

Tribal SELF-GOVERNANCE DEMONSTRATION PROJECT

JANUARY 1992

A NEWSLETTER OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

VOL.1 NO.1 PAGE 1

President Bush signs into law a bill that extends the Tribal Self-Governance Demonstration Project through fiscal year 1996, and increases to 30 the number of tribes that can participate.

Self-Governance Extended And Expanded By Bipartisan Congress

With strong bipartisan support in key committees, Congress unanimously passed legislation which President George Bush signed into law Dec. 4, 1991 that extends the Tribal Self-Governance Demonstration Project through the 1996 fiscal year, and increases to 30 the number of tribes that can participate in the project.

Public Law 102-184 extends by three years the demonstration period for the project, allowing more time for Congress to examine the success of the project before deciding whether it should become a permanent program.

And P.L. 102-184, by increasing from 20 to 30 the number of tribes able to participate in the project, will provide for a broader cross-section of tribes in the project, and will also help to achieve better geographic diversity among the participating tribes.

This law was originally introduced by Sens. John McCain (R-AZ) and Daniel K. Inouye (D-HI) in the Senate. The companion bill in the House was introduced by Congressmen George Miller (D-CA) and John Rhodes (R-AZ). The law specifically amends the Indian Self-Determination and Education Assistance Act, which authorized the Tribal Self-Governance Demonstration

Project under a self-determination amendments bill in 1988, P.L. 100-472.

A section of the law requires tribes to complete a one-year planning period before they can negotiate a compact and annual funding agreement with the Interior Department.

Another section authorizes \$700,000 to be appropriated for the planning grants as well as for negotiation grants for the added 10 tribes that will be participating in the project. This money will be used by the tribes for budget and legal

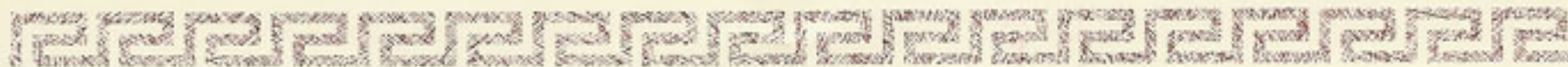
research, internal government planning, and preparation for negotiations. Each of the 10 tribes would get an estimated \$50,000 for planning, and \$20,000 for negotiation of a compact and annual funding agreement.

A final section of the law gives Indian tribes participating in the project authority to administer all of the programs and services of the Interior Department that are available to Indian tribes. It also rescinds the requirement that the Secretary of the Interior approve attorney contracts for participating tribes.

In addition, this section also authorizes the Secretary of Health and Human Services to complete a study on the feasibility of expanding the demonstration project to include activities, programs, functions and services of the Indian Health Service. It also directs that a report should be completed and forwarded to Congress within a year of the date P.L. 102-184 was signed by the President.

And finally, the last section of the law authorizes the Secretary of Health and Human Services to establish an Office of Self-Governance in the Indian Health Service to coordinate activities outlined in the statute.

Printing: printing printing printing printing printing printing
A Bureau Bureau Bureau Bureau Bureau Bureau Bureau



Messages From The President And Interior Secretary

On signing P.L. 102-184 on Dec. 4, 1991, President George Bush issued the following statement.

"Today I am signing into law H.R. 3394, the 'Tribal Self-Governance Demonstration Project Act.' This bill extends the duration of, and expands the number of tribes participating in, a demonstration project under which tribes plan, consolidate, conduct, and administer certain programs, services, and functions previously provided by the Department of the Interior. This demonstration project has been an important step in Indian self-determination, in improving the government-to-government relationship between tribes and the United States, and in helping Indian tribes develop independence.

"I am signing H.R. 3394 notwithstanding those provisions that purport to require cabinet secretaries to report the results of certain studies together with their 'recommendations' to the Congress. Were these provisions construed to require executive branch officers to submit legislative recommendations to the Congress, they would be constitutionally objectionable. Because Article II, section 3 of the Constitution vests the President with exclusive authority to decide whether and when the executive branch should propose legislation, these provisions must and will be construed not to require any legislative proposal or recommendations."

Assistant Secretary Eddie Brown delivered a message from Secretary of the Interior Manuel Lujan Jr., at the Working Conference on Self-Governance Nov. 1, 1991 in Phoenix, AZ, which stated:

"I appreciate your attendance at this Working Conference on the Self-Governance Demonstration Project. I understand that there are numerous issues and questions to be addressed so that this demonstration project will continue to develop.

"Both the President and I view self-governance as the next step in the government-to-government relationship which the President identified in his statement of June 14, 1991. I am pleased that self-governance has become a reality during the President's first term in office. I am also pleased that it has started to expand in terms of the number of tribes participating and in the range of issues that it is addressing.

"This workshop presents a great opportunity to implement the President's directive to work '...with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to Tribal governments.'

"This is a demonstration project. And as a result, we must attempt things for which there is little or no precedent. Most likely some will work and some will not. But it is from our commitment to try something new, that our procedures and processes can be improved to benefit not only the self-governance tribes but other tribes as well.

"As you know, I have established the Self-Governance Demonstration Council. This council is chaired by Dr. Eddie Brown and includes my Counselor, the Solicitor, the Deputy assistant secretary of Indian affairs, and the Deputy commissioner, Bureau of Indian Affairs. These individuals are capable of providing the necessary policy, legal and procedural guidance for this demonstration project to develop.

"However, real progress will require the creative interaction between my policy officials and the BIA staff with tribal leaders and their staff. The challenge before us is to use this program to find opportunities to strengthen our government-to-government relationship and improve the administration of the Federal trust responsibility.

"Over the next year, let us see how far we can go in streamlining Departmental, Bureau and Tribal procedures in order to improve the efficiency and effectiveness of programs and services that are ultimately delivered to American Indians and Alaska natives."



Self-Governance Support

Is Continued By Congress

The Congressional Interior Appropriations Committees proposed the initial support for self-governance in the 1988 fiscal year appropriations measure. Each fiscal year Congress continues to assist with appropriations, with fiscal year 1992 indicating lasting support, this according to Gerald I. James, general manager of the Lummi Indian Nation.

Action by Congress in appropriating funds for the project shows that it sees merit in the Self-Governance Demonstration Project, and wants Indian tribes to demonstrate that they can take charge of programs in their communities, James said.

Congress Provides \$2 Million More In FY 1992

His optimism is driven by Congress' move to provide a \$2 million increase over what the Department of the Interior requested for the Self-Governance Demonstration Project for the fiscal year ending Sept. 30, 1992. The Interior Department had requested a budget of \$3 million for the project; and at the request of the tribes, Congress granted an additional \$2 million for shortfalls tribes might experience in negotiating and implementing the project.

He said the move by Congress to provide more money for shortfalls is a very positive step. A shortfall, he said, is the difference between what a tribe is entitled under the statutes to operate the project and what the Bureau of Indian Affairs (BIA) is willing to provide through negotiations.

For example, said James, a tribe asks for an amount of money from the bureau to operate a bureau program. The bureau withholds a portion of that requested amount, because giving the full amount might detrimentally affect other tribes in that area or region that are benefitting from similar programs.

The Bureau of Indian Affairs has not restructured in response to the project, further limiting dollars available for transfer.

The additional \$2 million appropriated by Congress is very important because those shortfalls can now be addressed. This provides the tribes with the actual amounts of money to which they are entitled to operate the programs, and increases their ability to successfully operate and manage those programs, James said.

\$682,000 For Interior's Office Of Self-Governance

Congress also appropriated \$682,000 for the Office of Self-Governance in the Interior Department. The department had requested \$700,000.

"This is the first time the Interior Department has asked for anything for self-governance. It had requested funds for an Office of Self-Governance (within the Interior Department Office of the Secretary), which was established by Congressional appropriations for FY 1991. It will be the first full year of funding for that office," he said.

James said the office, since its creation almost a year ago, has managed to make the way a little smoother for tribes trying to make headway in the Self-Governance Demonstration Project. Previous to that, tribes had complained that for the first three years of the project the BIA provided little support to tribes seeking self-governance compacts. Research and financial data needed by the tribes so they could develop necessary financial plans were either

difficult to secure or never provided.

With the opening of the Interior Department's Office of Self-Governance, that department's performance and efficiency in negotiating and coordinating with tribes has markedly improved, said James. William Lavell, a longtime tribal advocate, was appointed to head the Office of Self-Governance in December 1990.

Communication And Education

Congress also supported continued communication and education to inform and educate tribes about the project; not only those tribes participating in the Self-Governance Demonstration Project, but other tribes across the country. To provide for this, \$150,000 was appropriated to that effort, James said.

"We went to Congress last year and said, 'We need to inform these tribes and we need money to do it.' We staged workshops across the country on self-governance in an effort to get correct information to the tribes," James said.

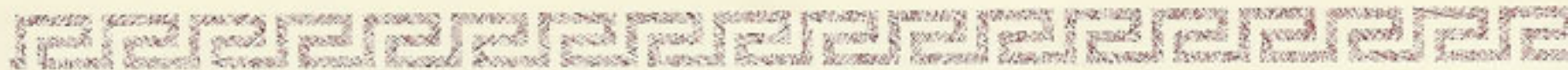
"The communication and education effort has done a lot to stop rumors and change anti-self-governance attitudes. We've worked hard to educate tribes as well as bureau officials as to what self-governance is...and what developments have taken place," said James.

Looking To Include Indian Health Service

In its appropriations report, Congress also expands tribal self-governance by directing the Secretary of Health and Human Services to study the feasibility of the demonstration project to include programs and services of the Indian Health Service (IHS), James said.

The Congress also directs that \$500,000 should be provided from the IHS budget to reimburse self-governance tribes for planning activities that could lead to tribal operation of some IHS programs, he said.

See Appropriation...Page 4

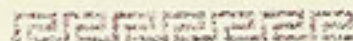


Appropriation

Continued From Page 3

Congress clarified its expectations in the IHS appropriations as follows: "The IHS, in close coordination with participating self-governance tribes, should report to the Committees, no later than two weeks before its first fiscal year 1993 budget hearing, on the status of self-governance planning, including budget requirements, the development of transfer models including experimental operations, and proposed monitoring and evaluation methodologies."

According to James, the planning between tribes and the IHS is only the first stage of an extensive process. The actual negotiation of compacts and annual funding agreements will likely begin in mid-1993 or FY 1994. "We are moving this project forward carefully and deliberately...a step-by-step, agency-by-agency approach."



Newsletter Of The Tribal Self-Governance Demonstration Project

This newsletter is a publication of the Tribal Self-Governance Demonstration Project. It is produced and circulated by the project to inform Indian Nations and those affected by self-governance about the Tribal Self-Governance Demonstration Project, its goals and its progress. For information, write to:

Maureen Kinley, Coordinator
Communication & Education Project
Tribal Self-Governance
Demonstration Project
Lummi Indian Business Council
2616 Kwina Road
Bellingham, Washington 98226
(206)647-6223

Flathead Nation's Approach To Self-Governance Unique

The Confederated Salish and Kootenai Tribes, one of the original 10 tribes to participate in the Tribal Self-Governance Demonstration Project, are working to reach a compact and annual funding agreement with the federal government, but for the tribe such a compact is not the end of a long effort, it's just the beginning.

Tribal Chairman Michael T. Pablo, said the Confederated Tribes consider their approach, which was developed in close work with the tribal council, unique among those tribes participating in the project.

In general, Pablo said, the Tribes' decided to work toward a "self-governance compact" in a deliberate and careful manner, and do not consider such a compact as a destination, but rather a basis for a process establishing a new government-to-government relationship with the United States.

Tribal Self-Governance Coordinator Greg Dumontier said, "We are not restricting the Self-Governance Demonstration Project to the notion that the compact agreement is the outcome. We perceive self-governance as a process, not as an instrument for funding. It is the redefining of the government-to-government relationship from the tribal perspective since we signed the Treaty of Hellgate in 1855."

This approach to self-governance by the tribe is not easy to swallow for some, particularly the Bureau of Indian Affairs (BIA), which according to Dumontier, sees the compact and annual funding agreement as the objective of the self-governance process.

"That's pretty much how the bureau looks at it. And predictably, the bureau is trying to reduce self-governance to something that they can manage," he said.

Under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, tribes can contract with the BIA to operate some bureau programs, but with many strings attached. Dumontier said what has happened to P.L. 93-638 over several years is the "principle of self-determination has been reduced to a procurement contract. The bureau is dealing with tribes as they would any other vendor. The same thing is starting to happen with self-governance."

He said that is why the Confederated Tribes are approaching self-governance in the manner they have chosen, and are working to make it known that self-governance isn't concluded with an annual funding agreement and compact.

"A compact is a tool of self-governance. Self-governance goes well beyond the parameters of a compact," Dumontier said.

He said what the Confederated Tribes are developing is an attitude, one that they absolutely believe, and one they can pitch to the federal government and bureaucrats.

Dumontier said the tribes' perspective is that the "federal government is here because we are here. In order for the federal government to provide services and functions on the reservation, it needs to do it with our blessing."

The Confederated Tribes aren't shy about pressing this point, and they go a step further by insisting that accountability for services and functions needs to be to the tribal government, and that proposed budgets that include services and functions to the tribe need to get the approval of the tribal council.

This approach may seem unpalatable to the bureaucracy, but so far it has gotten good reviews. Dumontier said, "We have taken these concepts...to Congress. We explained to them what we were after, and they said 'good, go forward.'"

Eddie Brown, Assistant Secretary for Indian Affairs, visited the reservation several years ago and said he liked the idea, said Dumontier, adding, "We haven't taken this concept to anybody who hasn't liked it."

He said what the Confederated Tribes' are doing is how they choose to approach self-governance. "We aren't suggesting that this is the way to go for everyone, but it's what we're doing."

The Point Man

For W. Ron Allen and a handful of other Indian tribal leaders, taking the lead in the march to tribal self-governance is akin to walking point on a military patrol—you're fair game for just about anyone.

When he talks about the concept of tribal self-governance—the idea that only a tribe itself knows what is best for it—W. Ron Allen can move from one topic to another and not skip a beat.

It is obvious he has thought long and hard about the concept, and has definite ideas about why tribal self-governance is going to be around for a long, long time.

Allen is the Chairman of the Jamestown S'Klallam Tribe as well as its Executive Director, and he is one of the key figures in the Tribal Self-Governance Demonstration Project. He along with the leaders from several other tribes have helped to lay the groundwork for what is becoming a focal point for Indian tribes looking to gain real control of programs and services for their communities.

Allen's initial interest in tribal self-governance and the Demonstration Project was both widely encompassing and at the same time very pointed. On the wide side, he said it looked like an exciting opportunity to decentralize a federal government that wasn't doing a very good job of helping Indian communities subsist, much less thrive.

"I knew right away that this was a project that would cut the paternal bond

that the bureaucracy was holding over Indians. I believe the system will work better if resources are put in the hands of people at the grassroots level," Allen said.

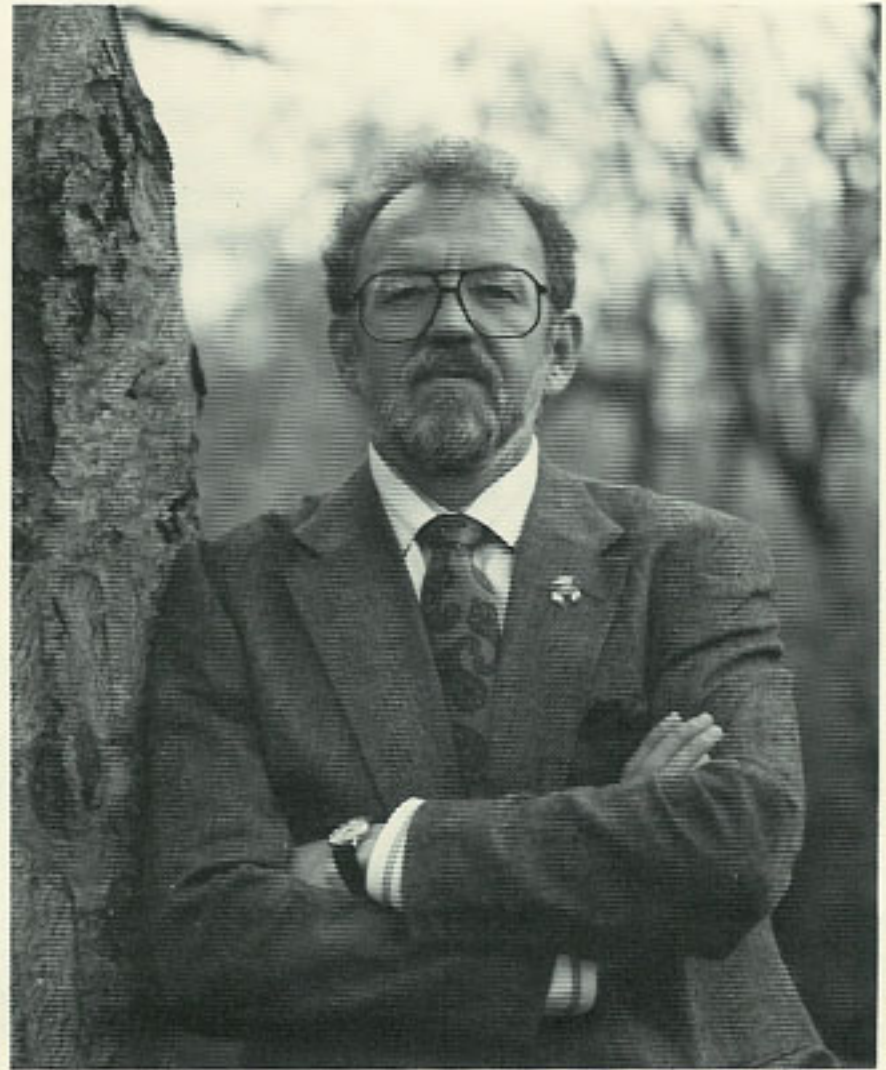
And on the pointed side, he said he wanted to show that his small tribe could handle things as well as the big tribes.

Not only was it a "desire to provide an opportunity for my tribe to participate, but to show to Indian country and the bureaucracy that a small tribe like ours can conduct a project like this, to not only disprove those who might think small tribes can't handle a project like this, but to do it well," Allen said.

Taking The Lead Can Be Risky

Taking the lead in a project that the bureaucracy as well as some Indian tribes see as threatening can inflict personal risk, at least professionally, he said.

"Personally, I consider the project a challenge. It's like looking to find a



W. Ron Allen

creative way to get around a bureaucratic stumbling block."

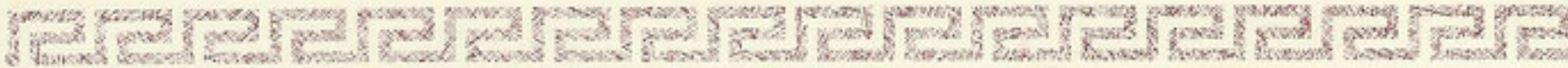
"There is a high risk to it. If you're a point entity who is leading the charge...you can be the recipient of negative repercussions. You can lose favor among those people who can exert influence that can affect you."

For those Indian leaders who are trying to make headway for their tribes by becoming very visible in Indian country, the price may seem steep.

"If you are considered a threat in this arena, other Indian agencies—such as the Indian Health Service and the Administration for Native Americans—they can treat you in a less favorable way, reducing opportunities not only for funding for your tribe, but opportunities for you as a leader," Allen said.

Being at the point in a project like this, he said, can also raise doubts about your vision and motives among some Indian tribes and communities.

See Point Man...Page 6



Point Man Continued From Page 5

"As a rule of thumb, Indian tribes do not take easily to change. They become very nervous that some Indian leader or some tribe may take them down the road to termination," he said.

Indeed many tribes fear the idea of termination, and well they should.

Allen said he recognized and considered the risks, but the chance to take a project like this as far as it can be taken can only benefit Indian tribes everywhere.

Progress Has Been A Struggle

Taking the Tribal Self-Governance Demonstration Project far enough along so that it can become a permanent program may take some doing in light of the struggle it has taken to get this far.

Because of the concept of tribes taking full responsibility in managing programs, handling funds and dealing with bureaucracies on a **government-to-government** basis, Allen said he expected resistance to the Tribal Self-Governance Demonstration Project from bureaucrats and the bureaucracy as a whole.

"It's not any worse than I thought it would be. Because of my involvement and experience with tribes, federal agencies and national organizations over the past 10 years, I have become very conscious of the magnitude of the bureaucracy and its underlying mission to justify its survival," he said.

Allen said he well understood the bureaucracy, its entrenchment and its drive to perpetuate itself, as well as many of the key players and their motives.

Opposition Is Clever And Sophisticated

"I had a fairly good idea about how difficult it would be. We've met a lot of opposition; opposition that has become much more sophisticated once it realized the project was a reality," he said.

Because of strong and visible support for the Self-Governance Project by Senators and Congressmen, and the official position of support by the Administration, the opposition has had to become sophisticated. This was

necessary in order for them to avoid the appearance of opposition to tribes' sovereign control over their own affairs, which this project represents, he said.

"They can't openly oppose it, so they have become more clever in how they oppose it," Allen said.

That opposition can be in the form of doing nothing. The report that accompanied S.1287 by the Senate Select Committee on Indian Affairs, outlines such opposition.

The report says Indian tribes participating in the project, during hearings before the Senate Select Committee on Indian Affairs, testified that over the first three years of the project the BIA provided little or no support to those tribes seeking to negotiate self-governance compacts.

The BIA failed to provide adequate or even useful research and financial data to the tribes that would help them to determine their appropriate share of federal funds needed to manage programs previously operated by the bureau. This inaction by the bureau significantly delayed the project and put the tribes at a disadvantage during completion of the first negotiations on self-governance compacts, the report said.

The Interior Department has since set up an Office of Self-Governance, and performance and efficiency in implementing the project has greatly improved, according to the report.

Allen is undaunted by the sophistication and cleverness of any opposition that might try to impede the progress of the project.

"This project," he said, "is going to happen despite the attempts of people who are trying to subvert it."

"The project will work because it liberalizes what tribes can do with these federal resources, and creates better service flexibility in addressing our own communities' needs," he said.

Doing Things That Couldn't Previously Be Done

Allen said his tribe already has

managed programs in ways that have been beneficial to the community, doing things that it couldn't do previously.

"We are able to define a number of our programs in ways so they can become more effective. For example, we have now established a cultural program under social services, something that we weren't allowed to do previously. That may not mean a lot to some people, but it means a lot in terms of the social value and cultural value to our community," he said.

Another example, he said, is the Housing Improvement Program. Work on a home in the community progressed satisfactorily, but \$6,000 more was needed to complete the work. "We were able to move money into that project in order to finish the home, where previously we would have been forced to wait for the next funding year," Allen said, adding that with the time needed to restart work after funds were available, it would probably have been 18 months before the home was completed.

"The consolidation of education programs such as higher education, vocational education and adult education is another example. They each have different functions," he said, but they all focus on improving educational opportunities in the community.

The BIA, by allocating small increments of money to each program, constraints the usefulness of the money. The programs under self-governance have become more flexible based on the community's needs, Allen said.

Efficient Tribal Bureaucracies

All this, of course, means tribes must become better managers of their programs, become good, responsible decision makers about what is best for their communities, become prudent money managers to ensure their money is well spent, and become efficient tribal bureaucracies to provide and deliver better services that the current federal bureaucracy now provides and delivers.

For those tribes involved early on in

See Point Man...Page 7

Point Man Continued From Page 6

the self-governance project, Allen sees them evolving and progressing as government entities.

"What I see in 10 years is the tribes will have fully developed in their governmental operations; they will be more comprehensive and more complete. Because now we are functioning primarily as contractors, we don't have in place all the components of a complete, operational government—the processes of appropriation, the guidelines and regulations in all tribal divisions necessary to manage their resources."

Allen warns though that tribes must be alert so they don't become the bureaucracy they are trying now to replace. "We must make sure we don't trade a bureaucracy for a bureaucracy. Our bureaucracy must be cleaner and will not absorb resources like the federal bureaucracy does now."

"Also in 10 years we will have probably made great strides in penetrating the Indian Health Service...and taken a serious look, if not actually entering into other departments that have Indian programs, such as Department of Labor programs, HUD programs, EDA programs," Allen said.

Self-Governance Is Very, Very Exciting

In addition, Allen said he sees many, many more tribes following the direction of self-governance. In 10 years, nationwide, he sees a possible five-fold increase in the number of tribes involved. "I think 150 plus tribes. Out of 500 tribes out there, I see 150 plus. And right now, if it was allowed, you could have 75 to 90 tribes involved in this project," he said.

It would be difficult for tribes not to be interested. The idea is appealing—tribal governments dealing with other governmental entities such as states and the federal government utilizing the **government-to-government** principle, tribes setting their own agendas and truly managing and controlling their own programs and resources, he said.

"The whole idea of self-governance is very, very exciting, in particular the advancement of the **government-to-**

government relationship," Allen concluded.

government relationship, Allen concluded.

Attacking Rumors, Addressing Misinformation

Does self-governance mean termination? Does self-governance mean the dissolution of the Bureau of Indian Affairs?

These questions are ones that frequently are posed to self-governance tribes, and these questions are the ones to be answered by the Communication and Education Project—a wing of the demonstration project whose job it is to provide information and to help educate others about the self-governance project.

Maureen Kinley, coordinator for the Communications and Education Project, said the need for the effort that she manages was recognized early on by four Northwestern tribes active in the self-governance drive in that area—the Lummi and Quinault Nations, Jamestown S'Klallam Tribe and the Hoopa Valley Indian Tribe.

To date, the project has done much to correct misconceptions, stop rumors and address negative attitudes about the self-governance project, as well as to provide information to tribes and bureaucrats across the country.

Kinley said in setting up the Communications and Education Project, the tribes decided initially that the most effective way to convey information was to hold workshops in different regions of the country, inviting tribes and government representatives. This, coupled with staging local presentations when requested to do so, and distributing information to tribes by mail, has contributed to meaningful results of the communication and education effort.

The objective of the workshops, she said, is to help alleviate the fears tribes and bureaucrats may have about the

concept of self-governance, to encourage other tribes to pursue self-governance, and to generally explain self-governance activities.

The workshops have proven an effective tool since they give tribes an opportunity to meet face-to-face those who are actively involved in the self-governance effort.

"The workshops have been the biggest part of the Communication and Education Project. That's where we answer questions and distribute all of our materials. We're just beginning to have representation at the national meetings, such as the recent NCAI conference," Kinley said.

From late-April to mid-September 1991 the project staged 10 workshops, conferences and presentations at sites in Nevada, Arizona, Idaho, Oregon, South Dakota, Wisconsin Louisiana and Washington.

Kinley said she realizes there are some areas of the country that have few or no tribes involved in the self-governance effort.

"We're attempting to cover all areas. We haven't decided yet where those will be, but we will try to include areas where we haven't yet been," she said.

For activities in 1992, Kinley said, "We're planning four major workshops and perhaps one on baseline measures," which gauges the progress a tribe has made since it has become involved in the Self-Governance Demonstration Project.

The project has also developed a newsletter, and will soon publish

See Communications...Page 8

Communications

Continued From Page 7

Redbook II, which will include comprehensive information about the legislative and administrative history of the project, research and planning, and negotiating compact and annual funding agreements in the self-governance process.

But what about those questions that keep popping up?

"We still hear those questions a lot. 'Does self-governance mean termination?' That was asked at the NCAI conference. And the other question, 'Are you trying to do away with the BIA?'"

It is vital to the Communication and Education Project that questions like these get direct answers to ensure that the Self-Governance Demonstration Project is understood by the BIA and other tribes, she said.

The BIA and others must realize that the tribes are not attempting to dissolve

the BIA, but rather change the relationship between tribes and the bureau. Many tribes wish to continue to receive direct BIA services or maintain their self-determination contract relationship.

"That's just fine," Kinley says, "and every tribe should rightfully control its own sovereign operations and inter-governmental relationships. Self-Governance is simply another option."

The BIA will be here for another century, but probably in a different role. For Self-Governance to be effective, the tribes need to control their own day-to-day governmental functions, therefore, the bureau must not either unduly intrude upon or unduly influence those functions. The bureau is essential to uphold the trust responsibilities of the United States, and to protect and resolve tribal land issues. The tribes want to

establish this new relationship based upon trust and cooperation.

That, Kinley said, is how the Self-Governance Demonstration Project is approaching its newly developing relationship with the bureau.

**Tribal Self-Governance Demonstration Project
Lummi Indian Business Council
2616 Kwina Road
Bellingham, Washington 98226**