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**TESTIMONY BEFORE THE
U. S. SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON
DEPARTMENT OF THE INTERIOR TRIBAL SELF-GOVERNANCE**

September 20, 2006

Thank you for the opportunity to be here today. My name is W. Ron Allen and I am the Chairman and Executive Director of the Jamestown S'Klallam Tribe located in Washington State. I am also the Chairman of the Title IV Self Governance Amendments Tribal Task Force and offer my testimony today in both capacities.

Almost three years ago – on October 23, 2003 - I testified before this Committee in strong support of S.1715, a bill that would have amended Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638 as amended). I understand that my time is limited today so I do not plan to use my time to discuss why Self-Governance works and why so many Tribes are opting to enter into a Compact of Self-Governance in both the Department of the Interior, as well as in the Indian Health Service. In my October 23rd testimony I spoke of the incredible success of Self-Governance and all of the points I made then are still very much valid today.

Instead, today I would like to focus my comments on three issues: first, I will very briefly discuss the background to S. 1715 and what the bill sought to accomplish; second I will briefly bring you up to date on discussions between the Department of the Interior (Department) and the Tribal Task Force; and third I would like to ask you to consider enacting legislation that will immediately make Title V's provisions available for inclusion in Title IV agreements and help narrow the issues that the Tribal Task Force and the Department will need to address in the future.

Background to S.1715 and What the Bill Sought to Accomplish

Title IV was originally enacted in 1994. Shortly after the Act was passed the Department initiated a rulemaking process to promulgate regulations. Five years after the rulemaking process began, DOI published regulations that, from the Tribal perspective, failed to implement Congress' intent when Title IV was enacted. Instead of moving Self-Governance forward, the regulations moved it backwards.

In 2000 Congress enacted Title V of the ISDEAA, which permanently authorized Self-Governance within the Department of Health and Human Services. Among other things, Title V directly addressed many of the flaws that were in Title IV, which the Interior officials used to impede the full implementation of Self-Governance within the Department of the Interior. Almost immediately after the passage of Title V Tribal leaders decided that Title IV needed to be amended to incorporate these beneficial provisions from Title V and they assigned the task to develop a package of amendments to a Tribal Task Force.

After two years of work Tribal leaders approved amendments prepared by the Tribal Task Force that were ultimately included in S. 1715. In addition to incorporating into Title IV all of the beneficial provisions that were included by Congress in Title V the amendments had two other important objectives: first, address problems in Title IV specific to construction programs and projects; and second, modify provisions in the bill relating to the assumption of non-BIA programs.

Efforts were made to meet with Department officials to discuss the draft amendments before and after they were included in S. 1715 and the bill was introduced, but after initial discussions it became very clear that some individuals within the Department completely opposed the idea of any amendments to Title IV. In fact, if those folks had their way, Title IV would be amended to strip away Tribal rights and flexibility rather than add any. Ultimately the Administration did not support S. 1715 and, although the bill was reported out of this Committee, it did not make it to the Senate floor for a vote and it died at the end of the session.

Events Since the Demise of S. 1715

The demise of S. 1715 did not temper the desire of Tribal leaders to see the bill enacted. To the contrary, as Tribes developed more experience carrying out responsibilities included in the agreements negotiated under Titles V and IV, it became even more obvious that the differences between the two titles made no sense and needed to be corrected. After months of badgering and some key personnel changes within the Department, discussions between the Tribal Task Force and Department representatives were finally rekindled.

Over the past two years the Tribal Task Force has met several times with representatives from the Department in an effort to understand the nature of the Department's concerns with the proposed Title IV amendments. Both sides have also exchanged correspondence detailing their differing views on the bill's provisions. Most recently a chart was developed that sets out the areas of known agreements and disagreements. See the attached memorandum and enclosures that I sent to Mr. James Cason, Associate Deputy Secretary and Acting Assistant Secretary, Indian Affairs that summarize the status of our discussions.

Progress in these discussions has been very slow – so slow that only in the last few months has the Department provided us with long promised explanations of its concerns with many of the proposed provisions. The Department has raised numerous concerns with provisions in the bill and many of those concerns are troubling. Particularly troubling is the Department's resistance to the inclusion of *all* Title V provisions in Title IV. These Title V provisions have been in place since 2000 and have a track record of helping Tribes implement Self-Governance and carry out programs better and more efficiently. Moreover, Congress has already agreed with them and included them in Title V, so there is simply no reason from a public policy standpoint why they should not apply to Title IV programs as well.

The bottom line is that there are some very fundamental differences between the Tribal and departmental positions on a range of issues that will require many more months and (at the present pace) likely years of discussion before it becomes clear if compromise language will ever be achievable. I am hopeful that our continued discussions will result in a joint Tribal and departmental legislative proposal sometime in the future. But until that time comes, Tribes should not suffer by being forced to carry out programs under Title IV without all of the benefits that are presently only available under Title V.

An Immediate Legislative Solution

My most fervent wish is that Congress enacts a comprehensive piece of legislation that will address all pending issues. I am a realist, however, and understand that the prospects for developing a comprehensive version of the Title IV amendments that Tribal and Departmental representatives will agree on in the near term are not good. Until a comprehensive bill can be developed, I urge you to consider enacting a very short piece of legislation in this session that will authorize as a matter of right any Tribe with a Title IV Compact or Funding Agreement to incorporate any provision of Title V that the Tribe chooses. This idea is not new – in 1996, Senator McCain sponsored a very similar amendment that allowed Tribes in Self-Governance under Titles III and IV to incorporate as a matter of right any provision from Title I of the ISDEAA into agreements negotiated under Titles III and IV.

Enacting such an amendment will result in some important benefits. Most importantly, it will allow Tribes to incorporate into existing Title IV compacts and funding agreements provisions from Title V that Tribes know work and will help them streamline the delivery of services to their people and carry out their governmental responsibilities in an efficient and coordinated manner. Passage of the amendments will also help reinforce to the Department that Congress agrees that Title V provisions should apply to Title IV agreements as a matter of Tribal right and this should help move forward discussions with the Department over a more comprehensive set of amendments.

The office of legislative Counsel in 2002 previously prepared a version of such an amendment that reads as follows:

INCORPORATION OF SELF-DETERMINATION PROVISIONS.—Section 403 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458cc) is amended by striking subsection (l) and inserting the following:

“(l) INCORPORATION OF SELF-DETERMINATION PROVISIONS.—

“(1) IN GENERAL.—At the option of any participating Indian tribe, any or all of the provisions of Title I or V shall be incorporated in compact or funding agreement entered into under this title.

“(2) FORCE AND EFFECT.—A provision incorporated under the foregoing paragraph (1) shall—

“(A) have the same force and effect as if included in this title; and

“(B) be deemed to:

(i) supplant any related provision in this title, as appropriate; and

(ii) apply to any agency subject to this Title.

“(3) TIMING.—In any case in which an Indian tribe requests incorporation of a provision under paragraph (1) during the negotiation stage of a compact or funding agreement described in that paragraph, the incorporation shall—

“(A) be considered to be effective immediately; and

“(B) control the negotiation and any resulting compact or funding agreement.”

The only change to existing law that this amendment would implement is the addition of the words “or V” to 25 U.S.C. 458cc(l).

Conclusion

In conclusion, as you know, Self-Governance has proven to be one of the most successful options for Tribes to assume and manage programs, services, functions and activities at the local level that Congress has ever enacted for Indian people. I know first hand of this success with my experience at Jamestown. While we have had our challenges to address, Self-Governance has given us the flexibility to provide services to our people in the most efficient and effective way possible. My deepest wish is that this Congress would enact a comprehensive package of amendments to Title IV like those in S. 1715 so that we can build on the successes of the past 15 years and further enhance the ability of Tribes to achieve their dreams and goals.

I understand that a comprehensive package of amendments like those in S. 1715 will likely not be enacted this session, however, and I am committed to continuing the work we are engaged in with the Department to come up with a joint package of amendments in the future. In the meantime I urge you to seriously consider enacting the short piece of legislation discussed above which gives Tribes the right to incorporate any provision from Title V into a Title IV compact or funding agreement.

Thank you very much for the opportunity you have extended to me to express my thoughts on these critically important issues. I also want to personally take this opportunity to thank you for your years of support to Self-Governance.