very important issues raised by the Self-Governance Demonstration Project authorized in Title III of P.L. 100-472 and now proposed to be amended by Senate Bill No. 1287 before this Committee.

Central Council was pleased to have been one of the ten Tribes first selected by Congress and the Administration to participate in the Self-Governance Demonstration Project (Project). We were not chosen by luck. For many years, the Central Council and

Testimony on S. 1287 by Richard Stitt on behalf of the Central Council of Tlingit & Haida Indian Tribes of Alaska  
 July 18, 1991 - Page 1

its tribal leadership has publicly asked Congress to initiate a fundamental reorganization of the Bureau of Indian Affairs (BIA) in our region for one important reason: to take scarce federal dollars now consumed by the BIA administration and instead spend them on direct services to our people according to our Tribe's priorities.

Although we were one of the first ten Tribes to participate, we at Central Council have yet to execute a Compact and Annual Funding Agreement, despite what we feel have been valiant efforts on our part. For example, the Central Council did not receive the initial \$100,000 planning grant until some months following the approval of the contract. This resulted in the Central Council asking to extend the contract a couple of times. In addition, during the planning phase the Central Council experienced further delays in obtaining requested financial data from the Juneau Area Office. The problem of delays is that valuable time is lost and this results in an additional financial burden on the Central Council. It is our opinion that the additional costs incurred by the Central Council should be reimbursed, since the delays were not the fault of the Central Council.

On a positive note we now have the benefit of working with a recently-appointed Area Director to the Juneau Area Office who has demonstrated a desire to assist the Central Council to obtain an acceptable Compact and Annual Agreement.

While we cannot say today we have an executed Compact, we are within a few days of signing one. We recently concluded a second round of extensive negotiations over budget allocations, having traded several versions of written funding proposals with Interior officials. A few days ago we informed Mr. Lavell that we accepted all of the final amounts Interior has offered. Our acceptance is accompanied by a formal protest, because of the great gap between: (a) what we believe are our minimum program needs or at least our fair share; and (b) the amounts Interior has decided it can make available. After some relatively minor details are finalized in the next few days, we believe Interior will join us in signing the documents and forwarding them to Congress for the statutory review period.

Since this is an entirely new venture, Central Council has taken care to closely involve our tribal constituency in each step of the planning and negotiation process. We have made special efforts to consult with our tribal members and the Tribes within our region, our efforts restricted only by the limited funds available for transportation. Fortunately, we have been able to have a representative from each of our villages in our region in attendance during the negotiation sessions. We believe this broad-based participation is the preferred way to negotiate on a government-to-government basis.

Our villages are beginning to see the opportunities and the challenges of Self-Governance, as well as the potential benefits of participation in the Demonstration Project. Even before the negotiations began, Central Council sent its President, Edward K. Thomas, and myself, to many of our village communities to report on the Demonstration Project and describe how it differs from previous program and policy directions. We are both encouraged and challenged by the responses we got from the people -- we believe that our administration of programs under the Self-Governance Compact will require our Tribe to carry out far more intensive and day-to-day consultation with our people than ever before, because not only are our people the service recipients or consumers but they are also the people with the right and the power to shape the future direction of services.

Effective January 1, 1992, our Compact will eliminate an entire BIA Agency Office and will result in a modest down-sizing of a BIA Area Office. Most of the BIA-supported services to Southeast Alaska Tribes will be incorporated within our Compact, including those services previously contracted under Public Law 93-638 to six Southeast Alaska Tribes -- Central Council, Angoon, Kake, Ketchikan, Sitka and Yakutat. The Compact negotiations have required a heightened level of cooperation and dialogue among the Tribes in our region which we are confident will lead to partnerships making more efficient use of scarce resources.

As the Project has taken shape and grown since its beginnings in 1988, Central Council has become increasingly enthused about our role in this historical movement and excited by the tangible benefits it is about to bring to our people. We admit today that we at Central Council began our involvement with this Project with an entirely different emotion -- that of skepticism borne of our years of frustration dealing with the BIA. However, our experience with the Project has increasingly persuaded us that, this time, the Interior Department is serious about supporting, instead of undermining, our self-governance efforts.

We join this Committee in commending Secretary Manuel Lujan, Assistant Secretary Edward Brown and Self-Governance Director William Lavell, for steering a rather unwieldy and resistant bureaucracy out of the stagnant pools of paternalism and into the dynamic white water of government-to-government relations. As you may sense, we are beginning to believe this Self-Governance Demonstration Project may be for real. We are starting to see its full potential -- our own creativity and empowerment unleashed by tribal self-governance and by the resourcefulness of a redesigned Interior Department dedicated to service rather than rule.

What excites us most about our participation in the Self-Governance Demonstration Project thus far is that we have increased power and ability to determine our own future our own way ourselves. We in leadership at Tlingit and Haida Central Council are well aware that the Compact we negotiate, and our administration of Compact programs, puts us right in the middle of a very bright spot light. The success or failure of our Project rests squarely on our shoulders.

When describing the Project in public tribal meetings in our village communities, I have said that the down-side of this Project is that we no longer will have the BIA to blame for short-comings and failures. We at Central Council recognize the increased responsibility we are assuming. We are ready for the challenge and are determined to succeed.

We welcome and support most of the provisions in S. 1287. Our specific comments follow:

**Bill Language -- Three Year Extension.** Extending the demonstration period to eight years is necessary for first-generation Tribes like Central Council whose progress has been delayed by obstacles. This extended period will give us more time to adjust, experiment and learn from our demonstration experience. We thus strongly support Section 2 of S. 1287.

**Bill Language -- Expanding the Number of Participating Tribes.** Increasing the number of Tribes who may participate in this Demonstration Project is in our interest as a pioneering Self-Governance Tribe for several reasons. First, increasing the amount of tribal experience will mean there will be more lessons we Tribes can learn from each other. Second, as more and more Tribes assume Compact responsibilities, the layer-upon-layer BIA bureaucracies should be reduced, directly benefiting us and all other Tribes and by streamlining our government-to-government relations with the United States. We thus support Section 3 of S. 1287.

**Bill Language -- Planning Grant Prerequisite Before Negotiating a Compact.** Section 4 of S. 1287 requires that a Tribe receive and complete a planning grant before it may negotiate a Compact. While this provision has no direct effect on our situation at Central Council, we believe this new requirement may not be necessary because, as a practical matter, few tribes have the financial capacity to plan without planning grant funds. Those few Tribes who do have the financial capacity are likely to be good Compact Tribe candidates for that very reason. There may be Tribes without planning grants who may in their own timing wish to submit a negotiation proposal and have it considered by Interior on the merits. Given Central Council's experience with the delay-and-obstacle-ridden BIA grant process, evidence of which we have provided this Committee in previous hearings, we do not think Congress should limit the Demonstration Project to those Tribes allowed into



the pipeline by BIA grant-givers. This places too much discretionary power with bureaucrats whose interests are often at odds with Tribal Self-Governance policies.

**Report Language -- Planning/Negotiation Grant Amounts.** We were financially hurt by the Administration's \$20,000 cap on our planning and negotiation grant. Central Council was forced to spend considerable sums of our own tribal funds in order to adequately consult with our tribal people and enable their participation in negotiations. These expenses are documented in our several applications for additional funds which were all rejected. While our negotiation cost experience may have been quite unusual, given how many tribal people we have spread out over such a large area, as well as the unique cost factors of communication and travel in Southeast Alaska, we believe there may be a few other circumstances in which fairness would likewise dictate that cost exceptions be permitted. Therefore we ask the Committee to include report language accompanying S. 1287 that instructs Interior to permit exceptions to its \$20,000 cap in certain high-cost areas.

**Report Language -- Shortfall Funding.** During the course of our negotiations, we heard different Interior Department definitions of what the "shortfall funding" is to be used for. We believe it should be used only for the following purposes: (1) to address the gap between what can be negotiated out of the BIA funding system and what is needed to meet tribal needs; (2) to address tribal Compact management needs; and (3) to address one-time tribal Compact startup costs. We ask the Committee to include report language accompanying S. 1287, similar to FY92 report language authored by the House Interior Appropriations Subcommittee, that makes clear a congressional intention to prohibit shortfall funds from being used to restore funding for BIA programs from which funds were transferred to Compacts after negotiations. Otherwise an important goal of the Self-Governance Demonstration Project, to down-size the federal bureaucracy and thereby convert administrative dollars into program dollars, will be thwarted.

THSG19.TES

CONGRESSIONAL TESTIMONY  
JULY 18, 1991

SUBMITTED BY SAC AND FOX NATION

SENATE BILL 1287  
AMENDING THE INDIAN SELF-DETERMINATION AND EDUCATION  
ASSISTANCE ACT

"TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT"

Mr. Chairman and Members of the Senate Select Committee on Indian Affairs:

My name is Elmer Manatowa. I am the Principal Chief of the Sac and Fox Nation located in the State of Oklahoma. I welcome the opportunity to appear before this legislative body to express the Nation's support of Senate Bill 1287, amending the Indian Self-Determination and Education Assistance Act - "Tribal Self-Governance Demonstration Project Act" and to express the Nation's concerns regarding the lack of support from the Bureau of Indian Affairs for the Self-Governance Compact tribes.

The Sac and Fox Nation officially signed the Self-Governance Compact and Annual Agreement on June 25, 1991. This has been a time consuming project for the Sac and Fox Nation. This signing was the result of many months of planning by the Nation and negotiations with the Shawnee Agency and Anadarko Area Office. The Sac and Fox Nation began many years ago to initiate an infrastructure to prepare us to handle our own affairs. We feel our efforts towards this project have been worthwhile because we are finally seeing an opportunity for us to work towards self-determination and self-sufficiency which has been promised to us for as long I have been involved in my tribe's government which goes back to 1959.

I admit that we were at first very leery of this demonstration project. We did not really believe that the Federal Government officials designated to carry out the Self-Governance Demonstration Project would have an attitude different from previous attempts by the Bureau of Indian Affairs to sell tribes on an idea of "so called self-governance".

However, to date, we've been pleasantly surprised by representatives from the newly established Office of Self-Governance. We've received the full support from Mr. Lavell and his staff. We are very grateful for the guidance and instructions which has been provided to us from their office. It has been unusual for us to enjoy the rapport and solid working relationship with an office associated with the Bureau of Indian Affairs. The Office of Self-Governance staff, specifically William Lavell and Ken Reinfield, were very instrumental and supportive in the Nation's attempts to determine program funds available from the above mentioned Bureau of Indian Affairs offices.

We do need to mention those items which have impeded our progress so that others will be aware of the obstacles we've encountered and changes can be effected.

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Limited Staffing - Office of Self-Governance: Congress cannot expect the Office of Self-Governance to keep up with the overwhelming responsibility of this project with so few staff located here in D.C. There will be a strong need for representatives located throughout the various regions where they can be more readily accessible to the tribes. The tribes cannot afford to travel to D.C. each time there is a need to meet and discuss important issues related to the demonstration project. Funding is still needed for those occasions when tribes do need to travel to the Office of Self-Governance.

Bureau of Indian Affairs Funding Distribution: The burdening process of the Bureau of Indian Affairs Funding distribution system is in desperate need of change. We request that the Office of Self-Governance be given the authority to distribute the funds to the Compact tribes. Compact tribes fear intentional delays on the part of the Bureau of Indian Affairs. It has been reported that current Compact tribes have their funding distribution documents treated as though their documents are vendor payments. These types of delays are unnecessary and could be eliminated with the establishment of a separate office for the Compact tribes. In 1989, the Sac and Fox Nation lost \$23,436.72 in interest to be earned due to the cumbersome funding distribution system of the Bureau of Indian Affairs. Their delays were indeed costly to us.

Negotiations - Compact Share: The Sac and Fox Nation attempted the development of a formula to be used as we prepared to enter into negotiations to determine a fair share for the Compact. However, our research of Bureau of Indian Affairs funds and funding rational to the tribes under the direction of the Anadarko Area could not be determined. The formula had to be abandoned. We could not locate comparable Bureau of Indian Affairs data. The Anadarko Area Office took the position that they offered equal services to all of the Anadarko tribes, plus services to non-Indians. They negotiated a 1/25th share for the Compact tribes based on the 24 tribes served by their office and 1/25th for "other" services to non-Indians. We discounted their services to non-Indians and agreed to a 1/24th share based on the 24 tribes served, only because our piecemeal preliminary research of outdated Bureau of Indian Affairs data had determined a similar share of the Area Office budget for the Sac and Fox Nation's share based on our population and land base.

We do find the Anadarko Area Office's statement of "equal services to all 24 tribes" to be unfounded and ridiculous. A small tribe of 200 does not create the same demands of the Bureau of Indian Affairs services as a tribe of 10,000. It is fortunate that the two tribes under the direction of the Anadarko Area Office with Compacts would not normally demand more or less than a 1/24th share of the Area Office funds. If the Area Office is to continue with this "so called" formula to any new tribes that may later enter into Compacts, a negative impact on the non-compact tribes will be sure to occur, not to mention the conflict among the tribes which would be fueled by this attitude by the Bureau of Indian Affairs. Surely a tribe of 10,000 will require more funding than the Sac and Fox Nation, a tribe of 2,500.

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Shawnee Agency: The original five tribes of the Shawnee Agency agreed to a distribution formula when they contracted the Shawnee Agency services in 1988. The Bureau of Indian Affairs now refuses to recognize the formula approved by resolution. The Traditional Band of Texas Kickapoo's were recognized a few years ago and came under the direction of the Shawnee Agency. Another new tribe, the Alabama-Coushatta were also added around the same time.

Although the new tribes received funding, the Bureau of Indian Affairs failed to increase funding to the Area and Agency offices for the increased responsibilities of the Bureau of Indian Affairs staff. This practice only created discord among the tribes by expecting them to endure diminished services where the services and funding were already insufficient. The Alabama-Coushatta Tribe was later removed from the Agency and now work directly with the Area Office.

What we've lived with is an agency that has been funded to serve five tribes, is officially designated to serve seven tribes, but actually serves six tribes. Three of which have totally contracted the Agency services.

We have an Area Office that tries to negotiate funds for Indians and non-Indians and we learned through the negotiation process that they also provide all of the personnel services for another Area Office.

Perhaps these examples can give you an idea of how difficult it has been for us to determine who does what, when, for who and how is the Bureau of Indian Affairs trust responsibility determined at each level. Our attempts to figure out the Bureau of Indian Affairs structure and determine a proportionate share for the Sac and Fox Nation has been almost impossible.

Indian Priority System: In 1983, the Sac and Fox Nation was one of three tribes in the Nation that was selected to participate in a non-banded prototype Consolidated Tribal Government Program (CTGP). This non-banded program was not a part of the Indian Priority System and should not have incurred decreases in funding. How was a prototype program to succeed when funding fluctuated up and down from year to year? Over the years, the program was eventually brought back into the Indian Priority System and lost its identity. It was never given a chance to succeed the way it was intended as a self-determination prototype.

Under the Indian Priority System, the tribes receive the same base funding. Tribal funding should be allocated on a needs basis, not on historic allocation. No consideration is given for cost of living increases, nor do we have the luxury of salary and fringe benefit increases enjoyed by the Bureau of Indian Affairs employees. We must decide to decrease direct services if we want to properly compensate our employees and provide salary increases. Tribal funding should be increased annually along with Bureau of Indian Affairs personnel increases.

Whenever the Bureau of Indian Affairs budget has been reduced, the tribes have their budgets decreased while the Anadarko Area Office budget has increased every year. In 1990, the Anadarko Area Office had the highest percentage for Executive Direction and Administration over any other Area office.

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Page Four

Shortfall Monies: We also realize that Congress will closely scrutinize the cost benefit of the demonstration project. Shortfall monies have been an essential need for the project to insure current services performed by the Bureau of Indian Affairs for the non-Compact tribes have not been affected. It has also helped to bridge what would have otherwise been a more difficult negotiation process on the part of the Bureau of Indian Affairs to identify Compact funds for the Compact tribes.

However, we feel that the Anadarko Area office and the Shawnee Agency made no effort to consolidate or decrease staff, even though two tribes under their direction are now Compact tribes. Eighty percent (80%) of the funds identified for our Compact at the Area and Agency level were made up by shortfall funds. The Sac and Fox Nation maintains that, as tribes Compact, the funds to the Agency and Area Office must be reduced and distributed to those tribes who choose to self-govern. The whole premise of the Compact is for the tribes to enter into another step in the process of self-governance - this cannot be achieved without the full support of the Bureau of Indian Affairs and their willingness to work closely and fairly with the tribes.

The problems I've mentioned clearly point out why we want to remove ourselves from this guardianship relationship and why we want the success of the Self-Governance Demonstration Project.

Mr. Chairman, it is imperative that the Bureau of Indian Affairs - Central, Area, and Agency offices be supportive of the Compact tribes rather than feel threatened by the tribes who are capable of self-governance.

The Sac and Fox Nation has a proven track record of outstanding management and self-governance. In 1988, the Nation contracted the Shawnee Agency under P.L. 93-638. We have continued to prove our capability to perform the duties previously performed by the Bureau of Indian Affairs, while increasing services to our people. The Nation was awarded mature contract status by both the Bureau of Indian Affairs and the Indian Health Service by virtue of no audit exceptions and operating programs for over three years. There is no reason for the Bureau of Indian Affairs to continue to throw roadblocks in the Nation's way every step of the Compact. We have the resources and the capabilities to determine the needs of our people; we must have the authority to meet those needs. Who best can determine the needs of the people than those who work with the people on a daily basis?

We are hopeful that Congress will continue its full support of the Self-Governance Demonstration Project. The Sac and Fox Nation desires to continue to pursue this opportunity as it shows more promise than previous attempts to give tribes an opportunity to govern themselves. We truly believe that we can improve upon the existing system through this project.

As Principal Chief of the Sac and Fox Nation, and speaking on behalf of the Nation, we fully support Senate Bill 1287.

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We applaud the efforts of Secretary Lujan in allowing the tribes an opportunity to exercise more control over their governments. We've much further to go and we ask for your full support of the Office of Self-Governance. For once, we may have a voice in Indian Affairs that is an advocate of the tribes.

There is a vital need for additional appropriations for the provision of funding for the ten tribes for planning and negotiation grants. Many tribes have indicated an interest in becoming a part of the Self-Governance Demonstration Project; the Nation feels a responsibility to those tribes to share information and offer assistance. The Project must be amended to include thirty tribes with increased funding.

This project has taken the tribes one step further in their efforts to be self-governing; it has provided the vehicle to which the tribes can determine the specific needs of their people and redesign and /or develop programs which meet those needs.

The direction of the Self-Governance Demonstration Project is clear - it is to give the tribes the opportunity to redesign and develop those programs which serve the people; it is not a project that relieves the Federal Government from its trust responsibility to the tribes.

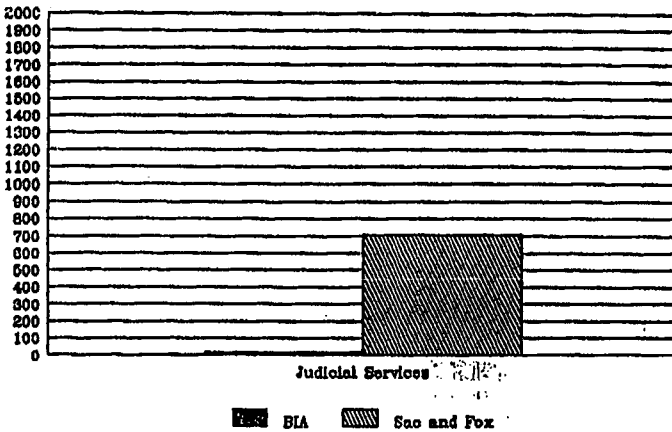
The funding levels for the Compact tribes should not decrease and should only increase as the tribes strive for self-governance. There is a fear in Indian Country that those tribes who become a part of the Self-Governance Demonstration Project will be "punished" in some manner by the Bureau of Indian Affairs. We need assurances that the Compact tribes will continue to be eligible to participate in competition grants and those grant proposals receive equal consideration with non-Compact tribes.

We respectfully reserve the right to extend our comments and submit them in writing at a later time.

Thank you.



## Comparison of Services BIA-1987 VS. SAC AND FOX-1989



The BIA served 5 tribes on record; the Nation served two (Sac and Fox and Kickapoo).

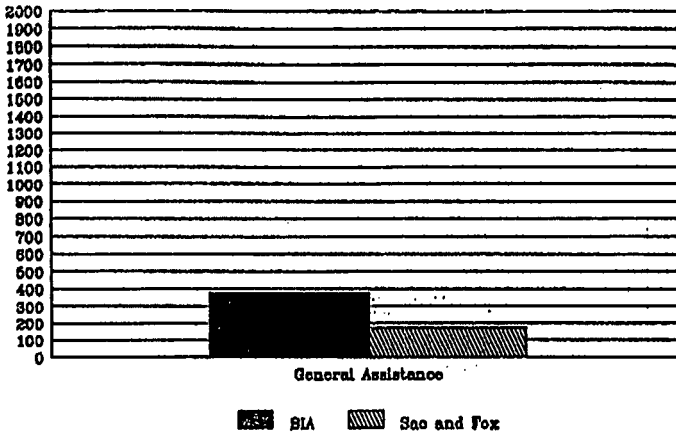
Services:                BIA                    S/F    

Court Services      14                      704

Adequate funding has not been available from the BIA; tribal funds have been provided to maintain basic services.



## Comparison of Services BIA-1987 VS. SAC AND FOX-1989

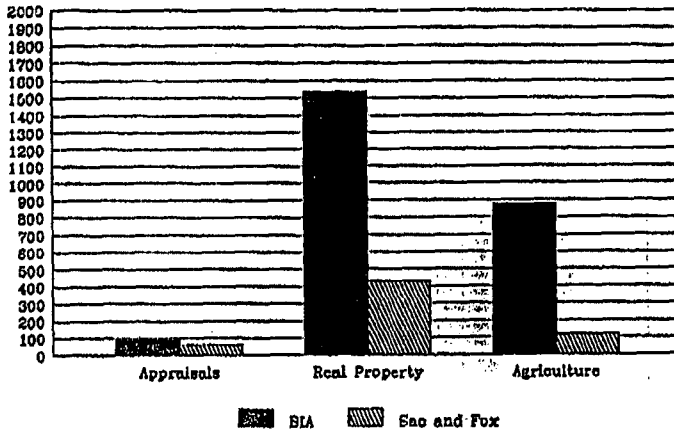


The BIA served 5 tribes on record; the Nation served one tribe.

Statistics cannot be compared with the BIA 1987 reports except for General Assistance applications. Sac and Fox Nation and BIA budget comparison figures include direct payment to recipients and operational costs.

Services:	<u>BIA</u>	<u>S/F</u>
	375	170

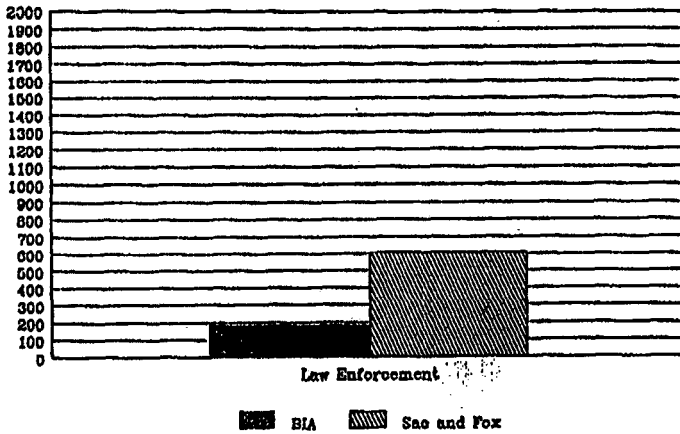
## Comparison of Services BIA-1987 VS. SAC AND FOX-1989



The BIA served five tribes on record; the Nation one tribe.

Services:	<u>BIA</u>	<u>S/F</u>
Appraisals	88	60
Real Property	1,533	429
Agriculture	874	115

## Comparison of Services BIA-1987 VS. SAC AND FOX-1989



The BIA served 5 tribes on record; the Nation two tribes (Sac and Fox and Kickapoo).

Services:	<u>BIA</u>	<u>S/F</u>
Police Services	183	608

REMARKS FROM DALE PHILLIPS,  
CHAIRMAN, COCOPAH INDIAN TRIBE

BEFORE THE SENATE SELECT  
COMMITTEE ON INDIAN AFFAIRS  
07/18/91

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Mr. Chairman and distinguished members of the Committee, My name is Dale Phillips and I'm the Chairman of the Cocopah tribe.

It is an honor and a privilege to be invited to speak before this committee and share insights as well as the future plans of my tribe.

The Cocopah tribe has 665 enrolled members. Our people reside on the three parcels of land that total 6,000 acres and comprise our Reservation.

The Reservation is located in the Western Corner of Arizona. We are bordered on the West by California and on the South by Mexico.

Mr. Chairman, the last time the tribe appeared before your committee, we were requesting that an additional 3,500 acres of land be added to our reservation.

In 1986 we received the new lands. The time since then has been a period of intense growth and development for the tribe as a whole.

The new lands allowed us not only to better use our natural resources, but also gave us an economic shot in the arm, beginning the walk toward becoming a self sufficient, tribal government designed to benefit and prosper our people.

Let me give you specific examples of three major areas of economic development that the Cocopah tribe has pursued since receiving the lands in 1986.

First of all, we have built an 800 space Cocopah R.V. Park. Our part of Arizona is flourishing with winter visitors.

We have also built an excellent bingo hall which is showing a positive economic return.

In addition, approximately 160 acres of the new undeveloped land has been added to our on-going successful tribal agricultural program.

In July, 1991 the Cocopah Tribe completed negotiations with local municipalities and the County of Yuma to operate and manage the existing landfill located on the Cocopah Reservation.

The questions surrounding the landfill were not easy to solve. However, after careful evaluation, the Tribe decided that the value of the enterprise lay in the local employment opportunities.

At the present time, the Cocopah Tribe is carefully exploring additional avenues of economic development. We firmly believe that careful short and long-term planning in the area of economic development will benefit us in the long run.

We stand at a very important point in our history. The Tribe has already carried out the fundamental precepts of self-governance.

We govern for the express benefit of our people particularly in the areas of economics, social, political and cultural development.

From these basic strands that we weave together comes the fabric of a strong and far-seeing tribe.

I remember an article in the May, 1967 issue of LOOK magazine. It stated that the Cocopah Tribe was one of the poorest in the nation. It cited high unemployed and incomes far below the poverty level. It could also have cited high infant mortality rates and high rates of other serious health problems. The times were indeed bad.

But, I stand before you today to say, our people have not only survived, they are now a stable Tribe ready for self-sufficiency.

The ability to make our own decisions, negotiate with others on our own, and develop businesses are very basic principals of self-governance and they are all vital to today's Indian Tribes including the Cocopah.

We firmly believe that the bill before you, S.B. 1287, will allow Indian Tribes, including our Tribe, to further the concept of self-governance. We feel sure that the results of this demonstration will be that, with a real Government-to-Government relationship, Indian Tribes will show evidence that they are able to plan, develop and operate their own affairs.

By replacing suspicion and interference with trust and cooperation, you will find that our tribal governments are as viable, if not more viable, than that of local municipalities or counties.

The addition of ten Tribes to the demonstration project and the extension of time by three years could be the beginning of allowing Tribes to return to their original governmental operation where they had full authority and responsibility for their destinies. Their only control is the proper one, the vote of their people.

We make great efforts in this country to insure that freedom continues throughout the world. This bill is an opportunity for you to take a positive step toward insuring that same freedom for the Natives of this country. Our Tribe wants to enter the Twenty-First Century along with the rest of the people in the world and with your support, we might even lead the way.

Again, I thank you Mr. Chairman for the opportunity to sharing my views with this Committee.

STATEMENT OF THE  
 ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
 IN SUPPORT OF ADDITIONAL  
 CONGRESSIONAL APPROPRIATIONS FOR  
 INDIAN TRIBES AND NATIONS PARTICIPATING IN  
 THE SELF GOVERNANCE DEMONSTRATION PROJECT - FY92

Webster's Dictionary defines the word "negotiate" as meaning "to confer with another so as to arrive at the settlement of some matter". Black's Law Dictionary defines the same word identically, but adds that it further means, "to meet with another so as to arrive at a compromise about something" and to "conclude by bargain, treaty, or agreement".

Having just concluded the "negotiations" for our fiscal year 1992 Self Governance Demonstration Compact Annual Agreement with the Bureau of Indian Affairs on July 15, 1991, in Shawnee, Oklahoma, it is respectfully submitted that a new definition to the word "negotiation" has been introduced and utilized by the Bureau of Indian Affairs: The above definitions have been expanded to include "take it or leave it".

The Compact of Self Governance entered into by and between the governments of the United States of America and the Absentee Shawnee Tribe of Oklahoma in fiscal year 1991 was a fairly negotiated and agreed upon document in which both parties, properly represented, agreed upon provisions, deliverables, budgets, and scopes of work to be performed thereunder, and the Absentee Shawnee Tribe has properly conducted that Compact of Self Governance in an admirable fashion. We have, once again, demonstrated, beyond doubt, that Indian Tribes and Nations can and will operate Bureau programs more efficiently, more responsively and more cost effectively than can the Bureau of Indian Affairs.

Our FY91 Compact of Self Governance, including funds from all sources including "X" Band and Congressional supplements, totals approximately \$824,000.00 with which this Tribe has provided all Bureau functions to the residents of our jurisdiction, save and except IIM Accounts and Titles and Records which were retained by the Anadarko Area Office.

During our operations, the Tribe has successfully responded to the needs of our membership through the direct provision of services, goods, and materials required by eligible Indians for their identified needs in relation to education, training, realty services, child welfare, social services, employment, law enforcement, courts, economic development, and a myriad of other, more minor needs have been successfully addressed.

Our participation in Self Governance has further allowed the Tribe the flexibility to provide other services to our people, among those a Denture program, an Eyeglass program, an Energy Assistance program, a Weatherization program, and others.

In short, the Absentee Shawnee Tribe has been more than successful in its operation of Self Governance and in its operation of other tribally funded programs which are a direct result of the increased flexibility afforded through Self Governance.

Our continued successes are presently jeopardized by the failure of the Bureau of Indian Affairs to negotiate in good faith for fiscal year 1992.

In fiscal year 1991, the Shawnee Agency, Anadarko Area Office and Central Office contributed approximately \$617,000.00 to the Compact of Self Governance, which was then supplemented by additional Congressional appropriations of some \$207,000.00, totalling approximately \$824,000.00.

In fiscal year 1992, the Shawnee Agency, Anadarko Area Office and Central Office will only contribute approximately \$602,000.00, in spite of a 9% increase which Secretary Brown assured Tribes would be spread evenly across the board. In other words, the 9% BIA budget increase, as handled by Secretary Brown and the BIA, results in a 2.43% DECREASE in actual services to Indians served by the Absentee Shawnee Tribe of Oklahoma.

Additionally, if the Tribe had been successful in securing its fair share of Shawnee Agency, Anadarko Area Office, and Central Office funding (\$637,500.00 excluding any supplemental funding), we would still be faced with a funding shortfall of approximately \$186,500.00 for fiscal year 1992 operations. As it presently exists, the Tribe now faces a funding shortfall of a greater magnitude.

This Tribe now finds itself in a position to pursue, with no guarantee of success, approximately \$242,000.00 in supplemental funding just to maintain the current level of services under the Self Governance Demonstration concept. If we are unsuccessful in obtaining supplemental funding at this level, we will be forced to reduce all aspects of Self Governance by nearly 25%, resulting in the loss of required personnel, and most importantly, the drastic reduction of services to Indian people.

Certainly, there is some problem with a Bureau of Indian Affairs allocation system which receives a 9% increase which results in a 2.4% decrease in Indian Programs. Where have these funds gone? Assuredly, they have not sifted to the service provision level.

This Tribe suspects that, as in years past, administrative costs, pay increases, additional staffing, and other forms of BIA overhead have taken their toll on this funding, with none left over to provide services to the beneficiaries for which the budgetary increase was designed to provide: the Indian people.

It is the goal of this Tribe to be successful in each endeavor undertaken as a governing body, and to be successful in its relationships with other governments, the United States of



America being one of these others, and to accomplish this feat, we must abandon the attitude of the "Golden Rule" being "he who has the gold, rules".

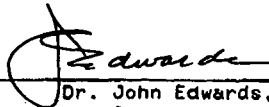
We must rather undertake Self Governance in the spirit which it was intended: to blaze a trail for others to follow, to experiment with new ideas and designs for efficient delivery of goods and services, to share the experiences gained with others so that the same mistakes are not made, and lastly to exercise to the fullest, the sovereign and traditional rights and privileges of Tribal government.

In short, we must not fail, yet by virtue of their actions and policies, we must not only succeed, we must succeed in the face of personal adversity, inadequate funding, and bureaucratic ineptness and territorialism caused wholly by the Bureau of Indian Affairs.

The answer to this problem is self evident. Congress must ensure the success of the Self Governance concept, despite the reluctance of the Bureau of Indian Affairs and its personnel, through provision of additional appropriations authorized in such a manner as to remove Bureau discretion in the award of such funds to Self Governance Tribes. This method was recognized and utilized in the "Reorganization" of the Bureau of Indian Affairs and the Indian Education concept: The Bureau was forbidden to fund the concept at the expense of Indians. It must be remembered what the mission of the Bureau of Indian Affairs should be: It is their mission to protect, preserve, and benefit Indians - It is not their mission to protect, preserve and benefit the Bureau.

It is respectfully requested that this body favorably consider appropriating additional funds for Tribes participating in the Self Governance Demonstration Project and mandate that those funds be received by the Tribes participating in Self Governance Compacts as opposed to being siphoned off by the Bureaucracy.

Thank you for your consideration and patience.



Dr. John Edwards,  
Governor  
Absentee Shawnee Tribe  
of Oklahoma

SUMMARY  
SELF GOVERNANCE DEMONSTRATION PROGRAM  
NEGOTIATIONS FOR FISCAL YEAR 1992

On July 15, 1991, the Absentee Shawnee Tribe of Oklahoma and the Bureau of Indian Affairs met at the Holiday Hotel, Shawnee, Oklahoma for the purpose of negotiating the Absentee Shawnee Tribe of Oklahoma's Self Governance Demonstration Annual Agreement for fiscal year 1992.

Attendees at these negotiations were as follows:

BUREAU OF INDIAN AFFAIRS

William LaVell  
L.W. Collier  
Dan Deerinwater  
Dennis Sisco  
James DeHaas

ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

Governor John Edwards  
Lt. Governor Leroy Ellis  
Ron Feazle  
Dwayne R. Hughes

The negotiations began at approximately 9:45 a.m., and started with Mr. LaVell briefing newly elected Governor Edwards on the philosophy and history of the Self Governance concept to this point in time.

Further discussions ensued regarding the status of "Federalism" and how it was felt that Self Governance could be the forerunner of this further concept of the government-to-government relationship. References were made to President Bush's recent policy statement which indicated that Tribes stood "shoulder to shoulder" with the various States, and how this policy might or might not bear fruit.

Finally, the meeting addressed the actual negotiations,

beginning with a presentation of the Bureau of Indian Affairs' proposed allocation plan. This plan is shown as Attachment #1.

As may be seen, this Bureau allocation plan allows a mere \$195,080.00 above what this Tribe would have been entitled to under the routine contracting processes of P.L. 93-638. This amounts to a Self Governance Demonstration Program reduction 26.88%. This Tribe had hoped to increase the contribution of the Anadarko Area Office and Shawnee Agency by virtue of its conduct of all Bureau activities during fiscal year 1991.

As indicated in the Semi-Annual Report for fiscal year 1991, this Tribe has successfully and cost effectively conducted all its operations with little or no assistance from the local Agency nor from the Anadarko Area Office, routine attorney's contracts and invoice approvals and bingo management agreements excepted: It should be noted that these activities requiring Bureau actions are mandated by Regulation and cannot be handled by the Tribe itself, since they require a "federal signature".

Prior to reaching any agreement, it was decided that the negotiations would resume after lunch.

The group recessed for a meal, with the Bureau representatives caucusing at one table and the Tribal representatives at another.

Following the meal, the negotiators reconvened with the Tribal representatives surprised to find that negotiations had been completed, apparently over lunch in the absence of Tribal representatives.

The document shown as Attachment #1 was the total amount of funds available to this Tribe, and no further discussion was

tolerated by the Bureau officials.

Mr. LaVell did, however, commit to providing a total of \$35,000.00 in supplemental funding to defray the loss of that amount of funds from this Tribe's base allocation. This contribution brought the total funding level of the Tribe to \$637,567.00: A total of \$207,433.00 short of the amount of funds needed by the Absentee Shawnee Tribe to maintain its current fiscal year 1991 operations.

The Tribal representatives objected to the removal of certain Anadarko Area Office line items from the negotiations to no avail. The rationale for this objection is that Mr. LaVell's commitment to provide additional funds are based on Congressional approval of supplemental funding for Self Governance Tribes, and that should such funds not be approved or fail to be approved in the future, the Tribe was destined to fail in its Self Governance efforts.

This concern fell on deaf ears, with Mr. LaVell expressing that it mattered little where the funds originated, as long as they were available. An anecdote followed regarding a debt owed the Tribe being paid by the debtor's rich brother: It mattered little who paid as long as it was paid. The Tribe responded by indicating that while this was true in the short run, it should be noted that in the long run there was no guarantee that the rich brother would continue to pay nor that the rich brother would continue to live. If he died, who paid then? It was thought that this rebuttal would have some effect, however, the "here today, gone tomorrow" situation was not received by the Bureau officials.

In short, this Tribe was bitterly disappointed in the "negotiations" conducted for the fiscal year 1992 Self Governance Compact in that no negotiations actually transpired.

The Tribe was provided a sheet of paper which stated the total amount of funds available from the Anadarko Area Office, the Shawnee Agency, and the Central Office and no further progress was made. It was literally a "take it or leave it" choice at that point.

Following an expression of the Tribe's dissatisfaction, Bureau officials stated that we should rush to Washington to influence congressional consideration of adding supplemental funding to the base allocation levels of the Tribes participating in Self Governance as opposed to continuing further negotiations or discussions.

The meeting adjourned at approximately 2:30 p.m.

SELF-GOVERNANCE COMPACT RESULTING CHANGES IN FY 1992 BUDGET		ABSENTEE SHAWNEE-----			AREA	TOTAL
PROGRAM TITLE	TRIBAL FUNDS B08-08	AGENCY FUNDS B08-01	FIELD OPS FUNDS B90-01	COMPACT FUNDS		
FY 1992 INDIAN PRIORITY SYSTEM FUNDS:						
SCHOLARSHIPS	4,300					4,300
ADULT EDUCATION	700					700
ADULT VOCATIONAL TRAINING	5,000					5,000
EMPLOYMENT ASSISTANCE D.E.	700					700
COMM. FIRE PROTECTION	(100)					(100)
TRIBAL COURTS	3,000					3,000
AID TO TRIBAL GOVERNMENT	8,700					8,700
SOCIAL SERVICES	3,400					3,400
SOC. SVCS. CHILD ABUSE NEGLECT			12,780			12,780
LAW ENFORCEMENT	4,700	5,000				9,700
SELF GOVERNANCE	484,000					484,000
CREDIT & FINANCING	600					600
AGRICULTURE	2,500					2,500
OUTDOOR REC. MGMT. DEV.	1,500					1,500
REAL ESTATE APPRAISALS	900					900
OTHER REAL ESTATE SERVICES	4,000					4,000
<b>TOTAL IPS COMPACT FUNDS</b>	<b>523,900</b>	<b>5,000</b>	<b>12,780</b>			<b>541,680</b>
FY 1992 ESTIMATED NON-IPS FUNDS: (BASED UPON FY 1991 LEVELS)						
HOUSING IMPROVEMENT PROGRAM		48,000				48,000
SOCIAL SVCS. GENERAL ASSISTANCE	24,000					24,000
SOCIAL SVCS. MISCELLANEOUS ASSISTANCE	667					667
SOCIAL SVCS. CHILD WELFARE ASSISTANCE	1,000					1,000
<b>TOTAL NON-IPS COMPACT FUNDS</b>	<b>25,667</b>	<b>48,000</b>	<b>0</b>			<b>73,667</b>

\*\*\*\*\*  
 \*\*TOTAL COMPACT FUNDS\*\* 549,567 53,000 12,780 ~~515,347~~ 602,567  
 \*\*\*\*\*

OT prog Requirements  
 845,000  
 - 637,567  
 207,433 - shortfall

615,347  
 - 12,780  
 602,567  
 + 35,000 suppl  
 637,567.00

845,000  
 650,347  
 194,653

**TESTIMONY OF THE  
ONEIDA TRIBE OF INDIANS OF WISCONSIN**

**IN SUPPORT OF**

**S.1287**

**AMENDMENTS TO THE  
TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT**

**PRESENTED TO  
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS**

**JULY 18, 1991**

The Oneida Tribe of Indians of Wisconsin offers this testimony in support of S.1287 Amendments to the Tribal Self-Governance Demonstration Project (SGDP) Act which authorizes participating tribes, under an annual funding agreement with the Secretary of the Interior, to plan, consolidate, and administer programs, services, and functions administered by the Bureau of Indian Affairs and to redesign programs, activities, functions or services and reallocate Federal funds. These amendments would extend the demonstration period three (3) years to afford tribes a reasonable period of time to determine whether this form of government to government relationship with the United States is an option that the Congress should make available on a permanent basis. These amendments would also increase the current number of authorized tribal participants from twenty (20) to thirty (30) and result in a broader sample from which Congress can examine the strengths and weaknesses of the Self-Governance Demonstration Project. Further, these amendments would require that all tribes electing to participate in the Self-Governance Demonstration Project must first go through the planning process and conduct budgetary and legal research, internal planning and organization preparation activities, and develop a negotiating process. Finally, these amendments would authorize \$700,000 to fund the additional ten (10) tribes to be added to the original program.

Two commissions, the American Indian Policy Review Commission of the U.S. Congress (1975-77) and the Presidential Commission on Reservation Economies (1984), found that the BIA



and many past policies of the U.S. government stifle tribal efforts to achieve social, economic and political self-sufficiency. Both commissions also found that the BIA should be restructured to focus on the protection of Indian tribes instead of managing the affairs of Indian tribes. Both commissions found that the BIA uses a disproportionate amount of congressionally appropriated funds to support its own operations instead of providing adequate assistance and support to Indian tribes. Finally, both commissions found that transferring funds and functions from BIA directly to Indian governments and correspondingly reducing the size of the BIA bureaucracy would increase tribal accountability through local autonomy and streamline the BIA into an agency which protects instead of manages Indian tribes.

The Tribal Self-Governance Demonstration Project was initiated to accomplish a reduced direct federal involvement in the management of Indian tribes. It is also designed to resolve problems associated with multi-tribe BIA agencies, reduce the size of the BIA bureaucracy, allow more direct local decision-making by tribal governments, and stabilize the level of BIA appropriated funding. The federal burden for administering many social and economic programs to self-governing tribes would decline over a period of years as functions and resources are transferred through negotiated compacts. Correspondingly, the structure of the BIA and its personnel burden should reduce with the conclusion of each Self-Governance Compact. This approach

has the advantage of increasing local decision-making at the tribal level and reducing federal Indian affairs management functions with a corresponding emphasis on trust protection responsibilities. The systematic transfer of resources and responsibilities from the BIA to tribal governments is the next logical step toward achieving true Indian self-determination.

The Oneida Tribe of Indians of Wisconsin is a federally-recognized Indian tribe consisting of 10,000 enrolled members nearly half of whom live on a 65,000 acres reservation located near Green Bay in northeastern Wisconsin. The Oneida Tribe is considered to be one of the more successful and progressive Indian tribes in the United States. Our accomplishments over the past two decades have demonstrated our capacity and ability to provide for the general health and well-being of our members through the use of federal and State of Wisconsin funds and those revenues obtained from our private enterprise initiatives. For example, a short two decades ago, the unemployment rate on the Oneida Reservation exceeded 70%; today, through the efforts of the Oneida Tribe using the resources available to it and through the foresight of Tribal leaders, the unemployment rate has been reduced to less than 20%. A 20% unemployment rate is still unacceptable to us, but the fact that it has been reduced to this level in this short period of time indicates that the Oneida Tribe can accomplish what it sets out to accomplish. During this period of time, the Oneida Tribe qualified for and administered nearly every form of BIA grant and contract assistance program

available, and, as the Tribe's annual audit record shows, the Tribe managed these grants without significant problems. Further, this record has enabled the Oneida Tribe to obtain the kind of private sector support which has resulted in dramatic economic growth and a substantial improvement in living conditions among Tribal members on the Oneida Reservation. The Oneida Tribe is on the verge of realizing its goal of becoming a self-sufficient, self-sustaining Indian tribe, and the closer we come to achieving this goal, the more the People of the Standing Stone reiterate their desire to achieve this status.

The challenge of our future is to develop or create enduring social and economic structures in keeping with our local goals, resources and cultural values. This responsibility rests with the governing body of the Oneida Tribe, the leadership of our community institutions, and the active participation of our members. The development of self-sufficiency is predicated on the ability of the Tribe to determine our own future and to direct our resources into efforts which will strengthen our governance capabilities, promote and enable economic progress, and protect and enhance the health and well-being of individuals, families and the community. The attainment of self-sufficiency is based on our ability to develop a strategy and to plan, organize, and direct resources in a comprehensive manner to achieve long-range goals.

S.1287 provides the opportunity for the Oneida Tribe to obtain and assert a greater degree of local control over Federal

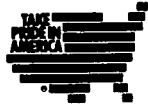
resources so as to direct these resources into those areas determined by the Tribe to be critical to our long-range development as a self-governing Indian tribe. S.1287 will open additional slots to be filled by ten (10) tribes. It is our understanding that few Indian tribes in the upper Midwest region of the United States are currently participating in this Project. Given the opportunity to participate, the Oneida Tribe will broaden the sample of experience available for review and evaluation by Congress.

Further, the requirement that all participating tribes go through the complete process of planning in order to conduct budgetary and legal research, conduct internal government planning and organization preparation, and develop a negotiation process is an amendment the Oneida Tribe strongly supports. While the Oneida Tribe has developed systems and structures which enable it to respond successfully to opportunities arising out of federal and state initiatives, the Tribe must develop the internal systems and structures which will enhance its decision-making process given the expanded powers provided by a Self-Governance Demonstration Project. The Oneida Tribe is anxious to meet this challenge.

In conclusion, the Oneida Tribe of Indians of Wisconsin endorses and supports S.1287 and urges passage of these amendments.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

OCT 24 1991

Honorable John McCain  
Vice Chairman, Select Committee  
on Indian Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Vice-Chairman:

Enclosed are the answers to the follow-up questions to the July 18, 1991, hearing on S. 1287, the Tribal Self-Governance Demonstration Project Act and the Self-Governance Demonstration Program, transmitted to us by a letter dated July 31, 1991. Also, enclosed are responses to the questions of Senator Gorton.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosures

**Questions for the Oversight Hearing  
on the Self-Governance Demonstration Project  
And**

**S. 1287, the Tribal Self-Governance Demonstration Project Act**

1. Given the Department's public commitment to the Demonstration Project, what specific requests were:
  - contained in your FY 1992 budget submission?
  - contained in the President's FY 1992 budget?
  - and what do you propose for the FY 1993 budget?

**Answer:** The Department's FY 1992 budget included \$.7 million for the Office of Self-Governance and \$3 million for shortfall funding and planning grants. In addition, the FY 1992 budget reflects base program transfers of \$16.3 million to the original seven compact agreements. This estimate was based on the amount of FY 1991 funds made available to the tribes through January 18, 1991. Since then the total amount of funds distributed to the tribes during FY 1991 is \$26.1 million. The Department is still formulating its FY 1993 budget so any discussion at this time would be premature.

2. Given the expansion of the project by ten tribes, what preparation has the BIA made or will make in terms of:
  - budget research?
  - planning?
  - BIA restructuring?

**Answer:** Regarding budget research for new tribes, assistance will be provided by the BIA and the Office of Self-Governance to identify a tribe's share of the BIA budget at the agency and area office level. Such research could come during a tribe's planning phase and would definitely come during a tribe's negotiation of its annual funding agreement. In addition research will continue on the central office budget to identify possible tribal allocation.

The Office of Self-Governance will be reviewing the recently negotiated annual funding agreements to determine if some of the formulas used for breaking out tribal share should be made uniform for all funding agreements. In addition, the BIA will undertake to display its FY 1993 budget requests by tribe which should assist new tribes to identify their share of the BIA budget and prepare for compact negotiations.

For new compact tribes, every effort will be made to build upon what has already been learned by the original compact tribes. It is anticipated that some of the education activities provided from funds to the Lummi tribe also will assist new tribes.

Regarding planning, the Office in conjunction with the BIA will be examining the trust related functions of various BIA offices to determine the extent and cost of maintaining these functions at the agency, area and central office levels. In addition, consideration

is being given to allow compact tribes to assume responsibility for trust related activities while the Secretary continues to maintain his trust responsibility by approving any actions that impact the corpus of the trust. For example, a compact tribe would perform all tasks related to preparing for a timber sale and the Secretary, through either the BIA and/or the Office of Self Governance, would approve the sale.

Regarding restructuring, the Office along with the BIA will examine the possibilities for reorganization at the local level within and between impacted agencies and area offices. Much of this will occur during the negotiations and prior to the start of the annual funding agreements.

At this time, the limited size of the demonstration project precludes very much reorganization; however, when it is warranted, the BIA will undertake the necessary reorganizations. For example, the Tahlequah Agency was closed and the Southeast Alaska Agency will be closed once the Tlingit-Haida compact is completed.

3. The Committee is aware that even though the top officials at Interior support the Self-Governance Demonstration project, there has been problems at other levels - complaints include everything from ignorance of the project to misinformation, to deliberate attempts to undermine the Project. How do you intend to address these problems?

**Answer:** The Self-Governance Demonstration Project is an evolving process. This means that BIA staff at all levels like the tribal staff are learning as the process unfolds. Each negotiation involves BIA staff from the area and agency offices. We are finding that as staff develop direct experience with self-governance, many of the misunderstandings are reduced.

To accelerate this process for BIA staff not yet directly involved with self-governance, we plan to conduct bureau wide training at the central, area and agency office levels once this round of negotiations is completed.

4. The prepared testimony of several of the first tier Tribes makes a number of specific recommendations, and I would like your comments on each recommendation:
  - a. Putting back the programs excluded (i.e. education programs) from the original Title III?
  - b. expanding the demonstration project systematically by subject area, e.g., (1) other Interior Department programs for the benefit of Indians and (2) at least a one-year planning process to precede the inclusion of IHS programs in the Demonstration.

- c. Clarifying that the programs that the Bureau has unilaterally withheld from Annual Agreements (e.g. Competitive grant programs) are intended to be a part of the Demonstration Project.
- d. Making the Office of Self-Governance a permanent structure for the duration of the Demonstration.
- e. Exempting Demonstration Tribes from 25 U.S.C. Sections 81 and 82 for attorney and other professional contracts.
- f. Providing a special waiver for OMB Circular A-87 requirements as negotiated in the Compacts.

**Answer:** (a) The Task Force on the reorganization of the BIA, is currently considering the issue of whether or not to include BIA funded education as a part of the Indian Priority System. The Task Force has tentatively proposed to include it in the Indian Priority System for budget purposes. If this view ultimately prevails, we would have no objection to including education also in self-governance demonstration projects.

(b) We agree that expansion is possible and desirable some time in the future. The expansion needs to be gradual and orderly so that the new programs can be accommodated by the Department and the tribes. Questions regarding programs outside the Department of the Interior must be addressed to the appropriate Federal department; however, the Assistant Secretary - Indian Affairs would be willing to work with other Federal departments such as the Indian Health Service. In addition, the respective Congressional appropriation and authorizing committees would have to be consulted.

(c) During the FY 1992 negotiations, the Assistant Secretary - Indian Affairs decided that compact tribes could participate in programs such as the proposed Community and Economic Development program in the same manner as all other tribes. At the same time, he committed to exploring ways that some portion of those funds might be included in the compacts without competition and without adverse impact on non-participating tribes for the FY 1993 negotiations.

(d) The Office of Self-Governance has been permanently established within the Office of the Secretary by the Departmental Manual Release dated November 9, 1991 (110 DM 9.1). (See Attachment One.)

(e) Further analysis is needed before waivers to these provisions can be supported. However, we have not been able to find any examples of where an attorney's contract has been denied by the Department.

(f) The Department has been supporting the compact tribes in gaining such waiver to many of the provisions in Circular A-87. On July 16, 1991, OMB sent a letter to the Department generally concurring with most of the specific requests. (See Attachment



Two.)

5. Would you support removing the identified restrictions in BIA programs on Tribal discretion in the Demonstration Project, e.g. HIP and/or Marijuana Eradication Recognizance Team?

**Answer:** These are complex issues that should be responded to on an individual basis. However, as a general matter, we support maximum flexibility in the handling of compact funds to address the problems of each reservation. This after all is the purpose of this demonstration project.

Regarding MERT, the Assistant Secretary - Indian Affairs ruled during the FY 1992 negotiations that this was a limited National program that was designed to respond on an as needed basis anywhere in the country. If MERT funds were included in one or more compact agreements, then the National program could be severely jeopardized thus adversely affecting non-participating tribes.

Regarding HIP, compact tribes can obtain a waiver of HIP regulations to do the type of housing construction that meets tribal priorities. Further, the tribe can use the HIP construction money for any other type of construction that it wishes.

6. What implications does the Self-Governance Project have for the on-going reorganization effort? How does the Bureau propose to adjust or prepare for the authorization of this Self-Governance Program to coordinate with the Bureau's programs?

**Answer:** The self-governance program dovetails with other efforts in the bureau to reorganize and take a comprehensive look at the method for resource allocation. The Office of Self-Governance must work as a partner with the BIA by pointing up possibilities for reorganization as a result of compact agreements and comment on other proposed reorganizations that are currently being considered.

7. What is the total FY 1991 amount of Central Office expenditures for Central Office Administration and for the salaries and expenses of programs administered out of the Central Office?

**Answer:** For FY 1991, according to the FY 1991 Distribution of Funds document, \$136 million was identified for Central Office. Of this amount, \$66 million was identified for Administration. The remaining amount, approximately \$70 million, went for salaries and expenses of central office operations for the various program areas.

8. Of these Central Office funds, how much was allocated to Self-Governance Compact in FY 1991?

**Answer:** In FY 1991, a total of \$315,000 was included in the compact agreements which was \$45,000 for each of the seven compact agreements.

9. What was the basis for the Administration's allocation of this amount in FY 1991?

**Answer:** Late in the negotiation process, an attempt was made to determine a central office amount that was "fair" to both the compact tribes and to those non-compacting tribes. An estimate was made of the total amount of central office resources that were eligible to be included in a compact agreement. This amount was divided by the total population to arrive at a per capita amount. The per capita amount was multiplied by the population of each compact tribe. The range was from about \$20,000 to \$70,000. For the first year, an average for the tribes was taken and it approximated \$45,000.

10. Is the Administration using the same rationale in allocating Central Office fund to FY 1992 Compacts? If not, are the amounts to be allocated the same or increased over the amounts allocated for FY 1991 compacts?

**Answer:** In conjunction with the tribes, a different approach was taken for the FY 1992 Compacts. An analysis was done that identified the percent of the national program contained in each compact agreement and then multiplied that percent by the amount of central office funding that was determined to be eligible for each program area. The percents of central office funding that were assumed to be eligible were 90% for non-trust programs and 75% for trust programs.

The results of the analysis was that most of the original seven compact agreements received less than \$45,000. Two compacts would receive more than \$45,000. The decision reached was that tribes could choose between including a \$45,000 base amount or including the amount from the analysis described above.

11. What percentage of the total Central Office expenditures for administration and program salaries and expenses is immune from allocation to Compacts?

**Answer:** As mentioned above, the percents of central office funding that was assumed to be eligible was 90% and 75% for non-trust and trust programs respectively. The rationale is that even if all tribes had compact agreements, then 10% and 25% of central office dollars are the amounts being assumed to be necessary to meet the Secretary's trust responsibility and administer the compact agreements and deal with other policy and administrative matters.

12. In the Administration's negotiating experience thus far, has the new BIA Education Office administrative structure offered any particular or additional difficulties to the negotiating task of determining what is the fair share of the Area Office level funding allocable to Compacts?

**Answer:** There has been no difficulty associated with BIA Education Office.

13. Specifically identify by program and amount all Interior funds allocated to FY 1991 and FY 1992 Compacts which originated from outside the Bureau of Indian Affairs.

**Answer:** The FY 1992 compacts, especially those that will commence in January, are still being negotiated. For FY 1991, the only non-BIA program included was fire fighting for \$712,718 which was transferred from BLM to BIA and included in three compact agreements.

14. Specifically identify all such non-BIA Interior programs which have been requested for inclusion in Compacts by Tribes in FY 1991 and FY 1992 negotiations.

**Answer:** As stated above, the only non-BIA program included for FY 1991 compact agreements was for fire fighting. For FY 1992, the only non-BIA programs that were requested were Highway Trust Fund monies and funds from the U.S. Geological Survey for cadastral surveys.

15. Specifically identify all such non-BIA Interior programs which are not allocable to Compacts.

**Answer:** Any program that can be included as a 638 contract can be included in the compacts. For example, the Assistant Secretary - Indian Affairs agreed to include road construction projects funded by the Federal Highway Administration from the Highway Trust Fund provided the projects are at a stage where they could be contracted for under P.L. 93-638.

16. Describe in detail the new, revised role of the BIA Central Office and an Area Office when an entire BIA Agency Office has been removed by a Self-Governance Compact. In this context, which specific functions remain with the BIA if all Tribe/Agency and Area program responsibility is assumed by a Compact Tribe.

**Answer:** When an entire agency is included in the compact agreement, then the BIA agency is no longer needed. This has been the experience with the Cherokee compact agreement. However, the Cherokee agreement did not include area office responsibilities. Consequently, the area functions associated with the Cherokee compact agreement remain intact. Central office functions were unaffected by the Cherokee compact agreement because the closing of only one agency office is not significant enough to affect central office work load.

At this time, there has been no systematic analysis of BIA area and central office functions to determine what functions should be retained by the area and central offices when all responsibilities have been assumed in a compact agreement. However, one main concern is that any reorganization or restructuring must ensure that the Secretary will be able to maintain the trust responsibility to the compact tribes and that non-compact tribes are not adversely affected.

17. Identify each Federal regulation which the Secretary has waived at the request of a Tribe under authority of a Compact. Identify each regulation which has been the subject of such a request for waiver and which has been denied by the Secretary or is pending Secretarial decision. Given the Administration's negotiation experience thus far, identify those federal regulations the Administration anticipated may be the subject of future requests for waiver by the Compact tribes.

**Answer:** Through August, 1991, the Secretary has granted no waivers at the request of a Compact tribe. So far, the only requested waiver that has been received has been from the Lummi tribe to waive BIA's forestry regulations. This request is being reviewed by the Solicitor's office and is pending Secretarial decision.

At this time, it is difficult if not impossible to speculate which federal regulation waivers will be requested by the compact tribes in the future. One reason for this is that compact tribes are proceeding cautiously with implementing their self-governance program. Another reason is that to request a waiver of regulations requires a compact tribe to decide exactly how it would want to alter a program's operation. Presently, the Office of Self-Governance is not aware of how much of this type of analysis is being undertaken by the compact tribes.

## DEPARTMENTAL MANUAL



ATTACHMENT #1

## TRANSMITTAL SHEET

PART 110 DM 9	SUBJECT ORGANIZATION Office of the Secretary Office of Self-Governance	RELEASE NUMBER <b>2903</b>
FOR FURTHER INFORMATION, CONTACT Office of the Assistant Secretary - Indian Affairs		DATE NOV 21 1990

**EXPLANATION OF MATERIAL TRANSMITTED:**

This Departmental Manual release transmits a Part 110 DM, Chapter 9. This chapter establishes an Office of Self-Governance within the Office of the Assistant Secretary - Indian Affairs reporting to the Assistant Secretary. The office will provide increased focus on self-governance and self-determination and serve in an advisory capacity to the Assistant Secretary on self-governance and self-determination issues.

*Charles E. Kay*  
Deputy Assistant Secretary of the Interior

**FILING INSTRUCTIONS:**

Remove:

None

Insert:

110 DM 9  
(1 sheet)

**DEPARTMENT OF THE INTERIOR  
DEPARTMENTAL MANUAL**

Organization Part 110 Office of the Secretary

Chapter 9 Office of Self-Governance 110 DM 9.1

**9.1 Office of Self-Governance.** The Office of Self-Governance has primary responsibility for assisting the Assistant Secretary - Indian Affairs in evaluating, developing, and implementing or overseeing implementation of policies and programs for self-governance and self-determination (such as provided for in Title III of P.L. 100-472 and P.L. 93-638, as amended, or otherwise) and for oversight of and assistance in self-determination development and regulatory processes.

**9.2 Functions.** The Office of Self-Governance performs the following activities:

A. Advises the Assistant Secretary - Indian Affairs on self-governance and self-determination issues and develops related policy and program proposals;

B. Consults with and, as appropriate, negotiates with Indian Tribes on self-governance and self-determination issues;

C. Monitors and evaluates self-governance demonstration projects under Title III of P.L. 100-472 and evaluates P.L. 93-638 self-determination contract and grant programs and other self-determination approaches that may be used by tribes;

D. Oversees development and implementation of self-determination regulatory processes;

E. Assists in improving the prospects of success for self-governance and other self-determination agreements including developing and making public budgetary information useful to tribes and the Interior Department in negotiating self-governance and other self-determination agreements.

**9.3 Organization.** The Office of Self-Governance is located in the Office of the Assistant Secretary - Indian Affairs and reports directly to the Assistant Secretary.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Attachment #2

July 16, 1991

Mr. John E. Schrote  
Acting Assistant Secretary for  
Policy, Management and Budget  
Department of the Interior  
Washington, DC 20240

Dear Mr. Schrote:

This is in response to your letter to the Director requesting approval for deviations to the requirements of the cost principles contained in OMB Circular A-87. On January 15, 1991, our staff met with officials of the Bureau of Indian Affairs (BIA), the Department of Health and Human Services and representatives of seven tribes that are participating in the Self-Governance Demonstration Project to further discuss this request. At the meeting, BIA agreed to gather additional information for some items to support its request.

As explained to us, P.L. 100-472 directed the Secretary of the Interior to enter into contracts with up to 20 tribes on a demonstration basis for a period not to exceed 5 years. Each project would in effect combine all sources of BIA support into one award, thus allowing each tribe maximum flexibility in the use of funds to meet its individual needs. As part of that project, the BIA is proposing to relax and/or eliminate a number of administrative requirements, including certain provisions of Circular A-87, to enhance a tribe's flexibility in the use of the funds.

In the enclosure to this letter, we respond to each of the specific requests included in your letter. These responses were generally agreed to at the conclusion of the January 15th meeting.

Please note that our responses relate only to the tribes included in and for the period of the demonstration project and should not be viewed as a commitment on the part of OMB to modify any of the existing and/or proposed requirements in Circular A-87 for all tribal governments. Input to any future changes to the Circular would be accomplished through the normal rulemaking process.

We trust that this adequately responds to your request. If you have any further questions, please contact Jack Sheehan on 395-3993.

Sincerely,

A handwritten signature in cursive script, reading "Frank Hodsoll".

Frank Hodsoll  
Executive Associate Director

Enclosure



**Enclosure****Request: (Applicable cost principles)**

Use the cost principles in effect as of October 1, 1990, for compacts (contracts issued under the demonstration project), unless the tribe and the Secretary of the Interior agree to revisions (Section 6 Paragraph (a)(i)).

**Response:** OMB agrees that the cost principles in effect as of October 1, 1990, can remain in effect for the term of the individual compacts entered into under the Demonstration Project authorized by P.L. 100-472. However, all other federally-funded grants/contracts not included as a part of the compact funding under the Demonstration Project will continue to be subject to the then current provisions of OMB Circular A-87.

**Request: (Depreciation and use allowances)**

Use a reasonable estimate in valuing acquisition cost of property where actual records are/were not maintained (Section 6, Paragraph (a)(ii) 1).

**Response:** Use of a reasonable estimate in valuing acquisition costs of property where actual records are/were not maintained is currently acceptable under OMB Circular A-87 (Attachment B, Paragraph 11 b). Also, as agreed to at the January 15th meeting, all other provisions of paragraph B. 11 will continue to apply.

**Request: (Publications and printing costs)**

Waive the prior approval requirements for publication and printing costs if such costs are charged directly to the Demonstration Project (Section 6(a)(ii) 2).

**Response:** OMB concurs that prior approval would not be needed if the BIA agrees that these types of activities are allowable as direct costs to the Demonstration Project.

**Request: (Rental/lease costs)**

Allow reimbursement of building-related costs, including land, whether or not owned by the tribe to the extent the costs are "reasonable" in light of comparable property, market conditions, etc. (Section 6, Paragraph (a)(ii) 3).

**Response:** This would be a significant departure from the provisions of Circular A-87 which require Federal agencies to reimburse the actual cost incurred by a recipient of Federal funds. As agreed to at the January 15th meeting, BIA will provide additional justification for a waiver to the Circular.

**Request:** (Automatic data processing equipment)

Eliminate the prior approval requirement related to the direct charging of automatic data processing equipment as long as the costs are reasonable (Paragraph (a)(ii) 4).

**Response:** OMB does not object to the request, provided BIA agrees that these types of activities are allowable as direct charges to the Demonstration Project.

**Request:** (Supplemental funding)

Allow costs of obtaining supplemental funding to the extent that funds generated will be charged to further the contract goals and objectives (Paragraph (a)(ii) 5).

**Response:** OMB does not object to the request, provided BIA agrees that these types of activities are allowable direct charges to the Demonstration Project.

**Request:** (Investment management)

Allow those investment management costs associated with pension plans, self-insurance or other funds which include Federal participation (Section 6, Paragraph (a)(II) 6).

**Response:** Investment management costs associated with pension plans and self-insurance funds are considered to be an allowable cost under the cost principles and are normally handled as a part of the indirect cost or fringe benefit rates that are charged on a consistent basis to all funding sources. These activities, therefore, should continue to be handled as they currently are. OMB does not object to allowing those costs that are related to other funds that include Federal participation, provided BIA agrees that these types of activities are allowable as direct charges to the Demonstration Project.

**Request:** (Idle facilities and idle capacity)

Allow costs of idle facilities or idle capacity in those situations where they are necessary to accommodate normal fluctuations in workload or where they were originally necessary but are now idle because of changes in program requirements or other causes which could not have been reasonably foreseen.

**Response:** OMB does not object to the request, provided BIA agrees that these types of activities are allowable direct charges to the Demonstration Project.

**Request:** (Interest)

Allow interest incurred by a tribe for (1) buildings, major building reconstruction and remodeling or acquisition or fabrication of capital equipment, and (2) delays by the Secretary in providing funds under the award in accordance with the advance payment or reimbursement schedule agreed to. (Section 6, Paragraph (a)(ii) 8).

**Response:** Circular A-87 presently provides for the payment of interest to Indian Tribes for new buildings. OMB is presently doing a study to determine if interest expense should be allowable for major building reconstruction and remodeling or fabrication of capital equipment. We expect to have this issue resolved within the next 6 months. With respect to the second part of the request, we have been advised by the Department of the Treasury that the Federal Government has no authority to reimburse Tribal governments for interest under the circumstances described. .

**Request:** (Lobbying)

Make lobbying costs of contractors (i.e., Tribal governments administering the compacts) unallowable to the extent prohibited by applicable statutory restrictions (Section 6, Paragraph (a)(ii) 9).

**Response:** OMB concurs in this request.

**Request:** (Professional service and litigation costs)

Allow professional service and litigation costs related to contract disputes or other matters related to the performance of the contract until a final administrative decision is reached.  
(Section 6, Paragraph (a)(ii) 10).

**Response:** OMB does not object to the request, provided that any revisions to Circular A-87 are adhered to subsequent to the Demonstration Project.



CHEROKEE NATION

P.O. Box 948 • Tahlequah, Okla. 74465 • (918) 456-0671

Wilma P. Mankiller  
Principal Chief

John A. Keicher  
Deputy Chief

August 28, 1991

Honorable John McCain  
Vice Chairman  
Select Committee on Indian Affairs  
Washington, DC 20510-6450

Dear Senator McCain:

Thank you for your letter of July 25 concerning my testimony on S. 1287 requesting additional follow-up responses to questions from the Committee.

I am pleased to have participated in the hearing and welcome the opportunity to respond to the additional questions. Attached hereto are my responses.

Sincerely yours,

  
Wilma P. Mankiller  
Principal Chief

Attachments

The Senate Select Committee's follow-up questions to the hearing on S.B. 1287 held on July 18, 1991. Committee's questions are in bold type, and Chief Mankiller's response follows.

**"What has been the response of other tribes to Self-Governance, as gathered through the Tribal Self-Governance Education Project?"**

Response: It is difficult to say; I believe most have a wait and see attitude because the concept is still fresh. The nature of most tribal leadership tends to be conservative therefore, they are not likely to embrace a new idea until they can carefully weigh the advantages and disadvantages. A few have been very skeptical and have said that this may be a streamlined or trojan horse method to effect termination. While this attitude is understandable given the numerous times the United States broke its word by dishonoring Indian treaties, I still have faith in the American system and have even more faith in Indian people to ensure this time that the United States is held accountable.

**"Your testimony indicates a long-term vision of where Self-Governance will lead, please discuss that view, indicating whether it is at all similar to the New Federalism concept as proposed by the former Investigations Subcommittee to this Committee."**

Response: At the turn of the 20th century the Cherokees and other tribes were self-sufficient and self-governing. We had formal educational institutions, a constitutional form of government, a formal court system, and a legal means to regulate property, etc.

Self-governance provides a mechanism which allows the Cherokees government to exercise our proper governmental responsibilities with minimal interference by the federal government. The new federalism concept and the ideas proposed by the Investigation Subcommittee could be used as the framework for a bridge to embrace all federal programs provided supposedly for the benefit of Indians.

The short answer is yes. Solid assurances and a federal commitment must be made that "new federalism" is not a means to diminish federal funding. The greater concern is that new federalism philosophy might create an environment which would allow the United States to abrogate its federal obligations and the trust responsibilities. As stated before, I have faith in the American system but it must be tempered by trust in my own people to ensure the United States is also held accountable. President Reagan used to say, "trust but verify". To overcome the fear of letting the federal government let go, somehow we need to figure a way to trust but verify that both parties do what they are supposed to do.

**"Can Self-Governance be effectively utilized by small tribes, or is it only for large tribes, or tribes with significant resources bases?"**

**Response:** Yes, I do not see why not. However, it must be recognized there is a problem associated with determining the fair share allocation of each respective tribe. It will take the wisdom of Solomon in order not to cut the baby in half as the parable in the bible suggests. Unfortunately, in the past when we have discussed equity funding or fair share allocations, tribal leaders and others usually end up with this analogous situation. Therefore, little occurs to change the budgetary allocations for obvious reasons.

One other qualification I have is I do not favor fully endorsing the concept without adequate understanding of possibly funding a federally recognized tribal entity which has no legal governing power or historical precedent of governance. I believe this would be wrong and would detract from the legitimacy of viable tribal governments which have struggled to survive, endeavored to revitalize the tribal institutions, and have had to endure the hardships of failed U.S. policy. These governments are now to finally become a full member of the family of American governments and it would not be right to give lesser organizations created by questionable circumstances the same standing.

**"Do you see the Self-Governance Demonstration Project as eventually involving all Federal Indian programs?"**

**Response:** Hopefully, yes with the aid of legislation that addresses adequately some of the concerns raised by Indian leadership when the idea of new federalism was introduced by the Investigative Committee. The essential framework for this approach would be legislative assurance to continue the government to government and trust relationship with Indian tribes. The policy of self-governance will possibly conflict with the control exercised by other federal agencies who have even less familiarity and confidence in Indian tribal governments; therefore, cooperation by others to let go of source funding may be difficult. Strong, capable, and educated leadership must come from the executive branch starting with the White House and OMB to oversee and assure implementation. I don't think the funding base should be charged for the White House or OMB cost. A criticism made about the new federalism concept was the idea that federal oversight above the department level would be assessed against the base funding allocation.

The ability of an Indian tribe to manage and administer federal funds for the most beneficial use is sensible. It is an ideal which should be changed to an objective; however, accomplishing the objective will not be easy.

**"How long will this take?"**

**Response:** I do not know. With the aid of legislation it will still take years. The Investigative Committee provided a simple approach to dividing the Indian fund allocation provided by the federal government in recent times. It is my understanding there

is approximately three billion dollars annually appropriated for the benefit of Indians. Approximately, one billion for the BIA; one billion for the IHS; and one billion from the miscellaneous federal agencies which have programs made available to Indians. What formula is fair? How do you determine equity funding?

What incentives could be provided to ensure governments that successful performance to address chronic problems such as unemployment is not used to cut future funding bases? Too often Indian tribes who run successful programs are penalized for being successful. Accordingly, the morbid figures which drive eligibility criteria are used in the reverse to cut funding. In many instances successful well managed programs reduce caseload because of the investment prior to the individual crisis. In other words, if a tribe runs a successful social service and employment program and thus, general assistance and unemployment rates are reduced because the program is successful. It should not follow that funds should be reduced and allow the individual crisis to redevelop. The same could be said of law enforcement programs. Aggressive law enforcement and good community relations programs may result in reductions of crime caseload because of the financial investment focused on early reaction and prevention to community problems.

**"When will we be able to address the issues of permanent legislation?"**

**Response:** I would like the congress to start addressing the issue this session. As you will recall from my earlier testimony, the Cherokees would like to have a permanent authorization for self-governance.

**"How far along into actual demonstration and experimentation do you think we are?"**

**Response:** I believe we are off to a good start. As for my tribe, we are quite comfortable with the self-governance philosophy. Yet we realize we have many things to do and understand the changes to status quo never comes easy.

**"Why do we need the extra years in the demonstration project?"**

**Response:** Governance by any body politic is a demonstration project. Indeed, is not the American system of government a 200 year old demonstration project of democracy and representative government? For the same reason, the self-governance project needs to be extended and only canceled when a tribe demonstrates it is totally incapable and it is hopeless to allow the government to manage its own affairs. I do not know of any case in the latter category.



It seems to me the federal government is certainly protected from tribes possibly abusing their rights to self-government because it is the dominant government. Chief Justice John Marshall described the nature of the relationship when he characterized Indian tribes as domestic dependent nations in the famous Cherokee cases of the 1830's. The greater danger is that the federal government does not abuse its power over the administration of Indian affairs.

The Cherokee Nation is comfortable with self-governance now; however, the process of changing from the contractor role to administrator of tribal programs with federal funds needs time to adequately age just as the American system has had 200 years of aging. The federal government's policy of supporting self-determination beyond the simple rhetoric has finally occurred in a meaningful way. Furthermore, this new way of self-governance demonstrates the maturation of a relationship which supports the aim of public policy.

**"What have been the most difficult tasks at the local level in implementing the Project?"**

**Response:** Changing attitudes about responsibilities and both parties understanding the standards of accountability for both the tribal and federal governments. From a tribal perspective, accepting greater responsibility as tribal program administrators and getting the Bureau of Indian Affairs to let go. It is natural this process will take time.

**"Do you believe a planning phase is a necessary prerequisite to entering the Compact Phase of the Project? Please detail."**

**Response:** No, my response is the same as in my original testimony.

**"Is geographic diversity to tribes necessary to achieve Project goals?"**

**Response:** No, I would guess the original authorization was intended to provide for ample testing of the concept. Some regions may be more inclined to use this new authority than others. I do not see what difference that would make. I would not recommend the number of demonstration projects be restricted by region.

**"To what extent does Title III address the issue of adequate funding for Indian programs?"**

**Response:** I do not believe it does. A permanent authorization to address unintended shortfalls and funds to accomplish transitions from federal to tribal programs needs to be addressed.



## Quinault Indian Nation

POST OFFICE BOX 189    ☐    TAHOLAH, WASHINGTON 98587    ☐    TELEPHONE (206) 276-8211

September 12, 1991

The Honorable John McCain  
Vice Chairman  
Senate Select Committee on  
Indian Affairs  
838 Hart Senate Office Building  
Washington, DC 20510  
Attn: Dan Lewis, Minority Staff Director

Dear Senator McCain:

I have enclosed the Quinault Indian Nation responses to your questions as follow-up to the July 18th Senate Select Committee on Indian Affairs hearing on S.1287, the "Self-Governance Demonstration Project Act." Hopefully, our responses will assist in the development of effective reauthorization legislation.

We certainly appreciate your continued support for this historic Self-Governance Demonstration Project. If we can be of further assistance, please call on us.

Sincerely,

A handwritten signature in cursive script that reads "Joe DeLaCruz".

Joseph B. DeLaCruz  
President

Enclosure

JBD:jj  
MCCAINLT.304

**PRESIDENT JOE DeLaCRUZ, QUINAULT INDIAN NATION  
RESPONSE TO SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
ON S.1287, THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT**

**Question:** *What has been the response of other tribes to Self-Governance, as gathered through the Tribal Self-Governance Education Project?*

**Answer:** There has been a tremendous amount of interest by other Tribes in the Tribal Self-Governance Demonstration Project. Outside of the Tribal Self-Governance Education Project, there is very little information available about the Project. Much of the education effort of the four Tribes, (Hoopa, Lummi, Jamestown Klallam, and Quinault) has been directed at the purpose of the Self-Governance Demonstration Project, the legislative history, and our experiences through planning, negotiations, and now, implementation from our perspectives as participating Tribes. Although most of communications and inquiries from other Tribes has been positive, there is still a considerable amount of misinformation and misunderstanding about the nature and intent of Tribal Self-Governance.

The three rumors we continue to face as we travel around the country are: (1) Self-Governance is termination; (2) Self-Governance replaces the Treaty; and, (3) Self-Governance hurts other Tribes. The Education Project provides a forum for us to respond directly to these rumors.

In general, the response by other Tribes has led us to the conclusion that Self-Governance may not be desirable for all Tribes. Some Tribes would like to participate in the Self-Governance Project, some Tribes have a "wait and see" attitude, some Tribes are comfortable with the "638 Contract" process, and some Tribes desire the BIA provision of programs and services on their Reservations.

**Question:** *Your testimony indicates a long-term vision of where Self-Governance will lead, please discuss that view, indicating whether it is at all similar to the New Federalism concept as proposed by the former Investigations Subcommittee to this Committee.*

**Answer:** As I stated in my Testimony on S.1287, I believe the Tribal Self-Governance Demonstration Project is an "evolving process" which should be allowed to develop at a pace and direction as determined by Tribal Councils. Although we are all eager to find solutions to the problems faced by Indian Country, the Self-Governance Project needs to remain experimental and exploratory until we have the time and experiences to evaluate both progress and problems. Hopefully, through analysis of the baseline measures reports and independent assessments, a clear direction will emerge for Congressional policy considerations

Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
S.1287

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The expansion of the Tribal Self-Governance Project to include other Federal Agencies needs to be logically and carefully explored. After addressing BIA excluded programs, the Indian Health Service (IHS) seems to be the appropriate first step in expanding to other Federal Agencies. After IHS, the Department of Health and Human Service's Administration for Native Americans and other Department of the Interior Agencies make sense.

Including other Federal Agencies will require extensive planning and preparation as we have discovered by our experiences with the BIA. Clear unambiguous legislative direction will be required to force Federal Agencies to transfer their resources to the Tribes. I am also concerned about the relationships and jurisdictions between the various Congressional Committees, particularly the Sub-Committees on Appropriations when we begin to focus on the other Federal Agencies which provide services to Indian people.

The Quinault vision of the Self-Governance Demonstration Project and "New Federalism" share common themes, particularly in providing greater authority and empowerment to Tribes. However, I see the process as gradual and incremental, not immediate and radical. Tribes must be able to control their own progress as other Federal Agencies are included in the Project. If 'government-to-government relations' are truly to be restored, the Self-Governance Project and New Federalism must allow for each Tribe to progress and shape their efforts as determined by the Tribe. This is, afterall, the premise of self-determination and self-governance.

**Question:** *Can the Self-Governance be effectively utilized by small tribes, or is it only for large tribes, or tribes with significant resources bases?*

**Answer:** The ability of a Tribe to effectively utilize the concepts embodied in the Tribal Self-Governance Demonstration Project does not seem to be determined by size of the Tribe or the amount of resources available to the Tribe. Size does not seem to be a critical factor. In our travels, it appears smaller Tribes may have an advantage in community involvement and the on Reservation political process associated with participation in the Tribal Self-Governance Project. The resource base can significantly influence the financial structure of a Tribe and the economic well being of the Tribe and Tribal members, but it does not seem to be critical as to whether a Tribe can benefit from the Self-Governance Demonstration Project. The most important factor is stability of the Tribal government. Stability in leadership, administration, and programs are keys to successful planning and implementation efforts.

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Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
S.1287

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**Question:** Do you see the Self-Governance Demonstration Project as eventually involving all Federal Indian programs? How long will this take? When will we be able to address the issues of permanent legislation?

**Answer:** Eventually, I would like to think Tribes with the desire to do so, could involve most, if not all of the Federal Indian programs provided the Trust relationship between the United States and Indian Tribes is protected. I would hope that the expansion and evolution of the Demonstration Project could occur over the next decade. All participating Tribes need to learn from their own experiences, successes and failures. At Quinault, where we have been involved in the Project since 1987, I look at our efforts with just the BIA and realize that after nearly four years we are still working out the details of our new relationship and developing the process and procedures for determining Quinault's share of the BIA resources, for effective transfer of responsibilities, and defining the new partnership. When and if the Project expands to IHS or other Federal Agencies, it is virtually unknown as to how long will it take to determine and define these additional relationships. We would expect to find varying levels of opposition within most Federal Agencies. However, IHS may perhaps be the biggest challenge we would face. After the BIA and IHS as the primary Indian Affairs Agencies, we envision other Agencies will be easier to incorporate into the established process. Federal Agency protectionism and resistance to change will be primary obstacles.

While some may think the Self-Governance Demonstration Project can be implemented simply by a Tribe making the decision to do so, it is my opinion that it is a much more complex process, particularly for those Tribes which initially cross the threshold with each Federal Agency. The initial Tribes crossing the thresholds must address the barriers and obstacles presented by each Agency including, but not limited to, divisibility and determination of a Tribe's share of resources from the Agency. The first Tribes must overcome the Agency obstacles and create the process.

For permanent legislation embodying the concepts of Self-Governance, with perhaps some movement towards elements of New Federalism, i.e. involving some but not all Federal Agencies, I would hope we could start giving it serious consideration by 1994 or 1995, as Title III reauthorization approaches expiration. We must remember the Tribal Self-Governance Project is still an experiment and we should not allow our excitement and enthusiasm for the Project to allow premature conclusions about what we are doing. Tribes should have the time to implement and evaluate their experiences in the Self-Governance Demonstration Project. As I travel around Indian Country there is still suspicion about what we are doing and still deep rooted fears of termination. I also

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Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
S.1287

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believe that while we may evolve towards something like New Federalism, that some other title must be developed because New Federalism carries certain negative connotations which have not been well received in Indian Country. And, any permanent legislation must also address the interests of those Tribes not desiring to change their relationship with the Federal government.

**Question:** *How far along into actual demonstration and experimentation do you think we are? Why do we need extra year in the Demonstration Project?*

**Answer:** We, the first Tribes with signed Compacts, have yet to complete our first year of implementation. It will take us another three to six months just to internally evaluate our first year and complete our Semi-Annual Report and another three to six months for someone to assess and evaluate the Project for all the participating Tribes.

This first year of implementation under the Compact has been one of transition, for us internally, for the BIA, and for the Office of Self-Governance. It is my hope that during our second year we will be able to adapt to our new roles and relationships. By our third year, we hope to reach operational efficiencies and effectiveness, creatively using opportunities afforded by Title III, P.L. 100-472. This year, for example, we have simply not had the opportunity to examine the Federal Regulations and develop replacement Tribal Regulations which fit our needs. The transition to Self-Governance, or even what might be called "growing pains," has affected all levels of our Tribal Government, from our Council to our Programs. The transition phase is a part of the process which I think all Tribes entering into Self-Governance will face. This acceptance of change requires time and resources which have reduced our capacity to utilize the full potential of Self-Governance.

We determined the need to extend the duration of the Demonstration Project the Baseline Measures development process. With a sunset clause in 1993, we would have only three years of experience from which to shape permanent legislation, allowing only our first two years of implementation for evaluation. At that point, we would either have to revert to P.L. 93-638 contracts or have permanent legislation in place. For many reasons, some of which have been stated in responses to other questions, I believe the Project and experiences are too premature to shape permanent legislation. We do not want to limit ourselves by moving too quickly or get caught up in our own enthusiasm. We would prefer to be cautious because we know any significant failures or problems could set us back decades no matter how extensive our accomplishments may be.

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Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
S.1287

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Also, with the transition issues we have confronted during our first year, we know that it will not be a representative year for evaluation of our experiences. This really means that only one year of experiences would have great implications for the future of Tribal Self-Governance. This is why we advocate for extending the Project for three more years, so we as well as Congress will have a better basis for shaping future Federal Indian policy.

As Tribes, we want the respect as responsible governments. We want the time and opportunity to learn from our own mistakes and experiences. We believe important information, including BIA opposition, will be forthcoming that will provide meaningful direction for future permanent legislation.

**Question:** *What have been the most difficult tasks at the local level in implementing the Project?*

**Answer:** As the President of the Quinault Nation, the most difficult task for my Council, has been taking on the expanded budgeting responsibilities. The Council must now establish annual appropriations, and as this Committee knows, there are always more needs than resources. We have accepted this challenge and responsibility, and I am quite proud of my Council. The allocation of resources is a political process, and we have had the opportunity to experience interest groups, coalitions, and lobbying efforts as we went through our budgeting process. While it has been one of the most difficult tasks, it has also been the most fascinating and rewarding.

Another difficulty we have had to deal with is changing peoples attitudes. Self-Governance has meant a new way of doing business for our program people and a new relationship with the BIA. As I stated in my testimony to this Committee, the BIA has no monopoly on bureaucracy. Our Tribal staff can also be entrenched and ingrained bureaucrats. As a Tribal leader, it can be frustrating, but I also recognize this is a problem which any organization undergoing significant change must face. The BIA attitude and opposition to the Demonstration Project among the Area and Agency staff also continues to pose problems.

Overcoming the fear of change and uncertainty, is also a difficult task. This confronts all of us, my Council, Tribal program staff, Tribal members, and even the BIA. Even though we understand the fear of change, within our own Tribe, by other Tribes, and by the BIA, it is in all our interest to accept the challenges of change.

Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
S.1287

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**Question:** Do you believe a planning phase is a necessary prerequisite to entering the Compact phase of the Project? Please detail.

**Answer:** Yes, I believe planning should be a prerequisite to entering the implementation phase of the Tribal Self-Governance Demonstration Project. In general, I believe planning is an integral component of good government. The need for planning in the Demonstration Project is not necessarily a product, it is the process which is of value. It allows the time and opportunity to ask the difficult questions about the Project, what the Tribe wants to achieve with the Project, how it can be achieved, what resources will be needed to get the job done, and the means for the Tribe to provide better services and programs than the BIA.

The planning process also allows the Tribe time to prepare and to examine legal, organizational, and programmatic conditions, internally and externally. Perhaps most importantly, the planning phase promotes involvement in the Self-Governance Project from Tribal Council, Tribal members, and Tribal staff.

**Question:** *Is geographic diversity to tribes necessary to achieve Project goals?*

**Answer:** Geographic diversity is not necessary to achieve Project goals. However, geographic diversity is desirable from my perspective. For example, under the existing limit of twenty tribes allowed to implement Self-Governance, seven may be from the Portland Area Office and five may be from either the Olympic Peninsula Agency or the Puget Sound Agency. As the number of Tribes are concentrated in a particular location, the potential for real or imagined adverse impacts to non-participating Tribes increases and the potential for accusations of regional favoritism also increases.

Geographic diversity has benefits. Geographic diversity will expose the Self-Governance Project to more BIA employees and provide them with a sense of the direction of future Federal Indian policy. It also provides more local and concrete exposure of Self-Governance Tribes to non-participating Tribes throughout Indian Country. And, geographic diversity will require participation by a broad spectrum of Tribes with varying cultures and resources further enriching the Self-Governance information base.

**Question:** *To what extent does Title III address the issue of adequate funding for Indian Programs?*

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Joe DeLaCruz  
President, Quinault Indian Nation

Response to  
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**Answer:** Title III does not address the issue of adequate funding for Indian Programs. The issue of adequate funding for Indian programs rests with Congress and the Congressional Appropriations process. This is not to suggest the Administration and Indian Tribes do not share in the responsibility for raising and shaping the issue of adequate funding. Through the negotiations and resource allocation process, we have revealed the critical lack of adequate funding at the BIA Area, Agency, and Reservation levels.

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**LUMMI INDIAN BUSINESS COUNCIL**

2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (206) 734-8180

DEPARTMENT. \_\_\_\_\_

EXT. \_\_\_\_\_

September 12, 1991

The Honorable John McCain  
 Vice Chairman  
 Senate Select Committee on  
 Indian Affairs  
 838 Hart Senate Office Building  
 Washington, DC 20510-6540

Dear Senate McCain:

Enclosed is the Lummi Indian Nation's response to your request of July 25, 1991 with regards to the follow-up questions to the July 18 hearing before the Committee on S.1287.

Thank you for your support of the Self-Governance Demonstration Project. We hope that these responses will assist you in your considerations of the future implications of the Project. If you have any questions or need any further clarifications, please do not hesitate to give me a call.

Sincerely,

Henry Cagey, Chairman  
 Lummi Indian Business Council

Enclosure

HC:jj

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LAVERNE OREIRO  
 Vice Chairman  
 JAMES HILLARE  
 Councilman

JUANITA JEFFERSON  
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 Councilman  
 JOE OREIRO  
 Councilman

# LUMMI INDIAN NATION

## Responses to the Senate Select Committee on Indian Affairs questions on the Self-Governance Demonstration Project

S. 1287

**Q.** *What has been the response of other tribes to Self-Governance, as gathered through the Tribal Self-Governance Education Project?*

**A.** There have been six conferences, workshops, and/or presentations to a wide variety of audiences since January 1991, with over 300 participants representing 68 different Tribes, federal agencies and other various governmental agencies, hosted by the Lummi, Quinault, Jamestown-Klallam and Hoopa Tribes. The following is a summary of the entrance and exit surveys completed by participants at these various presentations as well as the minutes and notes of the Self-Governance Staff.

In general terms, audiences are supportive of the Project. However, most would like more information or assistance in putting together their planning component for the Project. Listed below are the concerns, questions, and issues of conference participants.

- How does a Tribe determine it's "fair share" of agency, area and central office funds, especially in the multi-tribe agency without negatively effecting other Tribes? What is the criteria, formula, and methodologies? (Answers to these type of questions requires the BIA to provide complete budget data to Tribes.)
- With regards to Trust responsibility how can Tribes be assured that this Project is not another termination tactic of the Federal Government? How can Tribes be assured that the trust responsibility is in no way shape or form, compromised? How does a Tribe define and implement a government-to-government relationship?
- What is the process to make an agreement with the United States? How does a Tribes get started? What are the legal issues? What

are the planning processes? How does a Tribe develop strong effective management systems? How does a Tribe determine what programs, services, activities and functions to accept responsibility for? How does a Tribe determine if it has the ability and governmental stability to properly manage a self-governance project?

- What are the negotiation issues? What is the BIA attitude? There is concern that the BIA will be reluctant to change their paternalistic attitudes.
- How do Tribes implement the Project? What are the internal budget processes used by the Tribes? What changes have Tribes had to make in their organizational structures? What about the cost of implementing changes? How are they covered? (i.e. Personnel, training, equipment, space, etc.) What are the Baseline Measurements? How are they going to be used?
- What is the future of Self-Governance? How has the BIA responded? How has Congress reacted? How does the Project relate and differ from the 638 contracting process? Will Congress look beyond the dollars appropriated (SGDP) and see the improvements or will they see it as too expensive and find the SGDP short lived and costs too high? What happens after the five year period expires (Title III)? What keeps this momentum going? Where do the small Tribes fit? Is there a future for the small Tribes in the SGDP? Can SGDP really make a change? Is it worth the effort?
- How do you educate and communicate the Project? To the tribal community? To tribal employees? To the BIA? To other federal agencies? To other governments at the local, county, and state levels?
- Tribes want an active and effective clearinghouse to access the information! They would like to see more regional and local meetings, more subject specific workshops on the different phases of the Project.

## GENERAL COMMENTS

Many Tribes see it as important to address the negative aspects of the Project so that we are not looking through rose-colored glasses. Tribes are also looking at the first tier Tribes to set successful examples for them to follow. (NOTE: Attached are the handouts that have been developed by the four tribes that respond to these questions.)

*Q. Your testimony indicates a long-term vision of where Self-Governance will lead, please discuss that view, indicating whether it is at all similar to the New Federalism concept as proposed by the former Investigations Subcommittee to this Committee?*

*A.* This is an excerpt from the Joint Tribal testimony of Lummi, Jamestown, Hoopa, and Quinault on July 18 before the Committee.

"After Self-Governance Compacts have been implemented we suggest that other Indian Programs in the Federal Departments be directed to enter shorter planning stages. These would include other programs in the Department of Health and Human Services, such as Administration for Native Americans, Administration on Aging and Head Start, the Departments of Housing and Urban Development, Commerce, and Labor. Future consideration should be given the EPA, Department of Agriculture, Department of Energy, Department of Transportation and others.

Our Tribal vision is that Self-Governance should proceed in stages with extensive planning. We urge that the Self-Governance Demonstration Project advance with a manageable number of Tribal governments...Significant tribal efforts and coordination will be necessary in the next two years to establish support and educational mechanisms at both the Tribal and Federal level as well as to expand to new programs in our Annual Funding Agreements. We need to build a sound structural foundation to support Self-Governance at the Tribal and Federal levels. We have the baseline measures in place to document what works, what does not work and why, to guide future Congressional policy considerations. These baseline measures will have to be reviewed and analyzed to determine if they are sufficient and effective in measuring the success of the Project.

A flood gate increase of Tribes into the Self-Governance Demonstration Project would require a major restructure and reorganization of the BIA which would remove an understood process and foundation with a structure still in the formative stage. This would create unnecessary confusion in Indian Country and instability in the BIA. The result could be chaos, not progress. The BIA needs

to change, and the results of a "controlled" demonstration will provide the guidepost for the change.

We believe a clear understanding of the Self-Governance Demonstration Project's strengths and weaknesses should be realized with major problems resolved administratively or legislatively before significant expansion occurs. A detailed plan should be established for a permanent Self-Governance relationship between the tribes and the Interior Department. Other Tribes should have the opportunity to determine with full knowledge of our experiences, whether they desire to enter a Self-Governance Compact relationship or continue their Self-Determination contract relationship. Based on these collective Tribal preferences, we should then understand what a reorganized BIA should look like, the BIA would be reorganized according to Tribal determined needs.

The Self-Governance Demonstration Project should expand step-by-step by Federal program, Agency and Department. For the reauthorization and extension of Title III, we recommend the Congress:

1. include all BIA programs previously excluded in Title III;
2. include BIA programs where eligibility is at all open to question, for example construction and competitive grant programs;
3. direct the Indian Health Service to initiate a two year planning phase in preparation for future inclusion under Title III with the establishment of an Office of Self-Governance in the Office of the Secretary of HHS; and
4. recognize the operations and functions of the Office of Self-Governance in the Office of the Secretary of the Interior.

In summary, the Self-Governance Demonstration Project is a controlled experiment of New Federalism. We firmly believe Tribes should proceed carefully and assume new programs and federal Agencies at their own unique pace. This is the spirit and intent of Self-Determination. The New Federalism concept does not allow for Tribal choices and imposes programs. The key to a successful New Federalism is a gradual, step-by-step process of planning and deliberate choices by Tribal Councils to assume Federal responsibilities.

***Q. Can Self-Governance be effectively utilized by small tribes, or is it only for large tribes, or tribes with significant resource bases?***

- A. It actually appears to be easier for small Tribes to institute change, therefore implementation and change is not as difficult as comparison to a larger Tribe. However, it is not the size of the Tribe that is most relevant, what seems to be relevant is whether or not the tribal governmental structure is stable enough to implement the necessary changes? (Please refer to the Jamestown Tribally specific testimony of July 18, 1991.)

***Q. Do you see the Self-Governance Demonstration Project as eventually involving all Federal Indian programs?***

- A. Yes! As noted earlier, Tribes should be allowed to proceed in incremental stages to assume federal responsibilities.

***Q. How long will this take?***

- A. This is an unknown due to the variable factors of Tribal preparedness and Federal Agency willingness. We would envision the BIA and IHS to be restructured due to Self-Governance by the year 2000. As these are the most comprehensive Indian Affairs Agencies, other federal programs should be more easily transferred.

***Q. When will we be able to address the issues of permanent legislation?***

- A. Permanent legislation should be considered by Congress in 1994-95 during the last two years of the Self-Governance Demonstration Project reauthorization.

We must emphasize the importance of the Tribal planning phase and clear congressional direction to federal Agencies to willingly participate in any future legislation. Tribes need the ability to plan toward accessing and changing the bureaucracy. Presently, the bureaucracy's reluctance to change needs to be taken into consideration. The central issue is, "how do you methodically reduce a federal agency's resources and transfer these responsibilities to tribal control?"

Any permanent legislation must accommodate the interests and needs of four basic types of tribal government relationships with the federal bureaucracy, namely:

- |         |  |
|---------|--|
| Type I  | Non-Contracting Tribes;  |
| Type II | Contracting Tribes who are able to demonstrate Tribal fiscal accountability; |

Type III Self-Governance Demonstration Project Tribes;

Type IV Tribes interested in the New Federalism.

Permanent legislation must carefully consider the needs of all types of Tribal governments to ensure fairness and to avoid inter-Tribal conflicts generated by the affected bureaucracies. The Self-Governance Baseline Measures data should assist Congress or its policy considerations for permanent legislation in identifying Project benefits and problems. We requested in appropriations testimony an independent assessment of the Project to assist Congress. Unfortunately the request was not supported.

The Lummi Nation envisions a new way of doing business; a new relationship with the United States. Federal Agency resistance and obstacles should not be underestimated. Everything from funding mechanisms to rules/regulations changes will need to be clearly enunciated by Congress. Otherwise, the bureaucracy will simply stall and hedge to protect itself.

***Q. How far along into actual demonstration and experimentation do you think we are? Why do we need the extra years in the demonstration project?***

***A.*** The first tier Tribes have not yet completed a full year funding cycle of the implementation phase. We don't know where we could be if we hadn't been forced to fight the bureaucracy for the last two and one-half years. It is going to take time to develop good permanent legislation based upon the experiences of the first and second tier tribes. The BIA just this year is beginning to take Self-Governance seriously. The BIA attempts to cripple the Project and protect the bureaucracy in the next two years should provide critical information for future legislation as well. Self-governance is being endured, not embraced, by the BIA. The experiences of implementation by the Tribes and the BIA in the next two years will provide invaluable insights to Congress in shaping successful implementation.

***Q. What have been the most difficult tasks at the local level in implementing the Project?***



A. The Lummi Nation has been struggling with the reality of the enormity of tasks that need to be accomplished in order to effectively and efficiently implement the Project. The Lummi internal planning phase included the following components:

- Constitution Revision
- Comprehensive Needs Assessment of:
  - \* Community
  - \* Organizational infrastructure
  - \* Government
- Internal Reorganization
- Legal Research
- Budgetary data research
- Treaty Review
- Communications and Public Relations
- Negotiation preparations
- Rules/Regulations review, waiver and the development of Tribal administrative guidance documents.

Many of these components require on-going planning, a transition and implementation phase. Several problems have been identified that have inhibited the implementation:

- Lummi Nation was required to enter into the implementation phase of the Project three months earlier than planned;
- The Tribal fiscal year does not coincide with the federal fiscal year and Tribal election years.

*Q. Do you believe a planning phase is a necessary prerequisite to entering the Compact Phase of the Project?*

A. Yes! Most definitely!

*Q. Please Detail.*

A. Comprehensive planning is needed to develop internal structures, to ensure that there is an adequate appropriations process, evaluation process, Law and Order Codes and Ordinances. Regulations may need to be changed to operate programs differently. There needs to be a clear understanding of specific program rules and regulations before assuming responsibility for the program at the tribal level.

Tribal specific replacement rules and regulations will need to be prepared. A needs assessment should be conducted at multiple levels to ensure a clear understanding of tribal needs and priorities. The Tribal Council and membership need to clearly understand the Self-Governance purpose and plans prior to implementation thus, an adequately funded planning phase is necessary.

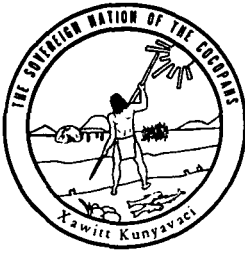
**Q. *Is geographic diversity to tribes necessary to achieve Project goals?***

**A.** Geographic diversity is needed to provide a fair opportunity for all Tribes to participate in the Project, if they choose. Geographic diversity ensures that a single BIA Area is not adversely affected creating inter-Tribal controversy. And, geographic diversity will generate information from a broader spectrum of Tribal government and BIA management structures.

**Q. *To what extent does Title III address the issue of adequate funding for Indian programs?***

**A.** Title III does not address adequate funding of Indian programs. The Baseline Measurements may identify program shortfalls. For example, in the 1991 negotiations, Lummi has eleven miles of roads but, the Bureau through the negotiation process only identified \$26.00 (twenty-six dollars) as Lummi's fair share of roads monies from the BIA. The question is, how is the BIA dealing with this within their budget process? How can \$26.00 be adequate to maintain and service eleven miles of roads over any period of time?

Title III is exposing the serious under-funding of the BIA in the negotiation and resource allocation process. It is quite clear that in the BIA transition from a service-provider to self-determination contractor, adequate financial resources to address needs and fulfill responsibilities was not a priority consideration.



## THE COCOPAH INDIAN TRIBE

COCOPAH TRIBAL OFFICE

Bln G

Somerton, Arizona 85350

Telephone 627-2102 or 627-2061

8-7-91

Honorable John McCain  
United States Senate  
Select Committee on Indian Affairs  
Washington, D.C.

Dear Senator:

Although we would like to be a self governance tribe, we must await passage of the ammendment and selection as a participant. We would like to , however, respond to the questions you sent on the attached sheet.

1. We attended the educational meeting in Phoenix and we felt that some of the tribes were hearing about the real process of moving into self governance for the First time. They seemed most interested as a whole and some tribes, like ours, are most anxious to move foward with this new opportunity.

2. The new federalism makes sense if it is applied directly on a government to government basis. By this I mean that tribes should not be expected to deal through the states competively but should negotiate directly with federal government. Most tribes are able to deal directly with their needs and , given the opportunity to do so, they will get better each day. Elected officials, regardless of the type of government involved, must be given the latitude to decide their own destiny. We all need help once in a while with difficult issues but parental attention by agency staff is both demeaning and detrimental to self governance approaches. The size of the tribe and its resources may be a factor but given the resources directly, instead of the current agency dole system , will increase the resources so that any tribe should be able to go foward. They may make some errors but better they make their own errors and learn from them then to live with the errors of others that tend to reflect on them.

It will take some time and some demonstrated success stories to allow the involvement of all federal programs but as costs of government increase and the "end of the pipe" funds keep going down, new answers, like this project, will be easier to accomplish.

3. The number and location of tribes and the varied economies of those tribes will insure the success of this program, in my opinion. That will take some more time to allow those who are new to the program the same opportunity to demonstrate their ability to succeed.

4. Unable to answer but those involved with the program indicate the lack of cooperation from BIA agency and area level is the biggest problem.

5. Based on the answer to 4., it appears that you need time to ferret out all of the possible compact areas from BIA. Some time could be saved by having the principals from previous participants assist the new tribes but I am sure they are busy with their own projects.

6. As answered in 3. it seems to me that you need information about tribes across the country to make a good decision. Since we have farming, commercial enterprises, gaming and now a commercial landfill we think we would be a good candidate. We also think that Arizona tribes should be included due to the large numbers of Indians and the diversity of their resources.

7. Only additional research by the current and future grantees will provide the information on the real extent of Title 111 assistance.

I again thank you for the opportunity to give my views.

Sincerely,

Dale Phillips-Chairman  
Cocopah Indian Tribe



SELF-GOVERNANCE DEMONSTRATION TRIBES

1. What has been the response of other tribes to Self-Governance, as gathered through the Tribal Self-Governance Education Project?

2. Your testimony indicates a long-term vision of where Self-Governance will lead, please discuss that view, indicating whether it is at all similar to the New Federalism concept as proposed by the former Investigations Subcommittee to this Committee.

Can Self-Governance be effectively utilized by small tribes, or is it only for large tribes, or tribes with significant resources bases?

Do you see the Self-Governance Demonstration Project as eventually involving all Federal Indian programs?

- How long will this take?
- When will we be able to address the issues of permanent legislation?

3. How far along into actual demonstration and experimentation do you think we are? Why do we need the extra years in the demonstration project?

4. What have been the most difficult tasks at the local level in implementing the Project?

5. Do you believe a planning phase is a necessary prerequisite to entering the Compact Phase of the Project? Please detail.

6. Is geographic diversity to tribes necessary to achieve Project goals?

7. To what extent does Title III address the issue of adequate funding for Indian programs?



MILLE LACS BAND OF CHIPPEWA INDIANS

*Executive Branch of Tribal Government*

August 30, 1991

Senator John McCain  
United States Senate  
Select Committee on Indian Affairs  
Senate Hart Building 838  
Washington, DC 20510

Dear Senator McCain:

Enclosed is the Mille Lacs Band of Chippewa Indians' response to the follow-up questions to the July 18, 1991 hearing on S. 1287, the Tribal Self-Governance Demonstration Project.

If you have any questions, please contact me or my staff, Melanie Benjamin at (612) 532-4181.

Sincerely,

A handwritten signature in cursive script that reads "Marge Anderson".

Marge Anderson  
Chief Executive

MA:mb

Enclosure

## SELF-GOVERNANCE DEMONSTRATION QUESTIONS

1. The Mille Lacs Band of Chippewa has been involved with the Tribal Self-Governance Education Project formally. Since the inception of this project, the Mille Lacs Band has encouraged other tribes to participate in this historic project. The tribes within the state of Minnesota have first been skeptical regarding the Self-Governance Demonstration Project but as they understand the Project, they feel that it is something they may want to participate in.
2. The Mille Lacs Band of Chippewa desires to strengthening its government-to-government relations with both the federal and state governments. This project allows tribal governments an equitable share of the dollars appropriated by Congress for Indian Affairs. This view is similar to the New Federalism Federalism concept as proposed by the former Investigations Subcommittee.
3. The Mille Lacs Band of Chippewa is a relatively small tribe with a very small resource base. The Band was one of the first tribes to sign a Compact with the federal government. The Self-Governance Demonstration Project is an excellent tool for any tribe to exercise its self-governance authority. The size and resource base should not be a factor when determining if a small tribe desires to participate in this project.
4. If a tribe can successfully demonstrate its ability to administer federal funds without participating in the different levels of the BIA bureaucracy, then tribes should use the concept of self-governance for other federal Indian programs.

Today is the time to start addressing the issue of permanent legislation. Permanent legislation is needed for tribes to continue self-governance.

5. The Self-Governance Demonstration Project is in the first stage of the historical project. Because Tribes are now implementing this project, there has not been enough demonstration time completed for identifying actual results. Additional implementation time is needed for the second and third tier of Tribes who now have the opportunity to participate in this project.
6. The most difficult tasks for the Mille Lacs Band has been securing participation and commitment from the different levels of the Bureau of Indian Affairs.
7. Planning is a necessary prerequisite for any venture. Management of any program is structured around planning and should be used as a guiding system of the tribe. A tribe growth and continued ability to grow and succeed can only

Self Governance Demonstration Project Questions  
August 30, 1991  
Page Two

succeed by a planning system.

8. Geographic diversity is not necessary to achieve project goals but is useful in that a comparison is established to show how other tribes with varying resources located are able to implement the project.
9. Based on the bureaucracy of the BIA, adequate funding is not available for Tribes to administer the programs effectively.





