

Tribal Self-Governance Demonstration Project

SOVEREIGN NATIONS

May, 1993

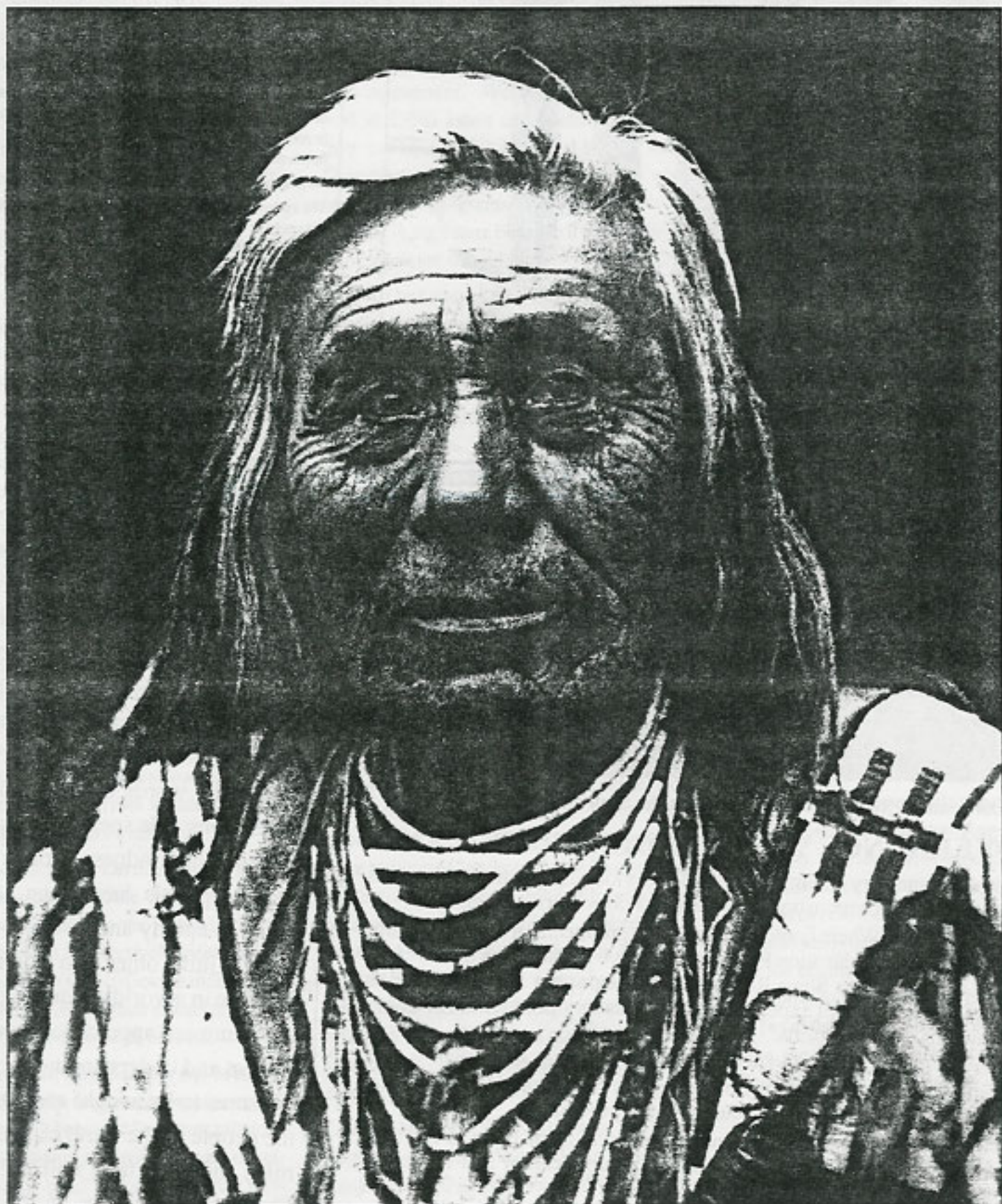
Volume 2

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A Face That Speaks For The Generations

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Cameraman Ron Sanford videotaping the Supreme Court

SELF-GOVERNANCE VIDEO UNDER PRODUCTION

A half-hour video documentary is being produced to provide background information about the Self-Governance Demonstration project to Tribes across the country.

The documentary, entitled "Where Eagles Fly", is being produced for the Demonstration Project Information and Education Program by Native Productions of Olympia. The screenwriter and director is Steve Robinson. Videographer and editor is Ron Sanford. Both have many years of experience in documentary production, and have won numerous awards for their efforts.

The documentary will feature interviews with Congressmen and other federal officials, as well as Tribal chairs, and will provide historic background information as well as insights into the current status and future of the process.

The video is scheduled for completion by June. Copies will be distributed to Tribes across the country through The Self Governance Communication and Education Process.

"We are really looking forward to completing this documentary, and have hopes that it will contribute a great deal to the over-all understanding of the Self-Governance Process," said Maureen Kinley, communication coordinator for the Self-Governance Demonstration Project.

SOVEREIGN NATIONS

SOVEREIGN NATIONS is a monthly publication of the Tribal Self-Governance Demonstration Project. The purpose of the publication is to disseminate accurate information about Self-Governance. Complimentary subscriptions are available through the Communication & Education Project. Materials contained herein can be reproduced, with proper credits. Appropriate editorial contributions and correspondence are welcome.

Self-Governance is a Tribally driven initiative intended to provide Tribal governments more control over their own destinies. The project fosters the shaping of a "new partnership" between Tribal governments and the government of the United States. We believe that excellence in related communication and education is fundamental to the achievement of these goals.

Note to contributors/editors:

We encourage your input, but cannot guarantee acceptance due to time and space constraints inherent in the publication of this newsletter.

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ON THE COVER: The Indian elder in the cover photograph, while not identified, speaks clearly with his eyes and his expression. He expresses thoughts with his heart that have transcended the ages. To those who will listen, he speaks the words of a thousand generations. He speaks words of wisdom and kindness, though he and his people have been subjected to apathy and disdain. He asks for little, other than to live in freedom in a world where the gifts of Nature are appreciated, where respect and understanding are the treasures to be sought and where the people of the Earth can determine the path they will follow. Photograph courtesy of University of Washington Libraries.

SELF-GOVERNANCE, A "MODERN MANIFESTATION"

The Self-Governance Demonstration Project is "the modern manifestation of the U.S./ Tribal government-to-government relationship that has been in effect for centuries," according to Bill Lavelle, Director of the Office of Self-Governance (OSG).

"When this government first began, we made allies of the Tribes. We needed them. So it was only natural for the U.S./Tribal relationship to exist on a nation-to-nation basis. Through the Self-Governance Demonstration Project, we are honoring the commitment we made at that time," said Lavelle.

SOVEREIGN NATIONS interviewed Lavelle during the recent Spring Conference of the Demonstration Project in Bethesda, MD. In his responses, he provided insights into the purposes of the project, as well as his perspective on issues ranging from the Federal trust responsibility to the capability of the Tribes to handle their own affairs. It is a perspective based on a lot of background. Lavelle became involved in Indian affairs as an attorney in Navajo Country in 1965, and has been active with the Tribes in one way or another ever since.

"I've seen a lot of change happen in that time," he said. "And, I can see that Self-Governance is just a next natural step in the relationship between the Tribes and Federal government." He hastened to add that the process is an option that no Tribe will ever be forced to take, although it is also an outstanding opportunity for Tribes wishing to truly take charge of their own affairs.

As director of OSG, Lavelle leads a small, but vital component of the U.S. Department of the Interior. Vital to the Federal government in its effort to effectively meet its trust responsibility to the Self-Governance Tribes. Vital to these Tribes in their efforts to implement the Self-Governance process.

The federal trust responsibility has been likened by the courts to a private benefactor and a private trust," he said. "Such trust relationships are based on ancient law, well developed on the books." He said this trust relationship is one that will always be important to all Tribes, whether or not they participate in the Self-Governance process. He also

pointed out that the program's statute specifically says that the Federal government will in no way reduce this responsibility. Period!

"With that thought in mind, the Office of Self-Governance was fashioned as an agency with provisions to safeguard the trust responsibility for all Tribes. Once a year we do a trust assessment. We actually go out and look at Tribal assets and books, to see that they are being well managed by the Self-Governance Tribes. This is not done with other Indian programs. But I suspect it will be done in the future because it is the type of thing a trustee should do."

Asked if he believes the Tribes are capable of handling their own affairs with little Federal oversight, he responded, "The littler the better."

"When I first came to this job I was asked what my job is. I somewhat jokingly responded that it's my job to get the Federal government out of the Tribes' way so they can govern effectively on the reservations. As I have grown in this job, that has become less of a joke and more of the real thing."

Asked how the Bureau of Indian Affairs would be affected if a majority of Tribes were to choose eventually to join the Self-Governance process, Lavelle said, "It would have to downsize. It would be in a role of providing technical assistance...more generalized services, provided by people with the ability to review Tribal projects from a trustee standpoint. The Secretary would still have to oversee leases and other documents and activities. There would still be a BIA, because there would still be a need for a trustee. But the role of the agency has been in a state of change for a number of years now, since the development of the Indian Self-Determination Act in the 1970's. And, I think there will continue to be a lot of change in the years to come."

Lavelle said the OSG will not in any way duplicate the BIA. "We couldn't. There are roughly 14,000 employees at BIA. We have seven people, including me, and two in the field in the Northwest. The OSG and the BIA have totally different functions. What we do



Bill Lavelle, Director of the Office of Self-Governance

is try to see that the Self-Governance program is implemented. We negotiate contracts, deal with the BIA, deal with the Tribes, helping them as they adopt the process...that's it. I see OSG continuing to play this kind of role...not getting very big. We might need to establish one or two more field offices, and maintain a small group of people in Washington D.C. But that would be it."

Asked if the Self-Governance process could work throughout the Federal system for all programs, Lavelle said, "I think so...If expertise is required, the Tribes are perfectly capable of hiring whatever people are needed. They started by hiring lawyers a long time ago. Then they started hiring accountants, then foresters, fisheries experts, doctors...they are perfectly capable of hiring such experts as well as providing them policy direction. The idea is to turn the money, and the ability to establish priorities on the reservations over to the Tribes. There is a tremendous diversity of priorities and needs throughout the country. The Tribes in Arizona are not going to have the same problems as the Tribes in the Northwest, who are not going to have the same problems as the Tribes in Florida, or in Maine or in the Dakotas. Problems vary, so each Tribe needs the flexibility to fashion the programs and put the money where their problems are on their own reservations. There isn't any reason this process can't work with any program the Federal government is involved with.

Clinton White House Sends Hopeful Signs of Improved Govt.-to-Govt. Communications

President Clinton and the Tribes...What Can We Expect From This Administration?

There have been a number of meetings between the Tribes and the Clinton Administration since he was elected to office, conducted in an effort to improve Federal policy towards Tribes and the relationship between the United States and the Tribes.

Meaningful contact between the Self-Governance Tribes and the Clinton/Gore campaign actually started in late September, 1992.

Henry Cagey of the Lummi Nation personally delivered to Little Rock, Arkansas, a Lummi/Quinault Nations Indian policy paper. The Tribes challenged the candidate to establish a comprehensive Federal policy addressing the government-to-government relationship, make a firm commitment to the Federal trust responsibility, and support for Tribal human, economic and infrastructure development. Administration support for the Tribal Self-Governance project was a fundamental theme for the policy paper.

Subsequent Lummi Nation correspondence to President Clinton led to a White House meeting on March 31 between Chairman Cagey and Lummi Indian Business Council

representatives and the President's Inter-governmental Affairs staff. The Lummi representatives met both President Clinton and Vice President Gore in this visit.

The group of Tribal leaders met on April 1 with Regina Montoga and Corella Avent of the White House Office of Tribal Governmental Affairs, arranged by Sense, Inc.

Tribal speakers at this meeting included Jamestown S'Klallam Chairman Ron Allen, who delivered a draft paper regarding "Federal Government-to-Government Policy which proposes the establishment of a Tribal/Federal Inter-departmental Council on Indian Affairs". The Purpose of such council would be to assist in coordination and implementation of positive meaningful Indian Affairs policy.

The Tribal delegates were invited to return to the White House for a tour the following day. Ron Allen and Lummi Nation's Jewell James attended and were invited by Avent to coordinate a national meeting of Tribal leadership with President Clinton and Vice President Gore, as well as respective Cabinet Members and staff.

"I am very encouraged by this proposed

meeting," said James, "The Office of Inter-governmental Affairs is open to working with the Tribes and assuring access to the White House...it's not only policy; it's reality."

A number of Tribal and Indian organization representatives have held several planning sessions in preparation for a potential early June meeting. As the meeting space in the White House is limited, Tribes have been requested to choose twelve Tribal Leaders from each geographic BIA area to participate. The meeting between the President and Vice President will be brief. However, this "government-to-government" policy will be the priority topic. Likely separate meetings with individual department secretaries will allow Tribes direct contact with the Administration.

Hopefully a broad spectrum of Tribal government and leadership will attend this historic event. These meetings present opportunities to establish meaningful government-to-government communication, and improve-



Lummi Tribal delegates presented President Clinton a cedar basket during a recent White House visit.

Excerpt from a statement by president Bill Clinton to the Indian Law Conference of the Federal Bar Association, regarding the relationship between the Federal government and Tribal governments, April 1, 1993:

"The relationship between the Federal government and Tribal governments, forged by treaties, federal law and tradition, dates back to the advent of the United States. My Administration supports sovereignty and is committed to the policy of self-determination. The government-to-government relationship will be strengthened and Self-Governance will progress. We are working for Tribal economic development, environmental protection, religious and spiritual freedom, improved health care, better housing and quality education."

Clinton Administration Maintains Basic Support For Self-Governance In FY 94 BIA & IHS Budgets

The Clinton Administration FY 1994 budgets for the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) continue support for the Self-Governance Demonstration Project with basic projections that the 30 authorized Self-Governance Tribes will negotiate transfer of \$75 to \$80 million from the BIA in FY 94. The Interior Department's Office of The Secretary cut the Office of Self-Governance by \$73,000 to a total \$613,000 for FY 94 even though the number of Tribes with Compacts will in-

crease from 18 to 30 next year. The justification cites "changes in the makeup of the workforce in this office."

The BIA includes \$4,934,000 for "Self-Governance grants" to cover planning, negotiation, start-up and shortfall expenses, with no mention made of implementation costs. From this amount, \$150,000 will continue the Lummi educational activities and \$100,000 is designated for the Independent Annual Assessment. The BIA also established the stable base budgets for the Hoopa, Quinault,

Lummi and Jamestown S'Klallam Tribes in its FY 94 budget.

The IHS Requested \$1,884,000 for Self-Governance activities, a \$96,000 increase over FY 93 provisions, justified as "the inflationary cost increases associated with Self-Governance." The IHS Budget Justification advises that the total funding "will be used to support the Office of Self-Governance, fund Tribal-specific planning activities, and for other activities associated with Self-Governance."

GRAND TRAVERSE TRIBE...SUCCESS DESPITE PREJUDICE

Prejudice is a word that has meaning to Tribes throughout the country. Tribes everywhere have experienced the pain of racism in the classroom and in the workplace. In fact, they have even found themselves excluded from these places, despite all the civil rights legislation that has been passed by the federal government, and all the lip service the Tribes have heard regarding their rights through the years.

Is there any way that Self-Governance can help?

Only time will tell if the increased independence Self-Governance can bring might have some impact on peoples' attitudes. But there are at least some things the Self-Governance process can contribute to education and employment opportunities, by virtue of increased revenue and increased control.

The Grand Traverse Tribe, a Tribe of about 2,000 members located on the Leelanau Peninsula, in the northwest portion of lower Michigan, could be a case in point. Dodie Chambers, Self-Governance Director for the Tribe, remembers the treatment she and other Tribal members received at the hands of non-Indian school systems, companies and residents of the area while she was growing up. "There weren't any jobs," she says. "You couldn't go to a restaurant and get a job as a waitress, or to a hotel to work as a maid...if you were Indian."

Opportunities to get ahead through education were dismal at times, as well. But times, they are a'changin'...in some respects. The federal government recognized the Tribe in 1980. And, as the Tribe has developed its own economic enterprises in the gaming arena, etc., Tribal members have been returning to the Reservation. Today, the Tribe

is a large employer, and there are jobs for every Tribal member who wants one. Education success stories are beginning to abound, as the Tribe has become able to provide its members with financial backing. Chambers predicts the Tribe will have as many as 50 students in college and trade schools this next year, and that the Tribe will be able to assist all of them.

Increased revenues resulting from the Self-Governance process, legitimate support from the federal government via the process, and increased local control by the Tribes, are expected to help produce significant improvements for all these programs, as well as with housing, cultural projects and more.

"Council members are realizing that the Self-Governance process has resulted in increased interest in Tribal government by our own population. Our people are really beginning to express themselves, and let their needs be known," said Chambers. "It just wasn't like that before Self-Governance. I think this is changing because the people have a better feeling that they will be heard, and that their needs will be met. More and more people are getting a paycheck now, for example. Even kids. If they stay in school, the Tribe finds work for them."

But it seems some things never change. Clearly, the Grand Traverse Tribe contributes significantly to the overall economy of the region, benefiting non-Indians as well as Tribal members. To demonstrate, the Tribe once paid its employees in \$2 bills, so people in Traverse City and other nearby communities could easily see the positive impact the Tribe has on the local economy. "We wanted to see the reactions of the banks, barbershops and grocery stores, hoping they would real-



Dodie Chambers

ize we support local businesses. All we heard was complaints about all the \$2 bills," she said.

"Everybody is still teaching prejudice to their kids. Our kids are still being teased. We don't see any better treatment from the banks...or the barbers...or whatever. I don't know how we'll ever get past this problem. Maybe we'll just have to outlive them."

Meanwhile, the Tribe sees Self-Governance as a great opportunity, and so does its membership. Better health care. Better employment opportunities. An increasing Tribal land base. And so on.

Maybe the process will help create better Indian/non-Indian relations some day. Maybe not. But meanwhile, at least the people of the Tribe should be able to live longer and otherwise more fulfilling lives.

American Indian & Native Alaskan Tribal/Federal "Government-to-Government" Policy Proposal

This is an excerpt from a concept paper developed by the National Congress of American Indians for the National Indian Policy Center.

We seek Presidential support for the formulation of an Indian Affairs Policy that will have as its cornerstones the following: (1) acknowledgment that the United States government has a special political and constitutionally based government-to-government relationship with Indian Tribes which differentiates Indian Tribes and other indigenous native people, from minority Americans; (2) the establishment of an **Tribal/Federal Inter-Departmental Council for Indian Affairs**; and (3) recognition that in exchange for 99% of the land, the United States and Indian Tribes entered into treaties and their mutual commitments which give rise to the trusteeship responsibilities of the United States as the underlying basis for the treatment of Indian Tribes as self-governing, self-determining and sovereign nations.

U.S. GOVERNMENT'S INDIAN AFFAIRS POLICY OVER THE NEXT FOUR YEARS

To provide for consistent implementation of the "government-to-government" relationship between American Indian and Native Alaskan Tribes, the Clinton/Gore Administration should:

- **Affirm the policy of Indian Self-Determination and recognition of the government-to-government relationship and reject failed policies of termination and paternalism.**
- **Establish an overall federal policy by the United States which extends to all Federal Agencies to establish a mutually defined, acceptable, and meaningful framework for a "government-to-government" relationship between the United States government and the governments of American Indian Tribes, Alaskan Natives and other native peoples.**

This policy should address the following key objectives:

- ✓ Effective administration of the trust responsibility to protect and enhance Tribal treaty Rights and Trust Assets;
- ✓ Support comprehensive Tribal governmental operations including: (a) development and environmental protection, (b) natural resource and economic development, (c) health-social-education and training, (d) service delivery, (e) law and justice systems, and (f) housing and infrastructure;
- ✓ Promote inclusion of American Indian and Alaskan Native Tribes in all legislation providing assistance to state and local units of government, and the Trust territories to include appropriate protection and recognition of the unique legal relationship Tribes and other Native people have with the United States; and
- ✓ Conduct negotiations between the U.S. government and Tribal governments of the basis of mutually recognized sovereignty.

GUIDING PRINCIPALS FOR FEDERAL-INDIAN RELATIONS

Indian nations propose that the government-to-government relationship be premised on the guiding principals set forth below:

- The relationship between the governments of the United States and Indian nations is based on tradition, treaties, federal law, and executive orders, including concepts that predate the formation of the Union. Mutual respect for treaties and obligations between the Federal Government and Tribal governments is an important prerequisite for improving the lives of Native Americans both on

and off Indian reservation lands.

- The United States, its member States, and each Indian nation has inherent sovereignty that provides paramount authority to exist and to govern.
- Each entity has an independent relationship with every other entity within the framework established by the American Constitutional form of governance.
- Since its formation, the United States has recognized the sovereign status of Indian Tribes and has, through the exercise of powers reserved to the Federal Government through the Commerce Clause of the Constitution (art. I, para. 8, cl. 3), dealt with Indian Tribes on a government-to-government basis.
 - ✓ The government-to-government relationship extends to all recognized Tribes, whether recognized by treaty, statute, agreement, executive order, or delegated administrative action.
 - ✓ The United States has the authority to extend recognition, and to establish or reassume the government-to-government relationship, with respect to all Tribes, including those that may be terminated or non-recognized.
- The United States shall forever respect and protect the inherent sovereign authority that Indian Tribal governments have exercised from time immemorial.
 - ✓ The United States shall support and assist Indian Tribes in exercising broad sovereign Tribal authority over all places, persons, property, and events within the territorial jurisdiction of Indian Tribes.
 - ✓ The United States will support criminal and civil jurisdictional authority and primacy of Tribal governments within the boundaries of their respective reservations, so as to protect and sustain the essential character and integrity of Tribal homelands in a manner consistent with sovereignty and self-determination.
 - ✓ The United States shall support exclusive taxation authority on reservations by Tribal governments to eliminate the burden of dual taxation that inhibits development of reservation economies.
 - ✓ The United States shall support increased Tribal authority in the administration of Federal funds.
- Governmental entities shall not infringe upon the rights of, or attempt to impose policy decisions upon other governmental entities.
- Issues of mutual concern are to be addressed through clear, direct dialogue and communication between affected governments.
 - ✓ Resolution of disagreements should be through mutual cooperation and accommodation wherever possible.
 - ✓ Full consultation will be undertaken prior to taking any action that will adversely affect Tribal interests.
 - ✓ The United States shall support the sovereign rights of Tribal governments to resolve disputes with states and other units of local government.

(Continued on page 7)

■ The United States acknowledges its trust obligations towards Indian nations which require the Congress, the President, and all entities of the Federal Government to assure that "The utmost good faith shall always be observed towards the Indians," (North-west Ordinance of 1787, 1 Stat. 50).

- ✓ The trust responsibility and obligation of the United States extends to Indian Tribes and Alaska Natives for their preservation, protection, and enhancement, including the provision of health, education, social, economic, and other assistance programs, in order to assist Tribes in performing their governmental responsibilities to provide for the social and economic well-being of their members, and preserve Tribal cultural identity and heritage.
- ✓ The trust responsibility applies to every federal agency of the government.
- ✓ The United States shall exercise the utmost good faith in upholding its treaties, statutes, agreements, and execute orders with Indian Tribes and in construing those documents generously in favor of the Tribes and as the Tribes would have understood them.
- ✓ The United States shall manage assets held in trust for Indian nations and individual Indians to meet the objectives of the beneficiaries of the trust.
- ✓ The United States shall protect Indian religious freedoms, prohibit desecration of Native American burial sites, and protect access to sacred sites.
- ✓ The United States shall not abrogate or abridge any Tribal right, whether held as a matter of inherent sovereignty or established by treaty, statute, agreement, or executive order, unless such abrogation or abridgement is consented to by the affected Tribal government.

■ The United States shall treat Indian Tribes in the same manner as the states with respect to federal statutes involving the distribution of funds or the administration of programs.

IMPLEMENTATION OF THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

An Executive Branch-wide Indian policy program is essential to achieve consistency in the relationship between Tribal governments and the United States. There is a need to establish an over-arching Indian policy within the Administration. It is well established that the trust responsibility of the United States in relation to Indian Tribes and their lands is shared by all federal agencies - the U.S. government as a whole. The policy of a "government-to-government" relationship between the Tribal governments and the federal government applies to all federal agencies, not just to those who, in their own discretion, decide to recognize such a Policy.

The Secretary of Interior has been acknowledged as the official with lead responsibility for Indian policy in the federal government. Other Cabinet departments must also recognize or understand that they share a government-wide responsibility to deal with Indian Tribes in a manner consistent with the "government-to-government" policy. In the absence of such a policy, each agency of the federal government has developed its own Indian Affairs policy. This condition has predictably resulted in inconsistencies and serious conflicts in policies between agencies. A heavy burden has been imposed on Tribal governments as they struggle to resolve and mediate such conflicts by dealing with many different agencies.

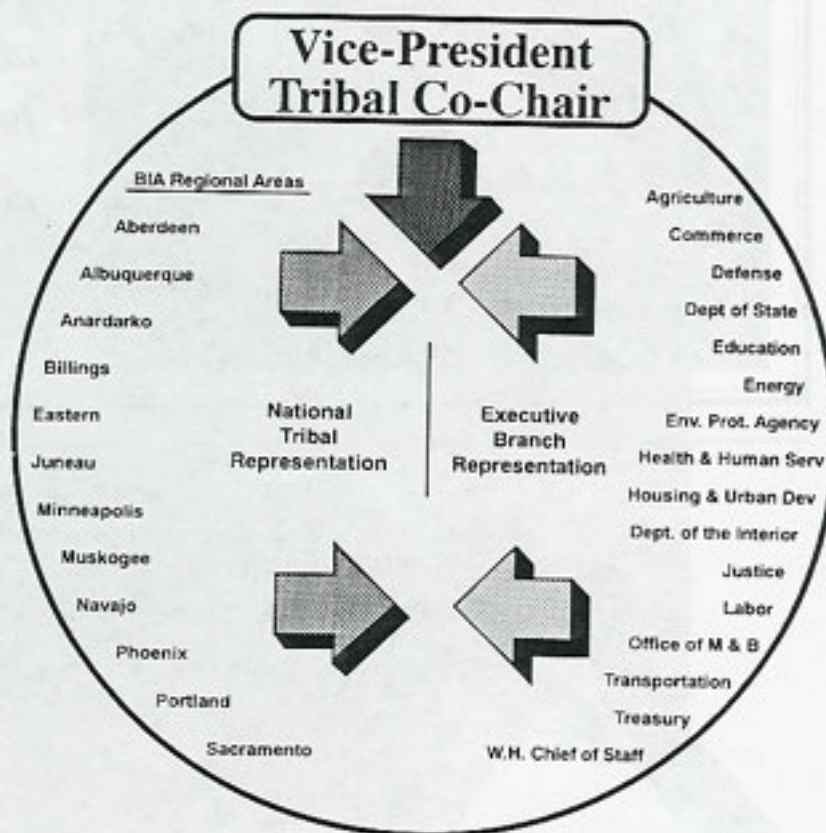
To implement the "government-to-government" relationship, Tribal leaders request consideration of an "Inter-Departmental Council on Indian Affairs IDCIA. The President would expressly delegate

authority to the Vice-President to preside over the Council which would include representatives from all cabinet departments and the Office of Management & Budget.

The IDCIA would have two primary responsibilities: (1) To provide a forum for the deliberation of Federal-Indian policy. Participation in the development and implementation of federal policies that affect the rights and status of Tribal governments means that policy decisions are made on the basis of bilateral or multi-lateral discussion/negotiation between Indian governments and the United States government; and (2) administrative implementation of the government-to-government relationship.

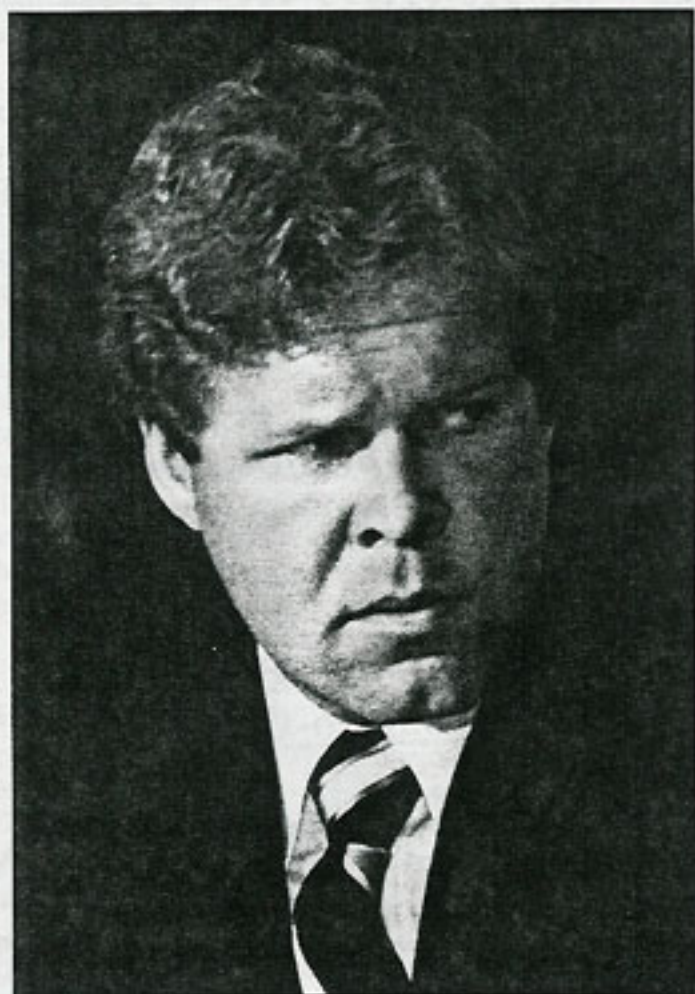
Tribal/Federal Inter-Departmental Council on Indian Affairs

Proposed Structure for Tribal Representation in the United States Executive Branch



Participation in the development and implementation of federal policies that affect the rights and status of Tribal governments will assure that policy decisions are made on the basis of bilateral or multi-lateral negotiation between Indian governments and the United States government.

It would be a United States responsibility to coordinate implementation of these policies by all Executive Branch agencies. In effect, the Vice-President should be given clear and strong backing by the President to see that these policies are implemented by other agencies and, in the event of problems or conflicts, the head of another agency must work to resolve the conflict. If the Council is unable to resolve an inter-cabinet conflict, the President would become the final word.



"We have to respect Tribal culture and tradition, but by all means let the Tribes decide what course is best to pursue for their own people. Self-Governance, community support, family values, a sense of individual purpose...Self-Governance in addition to promoting Tribal independence, encourages effective Tribal government, which helps lay the foundation that leads to the ability to compete in a meaningful way in both the domestic and international and economic arenas."

Congressman Norm Dicks
to the American Indian/Pacific Rim
Reverse Trade Mission August 8, 1992



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