

# Committee on Resources

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Testimony of  
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Tribal Self-Governance

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Chairman Pombo, Ranking Member Rahall and honored Members of the House Resources Committee, my name is Fred Matt, and I am Chairman of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation. On behalf of my Tribal Council, I am pleased to provide testimony regarding our Tribes' experience exercising the opportunities afforded them by P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975, as amended. This oversight hearing on "Tribal Self-Governance" is quite timely and I appreciate this opportunity to share our Tribes' experience.

When the authorizing legislation was enacted in 1975, a new era in Federal Indian Policy was affirmed that significantly changed the relationship between the United States of America and the governments of the Tribal Nations across this great Country. In Section 3, the Declaration of Policy contained in P.L. 93-638 it states:

"The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities."

CSKT is proud to report to the House Committee on Resources that the aforementioned policy is a success and our Tribes are a shining example of that success. The Indian Self-Determination Policy was conceived of during the tenure of the Nixon Administration; even though it did not become law until after the President left office. It was without question his greatest legacy in the views of tribal governments. It is a policy that has been supported and reiterated on a bi-partisan basis by every White House and Congress since it was proposed over 25 years ago. It was the beginning of the end of the paternalism and the "Washington-knows-best" procedures that had been so detrimental to tribal governments and it signaled the beginning of a policy that is Indian country's version of the 'best government is that which is closest to the people.'

CSKT immediately seized the opportunity provided in the legislation and began planning to manage the Bureau of Indian Affairs (BIA) Education Programs including scholarships, the Employment Assistance and the Johnson O'Malley Program and by the end of 1975, we had assumed management and operation of these education programs. Shortly thereafter added we added BIA Law Enforcement and Tribal Court to CSKT management. Since those initial agreements were effectuated, our Tribes haven't looked back. After a yearlong Tribal study in 1979 on the services provided by the BIA Social Services Program that included foster care and child protective services, CSKT assumed its management. From that time forward, we contracted to perform many other BIA Programs or portions thereof including Forestry functions such as Forest Development and Dwarf Mistletoe Control and Natural Resource Management such as Wildlife and Land Management programs.

One of the BIA Programs we assumed in 1989 was the Safety of Dams (SOD) Program, to eliminate or ameliorate the SOD concerns at 17 locations on the Flathead Reservation as identified by the Department of Interior National Dams - Technical Priority Rating listing. Our 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. Dams have been modified and at a cost significantly lower than originally estimated by the BOR. For example, the Black Lake Dam was completed in November 1992 at a savings of approximately \$1.3 million. The Pablo Dam SOD 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 across this nation. The CSKT SOD Program continues to succeed after nearly 15 years of Tribal Management.

The CSKT management of Mission Valley Power (MVP) is another early success story for CSKT in P.L. 93-638 contracting within the Department of the Interior (DOI). In the 1980s, the CSKT notified the DOI of our intent to contract for the Power Project within the Flathead Agency Irrigation Division. The Power Project provides electrical services to the Flathead Reservation Area that includes Indians and non-Indians. After heated debates and even attempted congressional intervention, then Assistant Secretary for Indian Affairs Ross Swimmer signed the P.L. 93-638 contract transferring the management and operation of the Power Project to the CSKT and our management continues today. We are proud to report that MVP offers some of the lowest cost and most stable electric rates throughout the Northwest. We have an independent Utility Board and an active Consumer Council as integral parts of our management of the utility. Our Utility Conservation Program has won several awards and our safety record is deemed outstanding. In addition, the CSKT set a goal to create a number of employment and training opportunities for our Tribal members as electrical linemen. This goal was accomplished as to date there have been ten (10) Tribal member lineman graduates who are fully employed in this technical industry and five more apprentice linemen are in training.

Our P.L. 93-638 contracting efforts extended to the U.S. Department of Health and Human Services (DHHS) when in 1977 CSKT formed the Tribal Health Department to perform an array of Indian Health Service programs such as Community Health Nursing and the Community Health Representative Program. Over the years, the CSKT assumed management of the Mental Health Program, the Medical Social Work Program, the Health Education Program and the Alcohol and Substance Abuse Program.

Our efforts with Self-Determination continued through 1987 when Congressman Sidney Yates conducted an oversight hearing of the Interior and Related Agencies Appropriations Subcommittee after a series of articles appeared in the Arizona Republic newspaper. Our late Tribal Chairman Michael T. Pablo attended that hearing and when asked he responded that tribes should be given increased responsibility in managing and operating federal programs. The BIA responded in December 1987 with the submission of a list of ten tribes, including CSKT for consideration of a demonstration project. The identified 10 Tribes proposed to Congressman Yates a planning phase and this initial phase was funded in Fiscal Year 1988. On September 15, 1988 P.L. 100-472 Title III of the Indian Self – Determination Act Amendments of 1988 was enacted and Tribal Self-Governance under P.L. 93-638 were born. We have been an active participant from the start.

As one of the initial Tribes identified in the Self-Governance Demonstration Project, our Tribes' approach through the planning process has been to work toward the program agreement, such as a compact, with a phased and careful approach that would affirm the establishment of a new government-to-government relationship with the United States. We are committed to instituting and implementing policies to strengthen our capacity as a Tribal government in order to achieve the maximum degree of self-governance possible within the federal system of the United States. The following principles apply:

- 1) Affirmation of government-to-government relationship between our Tribes and United States is not simply a funding relationship and not just with the BIA;
- 2) The role of CSKT Tribal government and the federal government will evolve over time but must reflect the Hellgate Treaty of 1855 and all other agreements between CSKT and the United States;
- 3) The Trust Responsibility requirement that the United States must protect the trust resources of the Tribes to the highest degree of fiduciary responsibility is not reduced by Tribal participation in Tribal Self-Governance; and
- 4) In our efforts in Tribal Self-Governance, CSKT will perform functions of determining the resources, exchange of information and achieve the highest level of accountability as determined by the CSKT Tribal Council.

These principles formed the foundation as we moved forward from P.L. 93-638 Self-Determination contracting to Tribal Self-Governance compacting in October 1993 when the CSKT entered into Tribal Self-Governance compacts and Annual Funding Agreements (AFA) with the DOI and the DHHS.

In September 1992 the Tribal Council, at the request of the Tribal Health Department Head, the Tribal Human Services Department Head and the IHS Flathead Service Unit Director, directed the completion of a Tribal study to consolidate the services of the three entities. The study commenced in October 1992 with staff interviews and data evaluation. As the Tribal Council analyzed the information gathered in the study, the Congress extended the P.L. 93-638 Title III Tribal Self-Governance opportunities to DHHS – IHS. The Tribal Council noticed the IHS that we intended to negotiate a compact and an AFA for all of the services provided at the Flathead Service Unit, including the Pharmacy Program, the Dental Program and all administrative functions. In addition, since the majority of the health care was provided through the Contract Health Services Programs (CHS), including the payment of health care claims, CSKT intended to assume the management of the CHS Program and the services provided to IHS by the Fiscal Intermediary. Agreements were reached and at the beginning of Fiscal Year 1994, (October 1, 1993), the CSKT began the operation and management of a consolidated health care delivery system known as the Tribal Health and Human Services Department that is responsible for the health care services of nearly 10,000 eligible IHS beneficiaries.

As we start our 11th year of operation under this AFA, we recognize that our current system is “At-Risk” as it is tremendously under funded and health care cost continue to rise as do the number of eligible beneficiaries. Both aspect of operating this program are beyond our control. In 1991, the CSKT, the IHS and the Congress engaged in lengthy and oftentimes difficult discussions regarding our funding crisis. With the assistance from the IHS and the Montana Congressional delegation, the CSKT were able to avert the reassumption of the health system by the IHS with the implementation of a Business Plan for Health Care Delivery. However, our System remains at risk even though we limit services according to the approved Business Plan. The funds we receive from IHS are seriously inadequate. A study by the U.S. Commission on Civil Rights in July 2003 documented that the an individual Medicare beneficiary health care cost \$5,915, a Veteran's medical benefit cost \$5,214 and a Federal prisoner's medical care cost \$3,879 while an individual IHS beneficiary received on \$1,914. In CSKT's analysis as a CHS dependent health care unit, we receive even less than the average IHS beneficiary with the individual beneficiary utilizing our System costing less than \$1,188 per user. As we celebrate 10 years of Tribal health care management, we are proud of that we have been able to provide quality care to users with significantly less funds than Medicaid / Medicare and even the Federal Prison System. However, we urge this Committee to seek additional funds for IHS to bring parity to Native Americans, as it is well documented that our health needs for diabetes, substance abuse, cancer, heart disease far exceeds the national average.

With the Tribal Council's decision to negotiate a Tribal Self-Governance compact and AFA for health care services, they decided it was also time to move our relationship with DOI to Tribal Self-Governance. In April 1993 the Tribal Council notified the BIA Northwest Regional Office of our intent to negotiate a Tribal Self-Governance compact and AFA for all the P.L. 93-638 contracted programs, services, functions and activities. The transfer from contracting to compacting in DOI was completed and at the beginning of Fiscal Year 1994 (October 1, 1993), the CSKT began operating and managing the BIA according the new agreements.

It was clear to the Tribal Council that the opportunities provided in Tribal Self-Governance complemented our authority as a sovereign government. It was recognized that certain governmental functions must be provided by the Tribes and that we must assume responsibility and be held accountable for the delivery of these governmental functions. P.L. 93-638 provided the vehicle to promote our Tribes' self-governance and would assist in the building of Tribal government infrastructure and promote economic self-sufficiency. The late Michael T. Pablo, CSKT Tribal Chairman, articulated this vision clearly as he became a national advocate for our efforts and other Tribes' efforts for Self-Governance.

To fulfill this vision, the CSKT immediately notified the BIA of our intent to negotiate an Agreement to transfer the management of the BIA Roads Maintenance and Construction Program to the Tribes. This agreement was complete in early 1994, and the CSKT began laying asphalt soon thereafter. We are proud to report that we have laid many miles of roads since we began in 1994 and continue to actively plan, design and construct roads throughout our 1.25 million acre Reservation.

All Forestry Program functions were added to the CSKT Tribal Self – Governance Agreement in Fiscal Year

1996 after a yearlong Tribal study to assume the management of these services. The CSKT also at this time transferred Fire pre-suppression activities and agreed to continue managing fire suppression activities through other agreements. In Fiscal Year 1997 the CSKT intended to assume all of the remaining functions provided at the BIA – Flathead Agency including Individual Indian Monies Program (IIM) and other administrative functions and the Northwest Regional Office Title Plant functions. However, the final Fiscal Year 1997 agreement only included the certain additional administrative functions. The CSKT decided to leave the BIA Agency Superintendent in place to facilitate the delivery of the inherent federal functions. It was determined that a local federal official, with sufficient delegated signatory authority would improve the delivery of the services under Tribal management. The arrangement remains in place today. Our efforts to assume the Title Plant, also known as the Land Title and Records Office, were completed mid year in 1997.

Our efforts to assume management of the IIM Program proved to be much more difficult. At the same time we began seeking to manage this Program, a class action lawsuit (the so-called Cobell case) was filed in federal court seeking remedy for accountholders resulting for years of mismanagement of the accounts by the DOI. A number of issues developed in our efforts to assume management of this Program. The first is the result of the transfer of the IIM Program from the BIA to the Office of the Special Trustee – Office of Trust Funds Management (OTFM). Since the Program no longer resided in the BIA, Tribal assumption would be under a different set of federal regulations than those regulations for all other non-BIA programs in the DOI. The non-BIA regulations are more restrictive and cumbersome. Although the CSKT were eventually able to assume management of the IIM Program in 1997, it was an agreement with significantly reduced authority for the CSKT to redesign to improve the Program. We are proud to report that the CSKT continues to operate the IIM Program. In the annual audit and evaluation conducted for OTFM by external evaluators, we have received excellent reviews. The federally run programs have just recently begun such reviews.

With the assumption of the IIM Program, the Regional Office Land Record and Title Office and all other BIA Programs with the exception of the federal signatory authority and the Flathead Indian Irrigation Project, the CSKT became the first Tribe in the Country to bring under Tribal Management the full range of DOI services. In 2003, no other Tribe exercises the authorities provided in P.L. 93-638 to the same extent as the CSKT. We are quite proud of our efforts in this area and for our efforts within the larger DOI.

Our efforts in Tribal Self-Governance have transcended to other areas, especially as the Congress has extended similar authority for other federal government programs. For example in 1998, the CSKT became the first Tribe in Montana to administer the Temporary Assistance for Needy Families (TANF) program through an agreement with the State of Montana and the Department of the Health and Human Services. The Tribal Council adopted a revised organizational structure for service delivery to ensure all the Tribal programs, based on income that a family requires to achieve economic self-sufficiency are consolidated in one Tribal department, known as the Department of Human Resources Development (DHRD). This was a major move as most other Tribal TANF Programs were generally added to the existing General Assistance Program. Within a year of administering TANF, our Tribes moved quickly to consolidate several funding sources including TANF into a Public Law 102-477 Plan, as approved and administered by the BIA. The benefits of this move were tremendous including fewer administrative reports, more time for intense client services, and less administrative overhead. This law and the opportunity to consolidate services for the benefit of the clients is true self-determination where Tribes can design services unique to each Tribe and their needs. The success of this model has resulted in increased employment opportunities for our Tribal members that were not previously available

When the Congress originally enacted the Indian Self-Determination and Educational Assistance Act in 1975, one of the stated purposes was to increase Tribal economic self-sufficiency by authorizing Tribes to manage federal programs. Nearly three decades later, the CSKT has proved this to be true. Today, the CSKT is the largest employer in northwest Montana. We employ over 1,000 individuals in a variety of capacities from lawyers, doctors, dentist, engineers, scientists and teachers. Our goal is to employ qualified individuals to ensure the highest quality of service is provided. We manage multiple budgets, from a variety of federal, state and private sources that exceed \$180 million per year.

The opportunities provided under this Act provided the CSKT with the ability to build a strong governmental infrastructure needed to move into other areas. Our Indian Reorganization Act (IRA) Section 17 corporate structure has indirectly benefited from our success in Tribal Self-Governance. S&K Electronic is rated in the top 10% of employers in the State of Montana. S&K Technologies has received nearly half a billion dollars in contracts and has satellite offices throughout the nation in states such as Georgia, Texas, Ohio and Washington. Our S&K Development manages a great resort located on the shores on beautiful Flathead Lake. With just these few examples and there are more, it is clear the federal policy of Indian Self-

Determination is a success and must continue or expand in the future.

The logical next step for the CSKT is to contract for operations at the National Bison Range Complex (NBRC). The Indian Self-Determination and Education Assistance Act's Title IV program –(the Tribal Self-Governance Act of 1994), authorized Tribes to enter into agreements for non-BIA programs administered by the Secretary of the Interior, which are of special geographic, historical or cultural significance to the requesting Tribe. We notified the DOI of our intent to enter into an agreement to assume management of the NBRC in December 1994 and to this day we continue to seek its management. The NBRC is located entirely on our Reservation, on land reserved in the Hellgate Treaty of 1855. The Tribes, as a result of that treaty, ceded over 20 million acres of what is now western Montana and reserved for ourselves and future generations the 1.25 million acre Flathead Indian Reservation along with the agreement that our lands and the rights described in the treaty would be protected forever. The agreement was breached when Congress, without Tribal approval removed nearly 18,500 acres in the heart of our reservation in 1908 created the NBRC and transferred the land to the US Fish and Wildlife Service (FWS). Although the Tribes received a minimal payment of \$1.56 cents an acre and then another settlement later, we never consented to sell the land. The land on which the Ninepipe and Pablo Refuges (ancillary FWS properties associated with the NBRC) are located is Tribally owned with DOI holding an irrigation easement and the FWS hold a secondary easement of refuge purposes. The bison that reside on the NBRC are descended from a herd originally raised by tribal members Charles Allard and Michel Pablo. And finally, in a study commissioned by the FWS a number of cultural sites are located on the NBRC. Clearly, the concept the Congress set forth in the law is met and exceeded as the three criteria of historic, cultural and geographic connections are all fulfilled by our relationship with the National Bison Range Complex.

The CSKT again notified the DOI of our intent to enter into an agreement to manage the NBRC on February 26, 2003 according to regulations published in the federal register to guide this negotiation process. In a press statement released jointly by the CSKT and the FWS following negotiations in September 2003, both sides stated that significant progress is being made toward the development of an agreement. We look forward to joining in partnership with the FWS to submit a signed agreement for this Committee's 90-day review. We are sure this Committee will agree that with our history of conservation and our professional capacity as managers, assuming certain duties at the NBRC is a sensible next step.

As we conclude our testimony we express concern that the proposed DOI reorganization may well have a negative affect on Tribal Self-Governance. CSKT is particularly concerned about the proposed reorganization in specific areas as follows:

**Impact on Self-Governance and Self-Determination** - It is our experience that when programs, services, functions or activities move from the BIA to another part of the DOI structure there is a negative impact on tribal opportunities to manage and operate them under P.L. 93-638. Such programs are deemed to be "non-BIA programs." As stated earlier in this testimony, there are different regulations for BIA-operated programs and all other non-BIA programs within DOI. The regulations governing tribal assumption of non-BIA programs fail to meet the intent or spirit of tribal self-determination by including what we believe are unnecessary governmental restrictions and retained federal control. The most glaring example of DOI resistance to tribal assumption of DOI programs outside the BIA can simply be found in the few number of self-governance agreements in existence after nearly a decade since 1994, when the Self-Governance amendments were enacted. Those that have enacted are unnecessarily narrow in scope. We also point to the resistance we faced from the Department during the previous Administration when we endeavored to assume the management of the IIM Program.

It is CSKT's utmost concern during this time of trust reform that Tribes do not lose the opportunity to manage and operate the trust resources programs. We have done an excellent job operating the trust programs and have audits and evaluations to prove it. We should not be punished for DOI's mismanagement over the past century.

1) **Funding for the Trust Programs and Funding for BIA** - The BIA is extremely under funded. For example, the Intertribal Timber Council reports that BIA receives one-tenth the amount of funding that the U.S. Forest Service receives to manage federal land. It is unreasonable to think that the BIA can manage tribal resources with such substantially fewer dollars on a per acre basis. BIA programs must receive full funding that is equivalent to funding received by other federal agencies to provide similar functions.

Another concern is where the funding will come from for the multiple layers of oversight DOI is proposing and how the oversight will apply to Tribal Self-Governance Agreements.

2) Guarantee No Diminishment of the Trust Responsibility – In our efforts in Tribal Self-Governance there has not been a reduction in the federal trust responsibility to our Tribes.

3) Signature Authority at the Local Level - For Tribes to operate efficiently, the provision of federal functions should be at the local level - not centralized in Washington DC or some other centralized location. As we said earlier, tribal government is the most effective when the decisions are made locally and not by a federal bureaucrat.

4) Information Technology and Security - As a result of the computer shutdown in the DOI due to security breaches, it is clear that major changes are imminent and needed with the BIA information technology systems, including appropriate security safeguards. Tribes that operate the trust programs and require access to BIA IT systems must be considered in its development and must receive the same level of funding that the BIA receives.

5) Increased Reporting – As DOI attempts to meet the requirements set forth by Judge Lamberth in the Cobell litigation, there is a perceived need for increased reporting. Although the CSKT is willing to account for our activities, it must be done in logical manner not at “the spur of the moment,” which often creates busy work and without proper justification to the purpose for the reason the data is needed.

Although we fully understand and support the need for TRUST REFORM, Tribal Self-Governance is a reform model that is tried and tested and has been deemed to be quite successful. Our efforts were motivated by the need to improve the services provided by the BIA and IHS. For over 10 years, we have documented success. To secure the opportunities the Congress has provided Tribes through Tribal Self-Governance; the CSKT has joined with other Tribes and are seeking the establishment of demonstration project to showcase alternatives to some aspects of newly proposed trust procedures and processes through Fiscal Year 2004 Interior Appropriations. The Senate Interior Appropriations bill includes this language in Section 134. After discussions last week, it appears the Tribes and DOI are close to an agreement. We want to thank Chairman Pombo for his recent letter of support to Chairman Taylor of the Interior Appropriations Subcommittee on this demonstration project. We urge the Committee's continued support for it.

I am proud to be a member of the Confederated Salish and Kootenai Tribes. Our Tribes have much to be proud and I hope we can count the Congress' continued support of our efforts.

Thank you for the opportunity to provide this testimony.