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PUEBLO OF SANTA CLARA**

**TESTIMONY BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES  
HEARING ON H.R. 3994, DEPARTMENT OF THE INTERIOR TRIBAL SELF-  
GOVERNANCE ACT OF 2007**

Un Bi Agin Di, Un Sengi Thamu:

Out of Respect and Good Morning. Greetings in my Tewa language.

Good Morning Chairman and members of the Committee. Out of respect I come before you to testify on H.R. 3994 (introduced by Congressman Boren and others), which proposes to amend the Indian Self-Determination and Education Assistance Act by providing further self-governance by Indian Tribes and for other purposes, which bill is also known as the "Department of Interior Tribal Self-Governance Act of 2007."

My name is Joseph Michael Chavarria. I am the Governor of Santa Clara Pueblo located in the Land of Enchantment in the Great State of New Mexico. Before I proceed may I respectfully ask that I say a few words in my Tewa Language.

In my prayer I have asked the Creator to look down upon us today to give us the strength, courage and wisdom that are needed and to give each and everyone of us the insight to examine how the enactment of H.R. 3994 will impact Tribes, Nations, and Pueblos.

As a Tribal Leader in this day and age, I can tell you that challenges still linger in the midst of our many successes. My Pueblo has found that collaboration and partnerships with federal, state, and local agencies assist greatly in meeting those challenges. As a proactive Pueblo, we have created opportunities through Self-Governance Compacts and Funding Agreements and through agreements with federal, state, and local agencies, all of which assist greatly in enhancing and protecting our natural resources, including our People, timber, wildlife, and water, which are all necessary for the continuance of our life here on this earth.

If H.R. 3994 is enacted, the Title IV amendments would allow our Pueblo and other Tribes and Pueblos to expand Self-Governance operations within and outside the BIA, increase our federal program responsibilities and reduce the number of federally operated programs, and reduce the obstacles that exist to our Self-Governance operations.

For instance, Section 401 of this bill proposes to define the terms "tribal share" and "inherent Federal function," which are not currently defined in Title IV. It has been our experience that this lack of definition of these terms has resulted in an overbroad determination by the Bureau of Indian Affairs of the programs, services, functions and activities (PSFA) that are "inherent Federal functions." As a result, less money is made

available for tribal shares. These definitions would make it clear that Congress intended for tribes to assume all PSFAs except for those that cannot legally be delegated to Indian tribes. Accordingly, more tribal share funds would be available to Santa Clara and other Pueblos and Tribes who want to take responsibility for federally operated programs.

In the last few years, as our Pueblo has attempted to expand our Self-Governance, we have been met with resistance from the BIA. Forestry Management provides a good example. We had to expend a significant amount of effort and resources in order to get from the BIA accurate descriptions of program services, tribal share formulas, factual data used in the formulas, inherent Federal functions, and funds available for tribal shares – all of which should have been made readily available to us.

When the BIA finally provided the necessary information to us, it was often only provided the day before our negotiations and often contained incorrect program descriptions and inaccurate data regarding our Pueblo. Funding for inherent Federal functions was often so inflated that less money was made available for all 24 tribes in our Region or for the eight Pueblos in our Agency than was allocated for federal positions (See Example A for Northern Pueblo Agency funding, attached hereto). Additionally, the tribal shares identified did not always add up to 100% of what little funding was being made available to tribes. When we questioned the data, some federal officials became very defensive. Others just shrugged their shoulders and pointed out that correcting the errors would take more time than was available for negotiations and getting signatures on the agreement. And actually, they were right. With inherent federal funding so inflated that tribal shares were minimal and the threat of an unsigned agreement (meaning the Pueblo would receive no funding for its next year), the obstacles often seemed insurmountable.

We respectfully suggest that H.R. 3994 would help even more if it included provisions that would require DOI agencies to limit their residual funding at all levels to the minimal amounts necessary for carrying out inherent Federal functions as defined in these amendments, to negotiate tribal share formulas with Regional tribes at least once every three years, and to use tribal data in funding formulas that is updated at least bi-annually.

Section 405 proposes that, under prescribed circumstances, a funding agreement will remain in effect when negotiations have not been concluded as to a new funding agreement, and, thereby, fund the tribe in the successor year while negotiations continue regarding unresolved issues. This amendment would level the playing field between the negotiating parties, as tribes would no longer be hemmed in by the threat of losing funding if negotiations regarding a new funding agreement are stalled.

Section 405 also prohibits the Secretary from making unilateral changes to funding agreements. This prohibition addresses a very difficult problem that our Pueblo has had with the Indian Reservation Roads program for the last two years. During that time, our Pueblo struggled to obtain BIA signatures on an IRR Addendum, a document that outlines the conditions and responsibilities for Santa Clara to take over roads construction on our Reservation. Time and time again, our Pueblo negotiated and submitted an IRR Addendum that was based on the latest “BIA model,” only to have each Addendum rejected or just left

unsigned in the Central Office. Last summer, we again negotiated tribal and BIA responsibilities and terms and conditions with the Regional Roads staff and the Regional Director and submitted our IRR Addendum for Central Office signature. As before, the document was not signed. Worse, the Central Office made unilateral changes to it – changes that weakened and watered down the IRR Agreement. Entire sections and provisions from the negotiated Addendum were revised or deleted. There was no communication with our Pueblo about the changes. These actions by the Central Office took all “good faith” out of our negotiations; the changes appeared to be dictates from an unseen bureaucratic figure who never contacted or met with us or attended our negotiation sessions.

Section 405 in H.R. 3994 would prohibit such unilateral actions by the Central Office. And, we respectfully suggest that H.R. 3994 would help even more if it included provisions that would enable Self-Governance tribes to directly negotiate future roads construction agreements with the Department of Transportation Federal Highway Administration using ISDEAA Title IV rights and protections.

If H.R. 3994 is enacted, the Title IV amendments would make BIA Self-Governance (Title IV) much more like Indian Health Service Self-Governance (Title V). This would greatly benefit the Pueblo since Title V has provisions that address the issues my Pueblo has struggled with before and will likely continue to face in the future, such as federal officials who resisted our desire to take responsibility for managing our forests, federal rules and requirements that restricted our ability to provide timely and flexible services to our people such as in higher education and social services, and delays in making funds available which then slowed down our ability to both provide services and to strengthen our federally funded programs in areas such as law enforcement.

The amendments would also benefit other New Mexico Pueblos and Tribes and would encourage them to enter into Self-Governance agreements. For several years, the Pueblo of Santa Clara has provided Self-Governance information to other New Mexico Pueblos and Tribes to try to answer their questions and increase their interest in Self-Governance. This has been difficult, though, because other tribes rightfully point out that tribal share funding is minimal, inherent Federal functions use up most Regional Office and many Agency Office dollars, accurate tribal share and formula information is difficult to get, BIA planning and negotiation grants are no longer available, shortfall funding is no longer available, and there are no longer any Central Office shares. If H.R. 3994 is enacted, these obstacles will be reduced or overcome. The Section 405 improvements should make more tribal share information and funding available, Section 413 calls for planning and negotiation grants to help new tribes research and prepare for Self-Governance, Section 413 also calls for shortfall funding which helps during the transition time when federal funding is being transferred from Regional and Agency offices to tribes, and Central Office shares are again required under H.R. 3994. In total, these Title IV amendments will make it easier and more beneficial for other Pueblos, Nations, and Tribes to prepare for and participate in Department of Interior Self-Governance.

From our experience in Self-Governance, we see the ISDEAA's strength. Self-Governance has transferred much responsibility and funding from federal agencies to the participating tribes. Self-Governance has authorized tribal governments to flexibly use program funding to provide more and better services to their people. In a recent negotiation, we were told by BIA officials that our tribe would actually receive fewer services if we returned funding for a difficult program that we had taken over and that we were doing more in this program than could the Bureau. These amendments will allow us to continue to use the law's strength and will reduce the obstacles in our way.

This bill contains improvements over current Title IV law that will allow our Pueblo to continue to progress as a government and as a People while keeping us accountable for our use of federal funds. This bill includes many provisions that were enacted in the Title V legislation with the Indian Health Service but that have not been included in agreements under Title IV with the Bureau of Indian Affairs. Such improvements include the subsequent funding agreement provisions and restrictions against unilateral changes in section 405, the timely advance payments provisions and restrictions against DOI withholding funds in section 409, and, for new tribes, the authorization of planning and negotiation grants, shortfall funds, and a formula for Central Office tribal shares. We thank you for these and other improvements that are in the bill and we know that our Pueblo's Self-Governance program will benefit.

This bill also will open new areas for our Pueblo that could assist us in the future. Because our BIA Self-Governance has been very successful, we are interested in reaching similar agreements with the Department of Energy, the U.S. Forest Service, and other federal agencies that regularly interact with our tribal government. The section 405(b) provisions regarding non-BIA programs will provide immediate opportunities to contact Department of the Interior agencies that deal with our land, water, and wildlife and with the U.S. National Park Service regarding nearby Bandelier National Monument. Section 405(b) gives a structured way for the Pueblo to assume responsibility and funding and to coordinate services with those federal programs that affect our resources. For instance, once H.R. 3994 is enacted, Santa Clara could negotiate an agreement with the U.S. Geological Survey to take responsibility for some portion of completing the cadastral surveys that are needed right now on Reservation lands under conditions that include verification that survey standards are met. And the Pueblo would like to negotiate a Title IV agreement with the U.S. Fish and Wildlife Service to reduce poaching, provide for joint enforcement of the Pueblo's game codes, and improve our ability to sustain wildlife and improve wildlife habitat on Pueblo lands, lakes, and rivers.

As a Pueblo we are not rich or wealthy with dollars however we are rich and wealthy in our Culture, Traditions and Language. Today's challenge of the federal dollar dwindling on a yearly basis has forced many tribes to take on a new animal - economic development. In order to provide necessary services to our people that were supposed to be provided by the federal government we have undertaken many critical service programs such as Social Services, Tribal Courts, Law Enforcement, Forestry, Child Welfare Assistance, Realty, Community Health Representatives, Head Start, Senior Citizen Programs and have provided supplemental funding to these programs in the amount close to one million dollars

annually. If not required to fill gaps in the federal funding, these supplemental tribal funds could have been used to create an endowment fund for scholarships to send our children to any college they may want to attend, to start new businesses, or to provide assisted living for our elders. These funds could have also assisted the Pueblo in providing health care insurance to each and every tribal member, since the critical services at the Indian Health Services are being drastically eliminated at a steady and alarming rate. Why? Because of lack of funding.

If enacted, H.R. 3994 will give all Tribes, Pueblos and Nations the opportunity to determine their destiny by utilizing the Self-Determination and Education Assistance Act to accomplish further Self-Governance in the future.

Thank you for this opportunity to testify before you, Chairman and members of the House Natural Resources Committee. Kunda Wo' Ha'

Example A –

Santa Clara compacted Forest Management into Self-Governance in 2005 and has experienced significant hardships acquiring appropriate funding amounts and receiving correct information from the BIA. Due to over-inflated residual amounts, the managing BIA Agency is receiving much more money than Santa Clara to manage much less commercial forest land (commercial land is the BIA's own benchmark measure for determining Forest Management funding). While Santa Clara owns 74% of the forests in its Agency,<sup>1</sup> it is only receiving 28% of the total available Agency program budget to manage this important resource.<sup>2</sup> In addition to losing most money to residual BIA budgets, the Pueblo has also been shorted by the BIA's refusal to use our current forested acres in the appropriate funding formulas even though these acres are in trust status and are incorporated into our BIA-approved Forest Management Plan. These problems and holdups are severely impacting the state of our forests and precious ecosystems. These BIA tactics need to be addressed to give Tribes the ability to adequately manage their resources before their forests are lost to catastrophic wildfire and insect/disease outbreaks. I urge that this Committee strongly consider these problems and ultimately make these BIA agencies more accountable for successfully negotiating Self-Governance programs such as Forest Management and using accurate figures and reasonable residual amounts.

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<sup>1</sup> Information from material provided by BIA in its 2008 Forest Development Funding Tables. SCP has 21,440 commercial timber forest acres, while the Northern Pueblo Agency is responsible for a total of 29,051 commercial timber forest acres.

<sup>2</sup> Information from material provided by BIA in its 2008 Forest Management Funding Tables. SCP is to receive \$80,106 out of a total NPA budget of \$280,976, which is 28%.