

DEPARTMENT OF THE INTERIOR**Office of the Secretary****List of Programs Eligible for Inclusion in Fiscal Year 2000 Annual Funding Agreements to be Negotiated With Self-Governance Tribes by Interior Bureaus Other than the Bureau of Indian Affairs**

AGENCY: Office of the Secretary, Interior.
ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2000 annual funding agreements with self-governance tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2000.

ADDRESSES: Inquiries or comments regarding this notice may be directed to the Office of Self-Governance, 1849 C Street NW, 2548 MIB, Washington, DC 20240. Telephone (202) 219-0240 or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:**I. Background**

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (P.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, functions, services, 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, activities, and functions 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. 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 not only programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), but also other programs that the Department determines are appropriate and available under other laws for contracting out or including in cooperative agreements.

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." 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.

The Department received two comments on the proposed list of Non-BIA programs. In general, the commentors thought the list could be clearer and that programmatic targets were too low. In response to these commenters, the Department has adopted the following suggested language. In part "III. Eligible Programs," the following language will be added.

Tribes may also want to refer to the Secretary's January, 1995 Report to Congress for a list of potential programs and portions of programs.

In addition the following language will be added to the last paragraph in part III:

Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

Based upon the concern that programmatic targets are too low, the

following language will be added to the preamble "Section IV. Programmatic Targets."

During Fiscal Year 2000, Each non-BIA bureau will negotiate Self-Governance annual funding agreements for its eligible programs beyond those already negotiated.

The following language will be deleted from Section "IV. Programmatic Targets."

Each of the non-BIA bureaus will negotiate at least one annual funding agreement with a self-governance tribe for implementation in Fiscal Year 2000.

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

In Fiscal Year 1996, an initial funding agreement was negotiated between the Bureau of Reclamation and the Gila River Indian Community to design and construct the community distribution system on reservation lands as authorized by Section 301(a) of the Colorado River Basin Act. Successor annual funding agreements for the continuation of this project were entered into for Fiscal Year 1997 and Fiscal Year 1998.

In Fiscal Year 1998, two agreements were negotiated by the National Park Service. The annual funding agreement with Kawerak, Inc., supported by funds from the shared Beringian heritage program, builds on the previous two agreements and covers work to be completed in Fiscal Year 1999. This work will result in a more complete record of the Bering Strait Region's Inupiat, St. Lawrence Island Yupik and Southern Norton Sound Yupik culture, history, knowledge and tradition.

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

Following this paragraph 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" and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. This summary is a general listing that represents the bureaus' best estimates of activities that may be available for negotiation at the request of the self-governance tribe.

The following list represents the most current information on programs potentially available to Tribes under a Self-Governance agreement. However, Tribes may also want to refer to the Secretary's January, 1995 Report to Congress, which also contains a list of

potential programs and portions of programs.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included in the following list, 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 contracts out some its activities in the management of public lands. These and other activities, dependent upon availability of funds, the need for specific services, or the Self-Governance tribe demonstrating a special geographic, cultural, or historical connection, may be available for inclusion in 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. *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.

2. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, inspection, enforcement and production verification of Indian coal and sand and gravel operations: these activities 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 and 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, 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 maintenance, interpretive design and construction, and similar activities, may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities, such as construction and maintenance, interpretive design and construction, and similar activities, may be available in specific States.

The above programs under "Other Activities" are available in many states for competitive contracting. However, if they are of special geographic, historical or cultural significance to a participating Self-Governance tribe, they may be available for annual funding agreements. Tribes may also discuss additional BLM-funded activities with the relevant State office.

For questions regarding Indian Self-Governance, contact the BLM Self-Governance Coordinator, Dr. Marilyn Nickels, Washington Office, 1849 C Street, NW, Washington, D.C. 20240, (202) 452-0330, fax: (202) 452-7701. General information on all contracts available in a given year through the BLM can be obtained from the BLM National Business Center, P.O. Box 25047, Bldg 50, Denver Federal Center, Denver, CO 80225-0047.

B. Eligible Programs of the Bureau of Reclamation

Reclamation operates a wide range of water resource management projects for hydroelectric power generation, municipal and industrial water supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of Reclamation's activities involve construction, operations and maintenance, and management of water resources projects and associated facilities. Components of the following FY99 water resource management and construction projects may be eligible for self-governance agreements.

1. Klamath Project—CA, OR
2. Newlands Project—NV, CA
3. Yakima River Basin Water Enhancement Program, WA
4. Trinity River Restoration Program—CA
5. Central Valley Project (Trinity Division)—CA
6. Central Arizona Project—AZ, CA, NM, UT
7. Colorado River Front Work/Levee System—AZ, CA, NV
8. Lower Colorado Indian Water Management Study—AZ, CA, NV

9. Middle Rio Grande Project—NM
10. Washoe Project—NV, CA
11. Yuma Area Projects—AZ, CA, NV
12. Indian Water Rights Settlement Projects—as Congressionally authorized.

Reclamation's initial point of contact for questions regarding Self-Governance is Dr. Barbara McDowell, Native American Affairs Office, Bureau of Reclamation (W-6100), 1849 C Street NW, Washington, D.C. 20240-0001, telephone (202) 208-4733.

C. Eligible Programs of the Fish and Wildlife Service (FWS)

The mission of FWS is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. FWS has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries.

FWS will also discuss participation in any program with any Indian tribe, self-governance or non-self-governance. Any self-governance tribe, however, may contact a national wildlife refuge or national fish hatchery directly concerning participation in Service programs under the Self-Governance Act.

Some elements of the following programs may be eligible for contracting under a self-governance annual funding agreement. The listing below was developed considering the proximity of an identified self-governance tribe to a national wildlife refuge or national fish hatchery, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement. This listing is not all-inclusive but is representative of the types of programs which may be eligible for tribal participation through an annual funding agreement.

1. *Subsistence Programs within Alaska.*
2. *Fish & Wildlife Technical Assistance, Restoration & Conservation*
 - a. Fish & wildlife population surveys
 - b. Habitat surveys
 - c. Sport fish restoration
 - d. Capture of depredating migratory birds
 - e. Fish & wildlife program planning
 - f. Habitat restoration activities
3. *Endangered Species Program*
 - a. Cooperative management of conservation programs
 - b. Development and implementation of recovery plans
 - c. Conducting status surveys for high priority candidate species

- d. Participation in the development of habitat conservation plans, as appropriate
- 4. *Education Programs*
 - a. Interpretation
 - b. Outdoor classrooms
 - c. Visitor center operations
 - d. Volunteer coordination efforts on- and off-refuge
- 5. Environmental Contaminants Program
 - a. Analytical devices
 - b. Removal of underground storage tanks
 - c. Specific cleanup activities
 - d. Natural resource economic analysis
 - e. Specific field data gathering efforts
- 6. Hatchery Operations
 - a. Egg taking
 - b. Rearing/feeding
 - c. Disease treatment
 - d. Tagging
 - e. Clerical/facility maintenance
- 7. Wetland & Habitat Conservation and Restoration
 - a. Construction
 - b. Planning activities
 - c. Habitat monitoring and management
- 8. Conservation Law Enforcement
 - a. All law enforcement efforts under cross-deputization
- 9. National Wildlife Refuge Operations & Maintenance
 - a. Construction
 - b. Farming
 - c. Concessions
 - d. Maintenance
 - e. Comprehensive management planning
 - f. Biological program efforts
 - g. Habitat management
 - h. Fire Management

Locations of Wildlife Refuges With Close Proximity to Indian Tribes

- 1. Humboldt Bay National Wildlife Refuge—CA
- 2. Kootenai National Wildlife Refuge—ID
- 3. Agassiz National Wildlife Refuge—MN
- 4. Rice Lake National Wildlife Refuge—MN
- 5. Mille Lacs National Wildlife Refuge—MN
- 6. Pablo National Wildlife Refuge—MT
- 7. Ninepipe National Wildlife Refuge—MT
- 8. National Bison Range—MT
- 9. Sequoyah National Wildlife Refuge—OK
- 10. Tishomingo National Wildlife Refuge—OK
- 11. Bandon Marsh National Wildlife Refuge—OR
- 12. San Juan Islands National Wildlife Refuge—WA
- 13. Dungeness National Wildlife Refuge—WA
- 14. Nisqually National Wildlife Refuge—WA
- 15. Alaska National Wildlife Refuges—AK
- 16. Mescalero National Fish Hatchery—NM
- 17. Alcheyay National Fish Hatchery—AZ
- 18. Quinault National Fish Hatchery—WA
- 19. Makah National Fish Hatchery—WA

For questions regarding self-governance contact Duncan Brown,

Native American Liaison, Fish and Wildlife Service (MS3012), 1849 C Street NW, Washington, D.C. 20240-0001, (202) 208-4133, fax: (202) 208-7407.

D. Eligible Programs of the Minerals Management Service (MMS)

MMS provides responsible stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. MMS is responsible for the management of the Federal Outer Continental Shelf, which are submerged lands off the coasts that have significant energy and mineral resources. MMS also offers mineral-owning tribes other opportunities to become involved in MMS's Royalty Management Program functions. These programs address the intent of Indian self-governance but are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions.

Within the offshore minerals management program, environmental impact assessments and statements, and environmental studies, may be available if a self-governance tribe demonstrates a special geographic, cultural, or historical connection. Generally, royalty management programs are available to tribes because of their status as Indians. Royalty management programs that may be available to self-governance tribes are as follows.

1. *Audit of tribal royalty payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in MMS delegated audits, this program is offered as an optional alternative.)

2. *Verification of tribal royalty payments.* Financial compliance verification and monitoring activities, production verification, and appeals research and analysis.

3. *Tribal royalty reporting, accounting and data management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal royalty valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Management of Allottee Leases.* Royalty management of allottee leases

6. *Online monitoring of royalties and accounts.* Online computer access to

reports, payments, and royalty information contained in MMS accounts. MMS will install equipment at tribal locations, train tribal staff, and assist tribe in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. *Royalty Internship Program.* A new orientation and training program for auditors and accountants from mineral producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance agreement but have not yet acquired mineral revenue expertise via a FOGRMA section 202 contract.

For questions regarding self-governance contact Joan Killgore, Royalty Liaison Office, Minerals Management Service, 1849 C Street NW, Room 4241, Washington, D.C. 20240-0001, (202) 208-3512, fax (202) 208-3982.

E. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, interpretation of geology, history, and natural and cultural resources. Some elements of these programs may be eligible for contracting under a self-governance annual funding agreement. The following list was developed considering the geographic proximity to, and/or traditional association of a self-governance tribe with, units of the National Park system, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement.

1. *Programs otherwise available (ongoing programs and activities).* Components of the programs on the following list are potentially eligible for inclusion in a self-governance annual funding agreement. Programs may be available within units of the National Park System.

- a. Archeological surveys
- b. Comprehensive management planning
- c. Cultural resource management projects
- d. Ethnographic studies
- e. Erosion control
- f. Fire protection
- g. Hazardous fuel reduction
- h. Housing construction and rehabilitation
- i. Gathering baseline subsistence data—AK
- j. Janitorial services

- k. Maintenance
- l. Natural resource management projects
- m. Range assessment—AK
- n. Reindeer grazing—AK
- o. Road repair
- p. Solid waste collection and disposal
- q. Trail rehabilitation

2. *Programs having a potential tribal connection (special programs)*. Aspects of these programs may be available if a self-governance tribe demonstrates a geographical, cultural, or historical connection.

- a. Beringia Research
- b. Elwha River Restoration

3. *Locations of Programs*. Aspects of the ongoing programs and activities may be available at the park units with known geographic, cultural, or historical connections with a self-governance tribe.

- a. Lake Clark National Park and Preserve—AK
- b. Katmai National Park and Preserve—AK
- c. Glacier Bay National Park and Preserve—AK
- d. Sitka National Historical Park—AK
- e. Kenai Fjords National Park—AK
- f. Wrangell-St. Elias National Park & Preserve—AK
- g. Bering Land Bridge National Park—AK
- h. Northwest Alaska Areas—AK
- i. Gates of the Arctic National Park & Preserve—AK
- j. Yukon Charlie Rivers National Preserve—AK
- k. Casa Grande Ruins National Monument—AZ
- l. Joshua Tree National Park—CA
- m. Redwoods National Park—CA
- n. Whiskeytown National Recreation Area—CA
- o. Hagerman Fossil Beds National Monument—ID
- p. Sleeping Bear Dunes National Lakeshore—MI
- q. Voyageurs National Park—MI
- r. Grand Portage National Monument—MN
- s. Bear Paw Battlefield, Nez Perce National Historical Park—MT
- t. Glacier National Park—MT
- u. Great Basin National Park—NV
- v. Bandelier National Monument—NM
- w. Hopewell Culture National Historical Park—OK
- x. Chickasaw National Recreation Area—OK
- y. Effigy Mounds National Monument—IA
- z. Olympic National Park—WA
- a-1. San Juan Islands National Historic Park—WA
- b-1. Mt. Rainier National Park—WA
- c-1. Ebey's Landing National Historical Reserve—WA

While NPS has tried to indicate the types of programs that may be available, this is not intended to be an all-inclusive listing. NPS will also discuss participation in any program with any Indian tribe, self-governance or non-self-governance.

For questions regarding self-governance contact Dr. Patricia Parker,

American Indian Liaison Office, National Park Service (2205), P.O. Box 37127, Washington, D.C. 20013-7127; telephone (202) 208-5475, fax (202) 273-0870.

F. *Eligible Programs of the Office of Surface Mining (OSM)*

OSM regulates surface coal mining and reclamation operations, and reclaims abandoned coal mines, in cooperation with States and Indian tribes.

1. *Abandoned Mine Land Reclamation Program*. This program to restore eligible lands mined and abandoned or left inadequately restored is available to Indian tribes.

2. *Control of the Environmental Impacts of Surface Coal Mining*. This program includes analyses, NEPA documentation, technical reviews, and studies. Where surface coal mining exists on Indian land, certain regulatory activities that are not inherently Federal, including, for example, designation of areas unsuitable for mining, are available to Indian tribes.

For questions regarding self-governance contact Maria Mitchell, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW, (MS-210-SIB), Washington, D.C. 20240, telephone (202) 208-2865, fax (202) 291-3111.

G. *Eligible Programs of the U.S. Geological Survey (USGS)*

The mission of the U.S. Geological Survey is to provide information on biology, geology, hydrology, and cartography that contributes to the wise management of the nation's natural resources and to the health, safety, and well-being of the American people. Information includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure and dynamic processes of the earth. Information on these scientific issues is developed through extensive research, field studies, and comprehensive data collection to: evaluate natural hazards such as earthquakes, volcanoes, landslides, floods, droughts, subsidence and other ground failures; assess energy, mineral, and water resources in terms of their quality, quantity, and availability; evaluate the habitats of animals and plants; and produce geographic, cartographic, and remotely-sensed information in digital and non-digital formats. No USGS programs are specifically available to American Indians or Alaska Natives. Components of programs may have a special

geographic, cultural, or historical connection with a tribe.

1. *Mineral, Environmental, and Energy Assessments*. Components of this program that involve geologic research, data acquisition, and predictive modeling may be available for inclusion in an annual funding agreement.

2. *USGS Earthquake Hazards Reduction Program*. Components of this program that involves research, data acquisition, and modeling related to earthquakes and seismically active areas may be available for inclusion in an annual funding agreement.

3. *Water Resources Data Collection and Investigations*. Components of this program may be available for inclusion in an annual funding agreement if a self-governance tribe demonstrates a special geographic, cultural, or historical connection.

4. *Biological Resources Inventory, Monitoring, Research and Information Transfer Activities*. Components of this program may be available for inclusion in an annual funding agreement if a self-governance tribe demonstrates a special geographic, cultural or historical connection.

For questions regarding self-governance contact Sue Marcus, American Indian/Alaska Native Liaison, U.S. Geological Survey, 105 National Center, Reston, VA 20192, telephone (703) 648-4437, fax (703) 648-5068.

IV. *Programmatic Targets*

During Fiscal Year 2000, upon request each non-BIA bureau will negotiate Self Governance annual funding agreements for its eligible programs beyond those already negotiated.

Dated: February 25, 1999.

Juliette A. Falkner,

Special Assistant to the Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada