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TRIBAL SELF-GOVERNANCE

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Wednesday, October 8, 2003

Serial No. 108-66

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OVERSIGHT HEARING ON “TRIBAL SELF- GOVERNANCE”

**Wednesday, October 8, 2003
U.S. House of Representatives
Committee on Resources
Washington, DC**

The Committee met, pursuant to notice, at 10:07 a.m., in Room 1324, Longworth House Office Building, Hon. Richard Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Hayworth, Osborne, Rehberg, Renzi, Pearce, Bishop, Kildee, Pallone, Christensen, Inslee, Tom Udall, Rodriguez, Baca and McCollum.

The CHAIRMAN. The Committee on Resources will come to order.

The Committee is meeting today to hear testimony on the issue of tribal self-governance. Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

STATEMENT OF HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. President Nixon heralded the beginning of a new era in which Indian self-determination without termination would be the guiding Indian policy of the Federal Government. This policy was embodied in the “Indian Self-Determination and Education Assistance Act,” which is also known as Public Law 93-638. Under this Act, tribes can opt to carry out by contract the services and programs the Federal Government provides to Native Americans.

While a good start, a number of tribes observed problems in implementing the Act, such as cumbersome Federal regulations that prevented tribes from tailoring services and programs to suit the special needs of their members. Moreover, a 1987 investigative series published in the Arizona Republic revealed gross waste, fraud and mismanagement in the Bureau of Indian Affairs.

These factors gave rise to a series of actions and laws establishing tribal self-governance. Under self-governance arrangements, tribes effectively step into the shoes of the Federal Government and carry out the various Federal programs, services and functions in a manner that best works for tribes and their members. It enables participating tribes to serve their members according to their

unique political, social, economic and cultural circumstances, with maximum efficiency and effectiveness.

Tribes are the governments for their Indian members. Self-governance thus represents what I believe is a Republican philosophical precept, holding that local government best represents and serves the people.

The purpose of today's hearing is to hear from several tribes that have been involved in self-governance since it was formalized in the late 1980s. The Committee is interested in a status check on the self-governance experiment.

How successful has it been in serving their members and managing their assets? Are there problems, and how can Congress address them on a government-to-government basis with the tribes? What does the future hold for self-governance?

This is a fairly open-ended hearing, and I think our witnesses are eager to tell the story of their experiences.

[The prepared statement of Chairman Pombo follows:]

**Statement of The Honorable Richard W. Pombo, Chairman,
Committee on Resources**

President Nixon heralded the beginning of a new era in which Indian self-determination without termination would be the guiding Indian policy of the Federal Government. This policy was embodied in the "Indian Self-Determination and Education Assistance Act," which is also known by its Public Law 93-638. Under this Act, tribes can opt to carry out by contract the services and programs the Federal Government provides to Native Americans.

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These factors gave rise to a series of actions and laws establishing Tribal Self-Governance. Under Self-Governance arrangements, tribes effectively step into the shoes of the Federal Government and carry out the various Federal programs, services and functions in a manner that best works for the tribes and their members.

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This is a fairly open-ended hearing, and I think our witnesses are eager to tell the story of their experiences.

The CHAIRMAN. I would now like to recognize Mr. Kildee for an opening statement.

**STATEMENT OF HON. DALE KILDEE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN**

Mr. KILDEE. Thank you, Mr. Chairman.

First I would like to submit a statement on behalf of the Ranking Democrat, Mr. Rahall.

The CHAIRMAN. Without objection.

Mr. KILDEE. Second, I will be very brief.

I never leave home without two things. As a matter of fact, I was at the French Embassy one night and one of my Indian friends asked me—I always carry this Constitution, which does not grant you your sovereignty but recognizes your sovereignty, that the Congress shall have the power to regulate commerce with foreign nations and among the several States and with the Indian tribes. These are the three sovereignties recognized by the Constitution.

I also carry John Marshall's very famous decision, *Wooster versus Georgia*, in which he says the Indian Nations have always been considered as distinct, independent, political communities, retaining their original, natural rights as the undisputed possessors of the soil from time immemorial. The very term "Nations," as it would generally apply to them, means people distinct from others. He goes on to say we applied the words "treaty" and "nation" to Indians as we have applied them to the other nations of the Earth. They are applied to all in the same sense.

Those are very important documents to show that the Indian tribes in this country have a retained sovereignty, a sovereignty that existed long before the European settlers came here. Congress' job in that government-to-government relationship is to protect and help you use all the accoutrements of sovereignty.

I thank you for being here today, and I yield back, Mr. Chairman.

[The prepared statement of Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall II, Ranking Democrat,
Committee on Resources**

Mr. Chairman. Self-governance is about empowerment—choice—respecting sovereignty—and a true government-to-government relationship. At its most basic, self-governance is about power and control over one's homeland—something to which all humankind aspires.

The Indian Self-Determination and Education Assistance Act was first enacted just before I came to Congress, so I have had a bird's eye view of its implementation and have been actively involved in its evolution. My basic observation of the history of the Act is that each step of the way we have been faced with nervous Federal employees and patient Indian tribes.

In the early days Indian tribes came forward to enter into what is known as "638 contracts," which provided them with the ability to administer Federal programs to their members. Though a very good concept, we quickly learned that the rules set up by the BIA were often over-restrictive, and the paperwork cumbersome.

It was not long before Indian country was proposed for a program to permit a tribe to enter into annual funding agreements which would include resources for the management of multiple programs and the flexibility to address priorities as they arose.

Congress has amended the original Act a number of times bringing us to the current self-governance authority that exists for Department of the Interior and Department of Health and Human Services programs.

To paraphrase the long-time former Chairman of this Committee, Mo Udall, who used to say about America in general, I say—Indian self-governance may not be perfect but we are not finished with it yet.

In TEA-21, I, along with the gentleman from Alaska Don Young, authored self-governance-type language introducing the concept of direct funding to Indian tribes through the Department of Transportation and was immediately hit with resistance from reluctant Federal bureaucrats fearful of dealing with Indian tribes on a government-to-government basis.

But what they do not understand is that we will not give up, as we have heard all the nervous "buts" before.

Everyone in this room has heard:

- But there are too many tribes to deal with;
- But the tribes will not know how to handle the money;
- But the tribes will not know how to manage the programs correctly;

- But our agency regulations are not set up to deal with individual Indian tribes; and, maybe my all-time favorite misconception
- But the Federal trust responsibility only lies with the BIA and IHS.

I reject these misconceptions and the success of the self-governance tribes proves them wrong every single day. I hear over and over again how Indian tribes who have taken over programs either through “638 contracts” or self-governance compacts are providing better services to their members with less money than was spent under Federal administration.

I believe the overall success of this program is due to the fact that it was initiated by Indian country and has been negotiated on a government-to-government basis throughout.

Certainly, we need to provide more funding for the compacts and, yes, we need to work on making regulations consistent. But as I just said, we are not finished yet.

To those who question the future of the Federal trust responsibility, Congress has made its intent clear that self-governance does not diminish this responsibility. Generations of treaties, laws, court cases and Executive Orders has framed the trust responsibility which the right to self-govern does not erase.

I look forward to our working together as we continue down this road of Indian self-governance. And to those tribes who choose not to participate in these programs, I will continue to work to ensure your choice leads to better quality of direct services provided by Federal agencies.

The CHAIRMAN. Thank you.

I would like to welcome our first panel: D. Fred Matt, Melanie Benjamin, Clifford Lyle Marshall, and Jacob Moore. To introduce our first witness, I would yield to Mr. Rehberg.

Mr. REHBERG. Thank you, Mr. Chairman, and thank you for having this hearing. I think it is important to draw attention to many of the things that are going so very positively with the Native Americans throughout America. This gives us an opportunity to showcase and highlight one of our tribes in Montana, one I am particularly proud of.

We hear a lot about Native Americans’ entrance into the gaming industry and that is essentially their commerce, their vision for their families’ future and their communities’ future. But we have a tribe in Montana that hasn’t made it through gaming but has one of the foremost technology companies in the Nation, in the world. In fact, they have parts in the tanks that are in Iraq and Afghanistan and other places. They develop it, they manufacture it, and they are a tremendous hiring opportunity for their tribe. As well as industries, they have S&K Technologies. They have a natural resource management second to none. I have a commitment from the leadership in the House to look at opportunities to look at pilot programs to allow them to go in and clean up dead and dying trees in the forest. They are the ones that can, in fact, do that.

So I am really proud to have Fred Matt here to talk a little bit about the things that are going on very positively with his tribe up in the State of Montana. I thank you for allowing me to point that out, to draw attention to him, and welcome, Fred.

The CHAIRMAN. You may begin.

STATEMENT OF D. FRED MATT, CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES; ACCOMPANIED BY ANNA WHITING SORRELL, COUNSEL

Mr. MATT. Thank you for that kind introduction.

I want to start off by saying I hope you will bear with me because I am going to read my statement. Those who helped me

prepare this know that I have a tendency to ramble, and when I ramble, I don't think you want to hear me ramble because, for one, your time is too valuable. So I want to make sure I stick to all the points and identify those things that we are doing right on our reservation.

So, with that, Chairman Pombo, Ranking Member Rahall, and honored members of the House Resources Committee, I am Fred Matt, the Chairman of the Salish and Kootenai Tribal Council. As Denny mentioned, I have traveled from the beautiful Flathead Reservation where we have just recovered from an unprecedented hot summer season and we are in the process of a drought right now.

While we did not experience any major fires on our reservation, our council was forced to take some drastic measures throughout the summer to protect our natural resources. We literally had fires all around us in Glacier Park and in the Bitterroot Valley. Let me tell you, it's really a welcoming season right now in the fall, to where our fire season is winding down.

I am honored to provide this testimony on tribal self-governance as our tribes are proud of our successes in managing the programs of the Federal Government. Our success began with the self-determination law when it was passed. After President Nixon proposed this policy, we were one of the first tribes in this country to exercise the opportunities provided in Public Law 93-638. Since 1975, when we began the management of the BIA Education Programs, we haven't looked back. Today, I am proud to report that the tribes I represent manage under self-determination more Federal programs than any other tribe in this Nation. We do so with excellent evaluations, clear financial audits, and with few, if any, complaints.

Just last week we began the 11th year of operating a full health care delivery system for the Indian Health Service for nearly 10,000 users. This includes dental services, pharmacy services, and public health nursing. We have developed contracts with doctors, specialists and hospitals throughout western Montana. With extremely limited funds, less dollars than are received by the Federal Prison System on a per capita basis, the services to the prisons, we have designed a system to meet our unique needs.

We manage the same range of programs provided at any BIA agency, except the programs that are under the direction of the Tribal Council. This includes all the educational programs, social service programs, law enforcement, tribal courts and, since 1989, we have operated a Safety of Dams program responsible for the rehabilitation of 17 dams located on our reservation.

We have been extremely successful. We have repaired dams quicker and cheaper than the Bureau of Reclamation. For example, one of the first dams was the Black Lake Dam, which was completed with a savings of \$1.3 million.

My personal favorite success story in self-determination contracting is the Mission Valley Power. We manage a power utility that provides electricity to nearly 22,00 Indian and non-Indian customers on our reservation. Today, I am proud to report that Mission Valley Power offers some of the lowest cost and most stable electric rates throughout the Northwest.

We have an independent utility board and active consumer council. Our conservation program has won several awards, and our safety record is outstanding. In addition, the Confederated Salish and Kootenai Tribes set a goal to create a number of employment opportunities for our tribal members as electrical linemen. This goal was accomplished with the graduation of ten tribal member linemen who are employed in this industry, and we have five apprentices currently.

In the area of trust reform in the Department of Interior, the Confederated Salish and Kootenai Tribes' efforts in trust reform began when we entered into the first self-determination contract, and it continues with self-governance in our self-governance compact. Early on, we recognized the need to improve trust services. We didn't wait for a judge to tell us what we needed to do, but recognized that we were the ones best suited to take on the task.

We got busy developing a model program. It includes the management of trust resources, such as land leasing, homesites, businesses, business leases, forest management, agriculture, and grazing permits. In addition to these services from the BIA agency, we have assumed the management of the IIM accounts from the Office of Special Trustee and we operate a land titles records office from the Northwest Regional Office in Portland.

Through the opportunity provided to the tribal self-governance that allows for redesign and reallocation of funds, we have developed a trust resource system with local control and where decisions are made by those impacted. In our tribally designated system, we manage the trust resources programs that generate revenue, the IIM accounts we receive and the revenue, and then we record the documents. It works and we're proud of it.

While we are proud of our programs, we recognize that the cornerstone to any tribal economic development is a strong tribal government. Tribal self-governance has done that for CSKT, as we know we have a number of highly successful tribal enterprises that Denny has alluded to. S&K Technologies is one of the five largest 8(a) Federal Indian contractors.

As I conclude, I want to tell this Committee of our next step in tribal self-governance. We are in the midst of negotiating an Annual Funding Agreement with the U.S. Fish and Wildlife Service for the management of the National Bison Range Complex. Our efforts to assume management of this complex began in 1994 when Congress authorized the management of DOI programs to tribes that have a significant historic, geographic, or cultural tie. We have all three with the Bison Range. The Range is located in the heart of our reservation, entirely on land reserved for us under the Hellgate Treaty of 1855. The bison at the Range are descendent from a herd raised from two tribal members, Charles Allard and Michael Pablo.

Finally, a study conducted by the Service documents the number of cultural sites on the refuge. After nearly a decade, we are close to reaching an agreement. After a 90-day public comment period, the signed agreement will be sent to this Committee. We look forward to working with you during that period.

Finally, I ask for your continued support in our efforts of tribal self-governance. The DOI is moving forward to fulfill the court's or-

ders, but do not allow them to do that in a manner that will harm our ability to manage programs through self-governance. Their current reorganization plan has the potential of negatively impacting our tribes by centralizing the decisionmaking in Washington, D.C., and at the regional office. It could strip the advances we have made over two decades.

Our experience shows that our tribes, when given the opportunity, we can meet or exceed any Federal expectation. As you know, we have secured language in the Senate Interior Appropriations bill authorizing a 1-year demonstration project that will allow us to continue operating our trust programs.

Chairman Pombo, thank you for your letter of support in this project. We urge your continued support as we deal with it in this Committee. Thank you again for this opportunity.

[The prepared statement of Mr. Matt follows:]

Statement of D. Fred Matt, Chairman, The Tribal Council of the Confederated Salish and Kootenai Tribes, The Flathead Indian Reservation

Chairman Pombo, Ranking Member Rahall and honored Members of the House Resources Committee, my name is Fred Matt, and I am Chairman of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation. On behalf of my Tribal Council, I am pleased to provide testimony regarding our Tribes' experience exercising the opportunities afforded them by P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975, as amended. This oversight hearing on "Tribal Self-Governance" is quite timely and I appreciate this opportunity to share our Tribes' experience.

When the authorizing legislation was enacted in 1975, a new era in Federal Indian Policy was affirmed that significantly changed the relationship between the United States of America and the governments of the Tribal Nations across this great Country. In Section 3, the Declaration of Policy contained in P.L. 93-638 it states:

"The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities."

CSKT is proud to report to the House Committee on Resources that the aforementioned policy is a success and our Tribes are a shining example of that success. The Indian Self-Determination Policy was conceived of during the tenure of the Nixon Administration; even though it did not become law until after the President left office. It was without question his greatest legacy in the views of tribal governments. It is a policy that has been supported and reiterated on a bipartisan basis by every White House and Congress since it was proposed over 25 years ago. It was the beginning of the end of the paternalism and the "Washington-knows-best" procedures that had been so detrimental to tribal governments and it signaled the beginning of a policy that is Indian country's version of the "best government is that which is closest to the people."

CSKT immediately seized the opportunity provided in the legislation and began planning to manage the Bureau of Indian Affairs (BIA) Education Programs, including scholarships, the Employment Assistance and the Johnson O'Malley Program; and by the end of 1975, we had assumed management and operation of these education programs. Shortly thereafter we added BIA Law Enforcement and Tribal Court to CSKT management. Since those initial agreements were effectuated, our Tribes haven't looked back. After a year-long Tribal study in 1979 on the services provided by the BIA Social Services Program that included foster care and child protective services, CSKT assumed its management. From that time forward, we contracted to perform many other BIA Programs, or portions thereof, including Forestry

functions such as Forest Development and Dwarf Mistletoe Control and Natural Resource Management such as Wildlife and Land Management programs.

One of the BIA Programs we assumed in 1989 was the Safety of Dams (SOD) Program, to eliminate or ameliorate the SOD concerns at 17 locations on the Flathead Reservation as identified by the Department of Interior National Dams—Technical Priority Rating listing. Our SOD Program provides investigations, designs and SOD modifications to resolve the concerns of the dams on the list. The Tribes' SOD Program has been extremely successful. Dams have been modified and at a cost significantly lower than originally estimated by the BOR. For example, the Black Lake Dam was completed in November 1992 at a savings of approximately \$1.3 million. The Pablo Dam SOD Modification Project was completed in February 1994 at a savings of nearly \$140,000. The first phase of the McDonald Dam SOD Program has been a "model" Program, which has been used by other tribes across this nation. The CSKT SOD Program continues to succeed after nearly 15 years of Tribal Management.

The CSKT management of Mission Valley Power (MVP) is another early success story for CSKT in P.L. 93-638 contracting within the Department of the Interior (DOI). In the 1980s, the CSKT notified the DOI of our intent to contract for the Power Project within the Flathead Agency Irrigation Division. The Power Project provides electrical services to the Flathead Reservation Area that includes Indians and non-Indians. After heated debates and even attempted congressional intervention, then-Assistant Secretary for Indian Affairs Ross Swimmer signed the P.L. 93-638 contract transferring the management and operation of the Power Project to the CSKT and our management continues today. We are proud to report that MVP offers some of the lowest cost and most stable electric rates throughout the Northwest. We have an independent Utility Board and an active Consumer Council as integral parts of our management of the utility. Our Utility Conservation Program has won several awards and our safety record is deemed outstanding. In addition, the CSKT set a goal to create a number of employment and training opportunities for our Tribal members as electrical lineman. This goal was accomplished as to date there have been ten (10) Tribal-member lineman graduates who are fully employed in this technical industry and five more apprentice linemen are in training.

Our P.L. 93-638 contracting efforts extended to the U.S. Department of Health and Human Services (DHHS) when in 1977 CSKT formed the Tribal Health Department to perform an array of Indian Health Service programs such as Community Health Nursing and the Community Health Representative Program. Over the years, the CSKT assumed management of the Mental Health Program, the Medical Social Work Program, the Health Education Program, and the Alcohol and Substance Abuse Program.

Our efforts with Self-Determination continued through 1987 when Congressman Sidney Yates conducted an oversight hearing of the Interior and Related Agencies Appropriations Subcommittee after a series of articles appeared in the Arizona Republic newspaper. Our late Tribal Chairman Michael T. Pablo attended that hearing and when asked he responded that tribes should be given increased responsibility in managing and operating Federal programs. The BIA responded in December 1987 with the submission of a list of ten tribes, including CSKT for consideration of a demonstration project. The identified 10 Tribes proposed to Congressman Yates a planning phase and this initial phase was funded in Fiscal Year 1988. On September 15, 1988, P.L. 100-472 Title III of the Indian Self-Determination Act Amendments of 1988 was enacted and Tribal Self-Governance under P.L. 93-638 were born. We have been an active participant from the start.

As one of the initial Tribes identified in the Self-Governance Demonstration Project, our Tribes' approach through the planning process has been to work toward the program agreement, such as a compact, with a phased and careful approach that would affirm the establishment of a new government-to-government relationship with the United States. We are committed to instituting and implementing policies to strengthen our capacity as a Tribal government in order to achieve the maximum degree of self-governance possible within the Federal system of the United States. The following principles apply:

- 1) Affirmation of a government-to-government relationship between our Tribes and the United States is not simply a funding relationship and not just with the BIA;
- 2) The role of CSKT Tribal government and the Federal Government will evolve over time but must reflect the Hellgate Treaty of 1855 and all other agreements between CSKT and the United States;
- 3) The Trust Responsibility requirement that the United States must protect the trust resources of the Tribes to the highest degree of fiduciary responsibility is not reduced by Tribal participation in Tribal Self-Governance; and

- 4) In our efforts in Tribal Self-Governance, CSKT will perform functions of determining the resources, exchange of information and achieve the highest level of accountability as determined by the CSKT Tribal Council.

These principles formed the foundation as we moved forward from P.L. 93-638 Self-Determination contracting to Tribal Self-Governance compacting in October 1993 when the CSKT entered into Tribal Self-Governance compacts and Annual Funding Agreements (AFA) with the DOI and the DHHS.

In September 1992 the Tribal Council, at the request of the Tribal Health Department Head, the Tribal Human Services Department Head and the IHS Flathead Service Unit Director, directed the completion of a Tribal study to consolidate the services of the three entities. The study commenced in October 1992 with staff interviews and data evaluation. As the Tribal Council analyzed the information gathered in the study, the Congress extended the P.L.93-638 Title III Tribal Self-Governance opportunities to DHHS—IHS. The Tribal Council notified the IHS that we intended to negotiate a compact and an AFA for all of the services provided at the Flathead Service Unit, including the Pharmacy Program, the Dental Program and all administrative functions. In addition, since the majority of the health care was provided through the Contract Health Services Programs (CHS), including the payment of health care claims, CSKT intended to assume the management of the CHS Program and the services provided to IHS by the Fiscal Intermediary. Agreements were reached and at the beginning of Fiscal Year 1994, (October 1, 1993), the CSKT began the operation and management of a consolidated health care delivery system known as the Tribal Health and Human Services Department that is responsible for the health care services of nearly 10,000 eligible IHS beneficiaries.

As we start our 11th year of operation under this AFA, we recognize that our current system is "At-Risk" as it is tremendously underfunded and health care costs continue to rise as do the number of eligible beneficiaries. Both aspects of operating this program are beyond our control. In 1991, the CSKT, the IHS and the Congress engaged in lengthy and oftentimes difficult discussions regarding our funding crisis. With the assistance from the IHS and the Montana Congressional delegation, the CSKT were able to avert the reassumption of the health system by the IHS with the implementation of a Business Plan for Health Care Delivery. However, our System remains at risk even though we limit services according to the approved Business Plan. The funds we receive from IHS are seriously inadequate. A study by the U.S. Commission on Civil Rights in July 2003 documented that the an individual Medicare beneficiary health care cost \$5,915, a Veteran's medical benefit cost \$5,214 and a Federal prisoner's medical care cost \$3,879 while an individual IHS beneficiary received only \$1,914. In CSKT's analysis as a CHS dependent health care unit, we receive even less than the average IHS beneficiary with the individual beneficiary utilizing our System costing less than \$1,188 per user. As we celebrate 10 years of Tribal health care management, we are proud that we have been able to provide quality care to users with significantly less funds than Medicaid /Medicare and even the Federal Prison System. However, we urge this Committee to seek additional funds for IHS to bring parity to Native Americans, as it is well-documented that our health needs for diabetes, substance abuse, cancer, heart disease far exceeds the national average.

With the Tribal Council's decision to negotiate a Tribal Self-Governance compact and AFA for health care services, they decided it was also time to move our relationship with DOI to Tribal Self-Governance. In April 1993 the Tribal Council notified the BIA Northwest Regional Office of our intent to negotiate a Tribal Self-Governance compact and AFA for all the P.L. 93-638 contracted programs, services, functions and activities. The transfer from contracting to compacting in DOI was completed and at the beginning of Fiscal Year 1994 (October 1, 1993), the CSKT began operating and managing the BIA according to the new agreements.

It was clear to the Tribal Council that the opportunities provided in Tribal Self-Governance complemented our authority as a sovereign government. It was recognized that certain governmental functions must be provided by the Tribes and that we must assume responsibility and be held accountable for the delivery of these governmental functions. P.L. 93-638 provided the vehicle to promote our Tribes' self-governance and would assist in the building of Tribal government infrastructure and promote economic self-sufficiency. The late Michael T. Pablo, CSKT Tribal Chairman, articulated this vision clearly as he became a national advocate for our efforts and other Tribes' efforts for Self-Governance.

To fulfill this vision, the CSKT immediately notified the BIA of our intent to negotiate an Agreement to transfer the management of the BIA Roads Maintenance and Construction Program to the Tribes. This agreement was complete in early 1994, and the CSKT began laying asphalt soon thereafter. We are proud to report that

we have laid many miles of roads since we began in 1994 and continue to actively plan, design and construct roads throughout our 1.25 million acre Reservation.

All Forestry Program functions were added to the CSKT Tribal Self-Governance Agreement in Fiscal Year 1996 after a year-long Tribal study to assume the management of these services. The CSKT also at this time transferred fire pre-suppression activities and agreed to continue managing fire suppression activities through other agreements. In Fiscal Year 1997 the CSKT intended to assume all of the remaining functions provided at the BIA—Flathead Agency including Individual Indian Monies Program (IIM) and other administrative functions and the Northwest Regional Office Title Plant functions. However, the final Fiscal Year 1997 agreement only included the certain additional administrative functions. The CSKT decided to leave the BIA Agency Superintendent in place to facilitate the delivery of the inherent Federal functions. It was determined that a local Federal official, with sufficient delegated signatory authority, would improve the delivery of the services under Tribal management. The arrangement remains in place today. Our efforts to assume the Title Plant, also known as the Land Title and Records Office, were completed mid year in 1997.

Our efforts to assume management of the IIM Program proved to be much more difficult. At the same time we began seeking to manage this Program, a class-action lawsuit (the so-called Cobell case) was filed in Federal court seeking remedy for account holders resulting for years of mismanagement of the accounts by the DOI. A number of issues developed in our efforts to assume management of this Program. The first is the result of the transfer of the IIM Program from the BIA to the Office of the Special Trustee—Office of Trust Funds Management (OTFM). Since the Program no longer resided in the BIA, Tribal assumption would be under a different set of Federal regulations than those regulations for all other non-BIA programs in the DOI. The non-BIA regulations are more restrictive and cumbersome. Although the CSKT were eventually able to assume management of the IIM Program in 1997, it was an agreement with significantly reduced authority for the CSKT to redesign to improve the Program. We are proud to report that the CSKT continues to operate the IIM Program. In the annual audit and evaluation conducted for OTFM by external evaluators, we have received excellent reviews. The Federally run programs have just recently begun such reviews.

With the assumption of the IIM Program, the Regional Office Land Record and Title Office and all other BIA Programs with the exception of the Federal signatory authority and the Flathead Indian Irrigation Project, the CSKT became the first Tribe in the Country to bring under Tribal Management the full range of DOI services. In 2003, no other Tribe exercises the authorities provided in P.L. 93-638 to the same extent as the CSKT. We are quite proud of our efforts in this area and for our efforts within the larger DOI.

Our efforts in Tribal Self-Governance have transcended to other areas, especially as the Congress has extended similar authority for other Federal Government programs. For example in 1998, the CSKT became the first Tribe in Montana to administer the Temporary Assistance for Needy Families (TANF) program through an agreement with the State of Montana and the Department of Health and Human Services. The Tribal Council adopted a revised organizational structure for service delivery to ensure all the Tribal programs, based on income that a family requires to achieve economic self-sufficiency are consolidated in one Tribal department, known as the Department of Human Resources Development (DHRD). This was a major move as most other Tribal TANF Programs were generally added to the existing General Assistance Program. Within a year of administering TANF, our Tribes moved quickly to consolidate several funding sources including TANF into a Public Law 102-477 Plan, as approved and administered by the BIA. The benefits of this move were tremendous including fewer administrative reports, more time for intense client services, and less administrative overhead. This law and the opportunity to consolidate services for the benefit of the clients is true self-determination where Tribes can design services unique to each Tribe and their needs. The success of this model has resulted in increased employment opportunities for our Tribal members that were not previously available.

When the Congress originally enacted the Indian Self-Determination and Educational Assistance Act in 1975, one of the stated purposes was to increase Tribal economic self-sufficiency by authorizing Tribes to manage Federal programs. Nearly three decades later, the CSKT has proved this to be true. Today, the CSKT is the largest employer in northwest Montana. We employ over 1,000 individuals in a variety of capacities from lawyers, doctors, dentist, engineers, scientists and teachers. Our goal is to employ qualified individuals to ensure the highest quality of service is provided. We manage multiple budgets, from a variety of Federal, state and private sources that exceed \$180 million per year.

The opportunities provided under this Act provided the CSKT with the ability to build a strong governmental infrastructure needed to move into other areas. Our Indian Reorganization Act (IRA) Section 17 corporate structure has indirectly benefited from our success in Tribal Self-Governance. S&K Electronic is rated in the top 10% of employers in the State of Montana. S&K Technologies has received nearly half-a-billion dollars in contracts and has satellite offices throughout the nation in states such as Georgia, Texas, Ohio and Washington. Our S&K Development manages a great resort located on the shores on beautiful Flathead Lake. With just these few examples and there are more, it is clear the Federal policy of Indian Self-Determination is a success and must continue or expand in the future.

The logical next step for the CSKT is to contract for operations at the National Bison Range Complex (NBRC). The Indian Self-Determination and Education Assistance Act's Title IV program—the Tribal Self-Governance Act of 1994—authorized Tribes to enter into agreements for non-BIA programs administered by the Secretary of the Interior, which are of special geographic, historical or cultural significance to the requesting Tribe. We notified the DOI of our intent to enter into an agreement to assume management of the NBRC in December 1994 and to this day we continue to seek its management. The NBRC is located entirely on our Reservation, on land reserved in the Hellgate Treaty of 1855. The Tribes, as a result of that treaty, ceded over 20 million acres of what is now western Montana and reserved for ourselves and future generations the 1.25 million acre Flathead Indian Reservation along with the agreement that our lands and the rights described in the treaty would be protected forever. The agreement was breached when Congress, without Tribal approval, removed nearly 18,500 acres in the heart of our reservation in 1908, created the NBRC and transferred the land to the U.S. Fish and Wildlife Service (FWS). Although the Tribes received a minimal payment of \$1.56 cents an acre and then another settlement later, we never consented to sell the land. The land on which the Ninepipe and Pablo Refuges (ancillary FWS properties associated with the NBRC) are located is Tribally owned with the DOI holding an irrigation easement and the FWS holding a secondary easement of refuge purposes. The bison that reside on the NBRC are descended from a herd originally raised by tribal members Charles Allard and Michel Pablo. And finally, in a study commissioned by the FWS a number of cultural sites are located on the NBRC. Clearly, the concept the Congress set forth in the law is met and exceeded as the three criteria of historic, cultural and geographic connections are all fulfilled by our relationship with the National Bison Range Complex.

The CSKT again notified the DOI of our intent to enter into an agreement to manage the NBRC on February 26, 2003, according to regulations published in the Federal register to guide this negotiation process. In a press statement released jointly by the CSKT and the FWS following negotiations in September 2003, both sides stated that significant progress is being made toward the development of an agreement. We look forward to joining in partnership with the FWS to submit a signed agreement for this Committee's 90-day review. We are sure this Committee will agree that, with our history of conservation and our professional capacity as managers, assuming certain duties at the NBRC is a sensible next step.

As we conclude our testimony we express concern that the proposed DOI reorganization may well have a negative effect on Tribal Self-Governance. CSKT is particularly concerned about the proposed reorganization in specific areas as follows:

Impact on Self-Governance and Self-Determination—It is our experience that when programs, services, functions or activities move from the BIA to another part of the DOI structure there is a negative impact on tribal opportunities to manage and operate them under P.L. 93-638. Such programs are deemed to be “non-BIA programs.” As stated earlier in this testimony, there are different regulations for BIA-operated programs and all other non-BIA programs within DOI. The regulations governing tribal assumption of non-BIA programs fail to meet the intent or spirit of tribal self-determination by including what we believe are unnecessary governmental restrictions and retained Federal control. The most glaring example of DOI resistance to tribal assumption of DOI programs outside the BIA can simply be found in the few number of self-governance agreements in existence after nearly a decade since 1994, when the Self-Governance amendments were enacted. Those that have been enacted are unnecessarily narrow in scope.

We also point to the resistance we faced from the Department during the previous Administration when we endeavored to assume the management of the IIM Program.

It is CSKT's utmost concern during this time of trust reform that Tribes do not lose the opportunity to manage and operate the trust resources programs. We have

done an excellent job operating the trust programs and have audits and evaluations to prove it. We should not be punished for DOI's mismanagement over the past century.

- 1) Funding for the Trust Programs and Funding for BIA—The BIA is extremely underfunded. For example, the Intertribal Timber Council reports that BIA receives one-tenth the amount of funding that the U.S. Forest Service receives to manage Federal land. It is unreasonable to think that the BIA can manage tribal resources with such substantially fewer dollars on a per-acre basis. BIA programs must receive full funding that is equivalent to funding received by other Federal agencies to provide similar functions.

Another concern is where the funding will come from for the multiple layers of oversight DOI is proposing and how the oversight will apply to Tribal Self-Governance Agreements.

- 2) Guarantee No Diminishment of the Trust Responsibility—In our efforts in Tribal Self-Governance there has not been a reduction in the Federal trust responsibility to our Tribes.
- 3) Signature Authority at the Local Level—For Tribes to operate efficiently, the provision of Federal functions should be at the local level—not centralized in Washington, D.C., or some other centralized location. As we said earlier, tribal government is the most effective when the decisions are made locally and not by a Federal bureaucrat.
- 4) Information Technology and Security—As a result of the computer shutdown in the DOI due to security breaches, it is clear that major changes are imminent and needed with the BIA information technology systems, including appropriate security safeguards. Tribes that operate the trust programs and require access to BIA IT systems must be considered in its development and must receive the same level of funding that the BIA receives.
- 5) Increased Reporting—As DOI attempts to meet the requirements set forth by Judge Lamberth in the Cobell litigation, there is a perceived need for increased reporting. Although the CSKT is willing to account for our activities, it must be done in logical manner not at “the spur of the moment,” which often creates busy work and without proper justification to the purpose for the reason the data is needed.

Although we fully understand and support the need for TRUST REFORM, Tribal Self-Governance is a reform model that is tried and tested and has been deemed to be quite successful. Our efforts were motivated by the need to improve the services provided by the BIA and IHS. For over 10 years, we have documented success. To secure the opportunities the Congress has provided Tribes through Tribal Self-Governance; the CSKT has joined with other Tribes and are seeking the establishment of demonstration project to showcase alternatives to some aspects of newly proposed trust procedures and processes through Fiscal Year 2004 Interior Appropriations. The Senate Interior Appropriations bill includes this language in Section 134. After discussions last week, it appears the Tribes and DOI are close to an agreement. We want to thank Chairman Pombo for his recent letter of support to Chairman Taylor of the Interior Appropriations Subcommittee on this demonstration project. We urge the Committee's continued support for it.

I am proud to be a member of the Confederated Salish and Kootenai Tribes. Our Tribes have much to be proud of and I hope we can count the Congress's continued support of our efforts.

Thank you for the opportunity to provide this testimony.

The CHAIRMAN. Thank you.

To introduce our next witness, I would recognize Ms. McCollum. Ms. MCCOLLUM. Thank you, Mr. Chairman.

It is an honor for me to welcome here today a tribal leader and a friend from Minnesota, Melanie Benjamin, Chief Executive of the Mille Lacs Band of Ojibwe. Ms. Benjamin has served her people as chief executive proudly for 3 years. During that time, she has been an effective voice for supporting her community, not only in Minnesota but around the country as well.

Ms. Benjamin stands up for tribal sovereignty and self-determination. She speaks about the need to maintain government-to-government relations between the United States and all tribes.

In her testimony, you will hear how tribal self-governance has improved the lives of the Mille Lacs Band and other Native Americans.

Mr. Chairman, the Mille Lacs Band of Ojibwe for a long time has called the southern shore of Minnesota's Lake Mille Lacs its home. During that time, they have endured incredible hardships, but they have also many successes. It is because of leaders like Melanie Benjamin that the Mille Lacs Band has a very bright future.

Recent economic developments on their reservation have led to greater self-sufficiency, not only for the tribe but for the surrounding towns and townships in the area. They are strengthening their culture by teaching their Ojibwe language to their children. They make sure that their children have a good education. I was very proud to be at the ceremony for opening up the school when they built a wonderful school for their children to attend on the reservation.

Tribal leaders all over the country are working hard, but I am very proud of the tribal leaders in Minnesota who continue to work with the State to provide for a cleaner environment. Chief Executive Benjamin will be the first to tell you there is much more work to be done, but under her leadership, I am confident that we will find a way for us to get the work done in a good, affirmative, government-to-government relationship.

Mr. Chair, I truly am honored to welcome Ms. Benjamin here today.

The CHAIRMAN. Ms. Benjamin.

**STATEMENT OF MELANIE BENJAMIN, CHIEF EXECUTIVE,
MILLE LACS BAND OF OJIBWE; ACCOMPANIED BY TADD
JOHNSON, COUNSEL**

Ms. BENJAMIN. Good morning, Mr. Chairman, and members of the Committee. My name is Melanie Benjamin and I am the Chief Executive of the Mille Lacs Band of Ojibwe.

As one of the first tribes to enter into a self-governance compact, it is an honor to be here today to talk about tribal self-governance. Under the leadership of my mentor, Arthur Gahbow, the Mille Lacs Band was one of the first tribes to envision what self-governance could mean. From day one, we have been involved in the self-governance policy.

We first began contracting for Federal programs in the 1970s under the Self-Determination Act. Self-determination was an exciting new era in Indian affairs, but as more tribes contracted for programs, the BIA just grew larger and larger. The contracting rules were constraining. Regulations were inflexible, with little room for creativity with our programs. I recall someone quoting a study, finding that only about 10 cents of every dollar appropriated ever made it to the reservations.

Around 1987, a small group of tribes, including Mille Lacs, began talking about a demonstration project, allowing tribes to prioritize and reallocate their BIA money. Of course, there were concerns. There is a story of a congressional staffer asking a tribal leader a question like this: "If you are allowed to spend Federal funds based on your own tribal priorities, what would stop you from buying a fleet of Cadillac cars?" The tribal leader replied, "I wouldn't do

that, for two reasons. First, I would be skinned alive by my own people. Second, if I survived, I wouldn't be reelected."

This is what self-governance is about. It isn't just creating new authority for tribes; it's about accountability. Self-governance ushered in a new era when tribes were finally treated as grown ups among this Nation's family of governments. More than 15 years later, I'm not aware of a single Cadillac purchase with self-governance funds.

What began in 1988 as a movement by just a few tribes now involves more than 200. Through our Annual Funding Agreements with the BIA and the IHS, we receive our fundings and determine their allocation. In addition, we have been able to contemplate new initiatives that may have been impossible without self-governance. We have developed an infrastructure to support our expanding economy, including a housing initiative, new roads, new sewer lines and so forth.

These initiatives directly meet Band members' needs. Self-governance has meant real change for the Mille Lacs Band. First, we now can redesign programs as we see fit. If we have a better way to provide chemical dependence treatment by using a "sweat lodge", we can do it.

Second, we can also reprogram funds if our needs change. For example, if we have a very dry season, as we recently did, we can reallocate funding toward fire protection.

Third, we participate in rulemaking. Title IV was the first Indian law that required negotiating rulemaking.

Fourth, we are using our funds more efficiently. We determine our own local needs and then we dictate how we use funding, not a Federal official in Minneapolis or Washington, D.C.

Finally, our compacts reflect a true government-to-government relationship. The Mille Lacs Band first compacted for 30 BIA programs in 1990. Thirteen years later, our self-governance budget has only grown by less than 3 percent per year, or less than 35 percent for the entire 13 years. In contrast, the BIA budget has more than doubled in the same 13 years.

When we entered into self-governance, we believed our self-governance budget would grow at the same rate as the BIA. This has not been the case. Congress needs to allow self-governance to grow proportionately with the BIA to continue to work and to be successful.

In 1987, a few bold tribal leaders wanted a Federal Indian Policy that was similar to treaty making. They started with BIA and IHS compacts. Today, my colleagues and I look into the 21st century Federal Indian Policy and ask, will we stay on track? What is left to accomplish in the evolution of self-governance policy?

The Mille Lacs Band of Ojibwe has always wanted to have all of our Federal dollars—not just those from Interior and HHS—but all of our dollars rolled into one Annual Funding Agreement with the United States. This includes funds from all other Federal Departments—Labor, Justice, Education, and all funds that currently flow through State programs. It would be our honor to be included in the demonstration project that moves this policy to the next level.

I appreciate your time and refer you to my written statement in which we address our concerns about trust responsibility. I also

have Tadd Johnson with me, formerly of this Committee. We would be pleased to take any questions you might have.

“Mii Gwetch”. Thank you.

[The prepared statement of Ms. Benjamin follows:]

**Statement of Melanie Benjamin, Chief Executive,
Mille Lacs Band of Ojibwe**

Good morning Mr. Chairman and Members of the Committee. My name is Melanie Benjamin and I am Chief Executive of the Mille Lacs Band of Ojibwe. We are a Federally recognized tribe of 3,593 members located in East Central Minnesota. As one of the first six tribes to enter into a Self-Governance compact with the United States government, it is an honor to be here today to talk about Tribal Self-Governance. Today, I will address the history and benefits of Self-Governance, and some of our policy concerns with the direction of current Federal Indian policy in relation to Self-Governance and the Federal trust responsibility.

The History of Self-Governance

Under the leadership of my mentor and predecessor, Arthur Gahbow, the Mille Lacs Band was one of the first tribes to envision the concept of Self-Governance: the ability of tribes to plan, implement and administer programs that best meet the needs of a tribal membership. Self-Governance was Art Gahbow's dream and, as a result of his hard work, the Mille Lacs Band was one of the pioneer tribes. From day one we have been involved in Self-Governance policy. Today, I am a delegate on the Tribal Self-Governance Advisory Committee that provides policy recommendations to the Director of Indian Health Services.

In the 1970s, tribes were allowed to contract for Federal programs and services that would benefit their memberships under Public Law 93-638, the Indian Self-Determination Act. By the 1980s, however, a growing Federal bureaucracy was not adequately addressing the uniqueness of the different tribes and made it difficult for us to administer our programs. As someone who used to administer Self-Determination contracts, I can tell you that the rules and regulations were very constraining. We had to report to low-level bureaucrats in order to run simple programs.

The inflexibility of the Indian Self-Determination Act left little room for creativity and experimentation. More troublesome was the fact that Self-Determination was not cost-effective for tribes who already had scarce resources to administer programs. I recall someone quoting a study that only about ten cents of every dollar appropriated ever actually made it to the reservations.

In 1987, tribal leaders formed the Alliance of American Indian Leaders. It was the 200th anniversary of the United States Constitution and tribal leaders such as Roger Jourdain of the Red Lake Band of Chippewa, Wendell Chino from Mescalero Apache, Joe De La Cruz of the Quinault Nation, and our own Arthur Gahbow came together in Philadelphia, Pennsylvania, to seek a change in Federal Indian policy. Within a year, the Alliance drafted a new title to the Indian Self-Determination Act, the Title III Self-Governance Demonstration Project.

In its consideration of the Demonstration Project, there is a story of a Congressional staffer asking a tribal leader a question something like this: “If you are allowed to spend Federal funds on your own tribal priorities, what would stop you from buying a fleet of Cadillac cars?” The tribal leader replied, “I wouldn't do that for two reasons. First, I would be skinned alive by my own people. Second, if I survived, I would not be reelected. This is what Self-Governance is about. It is not just creating new authority for tribes, but also letting them be accountable for the consequences of their mistakes. More than fifteen years later, I am not aware of a single Cadillac purchased with Federal funds.

In 1988, Title III of Self-Governance became law. Around 1990, the Mille Lacs Band and five other tribes formed the Six Tribe Consortium and entered into the first Self-Governance Compacts under the Demonstration Project. In 1994, Self-Governance became a permanent program in the Bureau of Indian Affairs and in 2000 became permanent law in the Indian Health Service and the Department of Health and Human Services. What started as a movement by a very small number of tribes more than a decade ago now sees more than 200 Self-Governance tribes. There are 35 Federally recognized tribes in our region, 9 of which are Self-Governance.

The Benefits of Self-Governance

The Mille Lacs Band of Ojibwe Self-Governance Compact is with the Department of Interior and we receive Self-Governance funds through our Annual Funding

Agreements with the Bureau of Indian Affairs and the Indian Health Service. Once received, we make the determination of how our Self-Governance funds will be allocated. This is the essence of Self-Governance: the empowerment of tribes to make allocations based upon tribally identified priorities that reflect membership needs. For the Mille Lacs Band, those priorities have typically been health, education, housing, and natural resources. More recently, economic development has also been identified because it is a means to provide more opportunities for Band members and their families.

Based upon these priorities, Self-Governance has allowed us to contemplate new initiatives that may not have been possible without Self-Governance status. The Mille Lacs Band has been able to develop an infrastructure that supports our expanding economy. For example, we have a new Housing Initiative to provide new homes for our Band members, new sewer lines for those homes, and new roads that allow the safe transportation of our children to their schools. We are also developing and expanding our environmental programs to include water quality testing and other monitoring measures that will better manage and protect our natural resources.

What Self-Governance means for the Mille Lacs Band specific to program operations are five-fold. First, we can now redesign programs as we see fit. If we have a better way to provide chemical dependency treatment by using a sweat lodge, we can do it. Second, we can also reprogram funds as we see fit based on changing needs. For example, if we have an exceptionally dry season as we recently had, we can allocate more funds to fire protection. Third, the Mille Lacs Band can participate in rulemaking. Title IV was the first Indian law that required negotiated rulemaking and for the first time brought Federal and tribal officials together to develop the rules. Fourth, we are using our funds more efficiently. Our local needs determined by us dictate the use of our funds, not a Federal official located in Minneapolis or Washington, D.C. Finally, our compacts with the Federal Government reflect a true government-to-government relationship that indicates we are not viewed as just another Federal contractor.

For example, years ago the Mille Lacs Band needed business and governmental expansion to accommodate our economic growth. We signed Memorandums of Agreement with a number of Federal and state agencies for this development to occur. The Mille Lacs Band became the lead agency and started a business that now employs 1200 people, and established new schools, clinics, a government center and elderly assisting living units. These developments would not have happened without the authorization provided under Self-Governance.

Self-Governance has also played a role in promoting new partnerships between the Mille Lacs Band and other entities. We are a rural community located on the southern shores of Lake Mille Lacs, one of the largest lakes in the State of Minnesota. We have recently joined forces with local municipalities to build a state-of-the-art wastewater treatment plant utilizing the latest technology that benefits both Band members and our surrounding neighbors. Many of our Band members engage in traditional fishing and wild ricing activities and for their health we want to ensure the integrity and water quality of Lake Mille Lacs. The new treatment plant will help ensure the continued protection of our greatest natural resource. Though the plant does not utilize Self-Governance funds, we believe it is an example of what our Self-Governance status can lead to.

The direct and derivative benefits of Self-Governance cannot be emphasized enough. But for Self-Governance, we might not have the relative success that we enjoy. There was a time not long ago when the Mille Lacs Band struggled with great poverty and was unable to meet the basic needs of our membership. We have come a long way since then and strongly believe Self-Governance played a significant role in our progress.

This is not to say that Self-Governance is the panacea to a tribe's problems, but rather Self-Governance is a means for tribes to realize their potential. Self-Governance is the tool that allows tribes like the Mille Lacs Band to build capacity that ultimately benefits a tribal membership. While Self-Governance has done much to benefit tribes more than any other Federal Indian policy, I want to bring to your attention some concerns the Mille Lacs Band has with current Federal policy towards the tribes.

A Disproportionate Self-Governance Budget

The Mille Lacs Band first compacted for 30 programs from the Bureau of Indian Affairs in 1990 with funds that amounted to approximately \$603,698.00. Programs varied from natural resources to substance abuse. Thirteen years later, our Self-Governance budget is approximately \$817,426.00 for the same 30 programs. This growth is less than 3% per year, or less than 35% for the entire thirteen years. In

effect, we are doing more with less funds because our Self-Governance budget does not reflect the increasing costs of administering those 30 programs. Consequently, there may be a day when administrative costs of a program will far outweigh the function and program activity. In contrast, the Bureau of Indian Affairs budget has more than doubled in the same 13 years.

When we entered into Self-Governance, we believed that our Self-Governance budget would grow at the same percentage rate as the Bureau of Indian Affairs. This has not been the case. Though Congress had appropriated funds to establish Tribal Self-Governance, it has not allowed Self-Governance to grow proportionately with the BIA or United States as a whole since its inception. Despite this fact, many tribes continue to seek Self-Governance status each year, which is a clear indication of the success of Self-Governance.

For Self-Governance to continue to work and be successful, changes must be made and implemented for tribes to remain in Self-Governance. Otherwise, Self-Governance may fail and tribes will be reabsorbed into the Bureau of Indian Affairs. The Mille Lacs Band is willing to offer assistance and participate in the redress of this budget problem.

Self-Governance and the Federal Trust Responsibility

The Mille Lacs Band of Ojibwe and all Federally-recognized tribes have a unique relationship with the United States. Our treaties with the United States established a government-to-government relationship that exists to this day. The United States' Federal trust responsibility arises out of the treaties, Federal statutes, Executive Orders, and Supreme Court decisions. From this Federal trust responsibility flows a trust obligation of the United States to the tribes.

It is the Mille Lacs Band's position that the Federal trust responsibility is very broad in scope and not limited to fine distinctions in legal definitions. However, the Department of Interior's BIA reorganization and the Department of Health and Human Services "One" Department Initiative indicate that the Federal trust responsibility is being re-defined in a manner that tribes strongly disagree with. This development in new Federal Indian policy is heading in the wrong direction and will be detrimental to many tribes.

In Public Law 106-260, the Tribal Self-Governance Amendments of 2000, the following language addressing tribal sovereignty, the government-to-government relationship, and the Federal trust responsibility reads in relevant part:

The Congress finds that—

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

...

- (5) Although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominated tribal affairs;

...

- (6) Congress ... finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)—

- (A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with the Indian tribes; and

- (B) strengthens the Federal policy of Indian self-determination, and

It is the policy of the Congress—

...

- (A) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;
 - (B) To permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;
 - (C) To ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;
 - (D) To affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

- (E) To strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;
- (F) To permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of individual tribal communities; [and]
- (G) To provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian tribes “.

25 U.S.C. § 458aaa.

The Trust Responsibility provision of the Self-Governance Act specifically addresses the duty of the Secretary: “The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.” 25 U.S.C. § 458aaa-6.

The above statutory language illustrates that Congress clearly intended to continue its Federal trust responsibility to the tribes and maintain the government-to-government relationship between the United States and tribes by expressly stating such. Despite the Mille Lacs Band and other Self-Governance tribes assuming more authority and control over compacted programs, Self-Governance law and policy never intended to diminish or waive the Federal trust responsibility but rather preserve it.

That was our understanding of Self-Governance as it relates to the Federal trust responsibility at the time we entered into our compacts, and this is our understanding today. This very understanding by the Mille Lacs Band leadership in 1990 was the primary reason we assumed Self-Governance, because we believed that all of our trust resources and assets would always be protected. In the event the Mille Lacs Band would be unable to adequately protect a trust resource or asset, the law provides trust resource and asset protection for us.

Under the Self-Governance Reassumption provision, the law provides that, if our trust resources face imminent jeopardy or endangerment, meaning immediate threat and the likelihood of significant devaluation, degradation, damage or loss of a trust asset, the Secretary may reassume program operations upon a finding of imminent jeopardy. 25 U.S.C. § 450m and § 458aaa-6; 25 C.F.R. pt. 1000 at 78727 (2000). Operation of this provision ensures that our trust resources are always protected under the Federal trust responsibility.

Today, the ongoing Bureau of Indian Affairs reorganization and the establishment of the Office of the Special Trustee appear to be re-defining the Federal trust responsibility through administrative action. Tribes, including the Mille Lacs Band, have been opposed to the BIA reorganization since before its implementation, yet the reorganization continues despite our objections in the name of “trust reform.”

One of the many aspects of the reorganization is the removal of all trust functions from the BIA to the Office of the Special Trustee. More troublesome is that the Special Trustee’s office is moving in the direction of limiting its trust responsibility to more limited duties. If such a concept becomes actual policy, we will have resources that may not meet the proposed limited standards, thereby leaving these resources unprotected and vulnerable to non-Federal interests. Therefore, the Mille Lacs Band seriously questions what measure of trust responsibility we can expect from the Office of the Special Trustee in regard to our trust resources and assets under our Self-Governance compacts.

Another “reorganization” the Mille Lacs Band is concerned with is the ongoing One Department Initiative of the Department of Health and Human Services that seeks to streamline the delivery of services. We interpret this to mean a reduction in staff and resources, although in the 1990s the Indian Health Service had already downsized significantly in order to increase the delivery of direct medical services to tribes. Part of that downsizing was the transfer of resources and operations to tribal management, which many other agencies had not undertaken to do. Consequently, there has been a 60% reduction in administrative staff in the Central Office Headquarters and the Area Offices in the past six years.

It must also be pointed out that as a direct result of more tribes entering into Self-Governance each year, more IHS administrative reductions will occur. To have more downsizing occur now is unreasonable and will impact the IHS’s ability to help tribes address the significant health disparities that exist in our communities. Indian Health Service has a unique place within the DHHS and is a direct extension of the Federal trust responsibility that addresses Indian health care. We fear that the Indian Health Service will become lost in the HHS One Department Initia-

tive, which has direct bearing on the trust responsibility to tribes and the provision of critical health care delivery.

Specific to HHS, a recommendation to address tribes' concern is to elevate the position of the Indian Health Service Director to that of Assistant Secretary of Indian Health. Such an elevation would assure tribes that Indian health issues would be addressed and improve the coordination efforts between the various health and human services agencies that serve tribes and their communities.

Generally, the Mille Lacs Band maintains the position that the Federal trust responsibility is very broad in scope and should not be limited in any manner. If the trust responsibility is limited to certain duties, the Mille Lacs Band further maintains that such a proposed policy overlooks our treaties with the United States and is in direct contravention of existing policy that defines the trust responsibility and relationship between the United States and tribes.

The Promise of Self-Governance

If the existence of Self-Governance as we know it today ceases to be, there would be the elimination of many crucial programs that function to improve our Band members' lives. The worst-case scenario is a return to the terrible poverty conditions we once knew not very long ago. It would mean being the poorest of the poor, the lowest in educational achievement, and poorest in health conditions. We cannot go back to such a harsh life.

It is a sad fact that my grandparents and many other Band member families suffered tremendously for a lack of resources prior to Self-Governance. It has only been under Self-Governance that the Mille Lacs Band has been able to rise above extreme poverty and improve lives on the reservation. The elimination of manipulative systems and reduction of Federal bureaucracy has allowed us to prosper and provide for our members.

Our relative success under Self-Governance is a good thing, but it does not mean our fundamental relationship with the United States should change. The government-to-government relationship should remain in place and should continue to recognize our sovereignty and right to self-determination. Altering current policy poses the risk of relegating us back to a ward status, much like a child, that knew no success by any measure.

Today, we are able to chart our own destiny as determined by our Band membership, not a Federal official or agency. The Mille Lacs Band can create a promising path for our children to follow who in time will also chart the Band's destiny. Self-Governance permits us the means to create a better world for many generations to come.

Conclusion

The vision of those tribal leaders in 1987 was bold. They wanted tribes and the United States to have a relationship that was more like the original one, back in the treaty-making era. The tribal leaders wanted a real government-to-government relationship with the United States, seeking the closest thing to a treaty they could find and settled on a "compact." Fifteen years later, those Self-Governance compacts have become a hallmark of progress for tribes and tribes are living that vision. Tribal leaders today look ahead to 21st Century Federal Indian policy and ask, will we stay on track? What is left to accomplish in the evolution of Self-Governance policy?

The Mille Lacs Band of Ojibwe has always wanted to have all of our Federal dollars, not just those from Interior and HHS, but all of our dollars rolled into one annual funding agreement with the United States. This includes funds from all other Federal Departments: Labor, Justice, Education, and all funds that currently flow through state programs.

I am told that the jurisdiction of the House committees make such a bill difficult to pass. Also, dealing with all affected agencies and the state would be an enormous challenge. But if any member of the House has the courage to take on this task, the Mille Lacs Band would like to work with you. It would be our honor to be included in a demonstration project that moves this policy to the next level.

I appreciate your time and would be pleased to take any questions you might have.

Mii Gwetch.

The CHAIRMAN. Thank you.

Next we have from my home State Clifford Lyle Marshall, Chairman of the Hoopa Valley Tribe.

**STATEMENT OF CLIFFORD LYLE MARSHALL, CHAIRMAN,
HOOPA VALLEY TRIBE**

Mr. MARSHALL. Thank you for this opportunity to testify today about the Self-Governance Program. I am Clifford Lyle Marshall, Chairman of the Hoopa Valley tribe of California, the largest land-based tribe in California.

My invitation to testify referred to self-governance as an experiment. Originally, self-governance was referred to as a project; later amendments to the Self-Governance Act designated it as a program. Regardless, whether it's an experiment or a program, it is the most successful piece of legislation in advancing tribal government, developing tribal infrastructure and advancing tribal self-sufficiency.

I thank the Committee for having this hearing because for the past two-and-a-half years most of what has been talked about in regard to Indian affairs is the Cobell case and the Department of Interior's trust reform proposal. The impression is that everything in Indian Country is bad, broken, mismanaged, has gone haywire, or run amok. I hope to express to you today that in many places in Indian Country, on many reservations, as the tribal leaders today will testify, very positive things are happening. I sense that many Members of Congress are not familiar with the Self-Governance Program, so I thank you again for giving us the opportunity to reintroduce the positives achieved through the Self-Governance Program.

In 1988, Congress passed the Self-Governance Act, an amendment to the Indian Self-Determination Act of 1975. It did so because tribes and tribal leaders were complaining vehemently about the shortcoming of 93-638 contracting. In spite of the intent of the Self-Determination Act, which allowed tribes for the first time to manage programs on their respective reservations, the BIA remained in complete control of programs by dictating contract terms and through heavy-handed oversight that took 80 to 90 percent of the Federal funding off the top of Indian program funding. More importantly, the programs designed by the BIA were not meeting the needs of the Indian communities. Tribes sought flexibility to adjust budgets and redesign programs.

In 1988, 10 tribes with a history of managing 93-638 contracts received a 2-year grant to design their own programs, draft their own compacts, and self-governance was born.

Today, almost 50 percent of the tribes compact under the Self-Governance Program. The Hoopa Tribe was one of the first tier of tribes and was the first to have its compact signed in 1990. Before 1988, however, the tribe had contracted most BIA programs under 93-638. Through self-governance, the Hoopa Tribe has assumed management authority over all Federal programs on its reservation.

Currently, the tribe manages 53 programs. Hoopa was the first to compact health care with the Indian Health Service in California, and now has a hospital, a dental clinic, and the only ambulance service and emergency room within 70 miles of the reservation.

One of the first priorities under self-governance was to establish the first tribal court in California and assert jurisdiction over

Indian child welfare cases. The tribe then established its own law enforcement department for resource protection and to enforce fish regulations. Hoopa's law enforcement program is now the only one in the State that is cross deputized by the county, which gives them the authority to enforce State criminal law on the reservation. This relationship has been in existence for the past 8 years. The tribe has just passed its own civil traffic code.

We have compacted resource management and manage our forest lands under a 10-year forest management plan approved by the BIA that exceeds environmental standards required by Federal law. This plan has allowed our timber to be "smart wood" certified, a certification that allows lumber products produced from our timber to be exportable to Europe.

The tribe also owns and operates its own logging company, creating seasonal employment and additional revenue from annual timber harvests. We also have our own nursery to grow trees for replanting. Forestry management includes forestry protection, and the Hoopa Tribe has created its own wildland fire protection program. All tribal firefighters meet the same qualification requirements of the United States Forest Service.

When Hoopa assumed forestry management, we also took over the BIA roads department. Though the reservation contains over 100 miles of roads, the tribe receives \$113,000 a year for roads maintenance, not enough to maintain five miles of road. To maintain and upgrade our forest roads neglected for decades by the BIA, a percentage of our annual timber sales goes toward road maintenance. Two years ago, the tribe invested in an aggregate plant that now helps subsidize the roads program by paying the salaries of roads department employees with revenues generated from the sale of sand, gravel, road base and cement.

Hoopa has its own Tribal Environmental Protection Agency, TEPA, that ensures that our resource management programs perform in compliance with Federal EPA regulations. TEPA is also responsible for enforcement of the tribe's solid waste ordinance. The tribe has compacted realty from the BIA regional office. Through tribal ordinances, the tribe assigns land to tribal members for housing, agriculture, and grazing.

The tribe created a public utilities district that has spent the past 10 years laying a reservation-wide water system. We are now in the process of developing a reservation-wide irrigation system, using river water as the source, and are in the beginning stages of designing a reservation-wide sewer system that is projected to be needed in the next 10 years.

The tribe has its own fisheries department that monitors in-stream habitat and salmon populations in the Trinity River basin. This is a well-respected program that also contracts with the Bureau of Reclamation and the United States Fish and Wildlife Service for collection of fisheries enhancement data.

We also have a housing authority, a human services department that provides alcohol and drug abuse counseling, as well as family crisis counseling, and an education department that encompasses preschool to a junior college branch campus. We plan to break ground on a new early childhood development facility in this next fiscal year.

By allowing us the flexibility to design our own programs, we have created this system for ourselves in just the last 14 years. We have done this with planning and sound fiscal management. As we look forward to our future, our focus is on the development of our lands for future housing needs and the development of tribally owned economic enterprises that will create an independent economic base and job opportunities for our people. We have completed two feasibility studies, one for a specialized sawmill that will produce specialty cutting for export markets and create 50 jobs locally. The other is a modular home plant that will not only create as many as 150 jobs, but also provide affordable housing to our tribal members and others in our surrounding communities.

We are not sure today what the DOI's trust reform proposal is. Hoopa is concerned that the DOI, the Department of Interior, is planning to take us all the way back to a system that existed before self-governance. They are proposing to design the program for us, they're going to set the standards, the processes and procedures, and they are going to fund their program by taking money off the top of tribal program funding.

We are concerned that the flexibility of self-governance which has allowed tribes to create their own successes will be eliminated, that the processes that tribes have developed through relationships with their respective regional and agency offices over the past 10 to 15 years will be replaced with something that will not work.

DOI and OST are saying that they have to do this because of the Cobell case. This is clearly not correct by our reading of the case. The last Cobell order clearly defines the trust as individual IIM accounts and limits its order to that. The order also requires the Department of Interior to manage the trust in compliance with tribal law and ordinances. Who has such ordinances? The answer is self-governance tribes.

Let me say why I believe that the liability issue that has been raised is overstated in regard to self-governance tribes. First, the BIA and DOI have never been sued by a self-governance tribe for mismanagement of a compacted program. Such an admission of tribal mismanagement would immediately destroy their compact. Second, under self-governance, the BIA can take back any compacted program simply by declaring the program in "imminent jeopardy." Finally, audits and trust evaluations are conducted annually, allowing a complete disclosure of tribal management of compacted programs. The BIA is sued by direct service tribes for their mismanagement. I have heard more than a few leaders of direct service tribes—no offense intended—say they would never compact because they would lose the ability to sue for mismanagement.

Self-governance tribes are the ones that have a clear track record for management. The DOI really has no track record of developing successful programs for tribes. Self-governance tribes have been the true trust reformers. We have used the flexibility of self-governance to address our people's needs, our own issues, concerns and problems. We have created successful programs that have become models for other tribes. We have taken over underfunded programs and created success with innovation and hard work. We have been able to match every dollar that we received from the BIA compact with

three dollars from other sources and with our own tribal funds. By assuming trust management, many of us are doing a cleanup of decades of BIA mismanagement.

Let me conclude by saying that self-governance is the most successful program in the history of Federal Indian policy because tribes have made it a success. Seven tribes in California, along with three other tribes, have asked Congress to create a new pilot project that will preserve the working relationships and agreements that they have created with their respective regional offices since 1990. This proposal is in the Senate Interior Appropriations bill, section 134. I ask that you support section 134 and preserve the most successful models of tribal self-governance in Indian Country today.

Solutions, problem solving and success for Indian Country won't be created within the beltway. Solutions come from tribal communities that understand their own needs. The Self-Governance Program has allowed tribes to make decisions, find their own solutions, and create their own successes. I ask that you take into consideration what has been accomplished under the Self-Governance Program as you consider DOI's proposals for trust reform.

Thank you for your time.

[The prepared statement of Mr. Marshall follows:]

Statement of Clifford Lyle Marshall, Chairman, Hoopa Valley Tribe

Mr. Chairman, Members of the Committee:

Thank you for this opportunity to testify today about the Self-Governance program. I am Clifford Lyle Marshall, Chairman of the Hoopa Valley Tribe. My invitation to testify referred to Self-Governance as an experiment. Originally, Self-Governance was referred to as a project; later amendments to the Self-Governance Act designated it a program. Regardless, whether it's an experiment or a program, it is the most successful piece of legislation in advancing tribal government, developing tribal infrastructure, and advancing tribal self-sufficiency.

I thank the Committee for having this hearing because, for the past two-and-a-half years most of what has been talked about in regard to Indian affairs is the Cobell case and the Department of the Interior's Trust Reform proposal to address the Court's order in that case. The impression is that everything in Indian Country is bad, broken, mismanaged, has gone haywire, or run amok. I hope to express to you today that in many places in Indian Country, on many reservations as the tribal leaders today will testify, that very positive things are happening. I sense that many members of Congress are not familiar with the Self-Governance program. So I thank you for giving us this opportunity to re-introduce the positives achieved through the Self-Governance Program.

In 1988 Congress passed the Self-Governance Act, an amendment to the Indian Self-Determination Act of 1975. It did so because tribes and tribal leaders were complaining vehemently about the shortcomings of 93-638 contracting. In spite of the intent of the Self-Determination Act, which allowed tribes for the first time to manage programs on their respective reservations, the BIA remained in complete control of programs by dictating contract terms and through heavy-handed oversight that took 80 to 90 % of the Federal funding off the top of Indian program funding. More importantly the programs designed by the BIA were not meeting the needs of the Indian communities. Tribes sought flexibility to adjust budgets and redesign programs.

In 1988, 10 tribes with a history of managing 93-638 contracts received a two-year grant to design their own programs, draft their own compacts and self-governance was born. Today, almost fifty percent (50%) of the tribes compact under the Self-Governance Program. The Hoopa Tribe was one of the first tier of tribes and was the first to have its compact signed in 1990. Before 1988, however, the Hoopa Tribe had contracted most BIA programs under 93-638. Through Self-Governance, the Hoopa Tribe has assumed management authority over all Federal programs. Currently the Tribe manages fifty-three (53) programs. Hoopa was the first to compact health care with Indian Health Service in California and now has

a hospital, a dental clinic and the only ambulance service and emergency room within 70 miles of the reservation.

One of the first priorities under Self-Governance was to establish the first tribal court in California and assert jurisdiction over Indian Child Welfare cases. The tribe then established its own law enforcement department for resource protection and to enforce fishing regulations. Hoopas Law enforcement program is now the only one in the State that is cross deputized by the County which gives them the authority to enforce state criminal law on the reservation. This relationship has been in existence for the past eight years. The tribe has just passed its own civil traffic code.

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When Hoopa assumed forestry management, it also took over the BIA roads department. Though the reservation contains over one hundred miles of roads the Tribe receives \$113,000 a year for roads maintenance, not enough to maintain five miles of road. To maintain and upgrade our forest roads neglected for decades by the BIA a percentage of annual timber sales goes towards roads maintenance. Two years ago the Tribe invested in an aggregate plant that now helps subsidize the Roads program by paying the salaries of roads department employees with revenues generated from the sale of sand, gravel, road base, and cement.

Hoopa has its own Tribal Environmental Protection Agency (TEPA) that ensures that our resource management programs perform in compliance with Federal EPA regulations. TEPA is also responsible for enforcement of the Tribes solid waste ordinance. The Tribe has compacted realty from the BIA Regional office. Through tribal ordinances the Tribal assigns land to tribal members for housing, agriculture, and grazing.

The Tribe created a public utilities district that has spent the last ten years laying a reservation-wide water system. We are now in the process of developing a reservation-wide irrigation system using river water as the source, and are in the beginning stages of designing a reservation-wide sewer system that is projected to be needed in the next ten years. The Tribe has its own fisheries department that monitors in-stream habitat and salmon populations in the Trinity River basin. This is a well-respected program that also contracts with the Bureau of Reclamation and United States Fish and Wildlife Service for collection of fisheries enhancement data.

We also have a housing authority; a human services department that provides alcohol and drug abuse counseling as well as family crisis counseling; and an education department that encompasses pre-school to a junior college branch campus. We plan to break ground on a new early childhood development facility in this next fiscal year.

By allowing us the flexibility to design our own programs, we have created this system for ourselves in just the last fourteen years. We've done this with planning and sound fiscal management. As we look forward to our future, our focus is on the development of our lands for future housing needs and the development of tribally-owned economic enterprises that will create an independent economic base and job opportunities for our people. We have completed two feasibility studies, one for a specialized sawmill that will produce specialty cutting for export markets and create 50 jobs locally. The other is a modular home plant that will not only create as many as 150 jobs and also provide affordable housing to our tribal members and others in our surrounding communities.

We are not sure what the DOI's trust reform proposal is. Hoopa is concerned that DOI is planning to take us all the way back to the system that existed before Self-Governance: they're proposing to design the program for us; they're going to set the standards, the processes and procedures, and they're going to fund their program by taking money off the top of tribal program funding. We are concerned that the flexibility of Self-Governance which has allowed tribes to create their own successes will be eliminated, that the processes that tribes have developed through relationships with their respective regional or agency offices over the past 10-15 years will be replaced with something that will not work.

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also requires the DOI to manage the Trust in compliance with tribal law and ordinances. Who has such ordinances? The answer is Self-Governance tribes.

Let me say why I believe that the liability issue is overstated in regard to Self-Governance tribes. First, the BIA or DOI have never been sued by a Self-Governance Tribe for mismanagement of a compacted program. Such an admission of tribal mismanagement would immediately destroy their compact. Second, under Self-Governance the BIA can take back any compacted program simply by declaring the program in "imminent jeopardy." Finally, audits and trust evaluations are conducted annually allowing a complete disclosure of tribal management of compacted programs. The BIA is sued by Direct Service tribes for their mismanagement. I've heard more than a few leaders of Direct Service tribes say they would never compact because they would lose the ability to sue for mismanagement.

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Let me conclude by saying that Self-Governance is the most successful program in the history of Federal Indian policy because tribes have made it a success. Seven tribes in California, along with three other tribes, have asked Congress to create a new pilot project that will preserve the working relationships and agreements that they have created with their respective regional offices since 1990. This proposal is in the Senate Interior Appropriations bill, Section 134. I ask that you support Section 134 and preserve the most successful models of tribal self-governance in Indian Country today.

Solutions, problem solving and success for Indian Country won't be created within the Beltway. Solutions must come from tribal communities that understand their own needs. The Self-Governance program has allowed tribes to make decisions, find their own solutions, and create their own successes. I ask that you take into consideration what has been accomplished under the Self-Governance program as you consider DOI's proposals for trust reform. Thank you for your time.

The CHAIRMAN. I recognize Mr. Hayworth.

Mr. HAYWORTH. Mr. Chairman, I thank you very much.

My colleagues, I certainly echo very much what Chairman Marshall told us. The subject of this hearing today, tribal self-governance, is by and large a success story. Though redistricting has taken many of the sovereign tribes out of what used to be my district, my colleague, Mr. Renzi, now in the newly constituted 1st District, represents many of my former constituents.

I am very pleased that remaining within the bounds of the new 5th Congressional District of Arizona is the Salt River Pima-Maricopa Indian Community. Here to tell us the story of economic diversity, the successes, the challenges confronted by the Salt River Pima community is my friend, the Special Assistant for Congressional and Legislative Affairs, Jacob Moore.

Jacob, welcome.

The CHAIRMAN. Mr. Moore.

**STATEMENT OF JACOB MOORE, SPECIAL ASSISTANT,
CONGRESSIONAL AND LEGISLATIVE AFFAIRS, SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY**

Mr. MOORE. Thank you. Thank you for the kind introduction. Good morning.

Chairman Pombo, Ranking Member Rahall, members of the Committee and distinguished guests, on behalf of President Joni

Ramos and Vice President Leonard Rivers of the Salt River Pima-Maricopa Indian Community, we thank you for the opportunity to testify today.

My name is Jacob Moore, special assistant on congressional and legislative affairs. I am here to share with the Committee the concept of self-governance, some of the successes resulting therefrom, and to emphasize the importance of section 134 of S. 1391, the Senate Interior Appropriations bill, which was just mentioned by Chairman Marshall from the Hoopa Valley Tribe.

The community, currently comprised of over 8,300 members, pre-dates Arizona as a State. Yet, in the last 50 years, urban growth has come to our boundaries, forcing the community to explore ways to protect our history, our culture, and our way of life. Today, we are surrounded by metropolitan Phoenix and are bordered by the cities of Tempe, Scottsdale, Mesa and Fountain Hills.

The Salt River Pima-Maricopa Indian Community is a contemporary but still traditional community that is concerned about our physical, social, economic and spiritual well-being. We are fortunate that our community recognizes the importance of planning for a world that the next seven generations of our people will inherit. The advantage of long-term planning enables us to make better decisions.

Our road to self-governance began at the same time President Richard Nixon launched self-determination in 1970. That action, as you know, led to the Indian Self-Determination and Educational Assistance Act of 1975. We entered into our first contract in 1970 to assume control of our Police Department and have not looked back since. This initiative set us on track for self-determination and self-governance. Since that initial contract, we have grown to be an active and strong self-governing tribe, and enjoy a reputation as such among our peers.

In the 1980s, we were the first tribe in the Nation to develop a major retail development on our land—and it wasn't a casino. To accomplish this, we brought together more than 300 landowners and a developer and created the Pavilions Shopping Center adjacent to Scottsdale. We could not have done this without the opportunities available under the Indian Self-Determination and Educational Assistance Act.

Subsequently, as a part of self-governance, we have taken over management of our own resources. We have established a realty data base and a compatible geographic information system. As a result, we can track ownership of every fractionated piece of land owned by heirs of original allottees and tribally owned lands. We can show landowners exactly where their land is with the use of digitized aerial maps and provide a current inventory of their land interests on the same day of the request. Equally significant, we can issue lease payment checks to members in a timely and accurate manner.

Under the spirit and intent of self-governance, we have expanded our economic development opportunities. The Salt River Pima-Maricopa Indian Community operates 11 successful enterprises that include such diverse industries as construction materials, telecommunications, entertainment, tourism, alternative energy, waste management and commercial property development. The revenues

realized from these enterprises allow us to supplement the limited resources received from the Federal Government toward fulfilling its trust obligations. Even with the additional tribal funds, there is still an unmet need in the delivery of basic services and infrastructure in Indian Country, including the Salt River Pima-Maricopa Indian Community.

Today, we have more than three decades of experience with self-determination and self-governance. From the original ten demonstration projects in 1987, the program has grown to over 260 tribes that are participating in self-governance in one form or another.

Self-governance has proven to be a viable means to allow tribes to obtain more autonomy in decisionmaking and management of their resources. Self-governance allows tribes to develop and grow in a way that is consistent with their traditional values and cultural integrity. The self-governance program allows tribes the flexibility to utilize and maximize limited Federal resources in the most efficient and cost-effective way. While accomplishing all of this, self-governance tribes have met and oftentimes exceed the level of trust accountability practiced by the U.S. Department of Interior. This is evidenced in successful annual audit reports, the EDS report, and the Department of Interior's As Is report.

In the context of the current trust reform effort and the U.S. Department of Interior's reorganization plan, we need to ensure that the embodiment of self-governance is not diminished. Since the trust reform plan has focused primarily on issues involving direct service tribes and self-determination contract tribes, as distinguished from self-governance tribes, self-governance tribes must be able to continue to operate within the principle that has guided their success.

The demonstration project proposed under section 134 of S. 1391, the Senate Interior Appropriations bill, will allow the current self-governance tribes to continue to operate under a system that has proven successful while allowing trust reform to continue. The Salt River Pima-Maricopa Indian Community has always, and will continue to maintain, trust standards that meet or exceed those of the Federal Government. Much like the empowerment realized under self-governance, our trust standards reflect our commitment to the well-being and continued existence of our community through a balanced relationship with the Federal Government that works.

Thank you for the opportunity to speak today, and thank you for your continued support.

[The prepared statement of Mr. Moore follows:]

Statement of Jacob Moore, Special Assistant on Congressional and Legislative Affairs, The Salt River Pima-Maricopa Indian Community

Chairman Pombo, Ranking Member Rahall, Members of the Committee and distinguished guests, on behalf of President Joni M. Ramos and Vice President Leonard Rivers of the Salt River Pima-Maricopa Indian Community (Community), we thank you for the opportunity to testify today. My name is Jacob Moore, Special Assistant on Congressional & Legislative Affairs. I am here to share with the Committee the concept of self-governance, some of the successes resulting therefrom and to emphasize the importance of Section 134 of S. 1391, the Senate Interior Appropriations bill.

Our Community, currently comprised of over 8,300 members, predates Arizona as a State. Yet, in the last 50 years, urban growth has come to our boundaries, forcing the Community to explore ways to protect our history, culture and way of life. Today, we are surrounded by metropolitan Phoenix and are bordered by the cities of Tempe, Scottsdale, Mesa and Fountain Hills.

The Salt River Pima-Maricopa Indian Community is a contemporary, but still traditional, community that is concerned about our physical, social, economic and spiritual well-being. We are fortunate that our Community recognizes the importance of planning for a world that the next seven generations of our people will inherit. The advantage of long-term planning enables us to make better decisions.

Our road to self-governance began at the same time President Richard Nixon launched self-determination in 1970. That action, as you know, led to the Indian Self-Determination & Educational Assistance Act of 1975. We entered into our first contract in 1970 for our Police Department. This initiative set us on track for self-determination and self-governance. Since that initial contract, we have grown to be an active and strong self-governing tribe and enjoy a reputation, as such, among our peers.

In the 1980s, we were the first tribe to develop a major retail development on our land. To accomplish this, we brought together more than 300 landowners and a developer and created the Pavilions Shopping Center. We could not have done this without the opportunities available under the Indian Self-Determination and Educational Assistance Act.

Subsequently, as a part of self-governance, we have taken over management of our own resources. We have established a realty database and a compatible geographic information system. As a result, we can track ownership for every fractionated piece of land owned by heirs of original allottees and tribally owned lands. We can show landowners exactly where their land is and provide a current inventory of their land interests on the same day of the request. Equally significant, we issue lease payment checks to our members in a timely and accurate manner.

Under the spirit and intent of self-governance, we have expanded our economic development opportunities. The Salt River Indian Pima-Maricopa Indian Community operates 11 successful enterprises that include such diverse industries as construction materials, telecommunications, entertainment, tourism, waste management and commercial property development. The revenues realized from these enterprises allow us to supplement the limited resources received from the Federal Government toward fulfilling its trust obligations. Even with additional tribal funds, there is still an unmet need in the delivery of basic services and infrastructure in Indian Country including the Salt River Pima-Maricopa Indian Community.

Today, we have more than three decades of experience with self-governance. From the original 10 demonstration projects in 1987, the program has grown to over 260 tribes that are participating in self-governance in one form or another.

Self-governance has proven to be a viable means to allow tribes to obtain more autonomy in decision making and management of their resources. Self-governance allows tribes to develop and grow in a way that is consistent with traditional values and cultural integrity. The self-governance program allows tribes the flexibility to utilize and maximize limited Federal resources in the most efficient and cost-effective way. While accomplishing all of this, self-governance tribes have met, and often-times exceeded, the level of trust accountability practiced by the U.S. Department of the Interior. This is evidenced in successful annual audit reports, the EDS report, and the DOI's As Is Report.

In the context of the current trust reform effort and the U.S. Department of the Interior's reorganization plan, we need to ensure that the embodiment of self-governance is not diminished. Since the trust reform plan has focused primarily on issues involving direct service tribes and self-determination contract tribes, as distinguished from self-governance tribes, self-governance tribes must be able to continue to operate within the parameter that has guided their success.

The demonstration project proposed under Section 134 will allow current self-governance tribes to continue to operate under a system that has proven successful while allowing trust reform to continue. The Salt River Pima-Maricopa Indian Community has always, and will continue to maintain, trust standards that meet or exceed those of the Federal Government. Much like the empowerment realized under self-governance, our trust standards reflect our commitment to the well-being and continued existence of our Community.

Thank you for the opportunity to speak today.

The CHAIRMAN. Thank you. I want to thank the entire panel for your testimony. To begin with, I would like to ask just kind of a general question of the entire panel.

When we look at what the next step is, where do we go from here, what kind of changes would you like to see put into effect that would help give you a better opportunity to manage and for self-governance? We can start with Mr. Matt.

Mr. MATT. As I alluded to in part of my verbal testimony, we are looking right now at the opportunity of developing an AFA for the National Bison Range, which is right in the heart of our reservation, so that's outside of the normal umbrella, I guess, of what we're used to dealing with at BIA and those programs. We got that developed to the point where it works well and we do a good job, but this is kind of outside of that. So we're looking at other programs and that happens to be one of them.

The CHAIRMAN. So what you would like is to have the opportunity to broaden or expand the areas that you can compact with and begin to take over?

Mr. MATT. Yes, sir, that's exactly right.

The CHAIRMAN. Ms. Benjamin?

Ms. BENJAMIN. I will have to also say that I think the opportunity to have compacting with the other Federal agencies as well would be a benefit to the Mille Lacs Band. In addition, my testimony talked about when there are those costs that increase for the BIA, they also increase for the tribal sides as well. Those two.

The CHAIRMAN. Let me just follow up on that. You said in your testimony that the BIA budget had doubled during a 13-year time span, I believe you said. How did your funding change during that same 13-year span?

Ms. BENJAMIN. We are about 3 percent each year that there's been an increase overall. For the 13 years, it's been 35 percent total. So we're smaller. Our increases are smaller than the Bureau of Indian Affairs, cost increases, things of that sort.

The CHAIRMAN. Mr. Marshall?

Mr. MARSHALL. There was a provision in the Self-Governance Act Amendment that provided the tribes would be able to compact with Interior programs. Up to this point, it has been limited to the BIA. So we do enter into compacts, but it is not based on treaty right because there's a fiduciary obligation of the tribe to protect those rights.

Fred is very concerned about the buffalo range, and we're very concerned about maintaining fisheries habitat on the river that runs through our reservation.

The CHAIRMAN. One of the major issues that you have dealt with is water and water rights. You said that you're working with the Bureau now on some stuff—

Mr. MARSHALL. Reclamation, yes.

The CHAIRMAN [continuing]. That you would like to see that expand.

Mr. MARSHALL. Well, the contracts that we have with the Bureau of Reclamation, we didn't get them through compacting. We got them basically by banging on their door until they listened to us, proving ourselves as being competent managers. But as we assert our rights at times, there tends to be some conflict of interest and

then we run into a discussion of whether or not we should be allowed to contract or not.

Our argument is that our fishing right is a treaty obligation, as Mr. Kildee said. It is between two nations, and there is an obligation to protect that fishery. As such, we feel we should be entitled to contract for the management of that resource, or to protect that treaty right.

The CHAIRMAN. Mr. Moore?

Mr. MOORE. I would echo some of the statements that were made earlier. Contract support cost is certainly an issue. The lack of increases in contract support costs is a disincentive for tribes to become involved in self-governance. Not all tribes are as fortunate as, say, Salt River or other tribes that have additional opportunities for development.

There are tribes that struggle. The idea of taking over programs when, in fact, they know in the long run they're going to have to do more with less, is not an incentive to look at self-governance. So having additional contract support is useful.

As mentioned earlier, it is again the idea of being able to compact not just the programs that are within the Bureau of Indian Affairs or Indian Health Service, but the other agencies that also have some component of tribal affairs involved.

The CHAIRMAN. Thank you.

Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. To all of you, I say thank you. And to Chief Executive Benjamin, I would say "Mii Gwetch". But I speak Ojibwe with a Michigan accent.

[Laughter.]

Mr. KILDEE. Let me ask you this question. Do you believe that the trust responsibility should be maintained as tribes assume control over more Federal programs? I ask that in this context. It would seem that one of the essential areas that might want to be retained in the trust responsibility is to protect sovereign tribes from State government. John Marshall's decision really was based upon that, because the Carolinas and Georgia were infringing upon the rights.

What should the relationship be between the trust responsibility and your self-governance? Should there still be a role for trust responsibility?

Mr. MATT. Anna, do you want to help me out with that?

This is a staff person that I brought with me and failed to introduce. She has worked intimately with our programs. Maybe you would have a better short answer than I would.

The CHAIRMAN. Please identify yourself for the record.

Ms. SORRELL. My name is Anna Whiting Sorrell. I work for the Confederated Salish and Kootenai Tribes.

Our tribes absolutely believe that the trust responsibility needs to be maintained. In this world today, our relationship is a government-to-government relationship. We have been willing to take on these responsibilities as a tribe with less resource, knowing we're going to have to do more and more. So it's very important for us that we keep that responsibility in place.

Maybe as time moves on we may consider a different demonstration at a different time, but at this point we would fully support that maintaining of the trust responsibility.

Mr. KILDEE. Ms. Benjamin.

Ms. BENJAMIN. There is an inherent Federal trust responsibility. I think we have to maintain that, and even though we want to expand our self-governance responsibilities, we still feel that inherent Federal responsibility is still there.

I would also like to introduce Tadd Johnson, who I mentioned was formerly of this Committee, to also comment on this question.

Mr. JOHNSON. Mr. Chairman, Mr. Kildee, when the Self-governance Act was originally conceived of back in 1987-88, the Department of Interior at the time sent a concept up to the Hill that essentially said the tribes would take over the program but there wouldn't be a trust responsibility included in the package. For the tribes at that time, it was a non-starter. I think that's the position for most tribes today.

So the trust responsibility is based on treaties and statutes and Executive orders in the course of dealings with the United States, and it is firmly embodied in the legal history of the tribes and needs to stay in place. Any expansion that is made of self-governance also needs to include the trust responsibility.

Thank you.

Mr. KILDEE. Mr. Marshall.

Mr. MARSHALL. Trust responsibility was created by Justice Marshall in the trilogy, Marshall's trilogy, which included *Wooster versus Georgia*, when he defined tribes as sovereign dependent nations, and defined the United States relationship with tribes. Through the course of history, it is the trust responsibility that has kind of shaped our history.

The Department of Interior, in presenting trust reform, has said to us there is a conflict between trust responsibility and sovereignty. Certainly there is as tension, but self-governance I think is closest to resolving that tension.

When we talk about the government-to-government relationship on the one hand, which is a recognition of tribes as nation, and the trust responsibility relationship, which is defined more as a trustee-beneficiary relationship, the conflict that is perceived with self-governance is as managers we are managing the trust. That was the debate that happened when self-governance was created—can the beneficiary be trusted to manage the trust. Under this idea that tribes are nations, I think the United States chose to accept a risk with this experiment.

Tribes have a very brief history of self-governance. If you look at the Indian Self-Determination Act, we have been managing our own affairs for barely 25 years. Before the Education Assistance Act, very few Indians went to college. Today, my programs on my reservation are managed. My forestry program, I have a tribal member who is a licensed forester. My fisheries program, I have a tribal member who is a fisheries biologist. My health care program, I have a tribal member who is a doctor. It goes like that.

Will there be a time when tribes can stand as independent sovereign nations in this country, or at some level where they can

function independently entirely of the United States? I don't know, because we weren't left with a whole lot to work with.

But trust responsibility is about trust duties, trust obligations, of the United States keeping its word that it gave to Indians when it treated with them or when it entered into agreements with them. I think when we talk about trust responsibility, we're talking about the United States keeping its word and meeting the obligations and the promises it made to Indians throughout the course of this Nation's history.

Mr. KILDEE. Mr. Moore, if you could respond.

Mr. MOORE. It is always hard to follow Chairman Marshall, who articulates it so well. But he is absolutely correct. I think history will confirm that an agreement was made on a government-to-government basis, that made certain promises in exchange for vast tracts of ancestral lands, that stated that health, education and welfare would be provided to Native peoples.

There wasn't a time set on that. Again, whether it's our parents or our grandparents or our great-great grandparents, those were commitments that they understood were made, not only for my future but for the future of our children.

Since that time, there have been misguided policies and bureaucracies within various departments that deal with Indian affairs that have clouded that issue. So that becomes an issue of whether or not it can be provided by the Federal Government or whether the tribes, through self-governance, can manage those programs. But beyond that, the commitment still remains the same, and that's what we hold to.

Mr. KILDEE. I think I agree with all of you, that I really believe the trust responsibility should never be a patronizing trust responsibility but it should retain its protective nature. Very often we need that, even today. It wasn't just back in the time of Andrew Jackson or John Marshall, although that's where we really find a basis for this in Supreme Court decisions. But it is right now in Florida, with the Seminoles. It's in California with people talking about Indian sovereign nations as if they're social clubs, not sovereign nations, during that last campaign. They aren't social clubs. You're sovereign nations. If there is to be retained a trust responsibility, it should be to protect your sovereignty, not to be a patronizing role.

I really appreciate your responses. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair.

I'm going to direct this to Chief Executive Melanie Benjamin. If others want to comment after her, I would be very interested in hearing your thoughts.

One of the comments that you made and you elaborated more on in your testimony, Ms. Benjamin, dealt with the reorganization that you would like to see really take the tribes as a partner in moving forward, and that's dealing with health.

You mentioned the ability for tribal elders working to find ways into combining traditional medicine as well as the advances that have been made with modern medicine in addressing alcoholism with the use of "sweat lodges." But we also know that not only in

Minnesota, where it has been identified, but throughout the country, diabetes has really made many of our elders' lives not as productive as they could be. I know we have even identified diabetes, unfortunately, very early in many children, Native American children in particular.

One of the things in your testimony that, yes, there will be some downsizing as more self-governance takes place, but the downsizing has to be done in consultation with the tribes to make sure the support staff is there in the Federal health department to do research and guidance and to work with the tribes in partnership in addressing these health issues, which were not addressed for years and have now been brought up to be discussed, but still continue to be a major failure on the part of the Federal Government working to address issues such as diabetes.

I would like to have you elaborate more on why your self-governance is the best way in which to bring medicine that will be effective not only to our elders but for future generations.

Ms. BENJAMIN. First off, I would like to thank you for those kind words during my introduction. I was very appreciative of that.

For traditional healers on the Mille Lacs reservation, we are a very traditional people where, along with, of course, a lot of other tribes across the country, we practice a lot of our traditional ceremonies and things of that sort. One of the important components when we look at health is the traditional healer. We have established a relationship on the reservation with the traditional healers and western medicine practitioners as well. They work hand in hand.

The majority of our elders will go to the traditional healer first and get that guidance and the treatment they need. Then they will also go to the regular doctors for that treatment.

I had an interesting story with our doctor, who was dealing with an elder. She couldn't find what the problem was with the elder, so she conferred with our traditional healer and talked about the symptoms the patient had and things of that sort. The traditional healer said, "Well, did you look in this area?" for whatever that was. So she went back and actually used that suggestion and they were able to find out what the ailment was. We believe strongly in that and that really works for us.

Under self-governance, we are able to redesign and reallocate those funds, because we want to make sure the people of the Mille Lacs Band get the best services we can provide for them. This is one of the ways.

Also, in terms of diabetes, we also have a real strong and aggressive program that we're looking to educate for preventive medicine, exercise because, as you stated, the youth are now being diagnosed with diabetes and we're very concerned about that. So that is one example.

I think a lot of times people don't realize that's how self-governance has an impact as well in some of those cultural ways of how we govern and how we live.

The CHAIRMAN. Any further questions? Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I apologize. I missed a lot of the testimony because we had another hearing in another

committee that I'm on. I wanted to just ask two questions, if I could.

It seems to me there's sort of a theoretical and practical side to this issue of expanding self-governance and compacts and how that impacts the trust reform responsibility. You can kind of look at it philosophically or you can look at it practically. Generally speaking, I think that most tribes feel they would like to see more self-governance, more compacts, but at the same time they don't believe that that should end the Federal trust responsibility. But practically speaking, it seems like it does.

In other words, if I could ask a question of Chief Executive Benjamin, it seems to me if we take your idea, which I read in your statement, about all dollars being rolled into one Annual Funding Agreement with the United States, that practically speaking, even if there remained a trust obligation, there wouldn't be much practically left of that.

I guess my question is, let's say you adopted your proposal and you had this Annual Funding Agreement. What trust responsibility would be left? I mean, would there be some kind of oversight responsibility, where maybe, if you're not doing the right thing, we could take it back? What would be left of the trust responsibility?

Ms. BENJAMIN. I think we talked about that earlier, and also about the kind of legal requirements of that relationship between the sovereign nations and the Federal Government. It talks about there are legal requirements that we have to adhere to, and those are still in place with the treaty signings, the Executive orders, contract agreements and those sorts of things. I guess that kind of leaves us with those guidelines that we have to fall within. Again, it is because of that government-to-government relationship, what the Federal Government agreed to when dealing with Indian nations.

Mr. PALLONE. So it would essentially be a sort of oversight responsibility, that if the tribe wasn't doing something properly pursuant to the guidelines, we could take that responsibility back; it would be in that nature?

I mean, I'm not trying to put words in your mouth.

Ms. BENJAMIN. Yes.

I think the question, too, has legal implications to that, so I would ask Tadd Johnson to respond as well.

Mr. JOHNSON. Thank you, Mr. Chairman, Mr. Pallone.

We came upon some of those issues when we were negotiating the rules on Title IV. We asked the Interior Department Solicitor to provide a legal opinion on what were the inherently Federal functions that the United States and Department of Interior had to perform.

It's an analysis that can be done. There are certain functions, obviously, that only the United States can perform. Then there are things that the tribes can perform.

Those can be separated out if you take a long, hard look at them.

One of the practical problems with the suggestion is probably just getting it through the House of Representatives. If you try to roll all the programs into one compact, it probably gets referred to six different committees or something, so a demonstration project would probably take a long time to get through on that idea.

But we just wanted to keep that idea alive. It was something that got discussed many, many years ago, and that was the long-term vision of self-governance. Whether it will get there or not, we're not sure, but we're going to keep plugging at it.

Mr. PALLONE. Again, I wanted to ask this question of Chairman Matt. If I understood it—and again, I'm looking at the written testimony—there was concern that the BIA's trust reform changes might limit opportunities for compacts or for tribal self-governance. I think your testimony says it may move programs into categories of non-BIA programs and the regulations are harder to give tribes opportunities to administer in those programs.

I know it's a little technical, but can you give me an example? In other words, what are they doing with these trust reforms that would limit self-governance opportunities? I know it's kind of technical, and I don't really understand it. Maybe you do, or somebody else.

Mr. MATT. I will try to address that a little bit, but I would like to have Anna expand on it.

As I sit here listening to the questions, there is one simple answer I would like to convey to this Committee. The beauty of self-governance is that it gives us the flexibility to design programs that meet the needs of the individual tribes. You have five tribes sitting at this table that we represent, but across Indian Country, there is 500 tribes. They are all uniquely different. We all are at different stages in our lives that would allow us to either compact or contract, or if we choose or not to choose. But it helps us design programs that have unique elements in it such as this lady just talked about earlier.

That's really the beauty of it. It helps us design programs that meet the needs, and we take it on in stages as we go, as we grow up, so to speak in this idea.

With that, I will let Anna directly answer your question and how that impacts us.

Ms. SORRELL. In our testimony that Chairman Matt provided, we clearly were able to describe a system that we put in place. What we tried to do was take the funds that come from a variety of sources, one of those mainly from the Bureau of Indian Affairs.

As to your particular question, we have had the experience already. Right now the regulations that Mr. Johnson refers to, there is a set of regulations that were negotiated with the tribes and the Department of Interior. Some of those regulations apply to BIA programs, and others apply to non-BIA programs. It is a technical distinction, but it is extremely important to tribes.

What the Bureau of Indian Affairs and the Office of the Special Trustee are doing, they are beginning to separate out programs, and as those programs are separated, they fall under different categories. When we began our negotiations to operate the IIM accounts in the Office of the Special Trustee, we had to negotiate a separate agreement, under different guidelines that are much more restrictive. They do not allow for the redesign; they do not allow for the reallocation to supplement the programs into a single delivery system.

On our reservation, there is one tribal government. That tribal government needs to have the opportunity to design the single

program, not a program that is appropriate in the Bureau, and then a different one that's appropriate for the Office of the Special Trustee, but a single program.

Our fear in the reorganization, they have developed separate stovepipes that go up with separate functions. As they separate out from one program to another, it's going to force us to renegotiate under stricter guidelines, different guidelines, that really allow the Federal Government to centralize those services, not to the tribes but to Washington, D.C., or the regional area.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Mr. Baca.

Mr. BACA. Thank you very much, Mr. Chairman, and thank you for having this hearing today, especially as we look at the continued needs, not only for the self-governance and the trust responsibility, but especially as we look at what's happening in California right now with the new Governor who talks about sovereignty and has the ability to go and tax each of the sovereign countries.

What impact, if at all, will that have on any of the sovereign nations right now as we look at additional dollars coming up in terms of self-governance? Will that have any impact based on some of the decisions that may happen in California?

I believe in California alone, when I look at the sovereignty in that area, most of the tribes contribute a lot more than even any additional tax. Will that then reduce any additional moneys or moneys that are allocated to some of the tribes in California or other areas? Can anyone answer that?

Mr. MARSHALL. I'm from California, so I'll try.

When I introduced myself as Chairman of the Hoopa Tribe—and Hoopa is a nongaming tribe. That doesn't mean it doesn't have a casino. It has a small one, with less than 80 machines. It either makes or loses \$100,000 a year. But it employs 40 people and keeps 40 families off of welfare. It allows them to live normal lives. We have a closed game because we're too remote to draw, and we generate income from other places, basically timber revenues.

The State compact provides for gaming revenue sharing, and we benefit from that. A lot of things we have done, from renovating tribal facilities, fixing leaking roofs on facilities that were built back in the 1970s, contributing to our preschool facility, building our dental clinic, we have used gaming revenue sharing dollars to do that with.

There are casinos and there are casinos. There are large casinos in the San Diego area. They produce a lot of revenue. They also create a lot of jobs, and they donate a lot of the money to—

Mr. BACA. On the average, they create about 1,500 jobs or more locally in the area; is that correct?

Mr. MARSHALL. I believe that Mark Maccaro from Pachonga was saying that the casinos in total create over 40,000 jobs in California. They are very sensitive to impacts. If there's an impact on a highway, they want to fix it. They've got the money to do it. I think it really takes away from the history that occurred to Indians in California. We are from the largest reservation in California, and I wouldn't compare mine to Fred's. I mean, Fred has a huge reservation compared to mine. But I think mine is just as pretty.

[Laughter.]

Mr. MARSHALL. Most land bases in California are very small. They were set aside simply just large enough for a farm or large enough for a home, and families grew. So there is no other opportunity. They aren't going to build an industrial park. There is no land base for it. It can't rely on natural resources. So gaming was an answer.

I know "Arnold" is talking about taxation. California is a Public Law 280 State, where the Federal Government transferred law enforcement to the State back in the 1950s. We have a law enforcement program because the law enforcement that was being provided by the State, in our opinion, was inadequate. Tribes had to make up the difference. They still see us as separate and apart from them.

Mr. BACA. That would be a change if he does tax on the compact that was originally signed, and also not keeping its word, right?

Mr. MARSHALL. We're going to see Arnold get mad. We're going to see—Excuse me, it's Governor Schwarzenegger.

Mr. BACA. Governor-elect.

[Laughter.]

Mr. MARSHALL. Right, Governor-elect Schwarzenegger. He was upset with some of the gaming tribes and he said some things. Hopefully he will take the time to sit back and reflect on that. I think he is not aware of the unique relationship between tribes as nations and the United States. I think, now that he's there, he will get an education.

Mr. BACA. I agree with you.

If I can, Mr. Chairman, I know my time is up, but it's shocking that the tribes only receive one-third of the money they need for programs such as welfare, courts, land management, assistance to the elderly, the health area, such as diabetes, education and the infrastructure.

I know that Honorable Melanie Benjamin in her testimony mentioned that the studies showed only 10 percent of every dollar appropriated actually makes it to the reservations, which means we should actually be funding at a higher level and we should not rely on casino moneys to provide a service that we ask the government to provide anybody else. We should be doing the same thing.

How can we straighten the principle of financial responsibility and government-to-government relationships, which is question number one, and how can we get tribes more involved in the decisionmaking process as to where the money should go? That's open to anyone.

Mr. MATT. I'll try to take the first cut at that.

Again, for the very nature of why we're here today, that's a way, if there's any funding during our agreement or negotiating part of our compacts, if we can get the adequate resources, it is our experience that, with what we have, we have done a better job. We clearly can go down the line here and prove that, with the limited funding that we receive, in some cases after we've negotiated compacts, traditionally that money starts shrinking. We still do a better job.

Mr. BACA. If I may just interject here, you're absolutely right. Isn't that correct, that when we fund other agencies outside of a sovereign nation, that we allow them to run and govern their own

money? And yet, we're somehow questioning you—I mean, it seems like we should apply the same principle.

Mr. MATT. There again, in part of my written testimony I allude to where, if we were to fund our health care system the same as we do the prison system in the State of Montana, we would have triple the resources that we need.

Mr. BACA. Right, and allow you to be competitive, as well, to keep the individuals that we're educating in each of the fields, isn't that correct? I mean, it becomes difficult when you're competing with the outside, and yet, in terms of the revenue and in terms of hiring people, whether it's in health, education, or services, unless you receive the funding and are competitive, people are going to leave. And yet the services aren't provided. So we should be providing an equal and level playing field on both sides, right? I mean, I think that's where you were going.

Mr. MATT. Yes, sir.

Mr. MARSHALL. If I may, one of the things that was brought up earlier was Wooster. But the Supreme Court has said that treaties are to be interpreted as the Indians would have understood them. That requires some dialog. What is the Indians' understanding of the treaty obligation, or of the trust responsibility, those duties and obligations owed to tribes by the United States?

Self-governance, as an experiment, is an experiment in dialog. It's an experiment in negotiation. It's an experiment where tribes have the right, the opportunity, to sit down at the local level with the agency, or with the regional office, as we do it, and say this is what we want to do and this is why. That dialog then turns into agreements, so that we meet the trust duties as we understand them, and the United States, through its local representation, provides the funding that's available.

I think we cut the middleman out, the bureaucracy out. In self-governance, we don't have the same bureaucracy that existed before, where somebody is designing the program, somebody is overseeing every step that we take.

We do trust evaluations. A national program, that says trust duties are going to be performed this way, takes away all the flexibility. We have designed programs. Part of the designing of the program is an agreement, and how those programs are going to be evaluated, because our program is different than Fred's program. So a "one size fits all" solution is not going to be there.

The solution for us, what has worked for us, is the flexibility to work with the agencies at the local level, who understand us and understand what we mean when we say these are our needs, and are willing to give us the opportunity to provide the service that, in essence, is meeting their trust responsibility to us, not us taking over the obligation to do it.

Mr. BACA. Thank you.

Thank you, Mr. Chairman. I thank you for taking the responsibility. I know you have always been a friend to Native Americans as well.

The CHAIRMAN. Any further questions? Mr. Inslee.

Mr. INSLEE. Thank you, Mr. Chairman.

Chief Executive Benjamin, you referred to the possibility at some time of funding from a variety of agencies. Could you expand on

that and tell me how you think we could make that work and why that makes sense?

Ms. BENJAMIN. Again, the Mille Lacs Band's position is that we know our people the best, and we understand what their needs are. We want to be able to have that flexibility under the self-governance model, where we would then determine what our priorities are for the Band. I think self-governance is a good model to start from in those different areas, labor and education, those types of things.

The other issue, too, is the block granting, where a lot of the funds go through the State and through the tribe. We would also like to have that opportunity to block grant those funds, and we wouldn't have to have the State as a middleman for some of those issues.

Some years ago we did do a study on that with Gore, and it went just to a certain level and then we were unable to pursue it any further from that. But I think from the testimony today, it proves that when we have that flexibility to provide those services based on our priorities, our people are better off. We can render a better service for them.

Mr. INSLEE. Mr. Marshall.

Mr. MARSHALL. There are a number of programs within Interior that perform trust obligations. The Bureau of Land Management performs the trust obligations of surveys, mineral management, oil and natural gas management. Tribes have hunting and fishing rights on lands adjacent to the reservations managed by the U.S. Forest Service. The U.S. Fish and Wildlife Service provides the protection of fisheries and is meeting a trust obligation to protect tribal fishing rights. So those are programs that we want to work with to ensure the treaty obligations and the rights that our tribes exercise are protected. So expanding it to those programs to actually provide the service is what we would be interested in contracting.

Mr. MATT. I would just say that Anna reminded me that we always try to do things at the reservation level to serve our membership better. We are in this constant sort of reorganization mode to do that. We have a Department of Health and Human Services, DHRD, where there's a variety of different funding sources—labor, the Indian Health Service and Interior—that funnel down through this program so that we meet the needs of our membership. It works very well, but it is different funding agencies that come through that office. So it does work good.

Mr. INSLEE. Thank you.

The CHAIRMAN. Any further questions? Mr. Kildee.

Mr. KILDEE. Just one brief question.

This has been a very good hearing, by the way. I think it is a very important hearing.

As sovereign tribes, as you negotiate with the Federal Government on self-governance, you sit there as equals with the Federal Government. Because of treaties or Executive Orders, you sit there as equals with the Federal Government to determine what you want as your responsibility, and what you want to hold the Federal Government to as its responsibility. I think it's very important that both sides recognize that this is true negotiations between sovereigns, so you get what you feel you need as your

responsibility, and hold the Federal Government to what you feel should be their responsibility. I think that's very, very important.

Let me ask you this question: Are there any programs that you believe should remain within the administration of the Federal Government, or should tribes eventually assume management of all Federal programs? Or is that something that will unfold with various tribes in different ways?

Ms. BENJAMIN. I think it's your statement that we will probably evolve into that process as we move ahead and look at our successes, and we also can maybe look at areas where we may have some adjustments to make. I guess I have to agree with your statement, that we will probably evolve into that as we go along and as we grow and more tribes are involved in this process, if they so desire.

Mr. KILDEE. I think that involvement is extremely important, having been here in Washington 27 years, to constantly remind people, whether it's the Indian Health Service or the BIA, that you are sovereigns dealing with a sovereign. You're not going there in any lesser position, so they don't come in and exercise greater sovereignty than what you have. You have real genuine sovereignty, and as I say, not granted to you but retained by you and upheld by our courts, something you had long before my European ancestors landed here.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Pallone.

Mr. PALLONE. You know, we had a hearing last week on the Indian Health Care Improvement Act, so the health care issues are very much in mind at the Committee right now. I know, Chairman Matt, you testified that your tribe receives substantially less funding for health program than the Federal Government's Medicare program, and even the Federal Prison System. You asserted that you were able to provide quality care.

I just wondered how the tribe manages that, in light of what we're trying to accomplish in improving Indian health care.

Mr. MATT. I will start again by just saying, with creativity, that is one of the things that we have been successful with on our reservation, getting into creativity and how we manage that. Maybe for more of a technical explanation, Anna is truly our right-hand person here and she is involved with everything. She could probably give you a better idea.

Ms. SORRELL. I wanted to say that, although Chairman Marshall says that he thinks Hoopa is just as beautiful as Flathead, once you've been to Flathead, you will understand that you're truly in God's country. As a result of that, we have over 10,000 users. Our tribal membership on the reservation is about 4,500, but we serve 10,000 eligible beneficiaries.

Our funding has not increased at the same level as our beneficiaries or our users. Partly that is a result of our highly successful Salish Kootenai College. We have the only all-Indian Job Corps center, so that brings people to our reservation.

We have a very unique system in that, when IHS first formed, we did not have a direct care facility built. So we are the largest tribe in this country without a direct care facility. In fact, we purchase all of our care on the open market, or the majority of our

care on the open market. So we have more medical providers within a 100 mile radius, per capita, than persons in Boston, which is one of the highest levels. So we have had to develop a relationship, a contractual relationship, with the providers. There are two hospitals, two private care facilities on our reservation. We have had to enter into contracts with those.

But what we have experienced through self-governance is that health care isn't a service. It's a business. We need to figure out how best to manage that business. Through our self-governance, we have been able to build a governmental infrastructure that has allowed us to deal with those health care businesses in a business-like manner. We actually have a business plan developed by an actuarial on how to deliver that care, how we get our primary care, how we refer people to specialists, how we enter into those hospitals. So we have this whole plan that's in place.

Then it is supplemented, as Chairman Benjamin has talked about, with those kinds of services in our communities, whether that be substance abuse or the delivery of mental health services, in a way that really respects and honors our tribal traditions.

One thing that I would like to say is that self-governance tribes are certainly at a disadvantage in terms of operating the contract health care program. For a number of years, we have been seeking assistance from self-governance tribes and from Congress and the Indian Health Service, because when you assume the management of contract health care, it's a limited budget.

If you get a major accident or you have a major outbreak of illness that requires you to go to the hospital, or a number of people to go to the hospital, it could bankrupt your health care system. One accident in September can cost \$500,000. For many tribes, that is the entire contract health service budget. So tribes that take on that responsibility don't have anywhere to get additional funds to support that. If it remains in IHS, they have the whole system to draw on, but self-governance tribes are limited to their individual pool.

So we have been asking and looking at ways to really reduce or minimize the risks that allow tribes to really take on that function, but also have the protection to ensure that tribes are not brought into bankruptcy as a result of it.

Mr. PALLONE. Thank you.

If I could just say, without the other tribes getting mad at me, when you're talking about "God's country", in August I had a chance to drive up through the Mille Lacs, and when I got to the tribal headquarters and looked out at that lake, which was so beautiful, I really thought I was in God's country.

Thank you, Mr. Chairman.

The CHAIRMAN. I don't think we ought to get into that.

[Laughter.]

The CHAIRMAN. I have to give equal time to Mr. Marshall.

Mr. Kildee had a follow-up question.

Mr. KILDEE. I have been to all three of the tribes, but I have yet to go to the Hoopa Valley Tribe. I will have to go up to your sovereign nation and visit that. But I have been to the other three.

Let me address this to Tadd. You are familiar with both ends of the two sovereignties there. How do you suggest we handle the need for increased funding for contract support costs?

Mr. JOHNSON. Mr. Kildee, Mr. Chairman, members of the Committee, I think some good oversight by the Committee would be helpful. I think a hearing on contract support would certainly be helpful, and a message to the Departments with regard to the shortage in that area. Certainly a strong joint message from the Chairman and Ranking Member to the Departments is usually very helpful in matters like that.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman. Mr. Chairman, this has been an excellent hearing. We ought to appreciate the fact that you have called this hearing.

The CHAIRMAN. Thank you.

I want to thank our witnesses. It has been an educational hearing for myself and I think for members of the Committee. As we move forward with this, we will continue to rely on you and others to provide information to the Committee so that we can help the Interior Department with their administration of the Federal laws. As a Committee, we will continue our oversight responsibility, and if there is a necessity of legislation to be passed, it will be this Committee that takes on that chore.

I want to thank you for your testimony. This is one of those issues that I really do believe we need to move forward on. I think as the testimony we have had here today illustrates, this is an opportunity, in many cases an opportunity, but I think in other cases a necessity for the tribes to take more self-governance and begin to move forward. I think it is something that is extremely important. So I want to thank you.

If there is no further business, the Committee is adjourned.

[Whereupon, at 11:43 a.m., the Committee was adjourned.]

