

**Testimony of James Steele, Jr.,
Tribal Council Chairman,
Confederated Salish & Kootenai Tribes
Of the Flathead Indian Reservation**

**Submitted to the Senate Committee on Indian Affairs'
Hearing on Proposed Legislation to Amend the
Department of the Interior Provisions of the Tribal Self-Governance Act**

**May 13, 2008
Washington, D.C.**

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Greetings Chairman Dorgan, Vice-Chairwoman Murkowski and Committee members. My name is James Steele, Jr. and I serve as the Chairman of the Tribal Council of the Confederated Salish & Kootenai Tribes (“CSKT” or “Tribes”). On behalf of the Confederated Salish & Kootenai Tribes, I thank you for the opportunity to provide our views to your Committee.

I am pleased to testify before this Committee on the draft legislation which would amend the Tribal Self-Governance Act’s Interior Department provisions found in Title IV of the Indian Self-Determination and Education Assistance Act. I note that, almost four years ago today, my predecessor, Tribal Chairman Fred Matt, provided testimony to your Committee on similar Self-Governance amendments.

The Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975 and the 1994 amendments to that act, known as the Tribal Self-Governance Act (Title IV of ISDEAA) have been two of the most successful and important pieces of federal Indian legislation in the history of this country. They rank with the Indian Reorganization Act of 1934 as setting the stage for Tribal governments to determine our own affairs, protect our own communities, and provide for our own people in concert with our respective cultures and traditions. It has been a crucial step in realizing the federal policy of Indian Self-Determination which was ushered in over thirty years ago. I say “step” because I believe the federal government is still in the process of realizing that goal.

The last twenty or thirty years have seen great changes in Indian country. Many Tribes have developed vibrant economies, established stronger governments, rebuilt communities, and achieved other hallmarks of progress and success. It is no coincidence that this progress has been realized at the same time as the Indian Self-Determination and Education Assistance Act has been implemented and improved, including by passage of the Tribal Self-Governance Act. The record shows that empowering Tribal governments and communities clearly results in benefits not only for Tribal members, but for surrounding communities and the larger public as well. After President Nixon signed the Indian Self-Determination Act into law the Salish and Kootenai Tribes we were one of the first to enter into a contract with the Bureau of Indian to operate and manage BIA programs. We were also one of the original 10 tribes to implement the Self-Governance Act when it was just a demonstration project initiated by the late Congressman Sid Yates during his tenure as Chairman of the House Appropriations Subcommittee on the Interior. We have expanded the number of programs we operate ever since and today I believe

we operate more federal programs than any Tribe in the country and we have done so with excellent evaluations and clean audits.

At present, the CSKT Tribal government administers \$25 million in self-governance funds, \$150 million in contracts and grants, and \$44 million in Tribal revenue. Our government alone has 1,000 full-time employees. We are the largest employer on the Flathead Reservation, one of the largest employers in western Montana and we contribute over \$30 million in payroll and over \$50 million in purchasing in the local economy. A recent report funded by the State of Montana showed that the Confederated Salish & Kootenai Tribes contribute \$317 million to the Montana economy annually.

Tribal Self-Governance Act Successes

Congress should be pleased to see that there is no shortage of success stories from Indian Tribes participating in the Interior Department's Tribal Self-Governance program. I am proud to testify that the Confederated Salish & Kootenai Tribes have many of our own. Following are just a few of these success stories:

- In the mid-1980s we took over total control and management of the electrical utility on our reservation, known as the Electrical Division of the Flathead Indian Irrigation Project and then renamed as Mission Valley Power (MVP). This utility serves every home and business on the reservation, to Indians and non-Indians. It is considered one of the best run utilities in the state of Montana. Since the Tribes took over, MVP has replaced and updated much of the utility's infrastructure yet managed to retain some of the lowest rates in the region. We have even been approached by off-reservation residents asking if the utility could be extended to serve them.
- CSKT has contracted the operation of the Bureau of Indian Affairs' (BIA) Land Title Recording Office for the Flathead Reservation since 1996. We are one of only Tribes I know of who contract this program. Control of this program's activities helped create the Tribal government capacity and infrastructure that allowed us to partner with the BIA to address the problem of land fractionation on the Flathead Indian Reservation through a program for Tribal acquisition of fractionated interests.
- In 1989, CSKT contracted the BIA's Safety of Dams (SOD) program. One of the main objectives of this program is to eliminate or ameliorate structural and/or safety concerns at 17 locations on the Flathead Reservation as identified by the Department of Interior National Dams - Technical Priority Rating listing. CSKT's 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 and, under our administration, Reservation dams have been modified at a cost significantly lower than originally estimated by

the Bureau of Reclamation. For example, the Black Lake Dam was completed in November 1992 at a savings of approximately \$1.3 million below BOR estimates. The Pablo Dam 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.

- Our Forestry Program is another example of a success made possible by the Tribal Self-Governance contracting framework. In fiscal year 1996, following a year-long Tribal study of the assumption of BIA’s Forestry programs, CSKT compacted all of those Forestry activities. We also administer fire pre-suppression and suppression activities through other agreements, including one with the U.S. Fish & Wildlife Service for fire protection at the National Bison Range, which is located on our Reservation.
- In fiscal years 1997 and 1998 respectively, CSKT began compacting for administration of both the Individual Indian Monies (IIM) program and the Northwest Regional Office title plant functions for the Flathead Reservation. Few tribes operate these programs. The fact that CSKT does so is a testament to our strong commitment to exercise our full authority under the Tribal Self-Governance Act.

In addition to the above-listed areas, CSKT compacts for all other available BIA programs, including: law enforcement; Tribal courts; education programs, etc. Our Tribal government infrastructure and staff is well-equipped to administer these programs and we are very experienced in federal contracting requirements. Our Natural Resources Department alone has well over 100 employees, including biologists, botanists, hydrologists, wildlife technicians, etc.

While it is outside the scope of the Indian Self Determination Act or the Tribal Self Governance Act it may also be noteworthy that we have signed an innovative agreement with the State of Montana governing hunting and fishing on all lands on the reservations that applies to be both tribal members and non-Indians. I point this out because that agreement is an important exercise in tribal governmental authority, which is one of the underpinnings of tribal Self Determination and Self Governance.

One of the great benefits of the Tribal Self-Governance contracting scheme is that it results in capacity building at the Tribal level (as illustrated by our above-referenced Land Title Records Office example). This capacity building results in benefits for Tribal governments, Tribal enterprises, and communities as a whole - both Indian and non-Indian. It helps provide quality jobs for Tribal members who want to remain in the Tribal community. It also helps to provide a stronger civic structure that supports greater economic development, environmental protection, safety, and other public benefits.

Areas Where Improvements Are Needed

Contract Support Costs. Work still needs to be done to ensure that the federal government will fully fund its obligation of paying full contract support costs so that it can meet this requirement to contracting Tribes. As we have stated to this Committee before, the Indian Self-Determination and Education Assistance Act was not intended to be a money-losing proposition for tribes, nor was it intended as a mechanism for Tribal governments to subsidize federal programs and federal statutory obligations. Unfortunately, the reality of Tribes having to absorb indirect costs associated with contracting federal programs currently serves as a real disincentive for Tribes to contract such programs as intended by Congress. We assume that all other federal contractors fully recover their indirect costs when doing business with the federal government and have never understood why tribes get disparate and negative treatment in this regard, especially since our indirect cost rates are negotiated pursuant to the same OMB criteria as are used by other contractors.

Federal Tort Claims Act (FTCA) coverage. Just as Tribally-contracted programs should be funded at the same level as federally-administered programs, so should they have equal liability coverage. CSKT is concerned about the apparent trend within the U.S. Department of Justice to opine that FTCA coverage does not extend to contracting Tribes, their employees or volunteers under various circumstances. This, like insufficient contract support cost funding, creates a fundamental, and powerful, disincentive for Tribal contracting and thereby undermines the Congressional objectives behind the Act.

Contracting of Non-BIA Programs. Unfortunately, the Interior Department has not established a successful overall record with respect to Self-Governance contracting of non-BIA programs. The Confederated Salish & Kootenai Tribes have been at the front of the effort to contract non-BIA programs, primarily through our nearly 14-year effort to contract activities at the National Bison Range Complex (NBRC). The NBRC consists of three National Wildlife Refuges located in the middle of the Flathead Indian Reservation. It is also noteworthy that the bison at the NBRC descend from a herd once owned by tribal members. All three refuges are administered by the U.S. Fish & Wildlife Service (FWS) as part of the National Wildlife Refuge System. Two of the NBRC refuges, the Ninepipe and Pablo Refuges, are actually located on Tribally-owned land; FWS operates them as refuges through easements granted by CSKT.

In 14 years, the FWS has entered into only one other AFA and that is in Alaska for some work to be done at Yukon Flats with the Council of Athabascan Tribal Governments. That AFA does not contain any personnel transfers.

CSKT is hopeful that the Department's record in this area will change. Certainly there have been supporters at the policy making level of the Interior Department (such as Secretary Kempthorne, Deputy Secretary Scarlett, Associate Deputy Secretary Cason and Assistant

Secretary Laverly) and there have been some excellent people for us to work with in the field (such as Dean Rundle from the Denver office and others) but there have also been a number of opponents, primarily entrenched federal employees or retirees who do like to see things change. Were it not for our perseverance and the support from headquarters, we would likely still be mired down. We are currently in the final stages of negotiations with the U.S. Fish & Wildlife Service for another Annual Funding Agreement to contract activities and position at the NBRC. We are hopeful that we can reach agreement on a new AFA that would return CSKT to the National Bison Range and establish a productive Federal-Tribal partnership.

Tribal Subsidizing of Federal Programs. To fully realize congressional objectives behind the Tribal Self-Governance Act, there needs to be an accompanying congressional commitment to fully funding the federal programs being contracted by Self-Governance Tribes. Shrinking or stagnant federal funding necessitating supplementation of Tribal dollars is a real problem for many Tribes. I realize that, as an appropriations matter, this is somewhat of a separate issue from the Self-Governance legislation itself. It is, however, integrally related to achieving the goals of the Act and merits attention.

Draft Title IV Amendments Legislation

As has been our position before this Committee with past proposals for Self-Governance amendments, CSKT is generally supportive of the proposed legislation.

With respect to § 401(8) of the proposed legislation, CSKT believes that inclusion of a definition for the term “inherent federal function” is very important, and we are glad to see it addressed in the current legislation before the House and the draft legislation presented to this Committee. During some of our past negotiations, the discussion of what constitutes an “inherent federal function” within the meaning of the Tribal Self-Governance Act has at times been frustrating. Providing, for the first time, a definition for the term in Title IV is a good start for addressing this issue. The proposed definition would provide consistency with Title V of the Act, thus promoting a more cohesive federal Self-Governance policy overall.

We support the explicit identification, in § 405(b)(1)(A), of Office of Special Trustee (OST) activities as mandatory for inclusion in an AFA (at a Tribe’s option). This reflects organizational changes within the Interior Department since the Act was originally passed, and makes clear that the programs are still available for Tribal compacting despite any reorganization. CSKT has been entering into AFA’s with the OST for performing appraisal activities.

CSKT also supports § 405(b)(2) of the proposed legislation, which retains the existing authority for Tribal Self-Governance contracting of non-BIA programs which are of special geographical, historical or cultural significance to an Indian Tribe. As indicated above, CSKT has utilized this authority to enter into a past AFA with the U.S. Fish & Wildlife Service covering activities at the

National Bison Range Complex and we are currently in negotiations with the Service for a new AFA there.

CSKT is pleased to see that the current Title IV amendments legislation on the House side (HR 3994), as well as the proposed Senate legislation, no longer contain the prohibition of “compacting” the Flathead Agency Power Division or Flathead Agency Irrigation Division which is currently found in 25 U.S.C. § 458cc(b)(4)(C). CSKT has contracted the Power Division under a P.L. 638 contract since 1987 and, as indicated above, has built a solid record of success in administration of the utility, now known as Mission Valley Power.

It is important that § 409(c) of the proposed legislation would retain the existing statutory language mandating funding to tribes for contract support costs. As noted above, this is a fundamental issue for realizing the full potential of the Tribal Self-Governance objectives. Stronger efforts to secure adequate appropriations for this area are badly needed.

The provision in § 412(a) of the proposed legislation which further clarifies application of the Federal Tort Claims Act (FTCA) will hopefully assist in clarifying the federal responsibilities for liability coverage when Tribes contract for administration of federal programs and activities. We continue to support the optional incorporation of Title I provisions into an AFA, as stated in § 412(b) of the proposed legislation. Such incorporation can help strengthen an AFA and supply additional tools for contracting Tribes. It also promotes consistency between ISDEAA’s Titles.

Closing Comments

I believe the Confederated Salish & Kootenai Tribes are a good example of how Tribes can thrive under the Tribal Self-Governance framework. As illustrated by this testimony, surrounding communities - both Indian and non-Indian - also benefit from this type of Tribal success. I encourage this Committee to continue working with Tribes to improve the Tribal Self-Governance Act and ensure that it fulfills Tribal and Congressional objectives. Together, we need to make sure that there are incentives to participate in the Tribal Self-Governance framework. Similarly, we need to eliminate disincentives and remove barriers to Self-Governance participation. The proposed legislation is a good start towards accomplishing those ends.

On behalf of the Confederated Salish & Kootenai Tribes, thank you for the opportunity to provide testimony. I would be happy to answer any questions.