

Sovereign Nations

NEWSLETTER OF TRIBAL SELF-GOVERNANCE

Nov./Dec.
1995

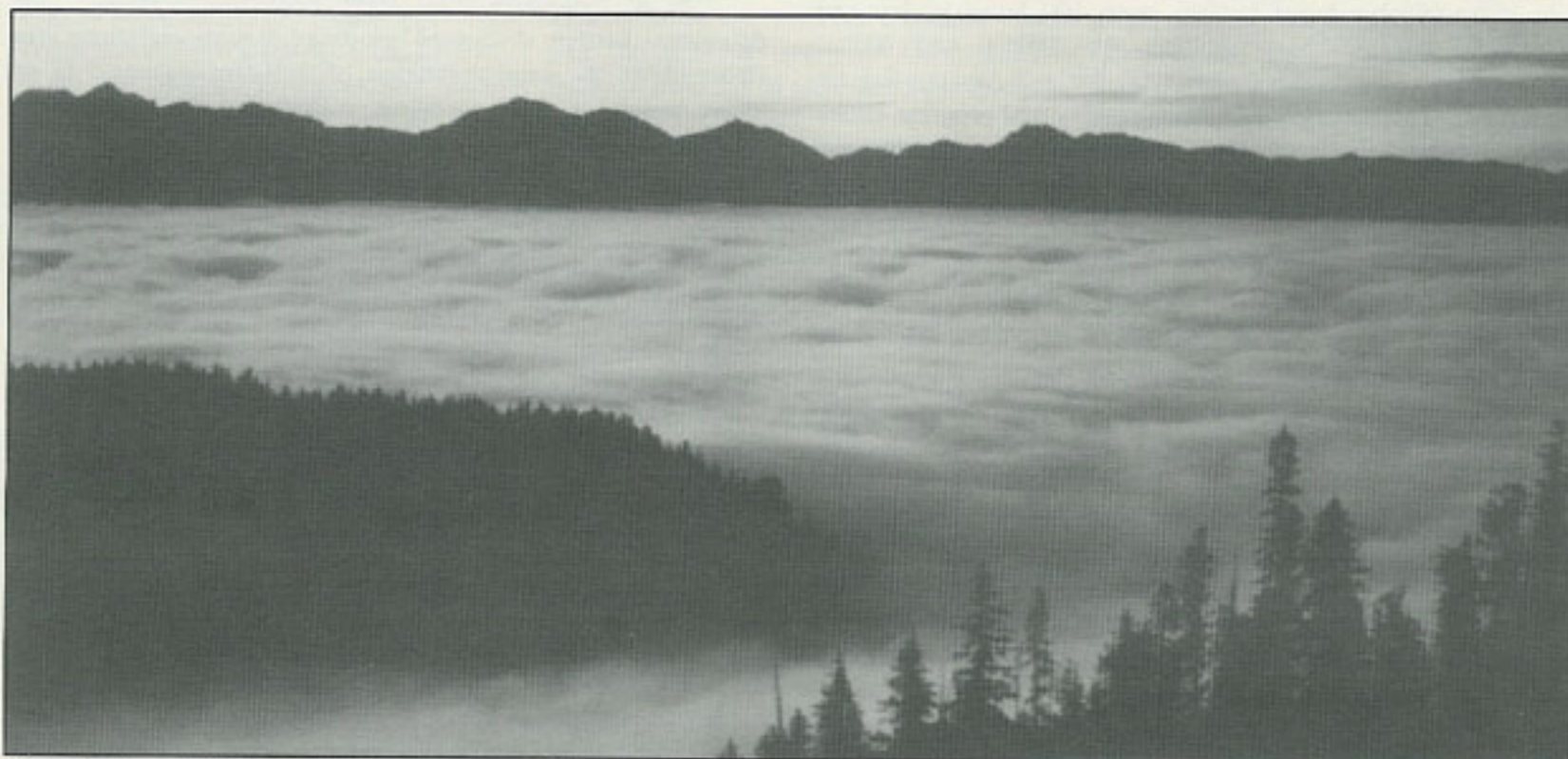


Photo by Larry Workman

Assumption of Federal Programs Makah and Penobscot Indian Nations Show How Its Done

Sovereign Nations recently interviewed the Makah and Penobscot Tribes to learn how the assumption of federal programs is working for them. Located at opposite ends of the country, these two Tribes have taken over significant aspects of the BIA Forestry Programs (Makah) and IHS Clinic and Hospital Programs in the case of Penobscot. We begin with the Makah Indian Nation; see inside Tribal Profile for the Penobscot story.

Nestled among the towering firs and a jagged seacoast where the rain and mist never seem to end and a straight road is impossible to find, lies the Makah Indian Nation. The Makah Indian Reservation consists of over 29,950 acres of rugged mountains and towering cedar trees. Located in the uppermost Northwest portion of the State of Washington, the reservation is home to over 2,000 Makah Tribal members. The Tribe is governed by a 5-member Council

with the current Chairman being Hubert Markishtum.

The Tribe is into its fifth year as a Self-Governance Tribe and has many examples of the impact of Self-Determination and Self-Governance ranging from Forestry to General Assistance Programs.

One of the success stories of the Makah Tribe is the Makah Forestry Enterprise or MFE. While the MFE is not a product of Self-Governance, it has continued to further develop and flourish under the additional freedom and funds associated with Self-Governance.

Beginning in the early 80's, the Tribe began to contract more and more of the BIA forestry programs. Under this arrangement the BIA performed the Forest Management Program which included planning, inventory and harvesting contracts. The Tribal Forestry department primarily

concerned itself with the tasks of brush clearing and thinning of trees.

The MFE was founded in 1985 as a response to management problems associated with a separate Tribal Natural Resources department and the forestry functions of the BIA. The MFE was established as a profit-making enterprise which reported to the Tribal Council. They gradually assumed the functions of the BIA Forestry Program. The emphasis behind the formation of the MFE was to create better efficiencies while maintaining collaborative ties to the Tribe's Natural Resources Department.

By the time the Tribe entered into Self-Governance negotiations, only three BIA employees remained. In fact, the Tribe convinced the BIA to create a Makah agency which was located on the reservation. Self-Governance allowed the Tribe to go one step further with the BIA programs. The Tribe self-governed most

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Update from Tribal Self-Governance and IHS Fall Conference



On October 3 and 4, 1995, over 100 Tribal leaders and delegates, representing 41 Tribes and Tribal organizations met in Scottsdale, AZ for a 2-day conference addressing the numerous outstanding policy and program issues relative to IHS Self-Governance. IHS officials also attending the conference included Michael Lincoln, Headquarters Deputy Director, Reuben Howard and Carol Martin from the Office of Tribal Self-Governance, Douglas Black, Associate Director of the Office of Tribal Activities, and other representatives from the Albuquerque, Oklahoma, Phoenix, and Portland Area offices.

Conference Dedication of Dwayne Hughes... This year's conference was dedicated in memory of Dwayne Hughes, who passed away at his home this past September. Mickey Peercy, Special Assistant to the Governor Chickasaw Nation of Oklahoma, W. Ron Allen, Chairman of the Jamestown S'Klallam Tribe, and Merle Boyd, Second Chief of Sac and Fox Nation spoke eloquently of Dwayne's spirit, sense of humor, and his hard work and strong support of Self-Governance issues. It was a special and moving tribute to Dwayne, who will be missed by his many friends in Indian Country.

Unresolved Self-Governance Policy Issues... Throughout the balance of the 2-day meeting, Tribal leaders engaged in open dialogue with IHS representatives regarding their concerns over the lack of decisions on numerous key IHS issues affecting Self-Governance Tribes. Many of these remaining unresolved issues were identified during the recently concluded FY1996 Self-Governance negotiations, including:

- Access and proposed distribution of Management Initiative Funds
- Written analysis of Workman's/Unemployment Compensation
- Finalization of IHS Contract Support Cost Policy
- Development of a Self-Governance Appeal process
- Establishment of recurring Self-Governance budgets

Role and Authority of the Office of Tribal Self-Governance... In addition to the above identified issues, the role and authority of the Office of Tribal Self-Governance remains unclear and the office is clearly not adequately staffed to handle the required financial and policy issues. Additionally, many obstacles and problems have been encountered in the Self-Governance negotiation and implementation process.

Title III Transition (T3T) Team Recommendations... The delegates further discussed proposed recommendations for streamlining the implementation of Self-Governance. In an effort to resolve these problems, a draft Tribal/IHS document was presented at the conference by the T3T Team. The document outlines key Self-Governance principles and provides specific recommendations for streamlining the negotiation and reconciliation process. In general, the Tribal participants endorsed the concepts and procedural recommendations. Additionally, Tribal leaders and representatives strongly concurred on the following:

- The Office of Tribal Self-Governance must remain at an organizational level no less than the IHS Director and be given full authority of the Director in implementation of Self-Governance policy and budget issues;
- Full budget authority for development and execution of Tribal Self-Governance budgets should be established as a separate "sub-sub activity" within the IHS for FY1997;
- The OTSG must be adequately staffed to handle the required financial and policy issues. Any proposed FTE's and position descriptions must be jointly developed with Tribal participation;
- IHS Negotiation Teams must be delegated full authority to negotiate IHS programs at all organizational levels and must arrange issue resolution by all necessary IHS authorities, or obtain the authority to resolve such issues, so that all final decisions are made at the negotiation table; and
- The Tribes strongly object to any IHS unilateral adjustment or action to negotiated Compacts and Annual Funding Agreement. Any such potential adjustment (or proposed IHS action) shall only occur pursuant to the amendment process in the Compact or AFA.

Immediate Tribal Action Required... IHS Deputy Director, Mike Lincoln responded to Tribal concerns and proposed recommendations by confirming that there is an opportunity to resolve these issues within the first quarter of this fiscal year. He strongly recommended that the Tribes provide feedback and communicate directly to IHS Director, Dr. Michael Trujillo. Many of the recommendations discussed at the meeting will need to be implemented quickly and should be in place prior to the start of next year's negotiation cycle.

If you would like any further information from the Conference, or would like a copy of the proposed recommendations, please contact Maureen Kinley, Lummi Communication and Education at (360) 384-2301.

Assumption of Federal Programs

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of the forestry programs but kept a BIA employee as a Self-Governance Specialist who is responsible for "signing-off" on Tribal timber sales contracts. Greg Argel, of the BIA Makah Agency, actually works on the Makah reservation and as MFE CEO Meri Heilman says, "is a unique employee who cares about his client, the Makah Tribe. He is very responsive and this is very refreshing," says Heilman. Argel says there is no conflict or divided loyalties to the BIA. "I consider myself loyal to the Makah Tribe."



Hubert Markishtum Chairman

The MFE is an arm of the Tribal government but has a Board which is quite unique to Tribal governments. The seven member Board of MFE is comprised of three Makah Tribal members and four experts in the Forestry field. None of the Board members is paid a salary or percentage of timber sales, but volunteer their time (beyond stipends) in an effort to operate a professional and profit-oriented forestry enterprise that will benefit the Tribe. "When the MFE was founded, it was our intent to separate Tribal politics from governmental enterprises," says Heilman. "Because of the forest acreage involved and the large numbers of timber sales, it is important that a Board base its decisions on expertise rather than politics." Heilman also points out that the MFE follows an approved Makah 10-year Forestry Plan and practices sustained forestry.

Michael Dukes, General Manager of the MFE, says one of the successes of the MFE is the fact that Meri Heilman is a Tribal member and serves as an excellent liaison between the MFE and the Tribe. "We really work well as a team," says Duke. The MFE accomplishes a great deal with few employees by contracting most of the work from logging to trucking. Many Tribal members benefit from these

contracts as one of the two logging contracts is with a Tribal member as well as several of the trucking contracts. In fact, the Tribe has used Self Governance funds to train Tribal members so they can be log trucker drivers.

Self-Governance has helped the Tribe place emphasis on the priorities they choose. "It allows the Tribe to make decisions that effect our Natural Resources by placing us in the driver's seat," says Heilman. "In the past, we just received funds through the BIA IPA. Now we have budget hearings and the people make decisions. This is a much better system than the BIA deciding. Tribal members have told us they wanted the roads improved and during the last budget, we received funds to improve many of the reservation roads."

The overall success of the Makah Forestry Enterprise is enormous. The Tribe recently purchased close to 2,000 acres of timber land from funds derived from prior timber sales. In addition, a Forest Program Review was conducted by

an independent third party which concluded that the MFE is in excellent shape, that the MFE relationship to the Tribe works well and that the MFE operates in an extremely sound and professional manner. The MFE is so respected that the Inter-Tribal Timber Council is using many of the MFE practices as part of a new handbook for Tribal Natural Resource departments.

As Tribal Chairman Hubert Markishtum states, "we are very proud of the Makah Forestry Enterprise. They provide jobs, generate funds for land purchases and serve as an example for other Tribes."

The MFE is just one example of how the Makah Tribe has flourished under Self-Governance. The Tribe has made many changes as they relate to Self-Governance including a General Assistance Program which has been in the process of adapting their own guidelines to better suit the Makah Tribe as opposed to some perceived BIA notion of what the General Assistance Program should be. As Heilman so succinctly puts it, "We are now accountable to the people, not to some out-of-touch BIA agency or bureaucrat. That's the beauty of Self-Governance." ◀▶



Michael Dukes, Meri Heilman, Greg Argel



"The treaty-making process was resumed in 1990 as a legitimate government-to-government method for arranging political, economic and legal relations between the United States government and Indian governments."

Sovereign Nations recently interviewed Rudolph Ryser, Chair of the Center for World Indigenous studies, who has been commissioned to conduct a study around Self-Governance. Sovereign Nations encourages Tribal leaders to respond to the preliminary findings of the study currently being conducted by the CWIS. Mr. Ryser may be contacted at P.O. Box 2574 Olympia WA 98507

1. *Mr. Ryser, you've stated in your Preliminary Findings of the Self-Government Process Evaluation Project, "Indian governments are engaged in negotiating Compacts on an agency-by-agency basis resulting in a pattern of relations similar to PL-638 contracting." Explain what this means, why you think it is occurring and what can be done to change this relationship.*

Ryser: Indian nations that entered into a Compact on Self-Governance with the United States government concluded the first treaties with the United States since treaty making was stopped unilaterally by the U.S. Congress in 1871. What this means, is that the treaty-making process was resumed in 1990 as a legitimate government-to-government method for arranging political, economic and legal relations between the United States government and Indian governments. At the same time, these new treaties began the political process of shifting political power back to Indian governments. After 125 years when the US government's Bureau of Indian Affairs took Indian government powers and exercised what Felix Cohen called "government by an agency of the U.S." the new treaty process began to return governmental powers to Indian governments. This is what is meant by the expression "resuming self-government" by Indian nations.

Now that the historic process of treaty-making and shifting-governmental power has begun it is important to measure whether or not Indian nations are actually increasing their self-governing powers or not. When does an Indian government become self-governing? Are the treaty negotiations actually producing the shift in power that is at the foundation of this process? In July 1995, the Center for World Indigenous Studies

was commissioned to undertake a several month's long study to begin answering these questions. The Self-Government Process Evaluation Project, with a team of eight researchers, is a "documents research" project which involves the review of thousands of resolutions, key communications, treaties, and constitutions and the careful coding of information from these papers provided to us by participating Indian governments and the United States government. A preliminary examination of a great many of these documents provided some early indications of what the study's final findings might be.

Given the thrust of the self-governance process (increasing governing powers in Indian governments and reducing US governing powers over Indian nations), it would be natural to assume that the negotiations of compacts would establish a government-to-government framework that fosters the intended transfer of power. Preliminary findings indicated that the first tier Indian governments (Absentee Shawnee, Hoopa, Jamestown S'Klallam, Lummi, Quinalt, and Sac n Fox) were clearly intent on entering into negotiation of compacts as one government to another government. As the negotiations began, they certainly had all of the characteristics of "government to government negotiations." Indeed, the conclusion of compacts and protocols (Funding Agreements concluded are actually protocols—operational and procedural documents supporting the main treaty). In the second round of negotiations during the next year, the U.S. government appears to have shifted its PL 638 contract negotiating approaches into the newly established Office of Self-Governance. This office appears to have become an "annex office" for the Bureau of Indian Affairs instead of an office operating directly under the authority of the Secretary of the Interior. *When tribes began negotiating the second year funding protocols, they faced virtually the same procedures and approaches in the Office of Self-Governance as they had earlier faced in the Area Office 638 contracting desk.* Instead of negotiations, Indian government officials were increasingly met with a "done deal." *Unfortunately, Indian government officials failed to recognize that they did not have to accept the "take it or leave it" approach; they forgot they were negotiating*



a treaty and not an administrative process. The treaty negotiations continue each year, but the tribal officials appear to have ignored this fact as did the U.S. government officials. When tribes were taking the next step to address the Indian Health Service, they appear to have accepted the suggestion that a wholly new compact had to be negotiated concerning the IHS. This was a serious mistake. Compacts had already been negotiated. All that was needed for the IHS was a new protocol for transferring funds. The preliminary thought on this matter is that the only way to change this condition is to go back to the negotiating table to redefine, or refine the compacts and refine the protocols. This must be done at the highest levels of Indian governments and the United States government.

2. Mr. Ryser, many Tribal leaders have complained that what the Tribe and the federal government call negotiations is not truly negotiations. The definition of negotiations does not usually include one party having control over that being negotiated and, at the same time, having the final say on the outcomes of each negotiation. Does this sound like government-to-government negotiations to you?

Ryser: The negotiation of a bi-lateral treaty like the Compact of Self-Governance involves the mutual recognition of sovereignty by both parties and the agreement to basic principles and establishment of a framework for the conduct of relations to achieve mutually defined goals. The Funding Agreement is technically called a protocol which describes how the treaty will be carried out in detail. The treaty itself generally does not need to be re-negotiated since it lays down broad principles of agreement by the parties, but may have to be re-negotiated if these principles of agreement change. The protocols are supposed to be re-negotiated each year, but as I indicated before, both parties (Indian governments and the US government) appear to have failed in their understanding that the protocol is a part of the treaty itself. Indian governments have failed to demand the same negotiation conditions for the protocols as they first demanded in 1990 for the compact negotiations. Also, it appears, that the bureaucrats from both governments are more directly in control of the protocol negotiations and this leads to reducing the process to administrators serving administrative purposes instead of the political aims originally set out in the compacts.

3. Given the current atmosphere of BIA cuts and Senator Slade Gorton's attack on Tribal sovereignty, what do you feel is the future of Self-Governance? What can the Tribes do to ensure the success of Self-Governance? Ryser

Ryser: In my personal view, Senator Gorton is simply acting out politically what he has always said he wanted to accomplish legally in the US Supreme Court (where he failed). He is interested in promoting state's rights in a way consistent with his interpretation of the US Constitution's Article 10. His is the kind of threat that Indian nations have always experienced from the various states. He is clearly interested in forcing Indian nations to fall under the control of the Bureau of Indian Affairs once again by abrogating the Compacts of Self-Governance. **He is seeking to violate, through abrogation, treaties concluded between the US and Indian nations.** No one should be surprised that Senator Gorton or any other elected US officials would attempt to prevent the resumption of self-government by Indian nations. If Indian nations with agreements recognize that the treaty process is a political process and only secondarily a legal process they will know that they must develop new forms of political leverage inside the United States and in the international community to impress upon the US government the necessity to fulfill its treaty (compact) agreements.

4. Mr. Ryser, what will the final report entail and how can the Tribes help?

Ryser: The final report will be an expanded version of the Preliminary Findings with a detailed analysis of data gleaned from the thousands of records. Because the project was cut by half from its original plan as a result of funding cuts we will examine the year-by-year resolutions of up to three Indian governments as case-studies instead of up to 19 governments. We will be examining as many documents from Indian governments and the U.S. government as we are provided. The study will

"The result is that Indian government bureaucracies and US government bureaucracies appear to be driving the process away from the exercise of political sovereignty which is being promoted by elected Indian and US officials."

provide a new measurement tool to evaluate the increasing or decreasing levels of self-government exercised by Indian governments. It will provide an analysis of the compact negotiating process, where the process contributed to achieving self-government and where it may have undermined the process. The study will also address the question of whether the government-to-government framework is adequate to achieve the goals of political sovereignty for Indian nations. Finally, the research team will provide data that support recommendations to Indian governments and the U.S. government for improving the negotiation process and the effective shift of governmental powers to Indian governments.

About a month ago, I sent a letter to each of the self-governing tribes concerned with the Department of the Interior
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The Penobscot Indian Nation



One of the newest Tribes to Self-Governance (within the Indian Health Services) is the Penobscot Indian Nation located in the east central portion of the state of Maine. Although the Penobscot Nation has only been involved with Self-Governance for approximately one year, they firmly believe it is an excellent vehicle through which to provide better health care services to the people in their Tribal communities.

Tribal Background and History...

The Penobscot Nation is the largest of the Abenake tribes that occupied the central and southern portion of Maine prior to the European invasion. It is the oldest documented continuously operating government in North America. The earliest recorded contact with Europeans occurred in the spring of 1524 when Italian mariner Giovanni da Verrazzano sailed along the coast of Maine under the flag of France.

The Penobscot Reservation, Indian Island, is located approximately 12 miles north of Bangor, the nearest urban area, and immediately adjacent to the city of Old Town. The ancestral location of the Penobscot Nation is the watershed of the Penobscot River, one of the largest rivers in Maine. The primary community

settlement of the Penobscots is Indian Island, which is comprised of 315 acres. Much of the ancestral land base of the Nation was lost. The Nation retained all of the islands in the Penobscot River from Old Town to Medway, some 60 miles north. However, through the Land Claims settlement in 1980, the Penobscots were able to purchase other land. The total land hold of the Nation today is currently 115,102 acres. The

estimated population of Indian Island is 548 of which 418 are Penobscots, 88 are non-

Indians, and 40 are members of other Indian tribes. Approximately 100 Penobscot reside in the adjacent area of Old Town and another 500 reside elsewhere in Maine.

Tribal Government... The Penobscot Nation is governed by a Tribal Governor, Lieutenant Governor, and twelve (12) Council members. Through a democratic election process, the Governor and Lieutenant Governor are elected every two years, and the Tribal council members are elected to four-year

terms with six people elected every two years.

Health and Social Services Programs... Over the past two decades, the Penobscot Nation has established various programs for the provision of health and social services to the members of the Penobscot community. The governing body established the Penobscot Nation Health Department in 1976 and

currently has 25 employees and 9 consultants who provide comprehensive ambulatory services to approximately 1,300 users.

"The decision by the governing body to move into Self-Governance was a logical and wise next step."

These services include medical, pharmacy, medical laboratory, dental, nutrition, environmental health, community health, home health care, substance abuse and mental health counseling, health promotion and disease prevention, and contract health care.

Decision to embark on Self-Governance... Because the Nation had been successfully managing under a 93-638 contract with IHS since 1978, the decision by the governing body to move into Self-Governance was a logical and wise next step. The rules and regulations that had been imposed by the IHS had often times created an administrative overload for a small, Tribally-operated site such as Penobscot. This administrative burden has competed with the provision of health care. However, Self-Governance has enabled the Health Department to redesign current programs and reshape various scopes of work to address Tribally-specific needs rather than those geared toward larger IHS facilities. The Penobscot Nation admits that the



Penobscots Health Center



transition to Self-Governance over the past year has been difficult. Several of the health staff members have been actively involved in the joint Tribal/IHS workgroups, however, they remain frustrated over the many unresolved and outstanding IHS issues related to the Self-Governance process.

There are a multitude of questions, concerns, and issues that have arisen regarding Self-Governance that have yet to be adequately addressed by the IHS. Notwithstanding these obstacles, the Nation is excited about the many positive changes that have occurred under Self-Governance in better meeting the health needs of the members of the Penobscot community. ➤



Medical exam room



Ila Nicola, Community Health Nurse, Donna Michaud, Patient Intake Specialist

Mission Statement

"The mission of the Penobscot Nation Health Department (PNHD) is to promote wellness, prevent disease, and treat disease within the Penobscot community. As an organization, we are committed to working in partnership with the community to support health and wellness and provide care for individuals and families in the physical, mental, emotional, and spiritual healing process. The PNHD will promote a health environment and provide the highest quality care by maximizing all available resources, honoring Penobscot traditions, respecting the dignity of each person and observing the highest possible moral and ethical standards."

Ron Allen elected President of NCAI



Chairman Ron Allen

W. Ron Allen, Tribal Chairman and Executive Director of the Jamestown

S'Klallam Tribe was elected President of the National Congress of American Indians (NCAI) on November 2, 1995, during its Annual Convention held in San Diego, CA. NCAI, founded in 1944, is the oldest, largest and most representative national Indian organization.

Ron brings a tremendous amount of leadership and experience to NCAI. He has held the Tribal Chairman position for his Tribe for 18 years and has also served as Executive Director for the past 14 years. In addition to his active role in the Self-Governance initiative, he has participated in numerous state, regional and national forums which have addressed: the development of legislation for the enhancement of Tribal governments, the implementation of the government-to-government relationship as reaffirmed in the historic meeting held between tribal leaders and the Clinton Administration, and involvement in administration policy and regulatory issues affecting Tribal programs including social service and health care programs, and economic development as well as gaming issues.

Indian Country is currently facing an era of intense political volatility and increased anti-Indian sentiment. Recent Congressional actions to cut budgets essential to tribal governments and the proposed taxation of Indian gaming revenues clearly threaten and attack tribal sovereignty. As President, Ron is committed to providing NCAI with the quality of leadership that will not just protect, but actively promote Indian Tribes as strong, independent and sovereign nations.

Anyone who has worked with Ron understands that he has the enthusiasm energy, and experience to face these current obstacles and challenges. Sovereign Nations extends their congratulations to Chairman Allen and wishes him luck as he embarks on his new role.

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

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Mr. Ryser

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(the scope of the project is limited to DOI because of a lack of funds) requesting that each send documents and records copies for our review. These included key communications concerned with negotiations, treaties, constitutions and related communications concerning changes, and other documents. We also asked that those governments interested in being the subject of a case study send copies of all resolutions adopted by their legislative body from 1988 to December 1994. The results of each case study will be prepared as a separate report for each government. The data used in the Final Report of the Study will be left anonymous for up to three governments. This part of the study is a kind of "political thermometer" to measure whether the Indian government is actually increasing its self-governing powers and in what particular issue areas. ***Sending documents immediately would help the process.*** Because of the cut in the size of the project, we will attempt to complete as much information coding and analysis as possible. We will prepare a full report, but it will be based on a smaller quantity of information.

Rudolph Ryser is a member of the Cowlitz Indian Tribe and the Chair of the Center for World Indigenous Studies in the United States. He has for more than twenty-five years worked in the field of Indian Affairs as a writer/researcher and Indian rights advocate. His most recent publications include "Resuming Self-Government in Indian Country," Murdoch University E-Law Review, Western Australia (1995) and "State Craft, Nations and Sharing Governmental Power," in Systems of Self-Government for Indigenous Peoples, international Work Group on Indigenous Affairs, Copenhagen (1994). He is currently working on a new book publication in 1996 entitled, Fourth World Geopolitics: Coexistence and the New International Political Order.

Tribal Self-Governance Sovereign Nations

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