Self-Governance becomes Law

Behind the scenes with H.R. 4842

The following historical overview outlines the views of Tribal representatives in Washington, D.C. regarding the passage of H.R. 4842. This self-determination amendment (Title I) and Self-Governance permanent authorization (Title II) were signed into law (P.L. 103-413) by President Clinton on October 25, 1994. Vice-President Gore announced at the National Congress of American Indians convention that a symbolic signing ceremony was planned for early 1995 at the White House.

The “Tribal Self-Governance Act of 1994,” which passed the Senate as S. 1618 last November and passed the House as H.R. 3508 in August, passed both the House and Senate on Friday, October 7, 1994 as Title II of H.R. 4842. Passage of the bill is considered a major victory for Tribes.

As the vote grew near, it became apparent that the bill might not pass for two reasons. First, even after compromises were negotiated with the Department of the Interior, significant opposition arose from fish and wildlife interest groups around the country. Second, partisan maneuvering as Congress ended threatened to stop all forward motion on matters like the Tribal Self-Governance bill.

Until the bill passed both the Senate and House, no one could safely predict what was going to happen. In many respects, it was a very close call. Appreciation is due to Assistant Secretary Ada Deer, Tribal leaders, Interior Department personnel, and many key congressional staff who helped get the bill passed.

As a protective strategy during the final week of the congressional session when the Self-Governance bill appeared

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Joe Tallakson, friend and advocate of Tribes, passes away

Joe Tallakson, long-time advocate for Tribal rights and sovereignty, died of cancer on Thursday, December 22, in Washington, D.C. During the course of his life, Tallakson was deeply involved in issues important to Tribes in the Northwest and across the country, and played a pivotal role in many of the most important Indian Country debates of the last two decades. His tireless work on behalf of Native peoples will always be remembered, and his friendship will be deeply missed by the many people who worked with and knew him. Tallakson was remarkable for many reasons, not least of which were his altruistic efforts and masterful accomplishments resulting in the advancement of Native American causes. He was

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

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

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

SEPTEMBER 28
Secretary Babbitt sent an assurance letter to Senator McCain concluding that H.R. 3508 as amended would not infringe on state jurisdiction in fish and wildlife management.

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

OCTOBER 5, MORNING
Tribes associated with several Alaska-based Self-Governance compacts, including Kawerak, Inc., and Tanana Chiefs Conference, helped persuade Senator Murkowski to lift his hold. Self-Governance Tribes from Oklahoma, Oregon, Washington, and Minnesota simultaneously contacted their Republican Senators to try to convince Senator Wallop to lift his hold. They also asked Congressman Sidney Yates, Chairman of the House Appropriations Subcommittee, to remind IAFWA of the strong congressional support for Tribal Self-Governance.

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

OCTOBER 5, EVENING
Chairman Ron Allen of the Jamestown S'Klallam Tribe, Henry Caged of the Lummi Nation, and Eddie Tullis of the Poarch Band of Creek Indians and other Tribal representatives made a final appeal at the IAFWA headquarters.

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

OCTOBER 6, 3:30 PM
IAFWA's Executive Vice-President, Max Peterson, called Tribal representatives with his compromisal language (a rewording of the Tribal proposal) to be added to the new Subsection (k) regarding non-BIA programs. The IAFWA provision stated: "Provided, however an Indian Tribe or Tribes need not be included in the authorizing statute in order for a program or element of a program to be included in a compact under section 403 (b)(2))."

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

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

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

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

OCTOBER 7, 10:30 PM
All Senate holds on Self-Governance were removed and the Senate passed H.R. 4842 by unanimous consent.

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

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

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

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

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

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

Tallakson was born May 9, 1943, in Sioux City, Iowa, to the Reverend Loyal and Hazel Tallakson. He went to college at Concordia College in Moorhead, Minnesota, and then served in the Army from 1965 to 1968. He went to graduate school at Pacific Lutheran University in Tacoma, earning a master’s degree in 1970.

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

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

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

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

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

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

His friendship was truly a lifetime gift, for him as the giver, as well as for those who were the fortunate recipients.
John McCain's
Floor Statement on H.R. 4842

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

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

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

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

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

Although I am pleased that we are
acting on H.R. 4842 today, I am deeply
troubled by what has taken place during
consideration of self-determination re-
form legislation. In my view, after the
Administration concluded that its
attempts to indefinitely postpone the bill
would be useless, the Administration
had one thing in mind with respect to
self-determination reform: the Ad-
ministration's concerns were critical;
Tribal concerns were negotiable. I sus-
pect the Tribes themselves will be trou-
bled by this because the Administration
has gone out of its way to proclaim itself
an Administration that is more sensitive
to Tribal concerns. Frankly, if there is a
unifying theme in this Administration's
Indian policy, it is the casual relationship
between words and action.

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

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

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

— Richard Nixon, 1970

Mr. President, Title II of H.R. 4842,
the "Tribal Self-Governance Act of
1994," is identical to H.R. 3508 and
reflects the various agreements negoti-
at ed by the Senate Committee on Indian
Affairs and the House Subcommittee on
Native American Affairs with the
Department of the Interior, Self-
Governance Tribes, and the Senate
Committee on Environment and Public
Works. In addition, a new Subsection (k)
has been added which addresses further
concerns raised by the International
Association of Fish and Wildlife
Agencies (IAFWA).

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

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

Mr. President, in recent weeks con-
cerns have been raised by the IAFWA
about the potential impact of Self-
Governance legislation on the existing jurisdiction and authority of the Tribal, state, and federal governments over natural resources, including fish and wildlife resources. I ask unanimous consent that a copy of IAFWA's October 3, 1994 letter be printed in the Record immediately following my remarks.

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

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

I am aware, for example, of reservations that are home to listed threatened or endangered species. Indian Tribes are in a position to contribute data on those listed species that could be both helpful to the Secretary in carrying out his responsibilities under the Endangered Species Act, and beneficial to the Indian Tribe in negotiating a compact for biological data collection. We also recognize that Indian Tribes conduct conservation efforts on their reservations to benefit migratory birds, such as participation in the North American Waterfowl Management Plan. It is intended that H.R. 4842 facilitate such cooperation. This legislation is not intended to alter any existing state jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

In spring of 1962, when the land claims dispute was at its peak, a group of Tribal representatives from the Alaskan interior came together at the Tanana Village the the annual celebrations and contests. At the urging of Al Ketzler Sr. and others, they held a meeting to discuss policies for dealing with the pressures of statehood. Their discussions at that time were centered on the problem of the state claiming land that had historically been used by the Tribes. Ketzler recalls, "We decided to organize as villages in the interior, and I was selected to do the organization." By joining forces, Tribes whose numbers ranged from 15 to 800 created a single, strong voice that had more impact than any single group could.

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

In 1966, Ketzler's efforts were continued by other young leaders, and the Alaska Federation of Natives was
formed. This organization was critical to the historic Alaska Native Claims Settlement Act of December 1971, which set up 13 regional for-profit corporations for Alaska Natives. During this negotiation between government agencies and Tribes, Ketzler and dozens of other Alaska natives lived in Washington D.C. for several weeks. Ultimately, Congress authorized a settlement of more than 40 million acres and nearly $1 billion.

Ketzler expressed some mixed feelings about the settlement, because he feels that the for-profit structuring of Native Corporations removed an important degree of Native control over land rights. He explains, “Of course the act put money into the state, but I would much rather see the land pass on to non-profit corporations. Then the people could have control of it rather than for-profit companies.”

Recalling the early days of Tribal organization, Ketzler notes that, “There was lots of resistance to Self-Governance activities in the 1960s. Things like the business community wanting Rampart Dam which would’ve flooded out our village and others across the interior.” It is a point of pride for Ketzler and the leadership of Tanana Chiefs Conference that despite inevitable differences of opinion, TCC has managed to avoid many mistakes.

Today the Tanana Chiefs consortium incorporates 43 Tribes in interior Alaska, covering a total area of over 235,000 square miles and more than 10,000 members. TCC functions as a non-profit corporation to administer health and social service programs in their region, and has compacted for all of the Bureau programs available to them.

Referring to their distribution methodology for compact moneys, Ketzler says, “Over the years Tanana Chiefs Conference established the base with the Bureau, and all of the exterior dollars we negotiated into the compact were passed on directly to the Tribes. This was to give them the opportunity to establish their own Tribal offices and staff, and start developing the capability of providing services locally rather than providing it regionally.” This is a great benefit in a region where many Tribes are only accessible by plane or boat, and centrally located services are simply unreachable in emergencies.

“We’re working for individual programs so the Tribes are able to deliver services at the local level. What we’re looking at on the regional level is to compact for things like BLM Cadastral Survey and Fire Fighting. We’ve already handled those services successfully for the last few years.” He mentions that a primary benefit of Self-Governance is, “It allows us to maintain Tanana Chiefs as a regional center.”

Referring to differences between Alaskan Tribes and those in the Lower 48, Ketzler says, “A big problem we have is accessibility and communications. Really, though, I don’t think we have a lot of differences—we have problems like Tribes in any other remote part of the United States.”

Regarding the successes of Tanana Chiefs, Ketzler says, “One of the things we’re able to do is organize really well and come out with a unified front. A good relationship with Senators and Congressional Delegates lets us get our points across in Washington.” This ability to transcend the logistical and communication challenges of Alaska, and to work toward effective solutions to regional problems, has made Tanana Chiefs a model of Self-Governance success.
The KAW Nation:

Winds of Change through Self-Governance

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

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

After moving from their ancestral lands to the east, the KAW people settled in widely dispersed bands along the rivers of Kansas. In 1846, the KAW Nation was assigned two million acres just a few miles west of Topeka, Kansas. However, the United States government eventually secured this land by cession. The Tribe then moved to Council Grove, Kansas, where property amounting to 20 square miles was assigned to them. Then, in 1859, half was ceded to the United States Government. The remaining half of the reservation was sold by Acts of Congress in 1872, 1874, 1876 and 1880. With sale proceeds, the Tribe purchased a 100,000 acre tract in what later became eastern Kay County, Oklahoma.

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

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

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

Enterprises such as these will produce the quarter of a million dollars earmarked for the KAW medical clinic. The remaining $750,000, for the implementation of the clinic, will come from a HUD/CDBG block grant, while technical support and guidance will be offered by IHS. Initially, the KAW Clinic will operate in an existing facili-
ty, but within two years they hope to build an entirely new clinic in Newkirk.

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

The road to Self-Governance hasn’t been an easy one for the Kaw Nation. In 1991, the Tribe began using planning grants and other resources to build the infrastructure and do the planning to prepare for Self-Governance. Melanie Knight, the Grants and Contracts Director for the Tribe, explains that when the Kaw Nation initially approached IHS to become a Self-Governance Tribe, the IHS said that they had to be a Department of the Interior Self-Governance Tribe first. The Kaw Nation challenged that ruling and eventually won the right to compact directly with IHS rather than spend valuable time and energy going through the complex motions of compacting with the Department of the Interior. By overcoming this bureaucratic hurdle the Kaw Nation set a precedent for Indian Tribes across the country. The Kaw people see health care as a crucial starting point because historically the Tribe under-utilized IHS health services. This was due in large part to the distance people were forced to travel for a visit to an IHS clinic. As a result, many health problems were ignored until they became severe; ultimately costing much more to treat once medical attention was sought. By opening the clinic in Newkirk, the Kaw Nation will make it possible to focus on preventative health care, keeping costs down by keeping people in good health.

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

When asked about the benefits of Self-Governance in the future, Wanda Stone points to the trend in inter-Tribal cooperation she has witnessed since Kaw Nation began compacting for services, commenting that although Kaw Nation didn’t get listed for permanent status in the recent legislation, they were pleased with the support they received from other Tribes. “That’s what I think is the good thing about Self-Governance; it has really united the Tribes. It’s refreshing to have Tribes come together, share information, and really push this thing forward as a unit, as a group. It’s long overdue for the Tribes to come together in that respect.”
TRIBAL LEADERS and staff members from around the country came together in Sparks, Nevada for the Fall Self-Governance Policy and Working Meeting on November 1 and 2. Over the course of two days, the group covered a wide variety of topics, ranging from the impact of Permanent Authorization becoming law (P.L. 103-413) to Joint Allocation Methodologies for IHS. The schedule was very full, but the group managed to cover the entire agenda and form work groups to take action on their discussions.

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

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

KEY PRIORITIZED ISSUES

**OSG Director Selection**

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

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

**Filling Field Office Positions**

The Northwest Field Office has been without a director since Ron Brown’s “early out” departure last spring. Although the Tribes have advanced names for consideration, the office is still being run by Tom Shirilla. The delegates believe the office deserves a minimum of two professional staff considering the extent of responsibilities.

**Legislative Developments**

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

Ron Allen summed up the opening session, suggesting that Tribal leaders need to develop a five-to-ten year plan to evaluate Self-Governance, the role of staff, the designated officials, and myriad other issues. He felt that many of the issues they were discussing had been left hanging for six years, and that the Tribes needed to develop a strategic plan and means to measure progress.

**Shortfall Funding and Stable Base Budgets**

Cyndi Holmes, Self Governance Director for the Jamestown S’Klallam Tribe, inquired of Bill Sinclair, Acting Director of the Office of Self-Governance, regarding the status of shortfall funding in 1995. Sinclair reviewed the difficulty of creating reliable formulas. He commented, “We were not sure what stable base budgets really means. We can talk about Tribal bases. We are ready to do that this year. Some line items have incremental amounts that need to be redone. These would be added to your cumulative base. We do not expect this to change unless there is something that will affect all Tribes. We will transfer them annually into the Tribal base. We will not be transferring those in permanently for now.” Following Sinclair’s remarks, several
delegates commented on the need to establish a reliable formula for shortfall funding, and the difficulties they will have in the near future as more and more Tribes enter Self-Governance.

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

**Trust Office Evaluation**

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

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

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

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

**Council of Area and Associate Directors**

Dale Rislign, Chairman of the Hoopa Valley Tribe, began by sharing the opinion that Tribes have a lot of questions and concerns regarding the Council of Area and Associate Directors (CAAD). These questions revolve around how CAAD functions. "What puzzles me about CAAD is if they are setting national policies and formulas then why can I not go to my Area Director and get my specific issues addressed properly," he said.

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

**Joint Allocation Methodology Work Group**

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

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

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

**Joint Allocation Methodology Process**

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

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

**Residual Work Group**

Cyndi Holmes highlighted the recent progress with the Tribal/IHS Residual Work Group, which also serves as the
Joint Allocation Methodology Work Group. The group will be making a presentation to CAAD in March regarding progress that has been made in defining the methodology for distribution of residual funds. A draft of the Work Group's plan was included in the conference materials and Cyndi Holmes presented a summary of their efforts.

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

Barriers to Formula Allocations

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

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

Discussion of 30/70 Formula

Butch O'Neal of the Navajo Nation questioned the 30/70 formula with the point that a Tribe in California with zero users receives the same amount of funds for overhead as the Navajo Nation. This is also the case for a Tribe which has only three users. He also stated that the Navajo Nation will not support the formula presented by the work group. He continued that President Zah, of the Navajo Nation, had already met with Dr. Trujillo to express the need to look at the amount that will be involved if these recommendations come to fruition. He acknowledged that the large Tribes have a different perspective, but said that Navajo sees this formula and others like it as having a very adverse impact on many Tribes because of the win/lose scenario it creates.

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

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

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

Closing Comments

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

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

**IHS POSITION RE-OPENED**

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

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

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

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

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

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

As more Tribes become involved with more federal agencies, the consolidation or development of a single Office of Self-Governance, and its roles and responsibilities, will have to be considered.
DAN LEWIS, who spent the last eleven years in Washington, D.C. working on behalf of Tribes, recently left the Capital to work in the private sector. Lewis’ most recent position in Washington was Senate Committee on Indian Affairs Director for Vice-Chairman Senator John McCain, a position in which he was a critical player in many Self-Governance battles.

Over the years, Lewis has gained the respect and friendship of many Tribal representatives, and made a lasting impact on Tribes across the country. When he addressed the delegates at the recent workshop in Sparks, NV, the appreciation of the Tribes represented was well-evidenced in the warm reception and expressions of thanks he received. Later that evening he was honored with a reception and formal presentation of gifts and thanks from numerous Tribes.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Continued on page 16]
Q: Having been so closely involved in the process in recent years, what do you feel the greatest success of Self-Governance has been to date?

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

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

A: The greatest challenge will revolve around the budget. As budget cuts take place, it’s easy for people to blame other cuts on Self-Governance. This will lead to further restrictions of the Self-Governance budget. This, in turn, will lead agencies to question Self-Governance seriously. But the Tribes have already scored the victory. With the present changes in the government the Tribes can really set the agenda through the Self-Governance project.

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

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

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