



Self-Governance Communication & Education Tribal Consortium

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TESTIMONY OF JAY SPAAN, EXECUTIVE DIRECTOR SELF-GOVERNANCE COMMUNICATION & EDUCATION TRIBAL CONSORTIUM OVERSIGHT HEARING ON NATIVE PRIORITIES FOR THE 2023 FARM BILL REAUTHORIZATION BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

July 26, 2023

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee:

On behalf of the Self-Governance Communication and Education Tribal Consortium (SGCETC), I am pleased to be here today to share and discuss priorities for the 2023 Farm Bill Reauthorization. SGCETC appreciates this Committee's long-standing support for Self-Determination and Self-Governance authorities. SGCETC, a non-profit intertribal consortium, supports Tribal Nations and federal agencies in implementing Self-Determination and Self-Governance authority, showcases Tribal Nations' success and innovation in delivering governmental programs, fosters information sharing, and promotes leading practices related to program administration and use of Self-Governance authority.

The enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Public Law 93-638) marked a significant shift in federal Indian policy. Before the act, the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) administered most federal resources and programs that serve Tribal citizens and communities. Passage of the ISDEAA and its subsequent amendments provide Tribal Nations with alternative models for delivering some Department of the Interior (DOI) and IHS resources and programs. Tribal governments now have the option to use Self-

Determination contracting and/or Self-Governance compacting to transfer the administration of some federal programs from DOI and IHS to their governments.

Self-Determination and Self-Governance are distinct authorities and mechanisms—each with its' own attributes, benefits, and regulations. For instance, Self-Governance authority allows Tribal Nations to administer and redesign federal programs based on their priorities and local needs, free from federal interference. Self-Determination authority generally requires Tribal governments to submit standards and redesign proposals for federal review and approval. Self-Governance was developed as a Tribally driven initiative to improve upon and move beyond the limitations that Tribal Nations experienced when taking over the administration of programs using Self-Determination contracts.

Each Tribal Nation decides the most effective institutional arrangement for delivering federal programs and services to its citizens and community. Nearly all Tribal Nations entered a Self-Determination contract with BIA and/or IHS, and more than 385 Tribal Nations entered a Self-Governance compact with the BIA and/or IHS to assume administration of one or more federal programs.

In recent years, Congress expanded Self-Determination and Self-Governance authorities to more federal agencies and programs. Examples include:

- In 2015, the Fixing America's Surface Transportation Act allowed Tribal Nations to negotiate Self-Governance agreements with the Department of Transportation for certain programs.¹
- In 2018, the Farm Bill established a Self-Determination Demonstration Project for the USDA's Food Distribution Program on Indian Reservations.² Seven Tribal Nations and one Tribal consortium now participate and report successful outcomes.

¹Section 1121 of the Fixing America's Surface Transportation Act, Pub. L. 114-94.

²Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334).

- The 2018 Farm Bill also established the Tribal Forest Management Demonstration Project authorizing the USDA's Forest Service to negotiate project-specific Self-Determination contracts with Tribal Nations for activities covered under the Tribal Forest Protection Act (TFPA).³ The Congressional Research Service reported in May 2023 that at least one Tribal Nation successfully entered a Self-Determination contract with Forest Service for a watershed restoration project.⁴

Decades of experience demonstrate that Tribal Nations' use of alternative program delivery models, like Self-Determination and Self-Governance, is tremendously successful. Yet, Self-Governance authority remains limited in both the number of applicable agencies and programs and the scope of authority. Expanding Self-Governance authority to additional agencies and programs could significantly assist Tribal governments as they build and maintain strong and healthy communities. For example, the Native Farm Bill Coalition reports that extending Self-Determination and Self-Governance to USDA's Conservation Title programs will increase Native producers' access, due to Tribal governments' understanding of land holdings issues.⁵ In another example, the Indian Law and Order Commission reported in 2013 that expanding Self-Governance authority to the Department of Justice could help reduce the high rates of violent crime that have plagued Indian country for decades.⁶ Self-Governance authority provides flexibility for Tribal Nations to use federal funds more effectively by (1) redesigning programs to meet local priorities, (2) integrating related resources to reduce

³Tribal Forest Protection Act of 2004 (TFPA), 25 U.S.C. §3115(a).

⁴CRS Report R47563. *Tribal Co-management of Federal Lands: Overview and Selected Issues for Congress* by Mariel J. Murray.

⁵Parker, Erin, and Griffith Hotvedt, Carly, et al. September 2022. *Gaining Ground: A Report on the 2018 Farm Bill Successes for Indian Country and Opportunities for 2023*. Prior Lake, Minnesota: Shakopee Mdewakanton Sioux Community.

⁶In 2010, Congress passed, and the President signed, the Tribal Law and Order Act, P.L. 111-211 (TLOA), which created the Indian Law and Order Commission. The Commission is an independent national advisory commission comprised of nine members who have all served as volunteers in unanimously developing the Roadmap. The President and the majority and minority leadership of Congress appointed these commissioners.

fragmentation at the Tribal government level, and (3) providing opportunities to waive some federal agency rules and guidance that hinder local solutions. It also reduces administrative and reporting burdens, allowing more focus on program delivery.

Priorities for the 2023 Farm Bill Reauthorization

SGCETC wishes to highlight the following policy priorities for the 2023 Farm Bill Reauthorization:

1. Make permanent the FDPIR Self-Determination Demonstration Project, expand opportunities for additional Tribal Nations to participate, add Self-Governance compacting as an option for FDPIR, and expand the authority for the entirety of FDPIR, not just the sourcing opportunity. Expanding authority beyond Self-Determination for the sourcing provision will provide Tribal Nations with an even greater opportunity to implement FDPIR efficiently and effectively. For instance, Tribal Nations should have the option to decide the food provided through its food distribution program without federal review and approval. This authority would allow Tribal governments to quickly respond to the unpredictability of growing seasons and current economic conditions. It would also provide Tribal Nations the opportunity to ensure that all ingredients required to prepare traditional foods are available through its food distribution program.
2. Expand Self-Determination and Self-Governance authorities to SNAP, allowing Tribal Nations to assume administration for the program. Nearly 25 percent of all native households receive SNAP benefits. Tribal governments are best positioned to shape and administer SNAP to meet local needs. SGCETC supports the bipartisan Tribal Food Sovereignty Act.⁷

⁷The Tribal Food Sovereignty Act proposes to give Tribal governments a more active role in the administration of the USDA's vital Supplemental Nutrition Assistance Program (commonly known as SNAP). If passed, the bill would help make sure SNAP is administered in a culturally-appropriate way that promotes the health and economic well-being of Tribal communities.

3. Expand Self-Determination and Self-Governance authorities to Food Safety and Inspection Services, allowing Tribal Nations to assume administration for meat processing inspections. SGCETC supports the bipartisan Promoting Regulatory Independence, Mastery, and Expansion (PRIME) for Meat Processing Act.⁸
4. Provide Tribal governments an exemption or waiver option for the simultaneous program participation limitation. Decades of experience with Self-Governance have proven that it fosters and enables local innovation in delivering federal resources. Yet, statutory limitations can hinder Tribal Nations' ability to implement innovative approaches to address unique, local needs. For instance, under current Title IV provisions, Tribal citizens cannot simultaneously participate in both SNAP and FDPIR. This restricts access and choice about where and what kinds of food the participants can purchase. It also restricts Tribal governments from developing holistic approaches to address local food insecurity challenges. Tribal Nations administering both SNAP and FDPIR under Self-Determination contracts or Self-Governance compacts should have the option to decide when and how their citizens can participate in each program.
5. Expand Self-Determination and Self-Governance authorities to USDA's Conservation Title programs. Providing Tribal Nations with these options would enable Tribal governments to directly administer Conservation Title programs to eligible Native producers—placing program access within easier reach for Native producers because their Tribal governments understand the land holdings issues that often prevent participation.
6. Provide additional funding or direct USDA to prioritize and dedicate funding for additional Tribal Forest Management Self-Determination Demonstration Projects.

⁸The Promoting Regulatory Independence, Mastery, and Expansion for Meat Processing Act proposes to amend ISDEAA to provide Tribal Nations with the opportunity to enter Self-Determination contracts with the FSIS for meat processing inspection, keeping processing local and available and facilities running smoothly and safely.

7. Direct the USDA to determine the feasibility of a Self-Governance demonstration project for additional USDA agencies and programs, including Rural Development programs; Rural Utilities Service programs; and additional Food and Nutrition programs, such as the Emergency Food Assistance Program, the Commodity Supplemental Food Program, and the Women, Infant, and Children Program (WIC). The study should identify, at a minimum, (1) the probable effects on specific programs and program beneficiaries of such a demonstration project; (2) statutory, regulatory, or other impediments to the implementation of such a demonstration project; and (3) strategies for implementing such a demonstration project.

The study report could include the results of the feasibility assessment and a list of the USDA programs, services, functions, and activities (or portions thereof) that would be feasible to include in a Self-Governance Demonstration Project. The list must indicate which programs would be feasible to include both with and without amending statutes or waiving regulations that the Secretary may not waive. In the case of those programs and other functions that could be included only with amending statutes or waiving regulations that the Secretary may not waive, the study must identify legislative actions required to include those programs.

The study should be conducted by a workgroup that includes both Tribal and Federal representatives that are knowledgeable of USDA programs, Self-Determination authority, and Self-Governance authority.

For programs that the Tribal-Federal workgroup deems feasible for Self-Governance authority, Congress could provide USDA with the authority to initiate demonstration projects. Self-Determination and Self-Governance are not “one-size-fits-all” mechanisms, and each Tribal Nation negotiates the terms of these agreements based on its unique situation. Demonstration projects have proven to be a successful approach for identifying how Tribal Nations and federal agencies

can implement the authorities and to identify any obstacles that need to be addressed before the widespread rollout of the authority.

8. Establish an Office of Self-Governance at USDA. Although USDA has limited authority for Tribal Nations to assume greater control over federal resources and activities through Self-Determination contracts and Self-Governance compacts, SGCETC is optimistic that those opportunities within USDA will increase. As such, authorization for an Office of Self-Governance could significantly benefit the implementation and success of authorities as they are provided to the Department.

The office should have the flexibility to transition its primary focus over time. For instance, when initially established, it could serve as a lead for (1) establishing a Tribal/Federal workgroup that will evaluate feasibility of Self-Determination contracting and Self-Governance compacting across USDA, (2) negotiations with Tribal Nations for the Self-Determination authority currently available at USDA, and (3) educating USDA agencies and programs about the mechanics of Self-Determination and Self-Governance authorities. As Self-Governance within USDA evolves from a concept under evaluation to full implementation, the office could transition to manage Self-Governance compacts, Self-Determination contracts, and to provide technical assistance to Tribal Nations considering and negotiating Self-Determination and Self-Governance agreements with the Department.

SGCETC appreciates the opportunity to present priorities for the 2023 Farm Bill Reauthorization to the Committee. Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have.