

# "TRYING A NEW WAY"

*Independent Assessment Report*

*on the*

*Self-Governance Demonstration Project*

**Title III PL 100-472**

**FINAL REPORT**

*Prepared by*

*The Center for the Study  
of  
American Indian Law and Policy  
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*and*

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## ***"Trying A New Way"***

*"At first we were not sure of what self-governance would mean for our people . . . . We were 'trying a new way' and that was frightening.*

*"We soon learned that while self-governance seemed to be a new way, it was really the old way of our Nation. Self-governance is a way of deciding for yourself and being responsible for what you did right and what you did wrong. We no longer had the Bureau [of Indian Affairs] to blame. I call it 'trying a new way to get back to the old.'"*

*-- Interview, Lummi Tribal Member*

*June 1992*

## ***Contents of Final Report***

***Introduction: Independent Assessment Project***

***Findings of Independent Assessment Team***

- I. The Concept of Self-Governance: History and Background***
- II. The Implementation of the Self-Governance: Demonstration Project and Field Investigation of Self-Governance***
- III. Summary Analysis and Evaluation of Self-Governance Findings***
- IV. Observations and Recommendations of the Independent Assessment Team***

***Conclusion: Demonstrating A New Way***

## Introduction

### Independent Assessment Project

This Report is the product of a Consortium organized by The Center for the Study of American Indian Law and Policy at the Law Center of The University of Oklahoma and the Center for Tribal Studies of Northeastern State University. The Consortium contracted to prepare this Report with the Lummi Nation acting on behalf of the seven first-tier Self-Governance tribes. These tribes, working with the Office of Self-Governance, prepared a Request for Proposals (RFP), solicited preliminary proposals, and then interviewed finalists at a meeting of the Self-Governance tribes held in San Diego. The Consortium of The University of Oklahoma and Northeastern State University was awarded the contract and a revised agreement was entered into on May 1, 1992. Members of the Consortium met with the Self-Governance tribes in Tucson, Arizona where the proposed evaluation procedures were explained and modification in contract specifications discussed with all of the tribes present. Specific and detailed information requests were distributed to the tribes and a planning session was held with the seven first-tier tribes. In May, the Independent Assessment Team began on-site evaluation of the Self-Governance tribes.

The scope of the Report, as outlined in the contract and as modified in initial and subsequent meetings, was an evaluation of the Self-Governance process. A process



analysis was designed to consider changes in governmental structure, services, planning and operations among the Self-Governance tribes. This is an independent analytical assessment and was not prepared as a substitute for the specific Reports required of the Secretary of the Interior pursuant to Section 305 of Title III of PL-100-472. The team has been assured from the beginning of the contracting process that the Office of Self-Governance was vigorously and independently pursuing its congressionally mandated requirement to submit a separate Secretarial Report. This Independent Assessment Report was contracted to be absolutely independent and separate from and supplemental to the congressionally mandated work of the Office of Self-Governance. The Independent Report reflects the analytical policy judgments and conclusions of the selected scholars and independent investigators and not necessarily those of the seven tribes, the Office of Self-Governance, or the Bureau of Indian Affairs.

The Report is based upon site visits to all of the initial seven tribes, interviews and meetings with more than two-hundred individuals, analysis of all available reports including each tribe's semi-annual reports, baseline data comparisons, minutes and summaries of tribal council and membership meetings, tribal audits, accounting records, and selected client-use surveys. All mandated reports including those from the tribes were submitted to the team and were examined in detail. Among those interviewed were the chief executive and operational officers of each of the seven tribes, tribal planners, the tribal Self-Governance coordinators, program directors, and budget officers. A field visit

to the headquarters of the Bureau of Indian Affairs in Washington, D.C. provided interviews with the Office of Self-Governance, the Assistant Secretary of the Interior for Indian Affairs and Commissioner, the Assistant Commissioner and representatives from offices chosen as representative of involvement in the Self-Governance Demonstration Project. In addition, the team interviewed, either in person or by phone, key Bureau of Indian Affairs personnel at area offices associated with the seven first-tier tribes. Representatives of the Consortium attended other Self-Governance related meetings and conferences and made a preliminary report to the tribes at the San Diego Workshop, September 22-24, 1992, and a final report to the tribes at a Self-Governance Conference in Seattle, Washington on November 16, 1992.

The Members of the Independent Assessment Team are as follows:

W. Neil Morton	Contract Agent / Project Director
Rennard Strickland	Principal Investigator / Assessment Director
Janis Pratt-Young	Project Coordinator
Robert Cheadle	Investigator
Phil Lujan	Investigator

Justin Noble	Investigator
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Betty Pfefferbaum	Investigator
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Katherine Supernaw	Investigator
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Carol Young	Investigator
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The dates and sites of the major field visits are as follows:

Cherokee Nation	May 1-3, 1992
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Absentee-Shawnee	June 1-3, 1992
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Hoopa Nation	June 14-16, 1992
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Quinault Nation	June 17-19, 1992
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Jamestown S'Klallam Tribe	June 21-23, 1992
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Lummi Nation	June 24-26, 1992
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Mille Lac Chippewa

July 15-16, 1992

Bureau of Indian Affairs,

July 18-22, 1992

Washington, D.C.

Rennard Strickland is Director of The Center for the Study of American Indian Law and Policy and Professor of Law at The University of Oklahoma. Strickland served as editor-in-chief for the revision of Felix Cohen's Handbook of Federal Indian Law (3rd edition, 1982) and co-author of Keeping Our Word: Indian Treaty Rights and Public Responsibilities (1990), a report on Wisconsin fishing rights prepared for the Senate Select Committee on Indian Affairs. Strickland has recently been named President-Elect of the Association of American Law Schools.

Neil Morton is Director of the Center for Tribal Studies and Dean of the Graduate School at Northeastern State University in Tahlequah, Oklahoma. Morton has been a consultant on tribal economic and education programs and a frequent advisor to tribal governments and private industry.

Robert Cheadle is a former Justice of the Chickasaw Supreme Court and has worked with tribal youth programs and law enforcement. He was at the time of the field work a Research Specialist at the Center for the Study of American Indian Law and

Policy and is currently a staff attorney with a federal agency based in Dallas, Texas.

Phil Lujan is Assistant Dean and Associate Professor in the College of Arts and Sciences of The University of Oklahoma where he is a specialist lecturing on questions of cross-cultural communications. Lujan has served as a tribal court judge and a member of tribal appellate court systems. Earlier, Dean Lujan was Assistant Director of the American Indian Law Center at the University of New Mexico.

Justin Noble is Professor Emeritus in the Department of Sociology and Anthropology at Northeastern State University and a consultant to the Center for Tribal Studies. He has done anthropological field investigations among African peoples and on North American Indian reservations.

Betty Pfefferbaum is a Professor in the School of Medicine of the Health Sciences Center of The University of Oklahoma. Earlier, she served as Vice President for Educational Programs at the Medical Center of the University of Texas in Houston. Trained as a medical doctor, Pfefferbaum has recently focused her research on

Native American juvenile and health concerns.

Katherine Supernaw was at the time of the field work a Research Specialist at The Center for the Study of American Indian Law and Policy and has been a tribal programs manager for a number of Native American groups. She has a Masters degree in rural planning and economic development with specialization in services for Indian peoples. She is currently an attorney with a federal agency based in Tulsa, Oklahoma.

Carol Young is Associate Director of the Center for Tribal Studies at Northeastern State University and a trained social worker with more than a decade of experience as an employee of the Bureau of Indian Affairs specializing in educational counseling. Mrs. Young has been the Director of the Annual Indian Symposium and is a consultant on tribal programs with special concerns in drug and alcohol abuse.

The conclusions of the Report are those of the Independent Assessment Team and may not represent the views of the tribes themselves, the Bureau of Indian Affairs, the Office of Self-Governance, Northeastern State University, or The University of Oklahoma. The Report was prepared under special contract with the Self-Governance Demonstration tribes and requests for permission to quote from the Final Report should be obtained from

Raynette Finkbonner, Self-Governance Coordinator, Lummi Nation.

Rennard Strickland

Principal Investigator

and Assessment Director

## **FINDINGS OF THE INDEPENDENT ASSESSMENT TEAM**

The following findings are based upon the evaluation process of the Independent Assessment Team. They reflect the team's understanding and analysis of on-site visits to the seven tribes, more than two hundred interviews, analysis of all available reports, tribe's semi-annual reports to the Office of Self-Governance, baseline data comparisons, minutes and summaries of tribal council and membership meetings, tribal audits, economic development and resource utilization surveys, accounting records, and selected client-use surveys. For further specific discussion of each of these findings see the "**Summary Analysis and Evaluation of Self-Governance and Findings**," Section III of this Final Report.

- The Self-Governance Demonstration Project has improved quality and quantity of services available to tribal members.
- The Self-Governance Demonstration Project has provided remarkable flexibility for tribes in meeting the needs of their members.
- The Self-Governance Demonstration Project has encouraged and facilitated the use of long-range planning in tribal programs.



- The Self-Governance Demonstration Project has increased the responsibility and accountability of elected tribal officials including Council Members.
- The Self-Governance Demonstration Project has created an increased appreciation of records management and improved accounting systems.
- The Self-Governance Demonstration Project has brought tribal members more directly into the process of budgetary allotment and priority setting.
- The Self-Governance Demonstration Project has encouraged more effective and efficient utilization of available funding.
- The Self-Governance Demonstration Project has allowed tribes to quickly adapt to changing needs and circumstances by modifying programs.
- The Self-Governance Demonstration Project has allowed tribes to consolidate programs and more effectively utilize resources across programs.
- The Self-Governance Demonstration Project has encouraged tribes to redesign programs including budgeting, departmental alignments and administrative procedures and has encouraged tribes to revise the

organization and operation of governmental structures.

- The Self-Governance Demonstration Project has produced major revisions in law enforcement and improved administrative due process.
- The baseline reporting process for tribes and the B.I.A. has provided an initial basis for discussion but may be of somewhat limited utility after the initial year.
- The Self-Governance Demonstration Project is viewed by all of the seven participating tribes and their tribal members whom we interviewed as a significant step toward the improvement of tribal social, economic, political and cultural life.
- The Self-Governance Assessment Team finds that the initial year has been a major success and recommends that the Self-Governance Demonstration Project should be given permanent legislative support as an option for tribes wishing to assume responsibility for tribal programs and who can demonstrate basic tribal infrastructure capable of effective management.

## I. The Concept of Self-Governance: History and Background

*No Right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself. We call the exercise of this right Self-Determination. The practice of this right is Self-Government.*

*-- Joe DeLaCruz, President*

*The Quinault Indian Nation*

The Indian Self-Governance Demonstration Project is firmly rooted in both the concepts of traditional tribal culture and the ideals of America's founding statesmen. One of the oldest principles of political democracy is that individuals with the greatest and closest interest in a decision are more likely to understand all of the aspects of that question. Citizens decide best that which they decide for themselves. The more directly one is personally accountable, the more likely one is to behave in a responsible manner. Such concepts, dating back in western civilization to at least the ancient Greeks, are a part of both the Native American heritage and the United States heritage of independent governance. Self-Governance, as a system in Indian policy, is based upon the idea that tribal units are best able to make judgments about what is in the best interest of their own tribal members.

Self-Governance is not a foreign concept or a new idea to Native peoples. It is as old as the tribes themselves. Constitutional lawyers and legal historians are in agreement that historic Native American tribes were originally operational self-governmental entities. From the beginning of the American Republic the courts have acknowledged that the relationship between historically sovereign Indian Nations and the United States is a "government to government" one. This relationship is at the heart of Native American constitutionalism, Indian law, and Self-Governance. It is this "government to government" relationship which today distinguishes Native American questions from those of other ethnic or minority groups. It is this governmental distinction which compels the modern Self-Governance movement.

Indian Self-Government, law and constitutionalism long pre-dates the United States Constitution or even the arrival of the European in the Americas. To understand the present day Indian commitment to the principles of Self-Governance requires an appreciation of pre-contact Indian civilization. Early European observers frequently wrote that Indians were "lawless," that they lacked organized government. Early white explorers, soldiers and settlers, looking among Indian tribes for leather bound statute books, ladies holding balanced scales, and powdered wigs, found none and thus concluded that the hemisphere's Native peoples were lawless, leaderless, and without government. This was not so. In fact, long before Magna Charta, the principles of restrained Self-Government were highly developed among the Indians of the Americas. In recent decades, both scholars and legislators have begun to acknowledge the debt of

the struggling young colonies to the legal, political and governmental ideas of the continents' original inhabitants. On the occasion of the two-hundredth anniversary of the United States Constitution, the Congress passed a joint resolution affirming the significance of the League of the Iroquois as a federal constitutional model and acknowledging the guiding principles behind the United States Constitution which were borrowed from the Indian founding fathers and governing mothers.

Tribal Self-Governance, in the context of Native American society, cannot be separated from the life and lifeways of Indian people. To the American Indian governance and the way of governing is organic. It speaks a language which reflects the ways of a people. The historic Indian experience demonstrates that government cannot be separated from the environment in which it matured. Native American constitutional and legal history demonstrates that law is more -- much more -- than powdered wigs, silver stars, and blinded ladies with their balanced scales. Law is also a Cherokee with a headdress of swan feathers holding the wampum belts in his hand and a Cheyenne soldier-society warrior draped in the skin of a wolf. The roots of much of Native American tribal law ways and governmental structure including the drive for Self-Governance stretch back long before the black robes and blue coats came and built their courthouses and guardhouses.

As the United States prepares to enter the twenty-first century, traditional concepts of Self-Governance continue to guide the thoughts of Indian peoples. From the

forests of the League of the Iroquois in the far Northeast to the Everglades of the Seminoles on the Florida coast, across the continent to the salmon-rich coastal rivers of the Pacific Northwest, to the tribal villages and inlets of Alaska on to the desert of the far Southwest, and through the great woodlands and plains in between, the original inhabitants of this continent still retain their remarkably rich traditional governmental heritage. It is a system which influences daily lives in both formal and informal ways, setting values and guiding actions. It is upon this system that the modern Self-Governance movement and the Self-Governance Demonstration Project is founded.

Through the Self-Governance movement tribes are seeking to more effectively address the needs of their own people. For most tribes, regulatory provisions and bureaucratic regulations administered by the Bureau of Indian Affairs dominate the lives of their members. Indians and Indian programs are regulated in ways barely comprehensible to other United States citizens. The nature of Indian policy is such that regulations loom large in even the smallest details of Indian governmental, cultural, economic and political life. And yet, the historic principles of tribal Self-Government pre-date white contact and form the basis for the exercise of modern tribal governmental powers. The Supreme Court has consistently recognized that the present rights of American Indian tribes flow from a preexisting sovereignty, limited but not abolished by their inclusion within the territorial bounds of the United States. Tribal powers of Self-Government are recognized by the Constitution, legislation, treaties, judicial decisions, and administrative practices. The Indian Self-Governance Demonstration

Project is a congressionally authorized extension of these concepts. At its best these rights are observed and protected by the Federal Courts in accordance with a relationship designed to insure the continued viability of Indian Self-Government. Neither the passage of time nor apparent assimilation of Indians can be interpreted as diminishing or abandoning a tribe's status as a Self-Governing entity. The Self-Governance Demonstration Project, as a congressional acknowledgment of these historic facts, brings tribal policy full circle.

The history of American Indian policy reflects changing national attitudes. It has shifted from treaty-making whereby the American Nation and the Indian Nations dealt at arms length to allotment of lands and termination of tribes. The present era, described by students of Indian law as the "Age of Self-Determination," began in 1961 and continues to this day. The self-determination era is premised upon the finding that Indian tribes are the basic governmental units of Indian policy. The most important initial step toward fulfillment of this philosophy was PL 93-638 which encouraged tribal contracting for Bureau programs. The next major step came with the adoption of Title III, PL 100-472 establishing the Indian Self-Governance Demonstration Project.

## II. The Implementation of the Self-Governance Demonstration Project and Field Investigation

*"[E]very tribe is very different, very unique, they have very different ways of looking at life . . . . We feel that [if] we can get the Bureau of Indian Affairs and Indian Health Service, and any other federal programs out of our way[,] we can prioritize for ourselves what's in the best interest for our people. This would include whatever economic development activities the tribe wants to pursue, how it wants to utilize its land, how it wants to enhance and develop its culture, preserve its culture, restore its culture, how it wants to enter into agreements with other governmental entities . . . . We're not expecting to accomplish the ultimate in three years, but what we are expecting to do is to be able to discern what kind of problems we have and what better ways that may be considered in terms of the approach . . . ."*

*Statement, W. Ron Allen*

*Jamestown Band of S'Klallam*

The major programmatic thrust of the Tribal Self-Governance Demonstration Project is to allow tribal governments to determine local priorities in program design and resource allocations. Under this operational mode, tribes are the policy makers, program



and service delivery agents, and program evaluators. This tribal initiative framework permits tribal governmental reorganization according to the policy and operational provisions established by individual tribes. It allows tribes to react almost immediately to changed conditions and adjust to emergency conditions.

The Independent Assessment Team paid particular attention to internal reorganization and long-range planning and their relationship to service delivery to tribal members. All of the Self-Governance tribes were involved with reorganizational procedures, ranging from major changes in tribal constitutions to departmental readjustments. In every instance, changes were implemented to improve service delivery with specific references to local priorities. The process of Self-Governance worked to advance the meeting of needs as acknowledged by tribal members.

There were common areas of restructuring experienced by all the tribes as they emerged from a two-year period of internal need-assessment and planning:

- Tribal Council -- expanded roles in budget allocation, monitoring tribal resources, community based needs assessment, and long-range planning.
- Budgeting -- expanded internal budgeting processes, including budget ordinances designed for tribal accountability and responsibility.

- Program Evaluation -- establishment of internal evaluation tools and processes to gauge service delivery effectiveness for social services and to determine objectives attainment in managing tribal businesses and tribal resources.

The transition from federally directed operations to local tribally directed operations has resulted in (1) expanded tribal involvement in business management and economic planning, (2) increased and enhanced services to tribal members and (3) reorganized tribal governments. The prevailing attitude of the Self-Governance tribes is one of self-sufficiency for future generations through development of human resources and through prudent management of tribal resource assets. Examples of on-going efforts include:

#### **Business/Economic Initiatives/Natural Resources**

- Implementation of tribal resources control, accountability and future-generation planning.
- Allocation of funds based on tribal needs and priorities.
- Emphasis placed on capacity building for self sufficiency through sequenced budgetary planning and goals establishment.

- Expansion of internal budgeting processes.
- Creation of tribal, municipal, county and state compacts to achieve enhanced natural resource development/conservation, economic development zones, education, criminal justice programs, and social service delivery.
- Application of cost effectiveness and efficiency standards for internal assessment of program impact.

### **Increased Services To Tribal Members**

Each Self-Government site revealed increases in numbers of people served and expansions of program content areas. The increases in number of clients and types of services offered can be attributed to (1) increased involvement in local needs-assessment, (2) increased accountability standards for tribal officials and tribal employees and (3) creation of cooperative service area agreements between the tribes and social service/economic assistance programs sponsored by municipal, county, and state units of government. The recognition of the Self-Government tribes as contractual counterparts by local units of government has resulted in more clearly defined service/jurisdictional areas and improved response to clients by the cooperating agencies.

The following program areas represent some areas of new services or expansion

of pre-Self-Government services:

## **Education**

- Early Childhood Development.
- Public School Cooperative Programming.
- Adult and Out-of-School Youth Education -- All Self-Governance tribes have redesigned and reprioritized their educational services to adults. The common program theme is education for employment.
- Higher Education -- Self-Governance priority setting resulted in increased funding for higher education scholarships to tribal members along with increased accountability. Emphasis is on the development of a cadre of professionals for tribal governmental service and tribal employment.
- In-service Education for Tribal Officers and Employees -- The Self-Governance mode requires a greater awareness of tribal goals and objectives, intergovernmental agreements/compacts and long range planning. Tribes are addressing these components through on-going comprehensive

training and planning sessions.

## **Human And Family Services**

The ability to allocate budgets in accordance with locally established service priorities provides a new direction for program content and program delivery. Concentration has changed from rigid categorical program delivery isolated from related programs to comprehensive, holistic program application to clients. This has drastically reduced the per-client distribution cost by eliminating duplication of effort and reducing travel and personnel costs associated with out-reach services. Cross-program savings, reduced administrative structure, and more direct delivery has resulted from Self-Governance.

Principal target areas resulting from self-governance include:

- Establishment of social service codes.
- Cooperative agreements with other health care agencies.
- Expansion of community health out-reach services .

- Combined program areas with emphasis on family health.
- Increased and improved services to tribal members isolated physically and/or geographically.
- Commitment of tribal enterprise profit percentages to social service programming.

### **Reorganized Governmental Services**

The Self-Governance Demonstration Project provides a mechanism for the practice of government-to-government relationships between the tribal government and the U.S. government. This practice promotes political self-sufficiency and tribal responsibility and accountability.

The tribal government infrastructure received significant attention during the self-government planning stages and the initial year of self-governance programming. The restructuring of tribal governments to accommodate new roles in determining priorities, implementing long-term financial stability, and establishing accountability measures represent major accomplishments.

## **Criminal Justice Services**

Law enforcement services and court systems received major attention during the formative year of self-governance. Emphasis was placed on:

- Execution of multi-jurisdictional cooperative agreements for law enforcement.
- Development of law codes and increased protection of due process and administrative rights.
- Development and expansion of tribal court system.
- Professional preparation of police officers equal to corresponding local and state requirements.

A marked improvement in relations among representatives of multi-jurisdictional areas resulted from cooperative agreements. Throughout the lands of the Self-Governance tribes there is an enhanced level of law enforcement and particularly of police protection.

## THE TRIBAL EXPERIENCE

The Independent Assessment Team believes that the most meaningful demonstrations of the success of the Self-Governance Project are found in the day to day life and operation of the tribal governments of the seven first-tier tribes. The examples are many and tell the Self-Governance story at the most basic human level. Self-Governance has improved the lives of tribal members in ways that could never have been achieved otherwise. The Independent Assessment Team saw this, time and again, in such seemingly simple settings as little Indian pre-schoolers gathered around tribal elders learning the lessons of life as well as the traditions of tribal basketry; in the expanded jobs which had been created by reallocation of funds from tribal forestry conservation efforts; in new homes acquired with the help of modified tribal loan programs; in summer internships which brought Indian tribal members back from college to work with the traditional people of their reservation; in the ongoing negotiations for the tribal acquisition of a major automobile sales and service franchise; in the senior citizens stepping off the new handicapped-protected bus acquired with reallocated funds; in the cafe behind the tribe's service station where returned citizens laughed about being home and discussed working in the new plant; in the sense of enhanced tribal security created by doubling of available police and case workers; in the positive response of teenage tribal members to newly designed drug and substance abuse initiatives; in refreshed and revitalized tribal forests and streams; in the shift of jobs made possible by retraining for fishermen whose



historic employment had disappeared; and in the warmth of the living room of the elder's house whose fuel subsidy has been given higher priority by her fellow tribesmen.

The tribal Self-Governance experience involves establishment of new priorities and reallocation to meet those priorities. This impacts directly on tribal members. It impacts at both the resource and the allocation levels. For example, when a Self-Governance tribe substantially increases revenues from their own management of natural resources such as timber, then tribal dollar resources and job opportunities are also increased. The impact is felt by tribal members in expanded employment, increased self-reliance and decreased dependence. Thus, there are more resources which can be directed or redirected to other tribal members. A cycle of increased independence stretches available resources and expands services without an increase in the appropriated dollars. Limited resources are thus significantly stretched under a system of Self-Governance.

The following analysis gives a very brief tribe by tribe overview of some of the selected impacts of Self-Governance. All seven tribes achieved remarkable changes in a very brief time. Only highlights on each tribe have been selected for these brief summaries. Much of what is said, by way of example for one tribe, could be repeated for many or all of the others. All tribes, as indicated earlier, enhanced programs for the young and the old, for health and police protection, for resource enhancement and employment opportunities. All tribes involved tribal members in the decision-making

which produced these positive results. For a more detailed breakdown, the Independent Assessment Team refers readers to the Tribal semi-annual reports where these examples are many times multiplied.

### **ABSENTEE-SHAWNEE TRIBE**

If there is an example of the strength of Self-Governance and of the ability of the system to continue to work in the face of overwhelming problems, that example is the Absentee-Shawnee. During the period of the Independent Assessment, the tribal leadership of the Absentee-Shawnee changed and the tribe was faced with escalating conflict with armed partisans. The conflict was resolved and the Self-Governance provisions and programs continued to operate effectively and efficiently through the transition from one government to the next. The Absentee-Shawnee Tribe made significant advances under Self-Governance in budgeting, planning and services. These included expansion of the education department and the police department. Tribal accounting has been streamlined and there is significantly more tribal involvement by members in setting priorities. Examples of programs which reflect this tribal participation are the energy assistance efforts and the eyeglass program. The tribe attributes the increased involvement reflected by greater attendance at their General Council Meetings to the chance for participation in priority setting allowed under Self-Governance. The tribe and the Independent Assessment Team conclude that the Self-Governance

Demonstration Project has significantly improved the lives of individual Shawnees and greatly increased the effectiveness of the dollars expended.

## **CHEROKEE NATION**

The Cherokees are the largest tribe in the Self-Governance Demonstration Project with more tribal employees, for example, than some tribes have enrolled members. The Cherokee experience is a good test of Self-Governance in an ongoing, highly established and efficient tribal bureaucracy. The Independent Assessment Team reviewed the impact of Self-Governance on more than fifty separate operational programs, projects and offices within the Cherokee Nation. Perhaps the single most impressive aspect of the Cherokee experience was the extent to which the tribe was committed to insuring internal evaluation and assessment of each of these programs. While the team never had questions about the fiscal accounting systems for which the tribe continues to win awards, the level of the tribe's ability and determination to assess programmatic efforts stands as a model to what can be done under tribal Self-Governance to monitor the quality and quantity of services being delivered by programs not only through Self-Governance but in all areas of tribal expenditures. An excellent example of this is the Cherokee Child Care Development Program which is a newly funded program which has been taken through initial design and implementation of appropriate regulations. Other impressive examples under Self-Governance are Family Day Care Homes, Child Development Center, the Tribal Work

Experience Program, and the On The Job Training Program. Both the tribe and tribal members, as well as the Independent Assessment Team, have concluded that the flexibility combined with accountability of Self-Governance has significantly advanced the cause of individual Cherokees and the ability of the tribe to meet their needs.

### **HOOPA VALLEY TRIBE**

The Chairman of the Hoopa Valley Tribe caught the spirit of Self-Governance when he described the process to the Assessment Team as "a total way of doing business and not just another funding mechanism." There is no better example of Self-Governance as a mechanism for systematic analysis of tribal needs than the Hoopa who have approached issues from a long-term perspective. A tribal systems analyst was the first job developed by the tribe under Self-Governance and this has enabled them, working directly with the Council and individual tribal members, to significantly expand and refine available services including not only intensified natural resource development, conservation and utilization but establishment of a new Senior Citizens Office, expanded educational and scholarship assistance, housing, headstart and community development. A very impressive aspect of the Hoopa Self-Governance experience has been the development of the budgeting process within the tribe and the establishment of a system which allows budgetary units and individual tribal members to be involved in establishing priorities. Both tribal officials, members with whom we visited, and the Independent

Assessment Team concluded that Self-Governance has been a significant factor in an improved tribal environment in which there is significant cost-savings, improved services, and enhanced protection of tribal natural resources.

## **JAMESTOWN S'KLALLAM TRIBE**

The Jamestown S'Klallams are the smallest of the tribes in the first-tier of the Self-Governance Demonstration Project. Their experience clearly establishes that a well organized and determined group can benefit from Self-Governance regardless of size. In fact, the Jamestown S'Klallams have been most effective in utilizing Self-Governance as a system to reevaluate and reorganize the tribal priorities and to reflect those changed priorities in the tribal organization and structure. The Self-Governance opportunity for economic development and utilization of natural resources which the S'Klallam's have is one of the strongest arguments in favor of the project. Jamestown S'Klallams have demonstrated ways in which tribal members may actively join together in unique business and economic opportunities opened by Self-Governance. A most impressive aspect of this tribe's program was the performance of their college scholarship support system with a remarkably successful student achievement record. Furthermore, the budgeting and accounting systems adapted to Self-Governance seems a model to guarantee wise and accountable fiscal performance. Again, it is clear that the tribe and the team see the achievements under Self-Governance as positive in all respects.

## LUMMI INDIAN NATION

The Lummi provide an excellent example of the diverse ways in which Self-Governance can help to revitalize a people and their programs through the involvement of tribal members in decision making. Dozens of newly designed and effective special programs and tribal initiatives are the result of the Nation's thoughtful understanding and utilization of Self-Governance. Much of the emphasis in restructuring and revitalizing has focused upon the human needs of Lummi tribal members. Particularly impressive efforts have been made in putting together a basic community infrastructure with education, police protection, drug and substance abuse programs, GED training and recapturing natural resources. The tribal leadership and elected Council members report that the Self-Governance system has allowed them to adapt programs to specific needs and encouraged them to exercise budgetary restraint and accountability. A particularly impressive impact of Self-Governance, as reported to the team, has been an improved cooperative relationship with other local governmental entities and an improvement in the sharing of resources and data. The economic management, natural resource protection, tribal employment, child and elder care efforts as well as justice programs are but a few of the Lummi advances under Self-Governance. The team shares the view of the Lummi tribal leadership and citizens that significant progress and improvement in tribal life has occurred through the operation of the Self-Governance project.

## **MILLE LACS BAND of CHIPPEWA**

The Mille Lacs provide a clear example of how Self-Governance can enhance existing tribal programs. Under Self-Governance, the Mille Lacs have in one area increased from six to thirty programs, according to Don Wedll, Commission of Natural Resources. This has been done with a lowering of costs through consolidation of administrative and supervisory services and regulations. As needs change, tribal resources were reallocated such as the shift from higher education funds to primary education used to meet a temporary shortfall. Another case is the shift in emphasis to working with other federal agencies such as EPA. Prior to Self-Governance there were, according to the tribe, no funds for these environmental activities but now there has been work in water treatment and other quality of life issues. Other shifts included improved juvenile, Indian Child Welfare Act services, and chemical dependency programs. The Mille Lacs are enthusiastic about the opportunities that Self-Governance has made it possible for them to actualize. The Band is particularly pleased with the increased confidence which Self-Governance has given to tribal members and the chance which the tribe now has to devote resources to needs as seen and defined by tribal members. The team believes that the Mille Lacs Band of Chippewa have effectively utilized the mechanism of Self-Governance to address the most serious needs of tribal people and have significantly improved life on the reservation.

## QUINULT INDIAN NATION

Since the implementation of the Self-Governance Demonstration Project, the Quinault Nation continues to progress toward complete management of federal funding for social programs, the development of economic stability, and other tribal programs. The tribe has redesigned its programs and funding allocations to better serve the needs of their people. The changes that have resulted from Self-Governance include not only local allocation of funds but a growing sense of self-reliance as a result of the opportunity to make those allocations based on tribal needs and tribal priorities. An additional step is the management of their own natural resources. Since the change from P.L. 638 to Self-Governance, the tribe has taken over the whole program of managing natural resources with the tribe handling harvesting, planting and sales which has resulted in doubling the number of employees. With Self-Governance, the tribe has been able to increase its social services. Examples cited by the tribe include: better law enforcement (16 instead of 5 officers); recreation programs to detour youth from drugs and alcohol; foster grandparents and child protection programs; training for tribal police at the state academy; new garbage and fire trucks; protection of wildlife; cross-deputization programs; new law enforcement computer programs; opening of programs in a distant and previously excluded portion of the reservation; and identification of tribal law and administrative systems providing administrative due process pursuant to the Indian Civil Rights Act. There is no question about the fact that the Quinault Nation has reshaped programs which have, in turn,



revitalized the Nation and improved the lives and opportunities of their members.

## **PROBLEMS OF INITIAL UNCERTAINTY AND STRESS**

The Independent Assessment Team, despite our highly favorable conclusion, does not intend to imply that there were no initial problems associated with the Self-Governance Demonstration Project. Any new venture requires the establishment of new relationships and regulations. There appears to have been such uncertainty in Self-Governance as well. The tribes, the Bureau of Indian Affairs and the Office of Self-Governance exerted extraordinary effort to overcome the problems of creation of an initial administrative structure. Nonetheless, tensions accompanied the effort to give birth to Self-Governance. The Independent Assessment Team was especially impressed with the flexibility and determination with which the bureaucratic structure (including the Office of Self-Governance and individual Bureau offices) addressed new issues as they arose. The leadership of the area offices within the Bureau as well as all other associated Bureau and tribal employees responded positively to the many increased and changing demands brought about by the creation of the Self-Governance Demonstration Project. No doubt it was a time of stress. There was some confusion and uncertainty at the beginning. And, no doubt, there was among some, at all levels, a reluctance to move forward on the Self-Governance Demonstration Project. And yet, particularly as a result of tribal and Bureau cooperative efforts and well planned workshops, materials, newsletters, conferences and

working sessions, the initial difficulties were overcome in a positive and constructive manner. The sort of initial problems which required special attention and caused conflict were:

- Budgetary delays and uncertainty in negotiation and delivery of funds to the tribes;
- Uncertainty and confusion over the delivery of technical assistance and petty conflicts over minor issues such as use of copy machines;
- Failure to communicate new procedures and changed requirements between higher administrative levels and departments both within the tribes and within the Bureau and the Office of Self-Governance.

The Independent Assessment Team wishes to stress that these were, within the larger context of the Self-Governance Demonstration Project, minor difficulties which were addressed by the officials in charge. Indeed, the example of the budgetary problems is a case study in resolution of conflict. By the follow-up or second and third stages of negotiation and funding, the needed data was available, the resources clearly denominated, and the parties able to proceed effectively. In any area of governmental relations, all of the parties will never be in full agreement, but the Self-Governance Demonstration Project

shows that mechanism can be put in place to provide for fact based meaningful resolution and negotiation.

It is the conclusion of the Independent Assessment Team, based upon an analysis of tribal budgets, the baseline data, the audited annual financial statements of the tribes, semi-annual reports and other fiscal documents that the level of accountability, understanding and reporting of expenditures and availability of funds has been significantly enhanced under Self-Governance. After an initial period of adaption and adjustment, the fiscal accountability and management has moved significantly forward. Indeed, Self-Governance has enhanced not only the quality and quantity of services to tribal members but has provided a stronger system of assessment, allocation and accountability.

### III. Summary Analysis and Evaluation of Self-Governance Findings

Listed below are the specific findings relating to the Self-Governance Demonstration Project and the analysis of the Independent Assessment Team as related to each of these conclusions. These conclusions are reflective of the broadest analysis of the individual tribal experience and reflect the common experiences among the first-tier tribes. The specifics of the tribal experience have varied, but each of the tribes had an increasing sense of responsibility. As a result they felt compelled to analyze budgets, review goals and look at programs with an increased view of what the ultimate result of a program would be within the life of tribal members. Tribal decisions in the Self-Governance Demonstration Project were not made at the top of some arbitrary leadership ladder, but rather involved the tribal membership from the respective tribal communities. Across the board, all seven tribes sought and acquired significant input. The tribes recognized and utilized the opportunities provided by Self-Governance -- the opportunity with the commensurate responsibility to control the programs that provide services for their community members.

- The Self-Governance Demonstration Project has improved quality and quantity of services available to tribal members.

The Team found not only that the tribes under Self-Governance were offered new and varied programs but that services under existing programs were markedly improved. Among programs which were either initially offered for the first time or reshaped and expanded were the

following: Prenatal Services; Early Childhood Development; Headstart and Preschool; Drug and Alcohol Counseling; Housing; Fuel and Heating Services; Loan Programs; College Scholarships and GED Education Initiatives; Technical and Vocational Training; Safety; Police Protection; Water and Resource Management; Ecological and Environmental Programs; Timber and Fish Reserve Management and Sales; Insurance Management; Economic Development; Substance Abuse; Senior and Eldercare Programs; Consumer Education; Technical Assistance; Human and Family Services; Employment Assistance; Retraining Programs; Small Business Development; Economic Planning. Individual tribal members benefited significantly from these changes directly traceable to Self-Governance.

- The Self-Governance Demonstration Project has provided remarkable flexibility for Tribes in meeting the needs of their members.

Guidelines adapted for three hundred or more tribal groups must necessarily be more rigid and specific than the sort of regulations which a tribe can adapt for their own special and unique circumstances. For example, one tribe found guideline loan limitations so inadequate that they neither met needs of tribal members or encouraged repayment. A shift allowed under Self-Governance transformed the program and resulted in a substantial increase in repayment which, in turn, meant more money available for reloaning. In numerous ways each of the seven tribes made adjustments in programs which substantially improved the life of tribal members.

- The Self-Governance Demonstration Project has encouraged and facilitated the use

of long-range planning in tribal programs.

Every tribe in the initial Self-Governance Project undertook specific long-range planning. Most of the tribes hired or reassigned an individual to devote full-time efforts to planning. While the nature of the planning program varied somewhat, each of them involved not only tribal leadership but program managers, case workers, service recipients and other clients. The long-range planning produced the elimination of some tribal programs, consolidation of others and creation of new efforts.

- The Self-Governance Demonstration Project has increased the responsibility and accountability of elected tribal officials including Council members.

Without exception, every Council Member with whom the Independent Assessment Team spoke acknowledged that Self-Governance was a sobering, if not frightening, experience. Councils under Self-Government are making real decisions rather than simply voting on the pass-through of federal Indian dollars. The tribal electorate, under Self-Governance, understands that many of the decisions which impact on their lives are made at the tribal level. A major advantage of Self-Governance is the increased responsibility and accountability. This was acknowledged by all seven tribes and observed by the Team.

- The Self-Governance Demonstration Project has created an increased appreciation of records management and improved accounting systems.

The Independent Assessment Team met with the fiscal and budgetary officers of each of the seven tribes. In addition, we spoke with the program managers about the changes in financial records and management under Self-Governance. We were impressed with the determination of the tribes to have available in useable form all pertinent records. We were also impressed with the use which was being made of these records. We have no doubt that the records management and accounting systems under Self-Governance have been improved and will continue to be improved. Thus, financial accountability is enhanced under Self-Governance.

- The Self-Governance Demonstration Project has brought tribal members more directly into the process of budgetary allotment and priority setting.

Each of the seven tribes has devised and expanded the structural provisions to guarantee tribal input into budgetary allotment and priority setting. Many of the tribes adapted new budgetary ordinances and established systems of holding public hearings. We noted that every single tribe has undertaken some form of client analysis to seek reactions from those who receive services. The General Council Meetings at which budget decisions are made are open to the tribal memberships in each tribe and all noted increased interest and attendance.

- The Self-Governance Demonstration Project has encouraged more effective and efficient utilization of available funding.

The Self-Governance Independent Assessment Team reviewed files on hundreds of tribal

programs. In reviewing these files, we determined that more effective and efficient utilization was taking place at all levels in the Self-Governance process. This was occurring from the initial planning within the management unit, through the analytical evaluation by the budgetary offices, to the appropriation by the elected tribal officials, on out to the implementation at the field and the service area. Under Self-Governance, tribal programs were required to justify their expenditures in a comparative way since the tribe was free to engage in reallocation. The result, in all tribes, was most impressive.

- The Self-Governance Demonstration Project has allowed tribes to quickly adapt to changing needs and circumstances by modifying programs.

Needs and circumstances change and change quickly. One of the historic problems of Indian policy has been the time required to adapt programs in the face of immediate needs. Under Self-Governance, for example, when the market price on lumber escalated, tribes were able to redesign marketing strategy almost immediately. As unemployment rises, tribes will be able to shift focus in education programs to GEDs or to focus on elementary schools when substantial numbers of parents with small children return to tribal lands. In the course of the first-tier tribes' experience, every single tribe made such important flexible adaptations to meet changing needs and circumstances.

- The Self-Governance Demonstration Project has allowed tribes to consolidate programs and more effectively utilize resources across programs.



At the heart of the Self-Governance concept is the idea of allowing tribes to move beyond the artificial categories created for general programs to adapt to the unique and individual circumstances of the tribes. Among tribal programs, these artificial divisions have resulted in needless duplication and escalated costs. The best example of this which the Assessment Team discovered was the requirement of a separate Headstart and a separate child care program on one reservation which under applicable guidelines prohibited the children enrolled in their separate programs from using the same restrooms. The tribe had to provide four separate "little girls rooms" and "little boys rooms" for Headstart and child care. Under the regulations of these programs, they had to deny access to the children if their programs' restroom was being used, even if the other restrooms were available. These sorts of senseless bureaucratic regulations are repeated hundreds of times throughout Indian country. All tribes made significant progress in addressing duplication through consolidation and cooperation. In fact, this area may be the single most successful use of Self-Governance by all seven of the tribes.

- The Self-Governance Demonstration Project has encouraged tribes to redesign programs including budgeting, departmental alignments and administrative procedures and to revise the organization and operation of governmental structures.

The Independent Assessment Team examined the organizational structure of all seven of the tribes. Each tribe had, in some significant measure, redesigned their governmental organization. These changes ranged from creation of new departments, adding new committees,

restructuring report channels, to adaption of broadly based administrative procedures, opening new geographically based units, creating new budgetary programs, organizing internal evaluation teams, and consolidating or eliminating existing tribal agencies. As a result of the structural changes from Self-Governance every one of the tribes was better positioned to provide support and services to tribal members.

- The Self-Governance Demonstration Project has produced major revisions in law enforcement and improved administrative due process.

The Independent Assessment Team requested and received from each of the seven tribes copies of their ordinances, laws and regulations relating to administrative due process and revisions in tribal provisions relating to law enforcement. Examination of the due process documents established that all tribes were in compliance with regulations and that under Self-Governance due process had been given a high priority. Next to the key areas of services for children and the elderly, law enforcement and related areas such as drug control and substance abuse, were placed at the highest priority by tribes under Self-Governance. Substantial resources were expended in these areas. In interviews with the chief law enforcement officials of each of the tribes, the team was presented with remarkable examples of ways in which law enforcement has benefited substantially from Self-Governance and how those reforms were being felt within the tribal lands.

#### IV. Observations and Recommendations of the Independent Assessment Team

"The Self-Governance Project authorized by the Congress has served as a very effective mechanism to achieve the goal of real self-determination. Hopefully, this promise will be realized as Indian tribes are finally allowed to exercise the prerogatives which the rest of American governments have. As the 20th century closes the Cherokee Nation has reassumed its place in the family of American governments."

-- Wilma Mankiller,  
Principal Chief,  
Cherokee Nation

The following recommendations of the Independent Assessment Team are based upon the conclusions reached in the **Section III "Summary Analysis and Evaluation of Self-Governance Findings,"** and upon the more detailed materials outlined in **Section II, "The Implementation of the Self-Governance Demonstration Project and Field Investigation."** Taken together, they support the Team's evaluative analysis that the Self-Governance Demonstration Project is worthy of permanent enactment and the suggestion of some principles for that legislative initiative.

- The Self-Governance Demonstration Project should be given permanent legislative support as an option for tribes wishing to assume responsibility for tribal programs

and who can demonstrate basic tribal infrastructure capable of effective management.

- The Office of Self-Governance after permanent legislation should continue to report directly to the Under Secretary/Commissioner. There should be a permanent coordinator or Director of Self-Governance perhaps designated as an Assistant Commissioner who would work closely with field representatives coordinating with the tribes.
- Long-term planning should be undertaken to insure that Self-Governance is not treated as a form of termination but continues to provide a base for tribal programs in terms not only of funding but of administrative support. The interests and rights of non Self-Governance tribes must be fully protected as well.
- The opportunities for tribal flexibility and individual adaptation which has characterized the Self-Governance Demonstration Project should be continued so that rigid regulations are not institutionalized in the Self-Governance Programs.
- The standard for Trust Responsibility and the responsibility for protection of tribal resources must be maintained. Tribes should not be held to an enhanced standard greater than the Bureau has applied nor should Trust Responsibility be used as an excuse to limit legitimate Tribal Self-Governance.

- A uniform reporting format or system should not be adopted or utilized because of the danger of creating inaccurate comparison of data and replication at the tribal level of bureaucratic procedures which the Self-Governance Project was designed to offset.
- There should be Special Congressional Oversight to insure the cooperative evolution of Self-Governance programs between Tribes and the Bureau of Indian Affairs.
- Development of Tribal economic resources and industrial development should be a central part of the Tribal decision-making process under Self-Governance.
- The Budget Process under Self-Governance should be consistent, timely and equitable to insure the protection of the resources of both Self-Governance and non-Self-Governance Tribes with the Bureau assuring full tribal access to all available data on the same basis as the Bureau of Indian Affairs.

## Conclusion

### **Demonstrating A New Way**

"[A] great deal of progress has been made in demonstrating a new way for tribal governments to work with the Federal Government. Further, I think that this demonstration project has been a good example of what can happen when Indian tribes, the Congress, and the Administration cooperate to the fullest extent possible. Tribal leaders and staff have exhibited statesman-like qualities in the development of this program."

Dr. Eddie F. Brown, Assistant Secretary for Indian Affairs,  
-- Statement, Senate Select Committee on Indian Affairs,

When Senator Inouye joined in advocating the Self-Governance Demonstration Project, he speculated that there was "no way of knowing what the outcome will be." He argued for this "bold step" as a way to break from the status quo -- one which "may be a great success, or it may fail." The bold venture has, in the opinion of the Independent Assessment Team, proven to be "a great success." Self-Governance has, at the bottom line, significantly improved the lives of individual tribal Indians. It has enhanced the quantity and quality of available services. The dollar return has been enhanced and the level of accountability significantly improved.

In conclusion, the Independent Assessment Team asks, "Why has Self-Governance been such a success?" We believe the success is traceable, in large measure, to what Dr. Brown has called the "cooperative venture" of the Congress, the Bureau, the Office of Self-Governance, and the tribes. It has also been a success because it is a part of an evolutionary historical circle which has returned tribal governments and tribal decision-making to tribal members -- to those most accountable to Indian people. It has also worked because tribes and their members are willing to take risks and assume the costs of asking "how can we do this better." In the final analysis, tribes making decisions about their own tribal needs makes sense as long as limited funds must be stretched to address almost limitless needs.

With Self-Governance, we have seen Native governments who were fully operational Nations before the arrival of the Europeans once more return to their historic state. As a Lummi tribal member noted in the field interviews which produced the title for this report:

"I call it 'trying a new way to get back to the old.'"