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President Joe Garcia
National Congress of American Indians

Testimony
Before the Committee on Natural Resources
United States House of Representatives

Hearing on
"Diversifying Native Economies"
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Introduction

Good morning Chairman Rahall and members of the Committee. My name is Joe Garcia, and I am Governor of Ohkay Owingeh, formerly known as San Juan Pueblo, in the State of New Mexico, and President of the National Congress of American Indians (NCAI).

On behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, thank you for giving me the opportunity to testify before you today on the important and timely topic of diversifying our Native economies. I would also like to take this opportunity to thank you for your ongoing commitment to building healthy and sustainable local economies in Indian Country. It is our pleasure to be here today to continue what has been an ongoing discussion about how the federal government can best support tribes in our efforts to achieve self-reliance, prosperity, and economic parity through economic development.

NCAI is fully committed to working with our federal partners in supporting existing federal economic development programs that have led to greater tribal and village sovereignty and self sufficiency. We welcome the opportunity today to discuss the current successful components of economic development, suggested improvements, and the need for continued support for the programs that have led to greater local economic diversity and individual opportunity.

We are well positioned to address the challenges and barriers tribal governments encounter when trying to develop their local economies and more important understanding opportunities for positive change. NCAI partnered with the Department of Interior to host the National Native American Policy Summit (Summit) this past may to sort through he challenges and solutions needed to create healthy and vibrant local economies. Vested participants from tribal governments, the federal government, academic community, and the private sector gathered over 3 days to discuss challenges and offer solutions.

In addition to the 300 plus recommendations received from participants for improving access to capital, business development and infrastructure, the Summit identified the overall need for tribal governments to strengthen governing institutions and create effective legal codes for business development. It also revealed the need for comprehensive tribal community planning and the need to improve inter-governmental relationships as key components for proactive economic growth.

Today we will be addressing some of the successful components of tribal government economic development, however, there has been a real and compelling need

established at the Summit and in other NCAI venues to continue this discussion to address other challenges and opportunities.

Native Economies - Success

The vast majority of tribes remain in desperate need of meaningful, diversified economic development opportunities. There are a few high-profile examples of tribes around the country who have prospered economically. However, there are hundreds more who remain nearly invisible, who are struggling to preserve their reservations, their culture, and their sovereignty. The social and economic conditions in many Indian communities are comparable to those in developing nations around the world. According to recent federal reports¹, an astounding 9 of the 11 poorest counties in the nation, based on per capita income, are home to Indian reservations.

Conventional thought has often dismissed the feasibility of American Indian economic development. Too often we hear that there is little incentive for investment, either public or private, on Indian lands; that many tribal institutions are too unstable or too weak to sustain development; that the location of many Indian lands are too remote for many types of business; or that the lack of infrastructure prohibits the establishment of businesses on tribal lands. These lines of thinking leads to the conclusion that the only option for Indian nations is continued dependence on the federal government.

Over the past few decades, many tribes and villages, by exercising sovereignty and self determination, utilizing natural resources and taking advantage of existing federal incentives, have begun building successful government enterprises and are participating in the American economy.

It is imperative to note this accomplishment has coincided with the rise of self determination. As the Harvard Project on American Indian Economic Development² has confirmed, across a number of indicators, socio-economic conditions are improving in Indian country and tribal economies are becoming more robust. From 1990 to 2000, family poverty rates decreased, real median income went up, housing overcrowding dropped, and more Indians were living in homes with adequate plumbing. Significantly, the Harvard Project discovered that these improvements are

¹ *Statistics derived from U.S. Census Bureau data; U.S. Department of Commerce, Bureau of Economic Analysis, Survey of Current Business; and DataQuick Information Systems, a public records database company located in La Jolla, San Diego, CA.*

² Joe Kalt & Jonathan Taylor, Harvard Project on American Indian Economic Development, "American Indians on Reservations: A Databook of Socioeconomic Change Between the 1990 and 2000 Censuses," (2005).

found in both non-gaming and gaming communities alike and credits self-determination policies for the progress.

Tribes have been able to produce improvements in their local communities and generate sustainable tribal government enterprises, in large part, by taking greater control of decision making, utilizing available tools, and strengthening governing institutions.

Success for tribal government enterprises differs from traditional corporations that are only responsible for creating a profit for shareholders or from other governments that provide services largely based on tax revenue. Since tribes have limited ability to raise tax revenue and, as responsible governments, they look to create tribal enterprises to produce revenue that is either reinvested to ensure sustainability or used to develop or supplement much-needed programs and services for their citizens'. Congress, in recognition of this unique tribal responsibility and in an effort to fulfill its federal trust responsibilities, has created various tools over the years that have allowed tribes to better serve their citizens' needs and become more self-sufficient.

Not surprisingly, the tools that have proven most effective over the years are those provide an incentive for tribes to pursue self determination. Providing tools and incentives has historically been proven a successful means of positively effecting decisions in the general population. This is apparent when Congress continues to support tax incentives for citizens to own homes and for businesses that provide health insurance for employees. There has also been success when Congress, in honoring our government-to-government relationship, establishes and supports the development of Native economies and fosters government stability through various incentives. As we have learned over the years creating a healthy economy and a stable government are not exclusive but inter-dependent.

Tribes, villages and communities have been successful in three primary government enterprise areas - natural resource management, gaming and hospitality, and government contracting.

Natural Resource Management

Tribes have always utilized the management and development of territorial natural resources to serve their populations. Longstanding subsistence activities like fishing and farming, once taken for granted by tribes, were diminished with encroachment and resettlement. The federal government, through the ratification and enforcement of treaties and various acts, have severely limited a tribal government's ability to

remain self sufficient by redefining tribal territories and tribal structures – most recently with the Alaska Native Claims Settlement Act of 1971(ANCSA)³.

With these treaties and acts, the federal government has dramatically reduced tribes' ability to utilize their natural resources, including their land base, to serve their populations' needs. More recently, however, the federal government has supported tribal self determination and a tribal government's right to serve their members needs by supporting those treaties and acts and providing tools and incentives for tribes to continue to utilize the remaining natural resources for the benefit of their members. For example;

- Water rights in the southwest enable Native farmers to continue to use agriculture to support tribal programs and individual self sufficiency.
- Treaty rights, reaffirmed by federal courts as recently as last month⁴, allow northwest tribes the ability to continue traditional fishing and ensure the natural resource will be available for the next generation.
- Self determination policies in the form of land management, rights-of-way and market-based land valuation have permitted tribes to go from passive participants to effective competitors in America's natural resource industries with energy being the most notable enterprise.

As this Committee is aware, 10% of the nation's energy natural resources are on Indian lands; and, Indian tribes are willing partners in natural resource development. Tribes have made decisions to manage and oversee their energy resources such as coal and natural gas found within their lands. And today, with tribes exercising self determination by securing the right to manage their own lands and resources, natural resource management serves as an effective industry and economic tool for tribes and villages. Harvesting timber, mining coal, farming, and turning limestone into cement have all been effective means for tribal governments to meet the program and service needs of its citizens.

Success, however, in the form of natural resource management, can be found in a relatively small number of tribes who have managed to hold on to large land bases or have managed to remain in areas with resources to manage. The vast majority of tribes do not benefit from this economic tool and remain in desperate need of economic stimulus.

³ Alaska Native Claims Settlement Act, 43 USC §1601 et seq.

⁴ United States District Court, Western District of Washington at Seattle, US, et al., v. State of Washington, et al., C70-9213, August 22, 2007

Gaming and Hospitality

Indian gaming has grown over the past two decades from an uncertain start-up industry for tribal governments to an established, mature hospitality industry with tribes creating competitive destination resorts. Tribes, when given the support to exercise their sovereignty as governments, have managed to build an industry that has allowed them to not only serve their members' program and service needs, but become revenue generators for other governments – all in one generation.

Gaming and hospitality has been an effective tool and a successful industry for those tribes that are located near large population centers and have partner states in the same industry. Although the media focuses on gaming as the face of Native government enterprises, the gaming and hospitality industry has not been a successful economic alternative for most tribes and villages. Just as natural resources as a government enterprise only is successful to a small number of tribes, over half of all recognized tribes have no gaming whatsoever⁵, and of those that do, some are not highly profitable and many serve to create local jobs for tribal citizens – especially for those tribes located in rural and remote areas.

Government Contracting

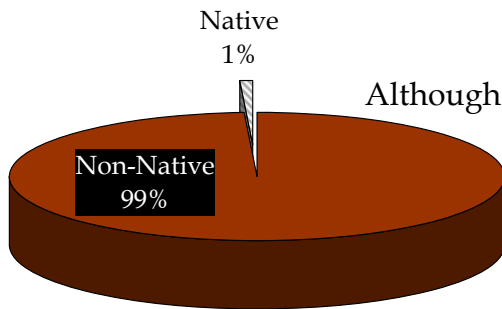
Government contracting has gradually begun to emerge as viable industry for successful tribal enterprise development. Successful contracting proves that, with the proper incentives, tribal enterprises can generate revenues to help achieve greater self determination and offers the potential of allowing all tribes to participate in the American economy regardless of a tribe's geographic proximity near a population center or its land-based resources.

Economic self-sufficiency is the goal of tribal government entities using existing economic tools or when exerting rights of sovereignty and self determination. This goal can be achieved only through active participation in the US and world economy. In fulfilling the United States' trust responsibility and in promoting self sufficiency among Native American governments, the federal government has provided an economic tool for tribes and villages (through federally mandated Alaska Native Corporations (ANCs⁶)) to access the largest purchaser of goods and services in the world - the federal government.

⁵ NIGA, Indian Gaming Facts, 2006 (www.indiangaming.org)

⁶ Federal Contracting Support for Alaska Natives' Integration into the Market Economy, Professor Duane Champagne (Sociology), Professor Carole Goldberg (Law) Native Nations Law & Policy Center, UCLA School of Law, Los Angeles, CA -
"Alaska Native Claims Settlement Act of 1971(ANCSA) has been modified numerous times by Congress, including an amendment in 1988 designating ANCs as minority business enterprises and Congressional language in 1992 designating ANCs as "economically disadvantaged" enterprises. Through this legislation, ANCs and their qualifying subsidiaries

The federal government spent \$377 billion on goods and services in 2005.⁷ American Indian tribes and Alaska Native Corporations access the federal market through participation in the Small Business Administration’s 8(a) program with the added incentive of allowing tribal and ANCs to utilize negotiated sole source contracting. The Department of Defense accurately justified the incentive by confirming it as “...further[ing] the federal policy of Indian self-determination, the United States’ trust responsibility, and the promotion of economic self-sufficiency among Native American communities.”⁸



Although Native contractors only received less than 1% (.8%) of all Federal contract awards,⁹ the program has had notable success for participating tribal governments. The tribal government contracting program has given tribes and villages the ability to create local diverse economies which in turn

allow tribes to support and create tribal citizen programs and offer real and substantial career opportunities for members where only limited or no job opportunities existed prior.

Tribes and ANCs, in the spirit of self determination, are offered a choice of business opportunities, and today, are providing everything from logistic support for our troops abroad to environmental services here at home. Tribes and ANCs that are not able to utilize the tribal government tool of gaming or leverage their land-based resources, now can enter business tracks that were previously the mainstay of mainstream corporate America.

Individuals, who had little opportunity a generation ago, now have options. Not just options for jobs, but options for diverse and challenging careers. Rural tribal and village members are now choosing to enter the engineering field or business

have been enabled to qualify for federal contracting and subcontracting, including SBA 8(a) and Department of Defense Small and Disadvantaged Business programs. The purpose of ANC status from the Alaska Native point of view is to assist ANCs in gaining competitive access and capabilities to successfully generate economic growth within the market economy.”

⁷ Source: *Eagle Eye, Inc*

⁸ See *AFGE v. United States*, 95 F. Supp. 2d 4, 36 (D.D.C. 2002), *aff’d* 330 F.3d 513 (D.C. Cir. 2003) Federal Contracting Support for Alaska Natives’ Integration into the Market Economy, Professor Duane Champagne (Sociology), Professor Carole Goldberg (Law) Native Nations Law & Policy Center, UCLA School of Law, Los Angeles, CA

⁹ Source: *Eagle Eye, Inc*

administration. Members have been able to move up a career path to manage contracts or in some cases, entire companies.

More important for tribal governments and US taxpayers is that the program allows tribal governments to build an economy, educate its citizens and create tax revenues that are returned to the federal coffers. The program has been a proven success in giving tribal governments a hand up and not a hand out; meaning our taxpayers are receiving far more value. For example,

- A remote village in Alaska, only accessible by car when the river freezes, now has a small local economy created from a Native Alaskan firm's entry into the highly competitive government contracting space. A recent profit was earned by its shareholders, many of whom used it to purchase higher-priced diesel fuel needed for the long, harsh winters.
- In Montana, Salish & Kootenai represent their values to the rest of the world through their successful government contracting program at S&K Technologies - a firm initially mentored by another tribal enterprise. The Tribe provides information technology and network solutions to the federal government that allows the 4,500 Tribal members residing on the Flathead Indian Reservation the opportunity to compete for jobs in software development and technical training. The Reservation has struggled with an unemployment rate as high as 41%¹⁰ proving the federal government contracting program can work in the most economically challenging tribal environments.
- And, in Maine, a small tribe close to the Canadian border manages a border security contract that generates enough revenue for the tribe to be able to purchase school clothing for its Tribal youth.

While this program is just beginning to realize success, it has not been an easy path. Most tribal businesses struggle for years with losses or marginal revenue. The government contracting businesses, even with the ability to utilize negotiated sole-source contracts, is an industry noted for its complexity and thin margins. The net revenues that are generated are often routed back into the business to ensure on-going success and the net revenue that is realized as profit is returned to the tribal members and village corporation shareholders in the form of citizen programs. Some tribal governments have been able to use funds for various programs including;

- Scholarship funds established to give tribal members the chance at higher education and fulfilling careers.

¹⁰ DPHHS Survey – February 2002

- Cultural centers built as a tribute to each tribe or village contribution to their local community and history, and
- Elder programs established to honor and care for those who paved the way.

Tribes realize that economic development, while serving as a key component toward self determination, is a part of their responsibly as a government and a key component to being able to serve the interests of their citizens.

We feel it is important for this Committee and Congress to know that these tools, created to promote self sufficiency in Native communities, are working as the federal government intended. The government contracting program is still a long way from universally building local tribal economies and offering hope to tribal citizens, but in its infancy it already has proved to be an effective tool for those tribes and ANCs who have had the tenacity to compete and profit in the federal marketplace.

Our member tribes, ANCs, villages and Native communities have all given us input on this issue and the message has been simple and clear – keep this program in place, it is working [See Resolution Attached].

With a directive from our members, NCAI set out to evaluate the program, listen to those who have had concerns, and try to understand misperceptions. We heard from our members about economic challenges and opportunities during a national summit help jointly with the Department of Interior. In addition, a joint working group was formed consisting of NCAI, Native American Contractors Association (NACA) and National Center for American Indian Enterprise Development (NCAIED) to ensure we were representing the vested American Indian entities and speaking with a unified voice. In March of this year at the 2007 Reservation Economic Summit hosted by NCAIED, our three organizations developed a joint statement on contracting issues [see Joint Statement attached].

Evaluating concerns meant meeting with and carefully reviewing the report and recommendations contained in the April 2006 Government Accountability Office (GAO) report on ANC 8(a) contracting.¹¹ The GAO recommendations centered on the need for greater oversight activities by the Small Business Administration (SBA) and federal agencies. To evaluate potential program improvements, we also met with the SBA to discuss and jointly develop proposals to address the GAO's recommendations as well as its own.

¹¹ United States Government Accountability Office, Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight, April 2006 Report to Congressional Requesters – GAO 06-399.

We listened to other SBA 8(a) participants and worked with various organizations like the Minority Business Roundtable. We have been trying to dispel program misperceptions that often arose from the statements or actions of a single entity striving to promote a universal viewpoint without giving voice to alternative perspectives.

As a result of the joint efforts of NCAI, NACA and NCAIED, we respectfully submit that Congress should consider the following small business government contracting improvements that would expand small business participation for all participants, increase oversight and provide assistance to small businesses as prime contractors, subcontractors or joint venture partners.

A. Expand Small Business Contracting Opportunities

In reauthorizing the Small Business Act's contracting programs, Congress should include stronger provisions to ensure that small businesses actually receive the federal contract support that has been required by law for many decades. While the federal contracting market has doubled in size since 2000, small businesses' percentage share of that market has declined significantly. This is a result of a limited procurement workforce in the federal government, an increase in overseas contracts, lax compliance with subcontracting plans, and barriers that would allow small businesses to compete for larger contracts.

To enable small businesses, particularly 8(a) firms, to compete for a larger share of government contracts, the federal government should take immediate actions to reverse these trends, including enhancing incentives for contracting officers to increase awards to 8(a) and other small businesses. In considering small business contracting legislation, Congress should adopt provisions to:

- a. Support tighter limits on bundling and consolidation of contracts, break up such contracts for award to small businesses, or employ procurement procedures to enable teams of Native enterprises and other small businesses to pursue larger contracts, such as contracting agencies issuing a Request For Information (RFI) to small businesses so they have a chance to form teams to pursue these larger contracting opportunities;
- b. Increase the Government-wide contracting goals for awards to small business of up to 30% of total contract awards to small business, and not less than 8% of total contract and subcontract awards to small disadvantaged business concerns;

- c. Include overseas contracts within the Government-wide contracting goals and require reporting of awards to small businesses as prime or subcontractors performing contracts overseas;
- d. Ease or increase the thresholds on individual networth and on competition, including annual inflationary adjustments, for individuals seeking to qualify and retain eligibility for 8(a) program participation;
- e. Encourage small businesses with larger contracts to implement subcontracting plans to develop stronger business alliances among all types of small business contractors, including 8(a) and other small disadvantaged concerns, HUBZone, service disabled veteran-owned, women-owned and other small businesses; and
- f. Revisit size standards, including indexing them for inflation.

B. Improve Administrative Oversight and Enforcement

Increased oversight and enforcement by SBA and other federal contracting agencies of existing requirements would verify that Native enterprises and other 8(a) and small business concerns are good stewards of taxpayer funds. To foster better SBA administrative oversight:

- g. Improve SBA's implementation of the 8(a) provisions applicable to Native enterprises by authorizing an Assistant Administrator for Native American Affairs to access all the SBA programs to improve the support provided to Native enterprises through contractual, financial and technical assistance;
- h. Strengthen SBA's authority to negotiate higher goals with individual contracting agencies, and require them to be more accountable for their past performance and future plans for making more small business awards so as to meet their goals in each subcategory of small business contracting;
- i. Support provisions to reinforce SBA's and other contracting agencies' efforts to track, monitor and enforce anti-bundling requirements, and set aside and other procedures (including subcontracting plan compliance) to ensure that small business

and small disadvantaged business contracting goals are met or exceeded; and

- j. Afford SBA sufficient resources to rebuild and train its staff to improve implementation of the 8(a) and other programs to assist all small business contractors in accessing the tools necessary to compete successfully and receive a fair share of federal contracting opportunities.

Conclusion

A few in Congress have suggested fixes to the government contracting program that would disproportionately affect tribal governments and ANC enterprises by limiting or removing incentives. The program, while in need of some improvements, is not broken and major fixes are unnecessary. This same conclusion was confirmed by the GAO in their recommending only administrative, not legislative, proposals for improvement.

Limiting tribal government enterprises' access to the federal market place will have distressing effects to Native communities. Tribal governments will need to look to Congress to establish a additional tools to deal with the critical need to strengthen local tribal and village economies so that tribal governments will have more - not fewer - resources and opportunities to provide programs and services for their citizens.

With high rates of poverty, low per capita incomes, lower levels of education, many health problems, many social problems including high suicide rates, high rates of crime and incarceration¹², we all should be looking to improve programs that work like the tribal government contracting

We want to thank you for giving us the opportunity to speak today on diversifying our economies. We look forward to your continued support of our self determination efforts and our use of effective economic tools.

¹² Federal Contracting Support for Alaska Natives' Integration into the Market Economy, Professor Duane Champagne (Sociology), Professor Carole Goldberg (Law) Native Nations Law & Policy Center, UCLA School of Law, Los Angeles, CA Sourced as: Scott Goldsmith, Jane Angvik, Lance Howe, Alexandra Hill, and Linda Leask *Status of Alaska Natives 2004* (Anchorage, AK: Institute for Social and Economic Research, University of Alaska, Anchorage, 2004), pp. 2-14, 3-2 to 3-39, 4-2 to 4-14, 5-2, 6-2 to 6-6; Alaska Native Policy Center, *Our Choices, Our Future: Analysis of the Status of Alaska Natives Report 2004* (Anchorage, AK: Alaska Native Policy Center, 2004); The Harvard Project on American Indian Economic Development, *Native Nations*, pp. 326- 329.