

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

**TESTIMONY BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS**

**OVERSIGHT HEARING ON THE SUCCESSES AND SHORTFALLS OF TITLE
IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT: TWENTY YEARS OF SELF-GOVERNANCE**

MAY 13, 2008

Good Morning. I am Clifford Marshall, Chairman of the Hoopa Valley Tribe of Northern California. Thank you for this opportunity to present my views regarding the Self-Governance Program and, more importantly, the future of Self Governance. The Hoopa Tribe was one of the first tier of tribes under the Self-Governance Project in 1988 and was the first tribe in the Nation to enter a Self-Governance compact with the United States in 1990.

First, and foremost, I thank this Committee for its continuing bipartisan support for the Tribal Self-Governance Program. The Self-Governance provisions in the Indian Self-Determination and Education Assistance Act stand as one of the most progressive pieces of Indian legislation enacted by Congress. In 1988, Congress listened to many tribes who were saying loudly that they were extremely unhappy with BIA programs and funding. Congress answered with the Self Governance Project that provided tribes with funding, flexibility in designing their own programs, and the authority to set their own budget priorities.

Through Self Governance, Indian Country has experienced many dynamic and pioneering changes in the last twenty years. Self-Governance tribes have progressively moved to stabilize funding bases, improve and expand services at the reservation level, and increase staffing and technical capabilities. Tribes have been able to strengthen tribal government, and establish administrative capability. Through Self-Governance, tribes have become effective partners with the United States, working together to positively address and resolve decades of backlogged trust management issues.

The Self-Governance Program spurred an important transition from bureaucratic one-size-fits-all, federally-dominated programs to flexible tribally-designed and administered programs. Tribes are in the best position to determine what is needed by, and how to provide for, their governments and members. Prior to Self-Governance, there had been a

lack of tribal participation in designing programs and setting agendas; instead, there was a reliance on federal-project planning. These federally-developed programs were not only chronically under-funded, they were not meeting the on-the-ground needs of Indian people. Self-Governance afforded tribes the opportunity to take over the planning and development of these programs. At that point they became based on the priorities and needs of Indian communities as determined by the tribes, and for this reason, they work.

This doesn't mean to say that Self-Governance is easy. Self-Governance is government, and performing the functions of government is hard work. Before Self-Governance the Tribe contracted most BIA programs under the Indian Self-Determination Act, Public Law 93-638. Frustrated with the short-comings of 93-638 contracting, the inflexibility of the BIA-designed programs, the draconian oversight of the BIA and contract compliance obligations, and the stark reality that needs on the ground were not being met, the Tribe embarked on Self-Governance and has not looked back.

For the first eight years of the program, we worked simply to regain control of reservation affairs and develop our governmental and administrative structure. The Tribal Council adopted over forty (40) ordinances, including the Tribe's own legislative procedures ordinance and a Tribal Budget Ordinance, to make our government more efficient and accountable. Today tribal ordinances total seventy (70). Again, creating a structure of government wasn't easy. During this beginning period, we were also able to stabilize our tribal government funding base, which required a lot of hard work and negotiation. We added to and improved our governmental capabilities, and set a course to begin planning for our future. Today, the Hoopa Tribe has assumed management authority over all Federal programs on its reservation.

Specific Hoopa Self-Governance Programs

Self-Governance has allowed us the flexibility to design our own programs. Currently, the Tribe manages 54 programs, created in the last twenty years. These programs provide a range of services to our people, have spurred economic development on our reservation, and ensure quality management of our trust resources. We are proud of the fact that Hoopa was the first to compact health care with the Indian Health Service (IHS) in California, and now has a hospital, a dental clinic, and the only ambulance service and emergency room within 70 miles of the reservation and the next nearest hospital. Much of the other programs we manage would be Bureau of Indian Affairs (BIA) trust resources and services related programs.

The Tribe established the first tribal court in California in 1983, adding a branch of government that the BIA had overlooked when it drafted the first tribal constitutions in the 1930's. The Tribe then established its own law enforcement department for resource protection and to enforce fish regulations. The Tribe then entered into a cross-deputization agreement with Humboldt County, giving tribal police the authority to enforce state criminal laws. This relationship was the first in California and has been in existence for approximately 13 years. The Tribe also enforces its own civil traffic code.

The Tribe originally contracted forestry management from the BIA as part of a settlement agreement for mismanagement of tribal timber lands in 1983. Since 1988, we have compacted and independently managed our forest lands under a 10-year forest management plan 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, which has created increased value and revenue from our annual timber sales. Our Forestry Department has received exemplary trust evaluations from then BIA’s Pacific Regional Office (PRO).

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 only Tribe receives \$113,000 a year for roads maintenance from the BIA, not enough to maintain one mile of road. To maintain and upgrade our forest roads neglected for decades by the BIA, a percentage of our annual timber sales go toward road maintenance. Almost seven 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 state and federal contracts and from the sale of sand, gravel, road base and cement.

The Tribe has also 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 15 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 to serve our community.

Hoopa has its own Tribal Environmental Protection Agency, TEPA, which ensures that our resource management programs perform in compliance with Federal EPA regulations. TEPA monitors and enforces both air and water quality standards set by the Tribal Council. TEPA is also responsible for enforcement of the Tribe's solid waste ordinance. This past year the Tribe established the Office of Emergency Services to prepare and coordinate our departments and make the Tribe eligible for FEMA funding in the event of a disaster. 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.

In regard to addressing poverty through economic development, we still have a long way to go. We have created programs addressing the obstacles to employment such as lack of education, training, and drug and alcohol abuse. With the collapse of the timber industry in our region in the 1970's we have been searching for a new industry that would establish an economic base from which we could build a local economy around. In 2003, the Tribe invested in, financed, and built the largest and most state-of-the-art modular housing plant on the West Coast, to provide an affordable product for Northern California residents. This plant produces homes using the same materials as on-site construction for less than half the cost. Our hopes were that this would create the opportunity for tribal members to invest in businesses that provide services and/or materials to the plant. Because of the collapse of the housing industry, along with the housing mortgage industry, sales for our corporation, "Xontah Builders" has dropped significantly and employment in our plant has been reduced by 50%. We are still in operation, operating with a skeleton crew of thirty-five (35) and anticipate increased sales once the housing market rebounds.

Funding Benefits and Government-to-Government Relationships.

A benefit of major importance in Self-Governance that gets little attention is how it has helped to generate additional funding for carrying out underfunded federal programs. Evidence of chronically underfunded Indian programs, sometimes as much as 75% within the BIA and IHS budgets, has been well-documented over the past several decades. Many tribes hesitate to assume federal programs under Self-Governance because they understand there is not adequate money to support the tribe in carrying out the functions of the programs that the tribes want to administer. However, while Self-Governance is an authorizing law – not an appropriations law – it gives tribes the ability to generate significant additional dollars to help offset the cost of carrying out trust activities. At Hoopa, we can show that the Tribe matches \$3.00 from other sources for each \$1.00 compacted from the BIA that is used for trust management programs.

Another benefit is the ability to redefine the working relationships between tribes and the BIA. For Self-Governance to work, tribes must develop and define a strong positive working relationship with their BIA counterpart. The Hoopa Tribe has enjoyed a solid working relationship with the BIA Pacific Regional Office (PRO) for more than a decade. In 1997, Hoopa and six other California tribes established the California Trust Reform Consortium. It was created to work with the PRO to address the trust resource management issues upon which many of the claims made in the Cobell litigation are based.

In 1998, the Consortium and the PRO entered into an agreement that established the terms, conditions and operating procedures for the Consortium. The ability to develop a new working relationship with the Regional Office was made possible by the flexibility created by Self-Governance. The agreement defines the management roles and responsibilities of the PRO and the tribes and includes provisions for a funding process through the PRO, a joint oversight advisory council, a process for developing

“measurable and quantifiable trust management standards,” methods for resolving disagreements and disputes, and finally, a participatory process for annual trust evaluations. This working relationship that is unique to California has worked well for the last ten years.

Specific Problems that Impede the Development of Tribal Self-Governance: Trust Reform

To be blunt, the specific problem to the development of Self-Governance is the Office of Special Trustee (OST) and the Department of the Interior’s (DOI’s) redesign of the trust relationship. OST is an obstacle to tribal governmental, social, and economic development. The Self-Governance Program is designed to create flexibility. Trust Reform Reorganization is inflexible. I have presented to you the successes of my Tribe in developing government, social programs, and resource management programs, and in developing a unique working relationship with the BIA PRO. Please note that all of these occurred before the effort of Trust Reform Reorganization, and are now in direct conflict with it because they do not mirror the universal program as designed by the OST. Please sunset OST this session, or limit its purpose to the management of IIM accounts, or adopt language that will protect the agreements entered into with the Self-Governance Tribes.

An example of this is the Office of Self Governance’s decision not to honor an agreement entered into between the Hoopa Tribe and the tribes of the California Trust Reform Consortium and the PRO. This agreement was entered into in 1995 and approved by the Washington office by Special Authorization. This agreement allowed the Regional Office to distribute BIA funds for forestry and roads programs directly to the Tribes. This resolved a bureaucratic problem of having the PRO send the funds back to Washington and then resent from Washington to the tribes; a process which would delay receipt of the funds by several months. In 2008, however, the OSG reinterpreted the Self-Governance Act as prohibiting anyone, other than the OSG, from distributing funds to the Tribe. Because the language previously approved in 1995 was included every year in the Tribes’ annual funding agreement, the Office of Self Governance (OSG) held up approval of the agreement for four months. The problem that was resolved through negotiation under Self Governance over thirteen years ago has now been reinstated because it does not comport with the DOI’s model for trust reorganization.

The OSG needs to understand that the Self-Governance Act was not designed to promote or protect bureaucratic activities; instead it exists to engage the direct participation of tribes to improve the provision of services to Indian people and the working relationships between the United States and tribes. We can only expect to see regression of all the progress made if dominating federal control re-emerges, something that the Self-Governance Program sought to keep at bay.

We view the reorganization plans of the DOI, starting with BITAM, as an attack on Self-Governance principles. There is an inherent conflict. Self Governance was designed to give tribes the flexibility to design their own programs and set their own internal funding priorities. Tribal Self-Governance programs, created before Trust reform, do not fit into the inflexible trust reform boxes DOI has now created. In the end, the DOI/OST trust plans will fail because tribal governments' local priorities and needs are not addressed in the reorganization plan. This is a plan for bookkeepers, not tribal governments.

Congress needs to continue to protect the programs developed by the Section 139 tribes. These programs were designed before the DOI's Trust Reform Reorganization and have been described as being light-years ahead of other tribally-developed self-governance programs and DOI's trust reform programs. We need the continued protection of Congress to ensure the advances we have made to date are not undermined by DOI's Trust Reform Reorganization.

Non-BIA Mandatory Programs

Another area of major concern for the Hoopa Tribe is compacting non-BIA programs. We are deeply disappointed that the Title IV amendment proposals no longer include the mandatory non-BIA programs. We understand that the Title IV Task Force agreed to remove this section, which was originally drafted by the Hoopa Valley Tribe, because of the strong opposition from Interior. It is short-sighted to leave out of Self-Governance those non-BIA programs that have statutory trust obligations to tribes and Indian people. The issue is this: Trust Responsibility is an obligation of the United States not the BIA. All federal agencies that perform operations that impact trust resources or rights of a tribe have a trust obligation to protect those resources and rights. Self-Governance affords tribes with the ability to ensure these resources are protected through compacting. We strongly feel that this ability should be extended to other federal agencies.

On the Trinity River, which flows through the Hoopa Reservation and which the Tribe has federally protected fishing rights, the Bureau of Reclamation operates the Trinity River Division of the Central Valley Project. The Trinity Dam, completed in 1964, was the primary reason for 80% declines in the Trinity River fishery resources, and has been the subject of numerous congressional and court actions associated with violations of the United States' trust obligations to the Tribe. To correct the declines in fishery resources, Congress passed various federal laws that mandated restoration of the Trinity River fishery resources as part of the Federal trust obligations to the Tribe. Ironically, the Bureau of Reclamation (BOR) has determined that the programs that are mandated by Congress to fulfill the trust obligations of the United States to our Tribe are not "Indian Programs" under the Self-Governance Act.

The problem here is that funding for Trinity River habitat restoration is so underfunded that it jeopardizes a trust resource and threatens our federally-reserved fishing rights. The Hoopa Tribe is also recognized by law as a co-manager of the Trinity River Fishery. The Hoopa Valley Tribe has worked tirelessly for years to get Congressional action to address this inadequate funding level for the Trinity River Restoration Program. But what we are

seeing instead is the movement of legislation to fund other river restoration efforts, without identifying additional funds, futhering the burden on the limited funds that the Trinity River Restoration Program currently relies upon. Trust Responsibility is not perceived by BOR as an obligation that gives tribal water and fishing rights any priority. Absent an acknowledgement that a trust duty is owed, protection of the Tribe's rights takes a back seat to other projects, even newly proposed projects.

The House bill, H.R. 3994, included specific language in Section 405(b)(2)(B) which would enable tribes to contract to perform programs, or portions thereof, that "restore, maintain or preserve a resource (for example, fisheries, wildlife, water or minerals) in which an Indian tribe has a federally reserved right, as quantified by a Federal court." We refer you to our November 8, 2007, testimony before the House Committee on Natural Resources for details on the importance of this provision to the Hoopa Tribe, and how it would resolve problems we currently face with the BOR over the management of Trinity River programs. These problems include delays in executing contracts which result in a significant financial burden for the Tribe and administrative, programmatic and staffing nightmares for our programs. What needs to be understood, which does not seem to be by other federal agencies, is that the trust responsibility to tribes is the trust responsibility of the United States and it is owed to tribes by all federal agencies.

Having said this, we do not oppose moving forward with the Title IV amendments proposed by the Task Force today. We hope this legislation will pass quickly so we can move forward with legislation that allows tribes to exercise their self-governance in other areas and in a more expansive way. With this, we ask you to take up and address the federally-reserved right issue with respect to non-BIA agencies as soon as possible.

TITLE III of S. 1439, the Indian Trust Asset Management Demonstration Act.

The Hoopa Tribe requests that the Senate Committee introduce Title III of the S.1439, the Indian Trust Reform Act of 2005 as a stand-alone bill. Hoopa worked with several tribes in the Northwest and the Committee staff on the development of this proposal. Title III of S. 1439 would create the Indian Trust Asset Management Demonstration Project, which would allow tribes to continue their own tribally-developed trust resource management programs. Title III authorizes tribes to design and manage their resources in a manner different than the Secretary as long as the tribes meet the requirements of tribal and federal law. Again, I point out that the Hoopa Tribe is already doing this with our forestry program, which is acknowledged nationally as a model program. Title III also would grandfather in Section 139 (131) tribes that currently manage their own trust resources into the Project. Active participation by tribal governments in the management of trust assets not only creates positive results, but reduces the chance of conflicts or breach of trust claims. We are committed to working with the Committee toward the enactment of Title III.

CONCLUSION

We ask Congress to continue to support Self-Governance and protect the progress Self-Governance tribes have made from the potential negative effects of DOI's Trust Reform Reorganization. We ask that you sunset OST. We also ask Congress to pass the Title IV amendments and start working on the future of Self-Governance with the participation of the tribes. Finally, we ask that you introduce Title III of S. 1439 as a stand-alone bill. This concludes my remarks and I would be happy to address any questions you may have.