

I. Background

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (Pub. L. 103-413, the "Self-Governance Act" or the "Act") instituted a permanent tribal self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). Section 403(b)(2) also specifies that "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law."

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities, or portions thereof, that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Self-Governance Act, annual agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a

self-governance agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Response to Comments

The Department provided the proposed list to the Self-Governance Tribes on April 23, 2003 for their review and comment. No comments were received. Several minor editorial and technical changes provided by Interior's bureaus were incorporated.

II. Annual Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior

- A. Bureau of Land Management (none)
- B. Bureau of Reclamation (4)
 - Gila River Indian Community
 - Chippewa Cree Tribe of the Rocky Boy's Reservation
 - Karuk Tribe of California
 - Yurok Tribe
- C. Minerals Management Service (none)
- D. National Park Service (4)
 - Grand Portage Band of Lake Superior
 - Chippewa Indians
 - Lower Elwha S'Klallam Tribe
 - Tanana Chiefs Conference, Inc.
 - Yurok Tribe
- E. Office of Surface Mining and Reclamation Enforcement (none)
- F. U.S. Fish and Wildlife Service (none)
- G. U.S. Geological Survey (none)

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance annual funding agreements because they are either "otherwise available to Indians" under Title I and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. The lists represent the most current information on programs potentially available to Tribes under a Self-Governance agreement.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Programs of the Bureau of Land Management (BLM)

BLM management responsibilities cover a wide range of areas, such as recreational activities, timber, range and minerals management, wildlife habitat management and watershed restoration. In addition, BLM is responsible for the survey of certain Federal and tribal lands. Two programs provide tribal services: (1) Tribal and allottee minerals management; and (2) Survey of tribal and allottee lands.

BLM carries out some its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the Self-Governance tribe demonstrating a special geographic, cultural, or historical connection, may also be available for inclusion in self-governance agreements. Once a tribe has made initial contact with BLM, more specific information will be provided by the respective BLM State office.

Tribal Services

1. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, and inspection, enforcement and production verification of Indian coal and sand and gravel operations: are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

2. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

Other Activities

1. *Cultural Heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Forestry Management.* Activities, such as environmental studies, tree planting, thinning and similar work, may be available in specific States.

3. *Range Management.* Activities, such as re-vegetation, noxious weed control, fencing, construction and maintenance of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. *Riparian Management.* Activities, such as facilities construction, erosion control, rehabilitation, and similar activities, may be available in specific States.

5. *Recreation Management.* Activities, such as facilities construction and