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H.R. 4842

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to be in trouble, the Senate and House added an amendment to an Indian Technical Corrections Bill, H.R. 4709. The amendment extended the Self-Governance Demonstration Project for ten years for the Interior Department and the Indian Health Services (IHS) and authorized up to thirty additional Tribes per year to enter into Self-Governance compacts with Interior or IHS. H.R. 4709 passed Congress on Thursday, October 6. The IHS Self-Governance Demonstration Project, which was due to expire at the end of 1995, is now extended ten more years.

What follows are some of the details of what happened during the three weeks prior to passage.

LATE SEPTEMBER The International Association of Fish and Wildlife Agencies (IAFWA) sent word out to its members which resulted in at least two Senators, Malcolm Wallop (R-WY) and Frank Murkowski (R-AK), placing "holds" on H.R. 3508, the "Tribal Self-Governance Act of 1994." A "hold" technically means that a Senator will not give his/her consent to the unanimous consent motion necessary to pass most legislation in the Senate.

SEPTEMBER 28 Secretary Babbitt sent an assurance

letter to Senator McCain concluding that H.R. 3508 as amended would not infringe on state jurisdiction in fish and wildlife management.

SEPTEMBER 29 Two separate visits to the IAFWA by representatives of the Interior Department's Office of Congressional and Legislative Affairs, as well as to Mike Anderson, Associate Solicitor for Indian Affairs, revealed that the IAFWA really wanted

and proffered to IAFWA.

OCTOBER 5, MORNING Tribes associated with several Alaska-based Self-Governance compacts, including Kawaruk, Inc., and Tanana Chiefs Conference, helped persuade Senator Murkowski to lift his hold. Self-Governance Tribes from Oklahoma, Oregon, Washington, and Minnesota simultaneously contacted their Republican Senators to try to convince Senator Wallop to lift his hold. They

representatives made a final appeal at the IAFWA headquarters.

OCTOBER 6 Assistant Secretary Ada Deer appealed to Interior Department Chief of Staff Tom Collier to intervene with the IAFWA on behalf of the Self-Governance bill.

OCTOBER 6, 3:30 PM. IAFWA's Executive Vice-President, Max Peterson, called Tribal representatives with his compromise language (a rewording of the Tribal proposal) to be added to the new Subsection (k) regarding non-BIA programs. The IAFWA provision stated:

"Provided, however an Indian Tribe or Tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under section 403 (b)(2)."

OCTOBER 6, 6:00PM House Subcommittee Chairman Bill Richardson secured agreement from the House leadership to move Self-Governance and several other Indian-related bills through the House at 9:00 p.m.

OCTOBER 7, 3:00AM The House took up the matter. H.R. 3508 was packaged together (as Title II) with the Self-Determination amendments (as Title I) of a new bill, H.R. 4842, and passed.

Necessity is always the mother of new bills in a crisis.

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Many consider this to be the most historic federal Indian affairs policy advancement in a quarter century.

H.R. 3508 amended to completely exclude all Interior Department programs outside the BIA from compacts.

OCTOBER 3 IAFWA and Tribal representatives met in Senator McCain's office in an effort to find common ground. However, the IAFWA amendment offered later that evening was unacceptable to the Tribes. The IAFWA amendment left open a loophole requiring specific statutory authorization in each non-BIA program available for compacts. An alternative provision was drafted to reflect the Tribes' position

also asked Congressman Sidney Yates, Chairman of the House Appropriations Subcommittee, to remind IAFWA of the strong congressional support for Tribal Self-Governance.

OCTOBER 5, DAY Interior Solicitor Lesly attempted to convince the IAFWA's attorney of the Tribal position.

OCTOBER 5, EVENING Chairman Ron Allen of the Jamestown S'Klallam Tribe, Henry Cagey of the Lummi Nation, and Eddie Tullis of the Poarch Band of Creek Indians and other Tribal rep-

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

education is fundamental to the achievement of these goals.

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

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The House failed to adjourn as expected and instead came back on other business on Friday, but under a rule that the House would not pass any bill returned by the Senate with provisions in it that had not already been passed by the House. Therefore, had the House not passed the Self-Governance bill at 3:00 a.m. Friday, the House would have refused to take up a Senate passed Self-Governance bill before its Friday night adjournment. Many other bills got caught in that trap on Friday evening.

OCTOBER 7, 10:30 PM

All Senate holds on Self-Governance were removed and the Senate passed H.R. 4842 by unanimous consent.

The jointly passed bill (H.R. 4842) was then on its way to the White House to be signed into law by President Clinton on October 25, 1994 as P.L. 103-413. Many consider this to be the most historic federal Indian affairs policy advancement in a quarter century. Senator McCain's introductory statement on H.R. 4842 is included in a related article. Printed copies of H.R. 4842 or P.L. 103-413 are available for distribution through the Lummi Education/Communication Project.

Correction

In the October issue of *Sovereign Nations* the map of participating Self-Governance Tribes misrepresented several Tribes' locations. We apologize for any confusion this may have caused.

JOE TALLAKSON

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effective in bringing about change with critical historic impact on both the local and national levels. He was a thinker, and you'd often find him stroking his beard as he mused about strategies and resolutions to adversities that confront Native Americans daily.

A former Quinault Tribal employee, Tallakson was known for his lobbying work, most recently helping pass several pieces of historic legislation for Indians. In 1994, while undergoing cancer treatment, he was the key strategist and author of legislation which resulted in President Clinton signing Public Law 103-413, Title II, Tribal Self-Governance authorization, which grants the Self-Governance project permanent status.

In 1992, he was an invaluable asset on the team working for the Lower Elwha S'Klallam Tribe to restore Olympic National Park and the Elwha River ecosystem and fisheries to the State of Washington, which became enacted as Public Law 102-495. In 1988, Tallakson and his colleagues were successful in securing legislation for the initial funding of the Tribal Self-Governance Demonstration Project, the Indian Fishing Rights Act, and the restoration of 18,000 acres to the Quinault Indian Reservation.

"He did so much for the Tribe," said Quinault Self-Governance Coordinator Lynda Jolly. "I don't know what I'm going to do without him. There's going to be a very big void to fill." Many people throughout Indian Country share Jolly's sentiment.

Tallakson was born May 9, 1943, in Sioux City, Iowa, to the Reverend Loyal and Hazel Tallakson. He went to college at Concordia College in Moorhead, Minnesota, and then served in the Army from 1965 to 1968. He went to graduate school at Pacific Lutheran University in Tacoma, earning a master's degree

in 1970.

After college, Tallakson worked in several capacities for the Quinault Nation: as an education coordinator, coordinator of the Tribal Johnson-O'Malley Program, and as director of the Quinault Summer Education/Recreation program at Camp Chitwin.

From 1971 to 1974, he served as Executive Director of the Quinault Community Action Agency. From 1974 to 1979, he served as an administrator for the National Congress of American Indians, consultant to the Office of Indian Education, Assistant Director of the American Indian Management Consortium, Senior Associate for Government Relations for the Council for Educational Development and Research, and consultant to the Quinault Tribe and the Metlakatla Indian Community.

In 1979 he co-founded SENSE, Inc., a lobbying group, and worked under contract for the Quinault and many other Tribes.

Aside from his professional achievements, Tallakson was a friend and counselor to all. His dedication to others was frequently exhibited as his advice and confidence were constantly sought by friends and colleagues. He was shy and found it difficult to accept expressions of appreciation and gratitude, whether they were for work or when he displayed personal concern about the welfare of others.

Survivors include his father and stepmother, Marcella, of Northfield, Minnesota; a brother, Dan, of Odenton, Maryland; two sisters, Sonya Murphy of Walker, Minnesota, and Ruth, of St. Paul, Minnesota. His mother preceded him in death.

A memorial, which included representatives from many Tribes, was held January 8, at the Taholah Tribal Community Center.

His friendship was truly a lifetime gift, for him as the giver, as well as for those who were the fortunate recipients.

Tallakson was a friend and counselor to all. His dedication to others was frequently exhibited as his advice and confidence were constantly sought by friends and colleagues.

John McCain's Floor Statement on H.R. 4842

McCain's expresses his concerns about H.R. 4842

MR. PRESIDENT, I rise today to make a few remarks concerning H.R. 4842, the Indian Self-Determination Act Amendments of 1994. H.R. 4842 passed the House earlier this morning and combines two bills regarding Indian Self-Determination and Tribal Self-Governance.

Title I of H.R. 4842 is the "Indian Self-Determination Contract Reform Act of 1994" and is virtually identical to S. 2036, a bill that passed the Senate last night. Title I incorporates technical changes that were inadvertently omitted from the Senate bill. Although I made a statement on S. 2036 last night, I want to repeat my comments today so that they parallel the bill that hopefully will be enacted into law this year.

Title I of H.R. 4842 reflects a good faith effort on the part of the Senate, House and the Tribes to be responsive to the Administration's concerns. With the inclusion of the changes incorporated in this amendment, I am advised that the Administration is finally able to express its full support for the bill.

I want to comment on one aspect of H.R. 4842 which relates to the standards to be applied to the exercise of discretion by the Secretary. Under P.L. 93-638, the Secretary must justify his decisions by a "preponderance of the evidence." During the consideration of S. 2036 and H.R. 4842, the Indian Tribes urged the Congress to raise this evidentiary standard to "clear and convincing." The Department objected to this higher standard and suggested that it would compromise with the standard of "clearly demonstrates" which is included in H.R. 4842. Although this standard is not defined in the bill, it is clearly understood by all parties to mean more than a preponderance of the evidence, but less than clear and convincing evidence.

Although I am pleased that we are acting on H.R. 4842 today, I am deeply troubled by what has taken place during consideration of self-determination reform legislation. In my view, after the Administration concluded that its attempts to indefinitely postpone the bill

would be useless, the Administration had one thing in mind with respect to self-determination reform: the Administration's concerns were critical; Tribal concerns were negotiable. I suspect the Tribes themselves will be troubled by this because the Administration has gone out of its way to proclaim itself an Administration that is more sensitive to Tribal concerns. Frankly, if there is a unifying theme in this Administration's Indian policy, it is the casual relationship between words and action.

Mr. President, this Administration needs an Indian policy with fewer illusions and more attentiveness to the problems and opportunities that exist in Indian Country today. If this Administration really desires to match rhetoric with action, I encourage them to heed the advice contained in President Nixon's 1970 "Special Message to the Congress on Indian Affairs":

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian Tribe to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a federal agency.

— RICHARD NIXON, 1970

Mr. President, Title II of H.R. 4842, the "Tribal Self-Governance Act of 1994," is identical to H.R. 3508 and reflects the various agreements negotiated by the Senate Committee on Indian Affairs and the House Subcommittee on Native American Affairs with the Department of the Interior, Self-Governance Tribes, and the Senate

Committee on Environment and Public Works. In addition, a new Subsection (k) has been added which addresses further concerns raised by the International Association of Fish and Wildlife Agencies (IAFWA).

Title II is the culmination of months of hard work, persistence and determination by the Self-Governance Tribes. Nearly one year ago I met with the leaders and representatives of these Tribes to discuss the future of Self-Governance and their desire for legislation making Self-Governance permanent at the Department of the Interior. We had a frank and candid discussion about the possibility of extending Self-Governance to other federal agencies, but in the end we agreed that, for now, the legislation would focus solely on the Department of the Interior. With the benefit of hindsight, I can say that we made a very wise decision, indeed. I know all of us who met that day fully anticipated that the Bureau of Indian Affairs as well as other Interior bureaus and offices would be resistant to the idea of establishing Self-Governance on a permanent basis. Nevertheless, I think all of us were a bit surprised at the level of resistance that came from an Administration that takes pride in pointing out that "reinventing government" is one of its highest priorities. Perhaps changes are occurring in the operations of other federal programs, but when it comes to the manner in which the Bureau of Indian Affairs administers federal Indian programs, the old way of business — that is, the government knows best — still reigns at 1849 "C" Street.

Although the passage of permanent legislation has taken longer than I had expected, I never lost faith in the men and women who believe in Self-Governance and who have been committed to seeing this bill enacted into law. For them, the passage of this legislation is nothing less than the right of Tribes to be self-governing. I am pleased to have played a small role in seeing that this legislation is passed by the Congress this year.

Mr. President, in recent weeks concerns have been raised by the IAFWA about the potential impact of Self-

Governance legislation on the existing jurisdiction and authority of the Tribal, state, and federal governments over natural resources, including fish and wildlife resources. I ask unanimous consent that a copy of IAFWA's October 3, 1994 letter be printed in the Record immediately following my remarks.

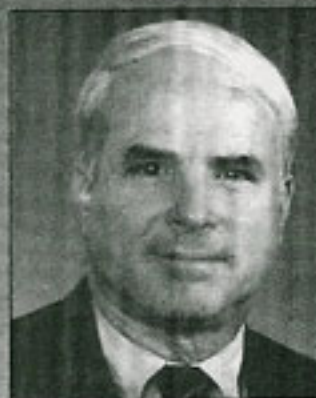
Consequently, I asked Secretary Babbitt to review H.R. 3508 in light of IAFWA's concerns. Secretary Babbitt's letter of September 28, 1994 stated, in part, that, "Nothing in H.R. 3508 or P.L. 93-638 would change jurisdictional responsibilities for administering federal laws governing natural resources, including fish and wildlife resources, or exempt Indian Tribes from adhering to federal laws and standards with respect to the protection and management of such resources." Secretary Babbitt went on to state that "...let me state a point which should be obvious to everyone — the Secretary of the Interior has no authority to change state law or jurisdiction. Consequently, I have no authority to confer on an Indian Tribe jurisdiction exercised by a state government over any natural resource, including management of fish and wildlife resources. Nothing in P.L. 93-638 or H.R. 3508 confers such authority on the Secretary." I ask unanimous consent that the Secretary's September 28, 1994 letter be printed in the Record immediately following the IAFWA letter.

I fully agree with the Secretary's construction of H.R. 3508—which also applies to Title II of H.R. 4842—that the bill is not intended to change the jurisdictional authorities of the Tribal, state, and federal governments over natural resources, including fish and wildlife resources.

I am aware, for example, of reservations that are home to listed threatened or endangered species. Indian Tribes are in a position to contribute data on those listed species that could be both helpful to the Secretary in carrying out his responsibilities under the Endangered Species Act, and beneficial to the Indian Tribe in negotiating a compact for biological data collection. We also recognize that Indian Tribes conduct conservation efforts on their reservations to benefit migratory birds, such as participation in the North American Waterfowl Management Plan. It is intended that

H.R. 4842 facilitate such cooperation. This legislation is not intended to alter any existing state jurisdiction.

Concerns have been raised as to the scope of non-BIA programs, services, functions, and activities that are subject to compacts pursuant to Section



"The passage of this legislation is nothing less than the right of Tribes to be self-governing."

—SENATOR JOHN MCCAIN

403(b)(2). Because National Parks and National Wildlife Refuges, for example, and programs such as the Endangered Species Act and the Marine Mammal Protection Act were established by Congress to benefit the general public, including Indians, a question could arise as to what elements, if any, of the Park and Refuge programs or the Endangered Species program fall within the scope of Section 403(b)(2). It is not intended that the Secretary's authority to enter into compacts under Section 403(b)(2) permit the transfer of inherently federal responsibilities vested by Congress in the Secretary which are determined by the federal courts not to be delegable under the Constitution.

It is not possible at this time to list all the elements of federal programs which may not be subject to Self-Governance

compacts, but such a list certainly could include discretionary administration of federal fish and wildlife protection laws, promulgation of regulations, obligation and allocation of federal funds, the exercise of certain prosecutorial powers, and other discretionary functions vested in federal officials. Thus, for example, with respect to federal apportionments made to states under the Federal Aid in Fish Restoration Act (Dingell-Johnson/Wallop-Breaux Program) or with respect to the Federal Aid in Wildlife Restoration Act (Pittman-Robertson Program) exclusive authority appears to relate to aid to the states, and therefore these programs would not be subject to inclusion in compacts under Section 403(b)(2) of this Act. However, where a Tribe otherwise meets grant, contracts or other requirements for a program, a Tribe, Tribes or Indians do not have to be identified in the authorizing statute to have said program included in a compact under Section 403(b)(2).

To make clear that nothing in H.R. 4842 is intended to permit the Secretary to enter into a compact for the performance of responsibilities which are inherently federal, that is, federal responsibilities vested by the Congress in the Secretary which are determined by the federal courts not to be delegable under the Constitution, section 403 is amended by adding a new Subsection (k), as follows:

(k) Disclaimer—Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary as to authorize the Secretary to enter into any agreement under Sections 403(b)(2) and 405(c)(1) with respect to functions which are inherently federal or where legislation establishing the existing program does not authorize the participation sought by the Tribe; provided, however, an Indian Tribe or Tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under Section 403(b)(2).

Mr. President, I ask unanimous consent that a copy of the letter from the Secretary of the Interior stating the Administration's views on these amendments, with the exception of Subsection (k), be inserted in the Record immediately following my remarks.

TANANA CHIEFS

Al Ketzler Sr. Talks about the Heritage of Self-Governance

THE TANANA CHIEFS CONFERENCE (TCC) is a union of Athabascan Tribes that have a long-standing tradition of cooperation and Self-Governance success. Despite the logistic difficulties of leadership imposed by the vast Alaskan interior, TCC's history of combined representation dates back almost one hundred years.

Athabascan Tribes first worked together to protect traditional land rights in the early 1900s, when a heavy influx of non-Native settlers came through the interior. Since the 1960s, TCC has been particularly involved in efforts to sustain Tribal sovereignty, and in recent years TCC has compacted for a number of services with the Department of the Interior. In addition, their compacts with IHS were recently finalized.

We recently had the opportunity to talk about the Self-Governance history of Tanana Chiefs Conference with Al Ketzler, Sr., one of the people who revitalized the organization in the early 1960s. Ketzler's involvement in Self-Governance efforts began when he initiated the re-birth of the alliance, and his impressive efforts on behalf of TCC have continued into the present day.

These Athabascan Chiefs first met to discuss land use and property rights issues at "Nuchalawoya", (the place where two rivers meet) where their Tribes had been meeting for thousands of years to hold celebrations, dog sled races, kayak races, and other contests. In the early 1900s, though, the pressures of non-Native settlers in the interior lead the chiefs to strengthen their loose confederation in order to protect traditional rights.

Their union was put to the test as



Leaders of the Tanana Chiefs Conference past and present.

early as 1915, when a dispute arose over the Alaska Railroad's intention to put tracks over a burial ground in Nenana. The railroad ultimately responded to TCC's concerns, and the precedent for success through Tribal unity was set. This unity became increasingly important after Alaskan statehood in 1959, when the Land Claims Settlement dispute reached a breaking point.

In spring of 1962, when the land claims dispute was at its peak, a group of Tribal representatives from the Alaskan interior came together at the Tanana Village for the annual celebrations and contests. At the urging of Al Ketzler Sr. and others, they held a meeting to discuss policies for dealing with the pressures of statehood. Their discussions at that time were centered on the problem of the state claiming land that had historically been used by the Tribes. Ketzler recalls, "We decided to

organize as villages in the interior, and I was selected to do the organization." By joining forces, Tribes whose numbers ranged from 15 to 800 created a single, strong voice that had more impact than any single group could.

Over the next year, Ketzler visited Native coalitions throughout Alaska, explaining the goals of TCC, and discussing the issues and concerns of these other Tribes. Then, in 1963, he flew to Washington, D.C. to present a petition from 24 villages asking Secretary of the Interior Stewart Udall to freeze state land selections until the Native land claims were settled. Ketzler remembers, "I got Tribes to plot out the land that they used, then I forwarded the information to the Department of the Interior, and those maps were the basis of the land freeze."

In 1966, Ketzler's efforts were continued by other young leaders, and the Alaska Federation of Natives was

The KAW Nation:

Winds of Change through Self-Governance

THE KAW NATION of Oklahoma, with a membership of 1,788, is an Ohegiana-Siouan Tribe that is small in number but big on initiative. After several generations of Tribal growth and progress they are looking forward to implementing plans for a new medical clinic under an IHS Self-Governance Compact to further enhance a long tradition of community development.

The Kaw Nation is known as "The Wind People" to other Tribes; their name is derived from the Siouan dialect word "ak'a" which means "south wind." However, the Tribe's name has gone through many variations in the last two hundred years, including Kansa, Konza, and Hau-sau. It was after this Tribe that the state of Kansas was named in 1861—without the Tribe's consent.

After moving from their ancestral lands to the east, the Kaw people settled in widely dispersed bands along the rivers of Kansas. In 1846, the Kaw Nation was assigned two million acres just a few miles west of Topeka, Kansas. However, the United States government eventually secured this land by cession. The Tribe then moved to Council Grove, Kansas,

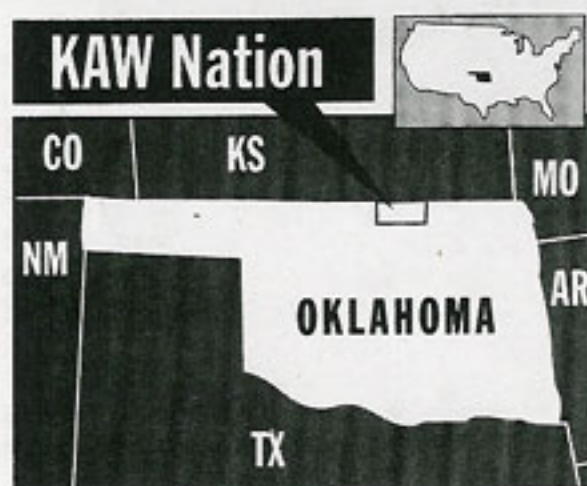
where property amounting to 20 square miles was assigned to them. Then, in 1859, half was ceded to the United States Government. The remaining half of the reservation was sold by Acts of Congress in 1872, 1874, 1876 and 1880. With sale proceeds, the Tribe purchased a 100,000 acre tract in what later became eastern Kay County, Oklahoma.

Many Kaw people earned their living farming or ranching in the rolling hills of eastern Kay County. Currently, the Tribe leases 80 acres near Newkirk for dry land farming and grazing, and their Chilocco land is leased for grazing. In addition to these activities, a portion of the 134 acres along Kaw Reservoir is utilized for a 12 greenhouse wholesale nursery that is operated by the Tribe.

The ability the Kaw Nation has already shown in managing its own affairs is a point of pride for Wanda Stone, the Tribe's Chairperson. Since becoming Chairperson in 1986, she has been a critical influence in helping the Tribe achieve a healthy state of economic stability. An example of this success is the turnaround the Tribal Bingo operation has shown since the Kaw Nation assumed full control of its management. Prior to 1989, Tribe made very little money from its bingo operation, but today it is a major source of income.

Another reason for the Tribe's recent success has been their ability to diversify in response to changing business environments. Over the years the Tribe has branched out in a number of professional directions, including the purchase of an existing motel/restaurant/truck stop facility in Braman. It was purchased in 1989 and is currently operating as a Tribal enterprise.

Enterprises such as these will produce the quarter of a million dollars earmarked for the Kaw medical clinic. The remaining \$750,000, for the implementation of the clinic, will come from a HUD/CDBG block grant, while technical support and guidance will be offered by IHS. Initially, the Kaw Clinic will operate in an existing facili-





**Chairperson
Wanda Stone,
Self-Governance
Director Carol
Nuttle, and
Grants/Contracts
Director Melanie
Knight: Kaw Self-
Governance
Leaders.**

ty, but within two years they hope to build an entirely new clinic in Newkirk.

Carol Nuttle, the Self-Governance Director for the Kaw Nation, is very optimistic about the potential for positive Tribal changes as a result of Self-Governance, and sees the medical center as just the beginning. Carol explains the key to the Tribe's future is their financial management. "Kaw Nation has a good investment process for bingo and their other Tribal enterprises. They put money back into the Tribe." The medical clinic is a perfect example of how wisely the Tribe is investing in the future.

The road to Self-Governance hasn't been an easy one for the Kaw Nation. In 1991, the Tribe began using planning grants and other resources to build the infrastructure and do the planning to prepare for Self-Governance. Melanie Knight, the Grants and Contracts Director for the Tribe, explains that when the Kaw Nation initially

approached IHS to become a Self-Governance Tribe, the IHS said that they had to be a Department of the

Interior Self-Governance Tribe first. The Kaw Nation challenged that ruling and eventually won the right to compact directly with IHS rather than spend valuable time and energy going through the complex motions of compacting with the Department of the Interior. By overcoming this bureaucratic hurdle the Kaw Nation set a precedent for Indian Tribes across the country.

The Kaw people see health care as a crucial starting point because historically the Tribe under-utilized IHS health services. This was due in large part to the distance people were forced to

travel for a visit to an IHS clinic. As a result, many health problems were ignored until they became severe; ultimately costing much more to treat once medical attention was sought. By opening the clinic in Newkirk, the Kaw Nation will make it possible to focus on

preventative health care, keeping costs down by keeping people in good health.

The Newkirk clinic will cover all aspects of health care, including dental, mental health, emergency, and substance abuse, and will create what Melanie Knight calls, "an exciting opportunity to impact health services." A critical component of the clinic's impact on the region is the decision to service all Tribes in the area. To bring this about, the Kaw Nation will use local television stations and the University of Oklahoma to disseminate their message about health care.

When asked about the benefits of Self-Governance in the future, Wanda Stone points to the trend in inter-Tribal cooperation she has witnessed since Kaw Nation began compacting for services, commenting that although Kaw Nation didn't get listed for permanent status in the recent legislation, they were pleased with the support they received from other Tribes. "That's what I think is the good thing about Self-Governance; it has really united the Tribes. It's refreshing to have Tribes come together, share information, and really push this thing forward as a unit, as a group. It's long overdue for the Tribes to come together in that respect."

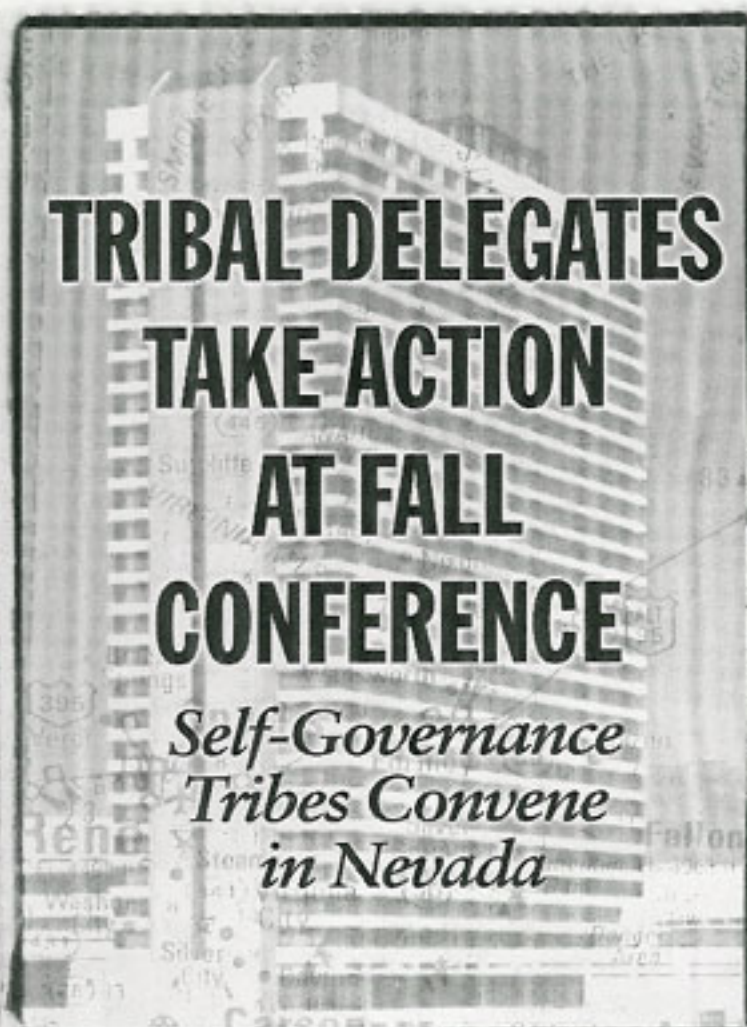
**"Kaw Nation
has a good
investment
policy for bingo
and their other
tribal enter-
prises. They put
money back
into the tribe".**

**-CAROL NUTTLE
Self-Governance
Director**

TRIBAL LEADERS and staff members from around the country came together in Sparks, Nevada for the Fall Self-Governance Policy and Working Meeting on November 1 and 2. Over the course of two days, the group covered a wide variety of topics, ranging from the impact of Permanent Authorization becoming law (P.L. 103-413) to Joint Allocation Methodologies for IHS. The schedule was very full, but the group managed to cover the entire agenda and form work groups to take action on their discussions.

Initial comments centered on the fact that the Self-Governance process has taken only six years to come this far. In that time, the BIA and IHS couldn't complete regulations for amendments to P.L. 93-638. Henry Cagey, Chairman of the Lummi Nation, also commented that a great deal of opposition surfaced in a number of corridors as Permanent Status came closer to passing. The United States Fish and Wildlife Service, and groups with a vested interest in the agency were pinpointed as a major source of opposition. Ron Allen, Chairman of the Jamestown S'Klallam Tribe, stressed the importance of continued efforts. Allen noted that as Self-Governance has been a Tribally driven initiative, it will be up to the Tribal leaders to continue pushing ahead if Self-Governance is to be successful in the future.

Following the introductory remarks, the facilitators opened the meeting to a discussion of Tribal issues and concerns to be addressed. This initiated a lengthy series of comments by Tribal leaders, who expressed their frustration over issues that have been unresolved for the last six years. Over the next several issues of *Sovereign Nations* we will outline those discussions. The topics prioritized by the delegates are listed in the box on the next page.



KEY PRIORITIZED ISSUES

OSG Director Selection

Regarding the selection of an Office of Self-Governance Director, many Tribal leaders expressed their shock when Hilda Manuel, Acting Deputy Commissioner of Indian Affairs, indicated that it could take as long as two years to fill the position recently turned down by Jerry Muskrat. In response, Manuel noted that political appointments are slow to occur, because the government takes as long as six to seven months just to run background checks on applicants.

After reviewing the reasons behind Muskrat's refusal, the delegates agreed that it was important to begin presenting the Department of the Interior with alternate recommendations immediately. Consideration of an interim director was also discussed.

Filling Field Office Positions

The Northwest Field Office has been without a director since Ron Brown's

"early out" departure last spring. Although the Tribes have advanced names for consideration, the office is still being run by Tom Shirilla. The delegates believe the office deserves a minimum of two professional staff considering the extent of responsibilities.

Legislative Developments

During the course of the conference, reports were presented by individuals involved in pushing the Permanent Status Legislation through Congress. Explanations were provided on the various amendments made to the bill, as well as summaries of the present status of appropriations.

Ron Allen summed up the opening session, suggesting that Tribal leaders need to develop a five-to-ten year plan to evaluate Self-Governance, the role of staff, the designated officials, and myriad other issues. He felt that many of

the issues they were discussing had been left hanging for six years, and that the Tribes needed to develop a strategic plan and means to measure progress.

Shortfall Funding and Stable Base Budgets

Cyndi Holmes, Self Governance Director for the Jamestown S'Klallam Tribe, inquired of Bill Sinclair, Acting Director of the Office of Self-Governance, regarding the status of shortfall funding in 1995. Sinclair reviewed the difficulty of creating reliable formulas. He commented, "We were not sure what stable base budgets really means. We can talk about Tribal bases. We are ready to do that this year. Some line items have incremental amounts that need to be redone. These would be added to your cumulative base. We do not expect this to change unless there is something that will affect all Tribes. We will transfer them annually into the Tribal base. We will not be transferring those in permanently for now."

Following Sinclair's remarks, several

delegates commented on the the need to establish a reliable formula for shortfall funding, and the difficulties they will have in the near future as more and more Tribes enter Self-Governance.

Bill Sinclair responded, "If you want to play the game this way, then we will. We are going to get there either way."

Trust Office Evaluation

Mike Berch and Eric Wilson, of the Office of American Indian Trust, explained the process by which their office provides independent trust evaluations for Self-Governance Tribes. They explained that their goal is to make the Trust Office evaluation process as simple as possible for the Tribes themselves, and turn the results of the study over to the Tribes for their internal use.

The delegates responded that the evaluation process is not as meaningful for the Tribes as it is for the BIA. Obviously, this is a sensitive issue. It was determined that Tribal representatives need to come up with a trust evaluation process that will not be costly, but will have meaningful results.

Henry Cagey spoke for Tribes that have already been through the process, saying, "We have completed our evaluation. We are the second Tribe. We were struggling with the definition and responsibilities regarding trust resources. Our directors were picking out the resources being reviewed. This is what we asked the Office of American Indian Trust to come down here for. Timber, soil, water, natural resources on the reservation are a trust resource. They [Trust Office] did concur that there is responsibility to handle restoration of these resources. Still, we need a better process."

Another work group was formed in order to create an evaluation process that is more relevant to the needs of the Tribes, and more in tune with the present circumstances in Self-Governance.

Council of Area and Associate Directors

Dale Risling, Chairman of the Hoopa Valley Tribe, began by sharing the opinion that Tribes have a lot of questions and concerns regarding the Council of Area and Associate Directors (CAAD). These questions revolve

around how CAAD functions. "What puzzles me about CAAD is if they are setting national policies and formulas then why can I not go to my Area Director and get my specific issues addressed properly," he said.

Other delegates expressed concern as to the level of authority CAAD possesses, as well as the need for Tribes to see how CAAD operates. Governor Larry Nuckolls, of the Absentee Shawnee Tribe, stated the issue by asking, "What authority do they have to develop this charter? Tribes need to review the proposed charter." Doug Black, IHS Associate Director for the Office of Tribal Activities, explained that CAAD is purely an advisory group discussing issues of national concern.

Joint Allocation Methodology Work Group

Cyndi Holmes was also the Tribal Chair of the work group, so she also presented an overview of the process. She said that original Tribes were able to negotiate for only certain line items, and the group saw a need to look at the line items not made available for distribution as Tribal shares. The Tribal Task Force for Distribution Methodologies was formed to address this.

The group went through a four-month process to arrive at a report and recommendations (presented to Michael Trujillo in March, 1994). IHS had a work group concurrently addressing the same issue, so it was deemed appropriate to combine the Tribal and the IHS work groups and to include non-Self-Governance Tribes as well.

The group, comprised of technical representatives, is principally responsible for analysis of allocation methodologies and fund distribution formulas. She acknowledged that issues become complicated because of differences in regions and between individual Tribes. The group is attempting to arrive at solutions to address each of these problems.

Joint Allocation Methodology Process

The group analyzed every line item, separating out the line items that needed special review. They also looked at the general budget category and each line item, and identified the uses for each.

Top 15 Issues

addressed by Tribal leaders at Sparks meeting

- Central Office study
- Distribution of contract support
- Secretary to develop a list for expansion to non-BIA programs
- Impact of permanent legislation
- Negotiated rulemaking
- Filling the Director's position as soon as possible
- Filling the positions in the Northwest field office and creating another field office
- Drafting new charter and mission for Policy Council which shall include Tribal participation and representation
- Five to ten year strategic plan for the Office of Self-Governance, defining its mission, role, and authority
- Develop mechanism for approving alternate programs for social services and welfare assistance (GA) which is a combination of waiver process as well
- Waiver process on new standards in permanent legislation/clean up outstanding requests
- Tribal participation in the development of the budget for the legislation
- Develop an education/training process on Self-Governance for DOE/BIA
- Evaluation process for DOI/BIA/OSG implementation and effectiveness of the Self-Governance legislation
- Selection process and criteria for new participating Tribes

The group inquired: were they administrative in nature, population driven, or facility related? Some were a combination of these. The range of administrative line items were from 24% to 35%; coincidentally, the 30% Tribe, 70% user population formula is consistent with this percentage distribution.

Residual Work Group

Cyndi Holmes highlighted the recent progress with the Tribal/IHS Residual Work Group, which also serves as the

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CONFERENCE

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Joint Allocation Methodology Work Group. The group will be making a presentation to CAAD in March regarding progress that has been made in defining the methodology for distribution of residual funds. A draft of the Work Group's plan was included in the conference materials and Cyndi Holmes presented a summary of their efforts.

Following Cyndi Holmes' remarks, Paula Williams, Tribal Administrator for the Sac and Fox Nation, mentioned that rumors are brewing among non-Self-Governance Tribes concerning the Self-Governance Tribes "taking all of the funds." She felt that Tribes need to resolve how the Self-Governance Tribes will address this issue. She felt it is also important that the elected leaders be represented at the NIHB/IHS Annual Conference in Albuquerque. Williams reminded the IHS that the technical staff does not have the authority to act on behalf of the Tribes.

Barriers to Formula Allocations

Tribes will not be able to absolutely agree on every line item, and differences and divisions between large and small Tribes. For the 30/70 formula, the break-even point is 2,100. Using this formula 80% of the Tribes are "small"; and when California and Alaska are removed 65% remain in the "small" category.

Ron Allen praised the work of the group, but noted that generally, each member of the work group keeps their particular Tribal needs in mind. Delegates need to keep that in perspective and look at the document and how it applies to their Tribe. The 30/70 formula was based on an estimate; however, it ended up being close to actual administrative costs. Allen cautioned that Tribes should try to avoid "turf" issues and those that pit Tribe against Tribe.

Discussion of 30/70 Formula

Butch O'Neal of the Navajo Nation questioned the 30/70 formula with the point that a Tribe in California with zero users receives the same amount of funds for overhead as the Navajo Nation. This is also the case for a Tribe which has only three users.

He also stated that the Navajo

Nation will not support the formula presented by the work group. He continued that President Zah, of the Navajo Nation, had already met with Dr. Trujillo to express the need to look at the amount that will be involved if these recommendations come to fruition. He acknowledged that the large Tribes have a different perspective, but said that Navajo sees this formula and others like it as having a very adverse impact on many Tribes because of the win/lose scenario it creates.

Ron Allen agreed that there are Tribes for whom the proposed formula looks questionable. He said that the work group needs to look case-by-case to see if the formula is appropriate, and that the 30/70 formula needs to be refined before it is applied. He felt that the bottom line is that this report is not finalized.

It was also noted that the delegates must consider the overall resources available to the Tribes. The large Tribes receive the bulk of the resources at the local level; the administrative funds allow the small Tribes the ability to operate. It was also explained that the funds under discussion are in addition to the funds that the Tribes are presently getting. The opinion was voiced that small Tribes should get a break, and that it is important that all Tribes work together.

After hearing various opinions regarding the fairness of the 30/70 formula, the decision was made to convene a meeting during the NIHB/IHS conference to discuss funding methodologies, particularly the 30/70 methodology.

Closing Comments

As the session closed on November 2, there was a general sense that much had been accomplished in a very short time. Several people commented that although the meeting was intended as a strictly informational one, some crucial work groups had been formed and important areas of concern addressed. Following the final summary of the workshop, William Stuart Christian, Operative Manager of the Santa Clara Pueblo Tribe, and several other delegates expressed their satisfaction with the meeting, and reminded the group to keep in perspective the people issue, the idea that Tribes are interdependent, and need to support each other if Self-Governance is to continue moving in a positive direction.

Tribal Suggestions Ignored During IHS Selection Process

AN INTERVIEW team comprised of Tribal leaders or their delegates and representatives of the IHS met in Rockville, MD on December 8 and 9, 1994 to recommend three candidates to Dr. Trujillo for final selection. The interview team members were: Craig Vanderwagen, Luana Rayes, Douglas Black, and Dorothy Dupree of IHS, Henry Cagey (Lummi), Robert Clark (Alaska), Alvin Windy Boy (Rocky Boy), Dan Millbridge (Mille Lacs), and Dwayne Hughes (Chickasaw). Other Tribal and IHS officials were invited, but some were unable to participate in the interviews. Dr. Trujillo was present during the majority of the interviews, but did not take part in the questions to candidates.

The interview team received numerous comments and suggested questions from Tribal Governments across the U.S. Many of the questions suggested were similar in nature. As a result, the interview team consolidated a list of over 50 questions into a category of six questions to be posed to candidates. Each question could merit from 0-3 points for a total of 18 points overall. Each candidate was scheduled for one hour, with follow up questions permitted if time allowed. The candidates interviewed had been previously evaluated and determined to be qualified by the personnel department of the IHS.

Following the completion of all interviews, the interview team conducted a final session during which the points earned were tallied and compared. The candidates who received the highest scores during the interview were ranked at 11.67, 11.33, and 7.67.

During the course of the final session, one IHS team member said he felt that none of the candidates were qualified. A Tribal team member

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IHS SELECTION

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expressed that he believed all of the candidates were qualified, but that he felt the best course of action would be to ask that the acting director, Reuben

Howard continue or be made permanent. The remaining members of the team who commented recommended that the top point-earners be presented to Dr. Trujillo.

Following the IHS team members' comments, the IHS Director decided to re-advertise the position and elevate the

position to a Senior Executive Service level. None of the interview team members had proposed this opinion to re-advertise and elevate the position. Conversely, one team member was informed that the position could be filled at the current level and then elevated to an SES level at a later date.

IHS POSITION RE-OPENED

THE INDIAN Health Service will be re-opening the position of Tribal Director, with the status shifted from Government Service 301-1, to a Senior Executive Service position.

According to Anne Secula of the Indian Health Services office in Rockville, Maryland, the change in status came after a first round of interviews with many qualified candidates enforced the critical nature of the position. Essentially the change results from a realization that whoever IHS selects will be in a position to do an unprecedented amount of work on behalf of Tribes, and the IHS wants to insure that they find the candidates most likely to utilize this authority fully. Secula commented, "The Indian Health Service wants to make sure that anyone they get is really going to be an advocate for Indian health, as well as an employee of IHS."

To change the position to Senior Executive Service level requires a formal request through the Department of Health and Human Services, but according to Secula that process should be complete in the upcoming months. Once the request is received the position will be announced for 30 days. The best candidates will be identified, interviews will take place, and a director will be selected. Regarding when the position could be filled, Secula noted, "There are a lot of variables involved, but we hope to be ready for interviews by May, and have a director in place by June."

Secula commented, "The position that will ultimately be announced entails working in tandem with Dr. Trujillo to advocate for health services on behalf of Self-Governance Tribes. Applicants must be able to deal with a multiplicity of issues, including budget, legal, technical writing, and understanding of the internal and external processes for policy development. The Self-Governance Director of IHS services will also be responsible for managing that portion of the IHS budget that goes to the Self-Governance Tribes."

It is hoped that by raising the status of the Self-Governance Director of IHS services, the position will attract applicants willing to devote themselves to the position for an extended period of time. Secula feels that this long-term commitment would allow the new director to make a lasting difference in health services for Self-Governance Tribes.

Many Tribes feel, however, that the only way to raise the status of the Office of Tribal Self-Governance (OTSG) Director is to first raise the OTSG to a higher level. One suggestion is

The following is the actual language from the job description distributed by IHS when the position was originally announced.

BRIEF DESCRIPTION OF DUTIES:

SERVES AS THE DIRECTOR, TRIBAL SELF-GOVERNANCE with primary responsibility for carrying out the Indian Self-Determination and Education Assistance Act (Public Law [P.L.] 93-638, as amended) as it pertains to health related activities effecting the Self-Governance Demonstration Project authorized by Title III.

- Serves as:
- 1) The principal advisor to the director, IHS, the Assistant Secretary for Health, and the Secretary on the full range of Self-Governance issues;
 - 2) The principal advocate and participant in decisions by the director, IHS, in negotiations between Tribal governments and the IHS on Self-Governance issues; and,
 - 3) An effective advocate for Tribal governments, within the IHS and the Department, on the development and implementation of federal Self-Governance policy. Provides policy analysis and/or technical assistance to the director, IHS, and Tribal governments in the development of federal Self-Governance policy and regulatory processes, Self-Governance Compacts, and Tribal share methodology and processes for full disclosure of IHS program and budget data. Oversees the coordination of IHS Self-Governance Demonstration Projects including acting as a Tribal advocate when negotiating agreements. Prepares regularly scheduled progress reports and special reports to Congress as required by statute, committee requests, and instructions.

QUALIFICATIONS REQUIRED (Will be adjusted when new level is announced):

Applicants must possess one year of specialized experience equivalent to the GS-14 level in the Federal Service. Specialized experience is experience which is in or directly related to the duties of this position and which has equipped the applicant with the particular knowledge, skills, and abilities to successfully perform the duties of this position.

Method of Evaluating and Ranking Candidates:

Candidates will be evaluated by use of:

- 1) Performance appraisals
- 2) Experience
- 3) Training and self-development
- 4) Awards
- 5) Outside activities

WHO MAY APPLY:

The area of consideration for the position advertised will be as follows (Again, the newly updated position will have slightly enhanced qualification requirements):

1. Minimum Area of Consideration: Qualified preference eligible, both inside and outside of the Federal Service. Indian Preference applicants (in the Federal service) will be automatically considered under the provisions of the Headquarters Merit Promotion Plan. Those who desire consideration under the provisions of the Excepted Service Examining Plan must indicate "ESEP" in Item 1 of the SF-171.
2. PHS Commissioned Corps Officers are invited to apply for applicable professional positions for which qualified. The UMSPHS Commissioned Corps Officers who wish to apply for this vacancy must submit a resume and meet the same experience and training requirements for positions as Civil Service applicants as provided by IHS Circular no. 87-2 dated July 9, 1987.

to place the OTSG at the Secretarial (DHHS) level. Another suggestion is to place the office outside all Federal Agencies and into the Executive Branch of the Government. This would strengthen the government-to-government relationship between Tribes and the United States. Furthermore, decision-making and policy direction would not be so directly influenced by the Federal Agency personnel who are unwilling to objectively make decisions that affect their employment status.

As more Tribes become involved with more federal agencies, the consolidation or development of a single Office of Self-Governance, and its roles and responsibilities, will have to be considered.

DAN LEWIS, who spent the last eleven years in Washington, D.C. working on behalf of Tribes, recently left the Capital to work in the private sector. Lewis' most recent position in Washington was Senate Committee on Indian Affairs Director for Vice-Chairman Senator John McCain, a position in which he was a critical player in many Self-Governance battles.



OVER THE YEARS, Lewis has gained the respect and friendship of many Tribal representatives, and made a lasting impact on Tribes across the country. When he addressed



DAN LEWIS: *On the past, present, and future of Self-Governance*

the delegates at the recent workshop in Sparks, NV, the appreciation of the Tribes represented was well-evidenced in the warm reception and expressions of thanks he received. Later that evening he was honored with a reception and formal presentation of gifts and thanks from numerous Tribes.

AT the recent Fall Workshop in Sparks, Nevada, Lewis shared some thoughts regarding his time in Washington, D.C. and his feelings about what will be next for Self-Governance. He touched on a range of important issues in this address, and after the conference we had the opportunity to further discuss these topics in a telephone interview.

Q: What specific actions will be most important in the continued success of Self-Governance?

A: Tribes need to continue to work with the Congressional Delegates; particularly the ones they don't know. This is a critical issue because the many members who have been Tribal allies will be retiring all too soon, leaving the Tribes without support if they don't cultivate other contacts. If people could get a member of Congress or two concerned about this at the state level and in Washington, it would be to [the Tribes'] advantage. We need to make sure the program has strong support in Congress. That's going to be critical—particularly when you have members who have

been advocates of Tribes retiring and moving on. It's important when you look at a map of Indian Country and see where the Tribes are. Those Tribes need to work within their own districts and with members of their own state.

Q: *Jerry Muskrat recently declined the position as Director of the Interior Department's Office of Self-Governance. What impact will this have on the Tribes?*

A: This is a crucial issue to all Tribes, and the prompt filling of the position will be important to the future of Self-Governance. A list of candidates should be presented to the Department of the Interior as soon as possible.

Q: *In light of what you describe as "battles within Health and Human Services," what is in store for Self-Governance as budgets tighten and more Tribes compact for services?*

A: Talk of shifting the various agencies around could have an impact on Indian Health Services—both in what may happen to the IHS, as well as the attention and funding that IHS receives. All of these factors will affect the ability of Tribes to collect moneys from the agencies, as the agencies themselves become more focused on self-preservation and less on the needs of Tribes.

Q: *Do you think Tribes should move into other agencies for compacts, or focus on IHS?*

A: It is important for Tribes to remain with Interior and IHS, and spend time refining the system before they move on to other programs. If this is done, there will be working models at Interior and IHS for Tribes and agencies to refer to later. To expand the scope of Self-Governance before working out policies and methodologies would be detrimental to the whole project. If you don't define the program well at those two agencies, you won't succeed with other agencies... it will just lead to frustration for the Tribes.

Q: *How long will it take to work out the systems with Interior and IHS and compact with other agencies?*

A: There are still a lot of issues to hammer out before you can move on. I'm confident, though, that Tribes will make that decision when the proper time comes. Tribes will know when it's time to move on."

Q: *How will the BIA reorganization meeting affect the ability of Tribes to collect moneys from that department?*

A: This is going back to policy reviews. There are not very many options for the nation as a whole,



At the fall workshop in Sparks, Dan Lewis received expressions of thanks and gifts from Tribal representatives

and a lot of times our focus is on new programs. Yet we forget the other 12 appropriations." HUD, HIP and Commerce are primary examples of the types of appropriations that Tribes haven't yet focused on getting funding from. HIP is a 20 million budget that we could use for other appropriations. As budget cuts take place and as shifting occurs, that's a very easy way for the bureaucracies to fight against Self-Governance, and continue to try and attack the project that way. This would mean reduction in funds for Self-Governance, and a broader focus on agencies will help counter that trend.

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DAN LEWIS [CONTINUED FROM PAGE 15]

Q: *Having been so closely involved in the process in recent years, what do you feel the greatest success of Self-Governance has been to date?*

A: The increased interest of other Tribes in Self-Governance. When it began in '88, there were a great number of Tribes who had very serious doubts about the program. Overcoming those barriers and having the program become permanent is the greatest success.

Q: *What do you feel the greatest challenge will be for Self-Governance in the future?*

A: The greatest challenge will revolve around the budget. As budget cuts take place, it's easy for people to blame other cuts on Self-Governance. This will lead to further restrictions of the Self-Governance budget. This, in turn, will lead agencies to question Self-Governance seriously. But the Tribes

have already scored the victory. With the present changes in the government the Tribes can really set the agenda through the Self-Governance project.

Q: *What have been the greatest rewards of working on Self-Governance?*

A: To really provide Tribes with greater self-determination and Self-Governance; to clear the obstacles and allow them to do what they can do best—that's to set their own goals and to run the programs as best meets the needs of their citizens.

Dan Lewis is now working for Bank of America in Phoenix, where he will continue to work with Tribes. Commenting on the need for all Tribes to continue pushing forward on Self-Governance, Lewis said, "This process of education is an ongoing one. We'll never get to a stage where we can say all right we're there. There's always got to be an interior as well as an exterior focus for the Self-Governance Tribes."



Tribal Self-Governance Demonstration Project

Sovereign Nations

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