

Tribal SELF-GOVERNANCE DEMONSTRATION PROJECT

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A NEWSLETTER OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

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Self-Governance Tribes Begin Planning And Budget Research With The Indian Health Service

The effort to expand the Tribal Self-Governance Demonstration Project to include programs and functions of the Indian Health Service (IHS) has begun with the establishment of a planning group comprised of seven representatives from the Self-Governance Project Tribes. The planning group members represent a geographic cross-section of Self-Governance Tribes, and serve as a working team for all the Self-Governance Tribes.

The working group was created during a January meeting in Phoenix, AZ, at which the Self-Governance Tribes and IHS discussed the tasks required in the recently enacted Public Law 102-184, which authorized the Secretary of Health and Human Services to conduct a study on the feasibility of expanding the Self-Governance Demonstration Project to include activities, programs, functions and services of the IHS.

The group is made up of Jim Danielson, Cherokee Nation, Tahlequah, OK; Edith Manning, Shoshone-Paiute Tribes, Owyhee, NV; Diana Fairbanks, Mille Lacs Tribe, Onamia, MN; Loretta Bullard, Kawerak, Nome, AK; Henry Cagey, Lummi Nation, Bellingham, WA; and Joe DeLaCruz, Quinault Nation, Taholah, WA.

The planning group, in collaboration with Doug Black, IHS Associate Director for the Office of Tribal Affairs and his staff, is creating a plan outlining how a \$500,000 IHS budget set aside will be expended. Congress in its 1992 fiscal year appropriations directed IHS to use \$500,000 to reimburse Self-Governance Tribes for planning activities

Planning and budget research of IHS by Self-Governance Tribes could lead to a future IHS Self-Governance Demonstration Project, giving Tribes access to IHS activities, programs, functions and services.

that could lead to a future IHS Self-Governance Demonstration Project.

Black said, "We're working (with the tribes) to develop a plan of action to spend that \$500,000. We're now trying to develop that (mutually agreed) scope of work."

"The Tribes (at the Phoenix meeting) in a cooperative agreement (of their own) designated the Cherokee Nation of Oklahoma to administer the activities (provided for by \$500,000) for the benefit of all the tribes," Black said.

The 17 Self-Governance Tribes, rather than thinly spread the IHS money among all the Tribes for planning activities, chose to channel the money to a single Tribe in order to get the best planning possible with the available funds.

Black said, "The group is working to develop a scope of work for a grant that will eventually be awarded to the Cherokee Nation. We're hopeful that it (research and planning activities) will be accomplished before the end of the fiscal year. I expect the work will be done in phases."

Joe DeLaCruz of the Quinault Nation, said that in developing the scope of work, "The first thing we have to do is get a handle on their (IHS) budget, from the service areas all the way to Rockville, MD. Basically (the budget research) is the major part of what we have to do first."

He said IHS has given the Tribes an outline of its

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generic budget categories and information it will provide. There will be much budget research and analysis as Tribes begin considering implementation scenarios, he said.

DeLaCruz noted that research and analysis of the Bureau of Indian Affairs budget during the first years of the Self-Governance Project took over two years, and in many respects remains an ongoing activity.

This work on the IHS budget is necessary to create a foundation from which the Tribes can plan before they start negotiating with IHS for program funds, he said. "Without performing this analysis we would be doing a disservice to ourselves and to the Tribes."

DeLaCruz said this groundwork must be done before the Tribes launch into Compacts and Annual Funding Agreements with IHS, though some Tribes at the Phoenix meeting, said DeLaCruz, "wanted to move right in and take over a clinic or a hospital."

He said the Tribes want the effort with IHS to move forward without delay. "We don't intend to let them drag their feet on this. IHS has committed to this, and so far...there has been a spirit of cooperation."

That attitude, said DeLaCruz, seemed to carry over into a late March meeting in Denver with IHS. "We wanted to look at the budgets for '91, '92, '93, and '94, how they break down those budgets, how they spend every penny. We had an excellent meeting, and they gave us excellent information," he said.

Compared with the often frustrating experience with the BIA in the early years of the Self-Governance Project, DeLaCruz said, "Things seem to be going much smoother with IHS as far as the spirit of cooperation."

The one disturbing problem encountered so far, he said, is an IHS solicitor's opinion that would keep the Cherokee Nation from serving as the Tribe designated by the Self-Governance Tribes to represent them in administering the activities of a planning grant. DeLaCruz said the Tribes are working to remedy that problem.

Black said IHS is working to get the project off to a good start. He said the Denver meeting was planned "to acquaint the Self-Governance Tribes with the IHS budget...the process, the specifics...the money that's appropriated to IHS, and how we spend it (the IHS headquarter's budget). We are really trying to accelerate this process," he said.

Black said IHS is currently handling the requirements of Self-Governance through the Office of Tribal Affairs, and has requested in its 1993 budget justification five full-time positions for Self-Governance activities. "Those positions won't be available, if the proposal is approved, until next fiscal year, which of course starts on Oct. 1."

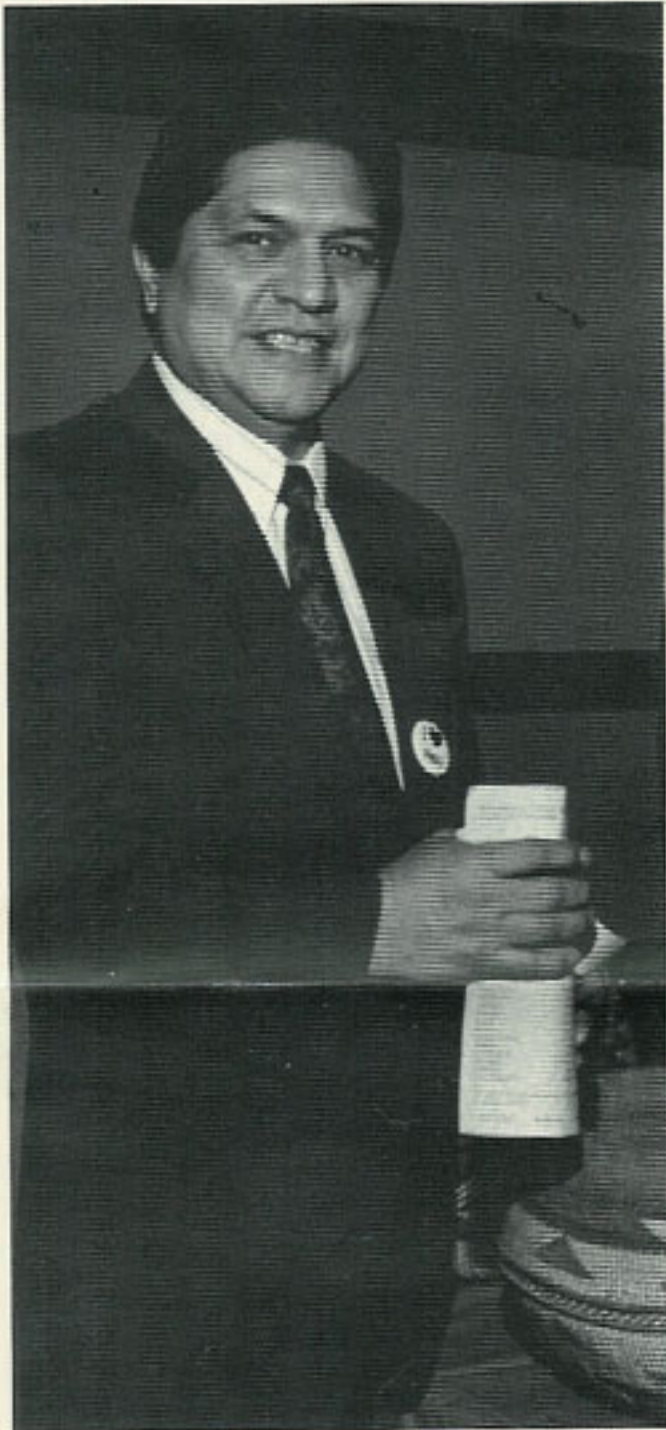
He said the decision on when and if IHS will establish a separate Office of Self-Governance hasn't yet been made. "I don't know whether the decision will be to create a new Office of Self-Governance...or have them work on Self-Governance from the existing office. We're not far enough along into that to know which direction will be taken," Black said.

And what about an IHS post equal to the one filled by William Lavell in the Interior Department's Office of Self-Governance? Black said, "That decision will be made when, and if in fact, the decision is made to create an Office of Self-Governance."

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



Dale Risling Sr.

Tribes Can Do So Much Better Running Their Own Affairs...

For the Hoopa Tribe there was no question about embracing the concept of Self-Governance. Years of bad Federal-Tribal relations had the Tribe looking for a better way to function.

For the Hoopa Tribe of northern California, the Tribal Self-Governance Demonstration Project couldn't have come at a better time.

Dale Risling Sr., chairman of the 2,100-member tribe, said the Self-Governance Project seemed a solution to a very bad relationship the Tribe was enduring with the Federal government.

Risling, who is in his second consecutive term as Tribal Chairman, was a member of the tribal council when the Self-Governance effort nationwide got started.

"I picked up the reigns when I took over three years ago. I thought the concept was great and would suit Hoopa well. We've had some really bad Federal-Tribal relations here in the past. We didn't do well. What that means is that the Bureau of Indian Affairs (BIA) agency office serviced 17 Tribes. We had to compete with those

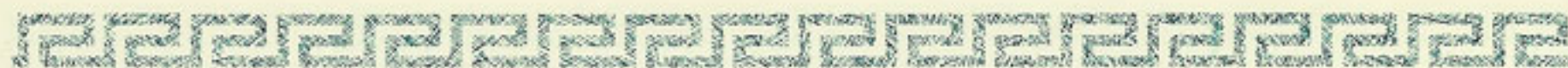
Tribes," said Risling.

That continual competition with other Tribes, plus a series of lengthy court cases that placed the BIA in control of reservation resources, effectively kept the Hoopas from management of the Reservation's natural resources—timber and fish—for a number of years.

The court cases were resolved in 1988 by Congress enacting the Hoopa-Yurok Settlement Act, which gave clear title to Hoopa lands and natural resources.

"After we got our reservation back in 1988 and started to manage our resources, we found out that there was very little support from the BIA, which had managed them on behalf of the tribe during the litigation. We also found out that they had minimal resources (funds or personnel) for us to use," Risling said.

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The reason for this, he said, is that the bureau resources were already spread very thin. "California is by far the lowest funded (BIA) area in the nation, and the Northern California Agency is a multi-Tribe agency with 17 tribes competing for scarce funds."

At this point, said Risling, "We felt that if there's another way of dealing with the Federal government, we really wanted to look at it because the current system wasn't working."

The Self-Governance Project offered a different way of doing things, he said. "The concept would eliminate three or four different layers of bureaucracy. We would be dealing with an office in Washington, D.C., and not with an Agency or an Area office. That pretty much reflected my personal feeling, and the members of the Tribal Council looked at it the same way. There was unanimous agreement."

Risling said among other Tribes there may have been some hesitancy to embrace the concept of self-governance, "But at Hoopa, because we had this recent very bad problem with the Federal government, there wasn't much debate about whether we should try a different approach."

Cutting Out Middlemen

The opportunity to try a different approach to managing Tribal affairs so far has been positive at Hoopa, Risling said. "We're really enjoying this new relationship that we have. This is our second year of our compact...and we deal with the Assistant Secretary's office (Office of Self-Governance), cutting out the Agency and the Area office."

"We've managed to take over some programs that we didn't contract previously, such as the Fire Suppression Program, and we're managing our portion of Federal roads money," he said.

Being a timber Tribe, fighting forest fires is an important part of planning and management. The Fire Suppression Program, he said, previously was handled by the BIA, and "one of the major reasons that prevented the Tribe from contracting (to operate and manage the program) was we didn't have deep pockets. We didn't have money or access to Federal resources to fight a major fire. If we needed \$1 million to fight a fire, the Tribe could have faced serious financial problems."

"We were able to negotiate (under the Self-Governance Project) with the Federal government and gain access to those deep pockets," he said, acquiring not only direct program funds that the Bureau would have spent on such a program, but indirect funds as well.

Better Social Services

The tribe has also been able to expand and create new

services for its Tribal members, unencumbered by Federal restrictions and stipulations about how and where funds can be spent.

"Because we have the ability to set our own funding priorities, we've been able to boost our senior (citizens') program and also create a youth program," said Risling.

"Under the old system we would receive money earmarked for certain areas (on specific activities). Under Self-Governance we receive our funding in one lump sum, and we can program it where we want...we set our own priorities. We couldn't do that under the old BIA (P.L. 93-638) contracts."

Better Assistance To Scholars

Finding funds for tribal members who want to attend college has always been a problem, said Risling. "Now we're able to provide more (financial) assistance to our college kids to help them meet college costs."

Previously, said Risling, "Because of very low Bureau funding coming in earmarked for higher education, we had to contribute a lot of the Tribe's own (financial) resources. That becomes difficult when you spread Tribal money among all the Tribal programs."

Frustrations As Well

Though the Hoopa's experience through the Self-Governance Project for the most part has been positive, there are frustrations as well.

"One of the most frustrating things that we've found," said Risling, "is we're supposed to be able to go through the BIA, from Agency to Area to Washington, D.C., to...track Hoopa's share of Bureau funds. We're still trying as hard as we can to do that. The BIA doesn't have a system, an allocation system, to do that. Their system of distributing money doesn't have rhyme or reason."

"Because we're unable to identify our share of the funds (for Self-Governance negotiations), we have to go to Congress for shortfall funds to apply to our Self-Governance agreements in order to make our compact work," he said.

"If anything is going to break this Project, it will be (the inability to gain access to BIA funds Tribes are eligible to receive.) Congress is going to give shortfall money only for a limited time," Risling said, and without a shortfall cushion, Tribes will have no where to go to get money enough to effectively manage their Self-Governance programs. This predicament provides no secure base of funding. Tribes will never be able to adequately plan for the future until a stable, predictable funding base is established.

Another development of the Self-Governance Project

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that bothers Risling is its leapfrogging growth in the number of Tribes participating. In its original form, the Self-Governance Project involved 10 Tribes, then 20, and now it's up to 30. Risling said though Congress has authorized the number of Tribes participating in the project, the increase has been pushed by the BIA.

"The project has expanded and expanded...and seems to have lost its demonstration concept, which was to take a select number of Tribes" through this Project to measure its merits, to see if it would work effectively.

"They're trying to make it into a full-fledged project, and it has lost its demonstration characteristics. It is also creating competition among (participating) Tribes again. It makes it very difficult to monitor the original demonstration concept, because it is now so broad," said Risling.

Tribes are competing for shortfall money, the arena filled with 30 tribes is now a large one—these are the things that play into the hands of the BIA, he said.

Bureau Resistance Persists

Though top BIA administrators, the Congress, the President, and the Interior Department have all voiced support for the Self-Governance Project, there continues to be a lack of BIA support as a whole for the project, Risling said.

"I think Eddie Brown (Assistant Interior Secretary for Indian Affairs), the Interior Department at the top, have been very supportive of the Self-Governance concept, but that has not filtered down. BIA people have, and we've witnessed this, been telling other Tribes at conferences,

"You're money is going out to the Self-Governance Tribes."

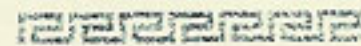
"The BIA can send out messages that will cause a lot of tribes to look at Self-Governance in a negative light. We need to continue to educate Tribes that we're not taking any of their money," he said.

This attitude of resistance by the rank and file of BIA employees can hurt the Self-Governance Tribes if they lower their guard, said Risling.

As an example, he said, new forestry funds coming through the BIA are being put entirely into the Bureau system, with none of the funds being considered for the Self-Governance Tribes. "If we're not alert, we'll be purposely by-passed in the allocation process again. That's just an example of how we (compact tribes) can be treated unfairly," he said. The Title III law specifically authorizes Self-Governance Tribes eligibility for new programs at increased funding.

Risling said though he and his Tribe are, of course, focused on the Self-Governance effort of the Hoopa, they are very supportive of Tribal Self-Governance on a broad scope. "Tribes can do so much better running their own affairs...they can cut out a lot of bureaucratic waste."

"As far as we're concerned, it should become a permanent program, and we will probably stick with the Self-Governance approach for as long as we can. It would be a sad day if we had to give up this arrangement," Risling said.



Sac And Fox Nation Takes On Self-Governance In Stride

The way the Sac and Fox Nation sees it, after two years of contracting under Public Law 93-638 to operate all of the programs of the Bureau of Indian Affairs (BIA) Shawnee Agency in central Oklahoma, its participation in the Tribal Self-Governance Demonstration Project is just another step in its move to total tribal sovereignty.

The Sac and Fox Nation is one of five Tribes of the Shawnee Agency, that in 1988 decided to band together and contract to operate the programs of the entire BIA Agency. The Tribe took over its share of the Agency programs and services in 1989. These 18 programs included key functions such as Tribal Government Services, Social Services, Realty and Tribal Operations. Several years earlier the tribes had contracted to operate other programs, including the Courts, Police and the

Home Improvement Program.

Paula Williams-Gomez, Tribal Administrator for the 2,300 member Sac and Fox Nation, said the Tribe at the time it was involved with the P.L. 93-638 contracting effort viewed it as something good. "I think they (Tribe) looked at it as another step in exercising their sovereignty," she said.

Contracting Under P.L. 93-638

There were, of course, some things the Tribe had to address to make the contracting arrangement work, the most critical being accepting the responsibility of operating programs that for decades had been run by the BIA. It was a responsibility that virtually had to be learned.

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The Tribe learned quickly, said Williams-Gomez, and exercising this new found sense of responsibility allowed the Sac and Fox Nation to increase services to its people under the contracting arrangement.

She cited the General Assistance Program, which under the BIA provided only minimal service. By cutting out the high administrative and overhead costs carried by the BIA, the Tribe was able to increase field service by almost 200 percent. "We were more directly accountable to the Federal government and tribal members for our actions, as all Tribal governments should be," she said.

The ability of the Tribe to operate the Agency programs under P.L. 93-638 contracts, however, came with strings attached. The way the funds for the programs were spent was tightly controlled by the BIA, said Williams-Gomez, but even more inhibiting was "the extensive reporting and the regulations. And most of all...the internal policy of the Bureau, not merely its dealing with regulations, but how they interpreted the policy."

This put the Bureau in a position where it tried to dictate how programs should be administered. A case in point, said Williams-Gomez: "They tried to include in the contracts the stipulation that we would abide by the BIA manual. We have our own policies and procedures, we felt they are adequate."

"They also wanted to dictate that we pay our employees using their salary scale," she said, which would have been financially difficult for the Tribe. She added that the Bureau also wanted the Tribe to adhere to its employee qualification standards, a move that would have eliminated many Tribal members from contract program jobs. The Tribe was bound by regulations and policies interpreted by the Agency whose programs were now operated by the Tribe, she said.

Self-Governance Came Along

In 1990, the Tribe seized the opportunity to become a participating Tribe in the Self-Governance Demonstration Project. "For us, it was just another step in the process of sovereignty—Self-Governance. We would be operating all of the same programs."

The Sac and Fox Nation completed its Planning Phase of the Project in short time, began to negotiate with the Interior Department's Office of Self-Governance in March 1991, and had its Compact in final form six months later.

The Self-Governance Demonstration Project differs from contracting under P.L. 93-638 in two major areas, said Williams-Gomez. The Tribe gets to redesign the programs at its own discretion, and funds to administer the programs are controlled by the Tribe.

"In the area of redesigning programs, I think the Self-

Governance Project is a huge step up from the 638 method of contracting. Our Education Department has already redesigned its program based on the needs of our people. Now we're in the midst of working on the Johnson O'Malley Program, and redesigning the Home Improvement Program," she said.

As for the ability of the Tribe to spend funds for the programs as it sees fit, there are still spending guides the Tribe must follow, but they are a far cry from the method used under P.L. 93-638.

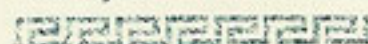
Instead of needing BIA approval for virtually every dollar spent on the program, the Tribe under the Self-Governance Project follows guidelines that states and local governments follow for managing Federal funds.

This, said Williams-Gomez, has eliminated delays experienced when the Tribe contracted under P.L. 93-638. As an example, she said, if the Tribe wanted to transfer funds from a travel category to higher education so a Tribal college student could stay in school, the required budget modification and approval under P.L. 93-638 could take three months. By then, the student likely would have dropped out of school. Under the Self-Governance Project spending guidelines, the funds can be more easily and quickly moved because the decision is the Tribe's to make.

Despite this Tribal determination approach to managing and operating reservation programs under the Self-Governance Project, the BIA is still very much in evidence, since it must interpret the policies that drive the project. "Of course, we still have that now...in how the Bureau interprets Self-Governance," said Williams-Gomez.

The idea of getting the BIA off the Tribe's back when it comes to managing and operating individual programs hasn't moved the Tribe to let up its guard. "We still require the same internal reporting from program directors as we did before. And something we're very serious about is financial accountability. If a Tribe isn't prepared for it, it can slip away from them really quickly," she said.

If there is one thing that will contribute to the demise of the concept of Self-Governance as it is promoted by the Self-Governance Project, she said, it will be poor financial accountability.



William Lavell Keeps It Simple



William Lavell

The Office of Self-Governance in the Interior Department is perceived as different things by different people, but it is generally agreed the position it takes on tribal Self-Governance issues and the general bent of its philosophy is determined by its director.

William Lavell, the director of that office, says, "The main function of the office is to negotiate the Compacts and Annual Funding Agreements with Tribes, and to see that we implement the terms of the agreements." That's the directive of the office, but Lavell says his personal philosophy also allows the office to "run interference in Washington (D.C.) for the Tribes, and be an advocate for the Tribes in the program (Tribal Self-Governance Demonstration Project)."

"I'm a very strong defender of Tribal sovereignty and Tribal governmental power. The U.S., when it needed to, made a whole series of deals with the Indians; we made a series of deals, we ought to live up to them. Tribal governments say they can govern their lands, let's let them (have the opportunity)," he said.

Lavell was named director of the Office of Self-Governance in December 1990, and this likely is his final stop before retirement from a legal career that has included private practice, tribal representation and serving as Associate Solicitor of Indian Affairs. Because of his background, some bureaucrats see him openly doing now what his philosophy has long been, and Tribes view

him as someone in a position to help them attain true self-governance without jeopardizing a future career.

Lavell doesn't bother himself with what others might think, he only is concerned about how effective the Tribal Self-Governance Demonstration Project can be at doing what it is intended to do—allow Indian Tribes to govern themselves without constraints and interference from the federal government.

The Self-Governance Project is really very simple, Lavell said. Essentially, it says to the tribes, "You design the programs, you decide where to put the money. That's the thrust of the whole program. Early on I decided that this is their (tribes') program; they thought of it, we didn't."

"We didn't expect the project to start full blown, we decided to start without regulations because the statute is simple and clear. (It's a demonstration project) .We were going to try to evolve the regulations as the project progressed," he said.

At this point, Lavell said, the Tribes and the Bureau of Indian Affairs (BIA) find themselves embroiled over several issues—the hottest of which involves negotiating for funds from the BIA so the Tribes can manage and operate reservation programs.

The Process Of Negotiation

In the area of negotiations, he said, the bottom line number is the most important item, and wading and struggling through the budget, line-item after line-item can be tedious. "Sure it's important to look at each line," but the overall funds a Tribe needs to operate and manage a program is in the end the most important.

The question to the tribe is, Lavell said, "Can you run the programs with this amount of money? And ask the the BIA, 'Can you provide programs (to other tribes) with this money?' If they can, then we've got a deal."

He said the negotiation and searching for these important bottom line numbers is a vital step, because once they are established fairly, then perhaps one-year funding agreements can be replaced in favor of multi-year agreements.

"We're looking for numbers so tribes don't have to go through (time-consuming) negotiations every year. Maybe we can get three- to five-year agreements down. We do it for the territories, why can't we do it for the tribes?"

In the end, Lavell said, the Self-Governance Project should simplify and ease the Tribes' ability to manage and operate their reservations programs. Currently, the average number of contracts between a Tribe and the BIA is about 20 or more per year, he said. "When a new program comes along, there's a new Tribal office, there's a new Federal office."

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"We're trying to keep it very simple. We expect to get that number down to (one transaction per year)" for a Tribe, while keeping the service level the same, he said.

"What I envision is getting the Federal government out of the tribal government's way as much as possible, so that Tribal government can perform its functions in a way that's responsive to its (people's) needs. I see eventually expanding the project to all federal departments with one funding agreement."

Getting Money To The Tribes

The idea of a Tribe defining a program to fit its local community needs is obviously a good one, but getting money to manage and operate that program has been a complaint from Tribes since the first negotiations were completed and agreements signed.

In some cases the delay between the signing of an agreement and the actual disbursement of money to a Tribe so it could effectively fund a program has bordered on a year.

"Money getting to the Tribes is a problem because of the BIA system, but the BIA is changing that system," Lavell said. The solution is not difficult, he said, "It's so simple it blows my mind."

It involves "getting the Central (BIA) office and the disbursing office to agree to the same set of account numbers and names. Until now the Central office and the office that disburses the money to the field have been using different sets of account numbers and names."

Lavell said that problem should be solved soon, and the biggest complaint his office receives from Tribes should also fade.

Trust Assessment

Lavell said his office has been working in conjunction with the BIA on annual trust evaluations for the Tribes involved in the Self-Governance Project. "For the purposes of the demonstration project, the BIA takes the trust functions—the trust responsibility of the United States remains exactly the same."

Since the bureau still has trust responsibility, an annual

trust assessment is done to ensure that the tribe's administration of a program, particularly programs that involve natural resources such as timber or minerals, is not damaging the Tribe's resources.

"We just finished the evaluation for the first seven tribes that were involved in the project to find out, 'Are the trust assets in danger?' Well, with the seven tribes, all are just fine. The beneficiary (in each case) is running the trust better than the trustee," said Lavell.

A Permanent Program

"Nobody questions that the project will become permanent in some form. Congress is for it, and the Tribes (those involved) are for it," said Lavell.

The onus of making the project work is very much in the hands of the Tribes, and the work of his office at this point is pretty basic, he said. "What we're trying to find out is two things. One, will there be more service delivered for the same amount of money, approximately? Two, will those services be more responsive to the needs of that reservation?"

For the Tribes' part, they will be getting more freedom to serve their communities, but they will also be more responsible to those communities. "You get more authority, you get more responsibility. You're also going to have to answer to your Tribe," he said.

Lavell said he has no illusions about his sometimes good guy sometimes bad guy image, but he thinks the Tribes view as generally favorable his Office of Self-Governance. "There is a little impatience from the Tribes that we don't get things done as quickly as they would like."

Maintaining relations with the tribes is an important part of his job, but he doesn't push himself upon them. "I like to keep in contact, but the nature of the program is that I don't like to butt in. The whole thrust of the program is for the Tribes to run the program. If they're having a problem they should contact me. If not, hey, I'll see them in a year."

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Lummi Indian Business Council
 2616 Kwina Road
 Bellingham, Washington 98226

