



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO

James Steele, Jr., Chairman  
Confederated Salish and Kootenai Tribes  
P.O. Box 278  
Pablo, Montana 59855

DEC 21 2007

Dear Chairman Steele:

I write in response to your August 17, 2007 letter (Letter), which requests the Department of the Interior's views on the applicability of the Indian Self-Determination and Education Assistance Act of 1975, (ISDEAA), codified at 25 U.S.C. § 450 *et seq.*, to the pending transfer of the operation and management of the Flathead Indian Irrigation Project (Project). Since 2002, the Department has consulted with the Confederated Salish and Kootenai Tribes (Tribes) and the Flathead Joint Board of Control (Board) regarding the necessary provisions and mechanism to transfer the Project's operation and management in an effort to facilitate a local solution.

Throughout this process, the Tribes have posited that a self-determination contract could serve as the appropriate mechanism for transfer. In February 2007, the Principal Deputy Assistant Secretary – Indian Affairs informed the Tribes and the Board that a self-determination contract would not work in this context. In July 2007, the Tribes requested an opportunity to present to the Department its legal views in favor of such a contract. Your August letter sets forth those views.

After further considering the Tribes' views and carefully reviewing the statutes and legislative history governing the establishment, construction and operation of the Project, I remain convinced that a self-determination contract does not provide an appropriate or viable mechanism to transfer the Project's operation and management. A detailed analysis of this position is set forth below.

### Background and Statutory History

The ISDEAA, known also as Public Law 93-638, authorizes the Secretary of the Interior (Secretary) to enter into self-determination contracts for specific types of government programs.<sup>1</sup> Most applicably, the Secretary may enter into self-determination contracts for programs "for the benefit of Indians because of their status as Indians[.]" 25 U.S.C. § 450(a)(1)(E).

<sup>1</sup> The ISDEAA authorizes contracts for five categories of federal programs. See 25 U.S.C. § 450(a)(1)(A)-(E). The first three categories, subsections A through C, refer to specific statutes under which tribes can apply for self-determination contracts. The final two categories, subsections D and E, set forth general requirements for such contracts.

