



Sovereign Nations

Tribal Self-Governance, "A Tribally Driven Initiative"

A New Tribal/Federal Relationship

Self-Governance Bureau of Indian Affairs & Indian Health Service Workshops and Tribal Caucus

On February 15-17, 1995, Tribal leaders and delegates, representing 253 Tribes participated in two Self-Governance (SG) workshops and a one day Tribal Caucus in Washington, D.C. The workshops were an opportunity for Tribes to share Self-Governance information and Tribal experiences with the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS). The primary purpose of the Tribal Caucus held Thursday, February 16, 1995 was to reach consensus on the Tribal shares distribution Joint Allocation Methodology Workgroup (JAMW) recommendations.

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Other Self-Governance issues that were addressed at the tribal caucus included: BIA Central Office Shares; Formulas; Residuals; Office of Self-Governance (OSG) and Office of Tribal Self-Governance (OTSG) Director positions; Non-BIA programs; Contract Support; and Negotiated Rule Making.



Jo Ivey Boufford, M.D., Principal Deputy Assistant Secretary for Health, addresses the general assembly.

Government-to-Government

Dale Risling, Chairman of the Hoopa Valley Indian Tribe, opened the Workshop by stating, "It is important that all participants at this workshop ask questions, share experiences and enter into dialogue. We need to keep in mind that Self-Governance is a new idea and there are no experts. Self-Governance is still in its infancy and work still needs to be done." Chairman Risling went on to outline some critical issues, such as negotiated rule-making and the elimination of obstructive rules and regulations. He reminded Federal Agency representatives that each tribe has its own unique needs and differences. We must consider these differences when negotiating Compacts. SG Compacts cannot be standardized or nationalized.

Most important, Tribes are "sovereign nations and our relationship with the United States must be based upon a true government-to-government relationship."

Summary

The following is a summary of results from the workshops and tribal caucus. *Information, handouts or copies maybe obtained by contacting the Lummi SG Communication/Education Project at (360) 738-2301.*

Department of Interior Issues

Negotiated Rule Making

On February 15, 1995, a federal register announcement was published on, "Joint Tribal and Federal Self-Governance Negotiated Rulemaking." A Committee will be formed on, Joint Tribal and Federal Self-Governance Negotiated Rulemaking. The purpose of this Committee will be to develop provisions on how the Department of the Interior (DOI) and Tribes will carry out their responsibilities under Self-Governance. Such provisions will address items such as: residuals, negotiation processes, establish definitions, regulation waivers, mechanisms to review trust functions, and reporting requirements.

The Committee will include thirteen (13) members, seven (7) Self-Governance Representatives, four (4) Non-Self-Governance Tribal Representatives, and two (2) Federal Representatives. The Committee will operate for one year. It is expected that the Committee will have a minimum of four (4) meetings.

Committee Membership

In a letter to the Secretary on November 1, 1994, the Self-Governance tribes nominated the following persons for the Committee:

- Rhonda Swaney (Salish & Kootenai)
- W. Ron Allen (Jamestown S'Klallam)
- Loretta Bullard (Kawerak)
- Dale Risling (Hoopa)
- Bernida Churchill (Mille Lacs)
- Lindsey Manning (Duck Valley - Shoshone Paiute)
- Merle Boyd (Sac & Fox)

The federal representatives are:

- Glynn Key (Special Assistant to the Secretary)
- Michael Anderson (Deputy Assistant to the Secretary)

The Assistant Secretary of Indian Affairs will select the representatives of the non-Self-Governance tribes from the nominations received as the result of the notice.

Nominations must be submitted on or before March 17, 1995 to the Office of Self-Governance (OSG).

Twenty new Tribes eligible to participate in 1996 Self-Governance Negotiations

On February 15, 1995, the Office of Self-Governance (OSG) published a Federal Register announcement for, "The Tribal Self-Governance Program Selection Criteria." Tribes who are interested in negotiating agreements pursuant to the Tribal Self-Governance Act of 1994, must submit complete applications to the OSG by May 16, 1995.

The Proposed rule establishes a process for tribes to apply for entry into Self-Governance and outlines the selection criteria for the Department. The announcement contains the following information:

- Eligibility requirements.
- Priority Ranking criteria.
- Application Review and Approval Process.
- Review and Selection Process for Negotiations.

Tribes interested in applying should contact the OSG by calling (202) 219-0240.

Workgroup Reports

(The following information is summarized from the various Workgroup Reports. Some Reports are in Draft Form at the time of this publication.)

Trust Evaluations

The task of reviewing the existing trust evaluation process(es) and to make recommendations on how to improve the process was assigned to this workgroup. The group submitted some preliminary recommendations however, they will have future meetings before they can complete their report.

The following preliminary recommendations were made:

- (1) Tribes should consider merging the offices of Self-Governance and American Indian Trust into a single department to eliminate duplication and better coordination.
- (2) Tribes should develop a written performance agreement with the Secretary of the Interior for evaluating the performance of the Interior Department in carrying out Self-Governance. The workgroup is developing proposals for consideration by Tribal leadership for this process.
- (3) Tribes should conduct Trust evaluations each year using a process and format developed by the Tribes. Due to the projected limitations

on budget, staff, and expertise it is recommended joint reviews with the Office of Self-Governance, the Office of American Indian Trust, and Tribes be completed every three years. (4) Each Tribe, during the negotiation process, should define the terms "imminent jeopardy" and "public health and safety."

The workgroup is scheduled to meet March 7-8, in Las Vegas, Nevada. The key contact person for the workgroup is Chief Elmer Manatowa, Sac & Fox Nation, (918) 962-3526.

"The Secretary (Secretary Babbitt) is committed to Self-Governance, he is very supportive. Self-Governance is the best mechanism to provide guidance to move forward with 638 and compacting...This is an exciting and challenging time."



Hilda Manuel, Deputy Commissioner for Indian Affairs addresses the general assembly.

Interior Programs (Non-BIA)

The Interior Programs workgroup has completed their assigned task and has submitted a final report. Highlights of that report follow. More information maybe obtained by contacting, Danny Jordan, Hoopa Valley Indian Tribe at (916) 625-4211 or Jerry Folsom, Lummi Nation at (360) 734-8180.

The Workgroups task was to identify eligible programs of the Department of Interior for 1996 negotiations and to recommend implementation guidelines. On January 23, 1995, the Interior submitted a report to Congress on the non-BIA eligible programs for the 1996 negotiations. Tribes and the Interior will update this list annually. For 1996 negotiations, the group developed interim guidelines

to facilitate the implementation of the Tribal Self-Governance Act of 1994 (P.L. 103-413).

The workgroup drafted interim guidelines in four areas: (1) Pre-negotiations; (2) Negotiations; (3) Post-Negotiations; (4) Measurement and Evaluation components. This is a comprehensive document. Any tribe intending to negotiate for non-BIA programs for 1996 should use this information in defining their own process.

The following recommendations were also included in the Interior Programs Workgroup report.

► **Office of Self-Governance**

The Office of Self-Governance (OSG) needs to have the authority to assist with non-BIA Agencies. The workgroup recommended that this office be directly under the authority of the Secretary. This would eliminate a fragmented approach within the Department for the implementation of Self-Governance. All Interior negotiators would be directly associated with OSG and have the authority to complete and approve the negotiated agreements.

► **Negotiation of FY 1996 Agreements**

The Workgroup recommended the following time frames for FY 1996 negotiation preparation.

- March 1 - Tribes inform the Secretary of their intent to assume programs.
- March 30 - Agency responds to the Tribe and provides the appropriate information.
- May 1 - Formal Negotiations begin.
- June 30 - Finalize Negotiated Agreements.

Several issues are yet to be resolved. Due to time constraints it is recommended for 1996 negotiations, each Assistant Secretary who is responsible for the specific DOI Agency be the primary negotiator.

► **Contract Support/Indirect Cost**

The workgroup recognized that this will be a difficult issue. It is likely, most agencies will say that they do not receive appropriations for contract support/indirect cost. Agencies will assert that Tribes will pay for these expenses from their direct program funds. If, a Tribe does not receive its full funding of indirect cost, the Tribe should receive an exemption to the under/over recovery rule for Self-Governance agreements.

► **Use of Existing Interior Compacts of SG**

It is recommended that one (1) solicitor be assigned to the Office of Self-Governance to oversee these types of issues for all of the Interior. The workgroup recommends that Tribal leaders determine their policy direction regarding the use of one compact with separate Annual Funding Agreements and transmit that decision to the Secretary.

Monitoring Success

Tribal leadership will need to continue monitoring and reporting the success of the Tribes in securing funding agreements with DOI Bureaus, Services and Agencies. Tribes will make these reports to Congress. Tribes must maintain a continuous monitoring process that records the successes and problems experienced with the Interior agencies.

Central Office Shares

A draft report has been distributed. The final report should be available by the end of February. The contact person for this workgroup is Anna Sorrell of the Salish Kootenai Tribe at (406) 675-2700.

The Tribal Self-Governance Act of 1994 (P.L. 103-413) requires that within 90 days of enactment (October 25, 1995), the Secretary of Interior, in consultation with tribes, will provide to the Congress the formula that is used in determining tribal shares of funds controlled by Central Office for the Bureau of Indian Affairs (BIA). BIA Central Office controls four categories of funds: other recurring, non-recurring, central office operations and special projects/pooled overhead. The report addresses each category. However, due to various contingencies, such as downsizing, the workgroup focused on Central Office operations.

Each Director of the Central Office identified the residual and core functions deemed necessary to perform the inherently federal functions related to trust oversight and statutory mandates. These justifications revealed considerable duplication of effort. With residuals identified, they calculated how much funding for Central Office operations that they would make available for negotiation. Next, they developed a single aggregate formula for all Central Office operations. The proposed formula approximates BIA Central Office operations as a percent of the total BIA direct appropriations. The formula is: *"Central Office operations minus residual funds divided by the total direct BIA appropriation minus Central office operations and contract support."* They will apply the percentage for Central Office administration to each tribe's Annual Funding Agreement, excluding contract support, to decide a tribe's share of Central Office operations.

The report provides justification and rationale for each of their recommendations.

Not all Tribes have responded favorably to the workgroup recommendations for a blanket percentage formula of Central Office Shares. Marge Anderson, Chief Executive of the Mille Lacs Band of Ojibwe Indians, adamantly opposed this approach. Ms. Anderson stated, *"With passage of P.L. 103-413, Title II, I was confident that my tribe's long five year battle to get the BIA to*

negotiate line by line tribal shares of the Central Office budget had finally ended." Some Tribes favor negotiating Tribal Shares of the BIA Central Office funds, using a methodology consistent with those used in the Area and Agency negotiations. Ms. Anderson closed by stating, *"A formula related to each program is the only rational method to distribute Interior funds. Let us move ahead together to achieve this goal."*

Office of Self-Governance

An update of the OSG Activities was provided by Bill Sinclair, Acting Director of the Office of Self-Governance.

- 20 new additional Tribes will be eligible to negotiate in 1996. OSG now has 60 Tribes on a list. To be eligible for 1996 negotiations they require that Tribes resubmit their applications.
- Non-BIA programmatic targets were sent to Congress on January 31, 1995.
- On February 14, 1995, a DOI/SG Interior workgroup was formed to develop procedures to make SG work. Their first meeting will be on April 18, 1995.
- The OSG Directors' applicants have been narrowed down to three (3) individuals.
- The SG Policy Council was reinstated one month ago. The purpose of the Policy Council is to provide policy guidance and recommendations for implementation of the Tribal Self-Governance Act of 1994 and any subsequent legislation.
- OSG will develop negotiation guidelines for 1996 within the next 30 days.
- OSG will be developing and distributing negotiation packets.
- Karole Overberg will now be the Northwest Field Officer for the Vancouver, WA., Office of Self-Governance. His first day in office will be March 20, 1995.

Tribal Leaders Disappointed with the Selection Process of the DOI Office of Self-Governance (OSG) Director

On February 17, 1995, Tribes sent a letter to Secretary Babbitt outlining their concerns with the lack of tribal participation and consultation in the selection process of the OSG Director. The Tribes asserted that substantive and meaningful involvement from Self-Governance Tribes is key to the effectiveness of the Director. The Tribes recommended: (1) The establishment of a Joint Tribal/Interior Selection Committee; (2) Time line for the process, with a final selection being announced no later than April 30, 1995.

Self-Governance and the Indian Health Service (IHS)

Tribal Caucus - Joint Allocation Methodology Report

The primary purpose of the Tribal caucus was to discuss and provide Tribal comments and recommendations regarding the Joint Allocation methodology workgroup (JAMW) final report, of January 26, 1995.

The JAMW Co-Chairs (Cyndi Holmes, Jamestown S'Klallam Tribe and Dorothy Dupree, IHS Albuquerque Area Office) provided an overview on the options and recommendations included in the report at the Tribal Caucus.

Following discussion of the proposed options by the Tribal leaders and in an attempt to reach consensus, a motion was made to adopt Method C - (Tribal Base Adjustment) on certain headquarters budget categories items. Method C was the final recommendation of the JAMW Workgroup. The Representatives from small Tribes recognized that the need for base level funding (provided under a 30/70) formula, had to be weighed against other goals, such as assuring adequate funding for those Tribes serving larger populations. In an attempt to achieve the maximum Tribal unity, a majority of the Tribal delegates voted in support of the proposed motion (236 votes in favor of option C, 15 votes against, 2 Abstentions). Those who opposed the recommendations represented larger Tribes who favor a population-based distribution. One of their concerns with the recommendation is that it reflects a transfer of resources from larger to smaller Tribes.

On February 17, 1995 a letter was forwarded to Dr. Michael Trujillo, Director of Indian Health Services, with the Tribal recommendations. The 253 Tribes represented at the Caucus forwarded this recommendation in the hopes of assisting him in reaching a final decision on this critical issue.

Tribes recognized the new challenges before Self-Governance. Solutions are going to require consensus, compromise, cooperation, creativity and working together. If the Tribes cannot move forward on these types of issues and make unified recommendations the bureaucracy will decide.

The key contacts for this work group are Cyndi Holmes of the Jamestown S'Klallam Tribe. She can be reached at

(360) 681-4612, or, Dorothy Dupree, of the IHS, Albuquerque Area Office. Ms. Dupree can be reached at (505) 766-2151.

Residual Workgroup

The Residual workgroup has essentially completed its work. A draft report has been submitted to the IHS Director. The workgroup has developed definitions of residual, tribal shares, and retained tribal shares. Critical federal functions are defined in the report.

The level of effort to meet those functional responsibilities cannot be determined utilizing a theoretical formula. Determining level of effort was decided to be primarily empirical based on some assumptions about the operating environment of the Agency.

Three options for staffing the residual were developed and proposed by the workgroup. Review of these options is expected to include both the Council and tribal leadership. Finalization is expected in March of 1995. For further information you may contact, Dwayne Hughes, Chickasaw Nation (405) 436-2603 or Dr. Craig Vanderwagon at IHS Headquarters, (301) 443-4644.

User Population

The charge to this work group is to address: tribal concerns over the validity and integrity of the User population estimates; the method of estimating User Pop for resource allocation; and alternative indicators that may be appropriate for resource allocation. A recommendation from the workgroup is expected in March.

This is a joint work group with membership from SG tribes, non-SG tribes, and IHS. This group has requested participation from the JAMW and Residual work groups.

There is recognition that the User Pop issue is not isolated to the SG arena. There has been recent User Pop analysis done with the Bemidji Area, and the group will incorporate those findings into their work.

The Tribal Co-Chair of this group is Patricia Knox-Nicola. She may be contacted at (207) 827-6101.

Workgroup Coordination

On February 6, 1995 the workgroups submitted a letter to Rueben Howard, Acting Director of OTSG stating: "Although the Joint Allocation Methodology Workgroup (JAMW), Residual Workgroup, and the User Population Workgroup are working on separate time tracks; each workgroup is operating under a deadline which will have an impact on the upcoming FY 1996 Self-Governance negotiations. Lack of decision-making on any of these workgroup issues may obstruct on-going efforts to reach closure prior to this deadline."

Contract Support Cost Workgroup

This workgroup was formed to address Self-Governance (SG) contract support cost (CSC) issues. It was noted throughout the workshop that Contract Support/ Indirect cost are on-going long term issues that have existed since the initial passage of the Indian Self-Determination (ISD) Act in 1974. These issues are not the result of SG. There are still some serious tribal concerns, such as, full funding of (CSC) as required by the Inspector General. Tribes must remain actively involved with Indian Health Service (IHS) to work toward alternatives and solutions. It has been agreed that where FY '95 agreements with SG Compactors had been signed, these agreements must be honored by the IHS. It was also agreed that the application of the compactor's negotiated indirect cost rate and the terms of the ISDM 92-2 should be applied fairly in FY '95 to contractors and compactors alike. IHS is seeking to renegotiate contract support costs with Tribes where "errors" have occurred and where compact language appeared to be "vague."

Mr. Black, Director of the Office of Tribal Activities (OTA), of IHS, reported to the Tribal Caucus on February 17, 1995, that the IHS had made a policy decision that CSC associated with Headquarter and Area "Tribal shares" should be provided from within the amounts negotiated in FY 95, unless the negotiated Annual Funding Agreements clearly stated otherwise. Mr. Black presented this as a Tribal Position as the result of the workgroup discussions.

Tribes responded to Mr. Black with a letter to Dr. Trujillo on February 17, 1995, stating the following:

"This decision is particularly disturbing for two reasons. First, it appears that IHS has made a policy decision that is inconsistent with current law and is contrary to the intent and essence of the Self-Governance initiative. Second, the Tribal representatives of the Contract Support Workgroup clearly did not make such a recommendation.

...Our position is as follows: the recommendations summarized and provided by OTA are totally inaccurate, and are a blatant mis-representation of the position of the Tribal representatives...Tribal representatives recommend that IHS has no choice, but to fund the contract support cost on Headquarters and Area Tribal shares as negotiated in 1995 SG Annual

Funding Agreements. These are legally binding agreements.

The Tribal representatives present at today's caucus unanimously voted in support of full payment of contract support costs on all tribal shares including Headquarters and Area shares. As we are now in the fifth month of FY 1995, the delay in transferring negotiated funding related to Headquarters and Area tribal shares could obstruct the successful implementation of this historic initiative."

The Tribes (253 Tribes) requested an immediate response from Dr. Trujillo, no later than February 22, 1995. A response has not been received as of this publication.

Issues yet to be resolved include, (1) an accurate estimate of the FY '95 CSC Shortfall and (2) the development of recommendations for a process for responding to Congressional concerns about the escalating rise in the CSC and the need for fair and equitable access to the ISD Fund.

A contact person for the CSC Workgroup is, Athena Shoenig, IHS Office of Tribal Activities, (202) 443-1104.

Baseline Measures

The Baseline Measures workgroup has not been formed, however, a draft list of tasks has been written. Discussion is ongoing between the Office of the Director and the Office of Tribal Self-Governance (OTSG). The proposed completion date is June 30, 1995.

The purpose of this group will be to:

- Define the Public Health responsibility of the Indian Health Service (IHS) under Self-Governance.
- Develop a process to identify, test, and distribute a set of health status indicators that are to be used to monitor the performance of SG Tribes, "638" tribal contractors, and the IHS-administered Service Units.
- Define the relationship between the IHS data reporting requirements and the Core Data Set.
- Requirements, and the responsibilities of tribes participating in the SG.
- Advise and make recommendations to the OTSG and the IHS Director about the scope and conduct of the evaluation of SG.

The contacts for this workgroup are Carol Martin of OTSG, at (301) 443-7821 or Christine DeCourtney of the Bristol Bay Health Corporation at (907) 842-5201.

Indian Health Design Team

The purpose of the Indian Health Design Team (IHDT) is to develop options and a proposal to reconfigure and streamline IHS' organizational structure. To reengineer and simplify work, to redeploy resources for maximum effectiveness, and to prepare new capabilities needed for health care reform and increasing tribal control. The team has membership from tribes, Indian organizations, and IHS. A core policy team will be used and a Tier 2 will be consisting of functional work groups. They are: (1) Administrative/Business Support; (2) Health Care Delivery/Clinical and Public Health; (3) Tribal Leadership/National Advocacy and Policy; (4) Budget/Finance/Resource Development; (5) Information Resources; (6) Government to government operations/Self-Determination Functions; (7) Mission redefinition.

The group will adopt guiding principals, establish roles, schedule completion dates and identify methods of feedback.

The next meeting is scheduled for March 28-30, 1995. A contact for this group is Cliff Wiggins in the Office of Director at (301) 443-1011.

Sanitation Facilities Construction Workgroup

The Sanitation Facilities Construction (SFC) Funding Allocation Methodology Workgroup is now in the process of developing recommendations. The goal of this group is to provide a recommendation to IHS by July 31, 1995 for implementation in FY 1996.

Project funds for SFC projects are currently allocated in priority order based on need. Tribes, especially SG Tribes, have expressed an interest in the funding allocation methodologies used by SFC. A joint IHS/tribal workgroup, consisting of five tribal (SG & non-SG) and four IHS representatives, has been established to review current practices for SFC project fund allocation and to make recommendations for improvements needed, if any, to ensure the equitable treatment of all tribes.

Rick Barror, of the IHS Office of Environmental Health, maybe contacted for further information. His phone number is (202) 443-1046.

All workgroups are to be commended for their time, committment, and endurance in completing these reports. Their hardwork is sincerely appreciated. Thank you.

Tribal Profile:

Highlighting the benefits, creativity, and innovation of Self-Governance.

Squaxin Island Tribe Uses Self-Governance to Fill Needs

by Brent Simcosky, Health Director, Squaxin Island Tribe

The Squaxin Island Tribe will begin construction of the Sally Selvedge Memorial Health Center in April 1995. The 8,000 square foot facility will house the programs of Primary Care, Dental, Mental Health, CHS, and Community Health. It will serve a population of 1,500 Community members. The current health programs are scattered over four locations with the Clinic comprising less than 800 square feet. The space situation was so bad that patients had to exit the side door of the Clinic and use the Natural Resources department's restroom for urine analysis. The new facility will be used to consolidate health programs into one facility and to greatly expand new services not available due to lack of space.

Identifying Community Needs

The Tribe recently identified some of the following community needs as they relate to health care:

- Health programs which are collaborative.
- Health programs to emphasize prevention/promotion.
- Health programs geared toward managed care.
- Health programs which take into account cultural issues of Native Americans.

The problem with filling these community needs has been funding, pure and simple. The Squaxin Island Tribe submitted several HUD grant applications for construction, but as everyone probably knows, construction dollars are hard to find. In addition, IHS had little if any funding for small Tribal health clinics.

Creativity and Flexibility

We decided to get creative and use Self-Governance to fund the construction. We secured a \$500,000 long-term, low-interest loan from the FHA. The Tribe also contributed close to \$300,000 of our own. How did we do this? The key to Self-Governance is that you now control the funds. We used carry-over and

Tribal Profile (con't)

Self-Governance Tribal shares for the Tribal portion of the construction and have dedicated \$35,000 a year to pay off the FHA loan debt. In other words, we leveraged \$35,000 into \$500,000. In the past, IHS would wait until they had full funding before construction could take place. Because of Self-Governance we are able to leverage our funds and begin construction now instead of several years down the road.

Self-Governance and the ability to use and leverage funds as we see fit, has allowed the Squaxin Island Tribe to construct a Health Center which will serve as the focal point for the promotion of the mental and physical well-being of Community members.

Community Input and Involvement

We used a Community design team to develop some of the following features and programs:

- New Clinical CHR to conduct elder medical visits (in the new Squaxin Island medical minivan).

- New health promotion classes in the 500 square foot meeting room .
- New networked computer system with new CHS, Billing software.
- Dental services now located on reservation.
- The Health Center utilizes traditional design and utilizes Tribal Community carvings and artwork.
- The Health Center lobby will incorporate a display of Native plants and their traditional medicinal uses. A garden outside will grow these plants with the help of the elder and youth programs.
- The Health Center will incorporate a healing/prayer room for the spiritual healing of community members.

Self-Governance has allowed us to do this year what might have taken years to accomplish!

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