

# DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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## DEPARTMENT OF THE INTERIOR SELF-GOVERNANCE ADVISORY COMMITTEE AND TECHNICAL WORKGROUP QUARTERLY MEETING

EMBASSY SUITES – WASHINGTON DC CONVENTION CENTER  
900 10TH STREET, NW  
WASHINGTON, DC 2001

### MEETING SUMMARY October 7-8, 2015

**Wednesday, October 7, 2015 (1:00 to 5:00 PM)**

Meeting of the SGAC and Technical Workgroup Members

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#### **Office of the Assistant Secretary – Indian Affairs Update**

*Ann Marie Bledsoe Downes, Deputy Assistant Secretary Policy and Economic Development, Office of the Assistant Secretary – Indian Affairs, DOI*

- Prior to her current position, worked for Ho Chunk Inc. in economic development; served as President of Tribal college, Administered the Indian Legal Program at Arizona State University Law School
  - Oversees the Office of Self-Governance and the Office of Indian Energy and Economic Development (including Climate Change)
  - Coordinates the White House Council on Native American Affairs and the five (5) subgroups:
    - Health,
    - Education
    - Energy
    - Economic Development &
    - Environment
- Cabinet members meet 2-3 times a year.
- Assists with Planning the Tribal Nations Conference to be held the first week of November. It will be broken out into a half day and full day session. NCAI will host pre-meetings the day before. There will be a breakout session in the afternoon and the next day will be a full day conference. Speakers include Holder, Biden, Burwell and others. The focus will be on interaction with Tribes. There will be a call out for questions when the formal announcement is sent out. Members of the Department will participate in pre-conference breakouts and take notes at the Tribal Nations Conference which will be shared agency-wide. There will be a request for agency follow-up and themes involving interagency collaboration. There will be a formal press release early next week.

#### **Sovereignty and Tourism**

The states are benefiting by marketing Tribal lands and stories. The goal is to take back our stories.

- What can we do better?

- Establish a Native American travel website where Tribes can contribute information and the site is driven by Tribal input.
- Visit American Indian Alaska Native Tourism Association <http://www.aianta.org/>
- Point of Contact is Ed Hall
- National and International – create a package for when visitors come to the US.

#### Budget - Continuing Resolution

- We are in the middle of a Continuing Resolution.
- Contract Support Costs is an ongoing issue both as far as settlements and the policy going forward. The Agency is working toward closing the loop in each area.
- SGAC members expressed a concern that the Department is emphasizing grants over contract/compact funding. Where does the Administration think Self-Governance is headed with respect to Tribal shares?

#### White House Council on Native American Affairs

- SGAC requests that a subcommittee be created to specifically address Natural Resource Management/Treaty Rights issues.

#### Advisory Group for Office of Justice Services (OJS)

- Self-Governance Tribes are not receiving updates and reports from OJS.
- There are gaps with communication and issues with consistency of services.
- TIBC endorsed the creation of a Tribal Advisory Group for OJS.

#### Trust Modernization Strategy

- At the core of Trust Modernization is Self-determination.
- SGAC hopes there is a willingness on the part of the Administration to look seriously at the Trust Modernization principles.

#### Funding by Formula v. Grant

- Tribes who receive funding via grants do not receive indirect costs nor are they allowed to recover funds they have spent for staff and other expenditures for the project from the grant program.
- When the Federal Government farms out these services to contractors it impedes developing capacity at the Tribal level and limits the Tribal government's ability to grow staff and expertise.
- Question from DOI: Is this particular to the grant scenario or is it more general?
- SGAC Response:
  - It is more general. Most Government agencies are doing this now and we think it may be an Office of Management and Budget (OMB) directive. OMB favors grants because they think the reporting mechanism is better but we are not non-profits; we are governments so we operate differently.
  - SGAC requests greater flexibility without limitations on use and other administrative burdens that distract from delivery of services.
  - SGAC members agreed that a conversation at the White House Council on Native Affairs regarding inter-agency cooperation regarding leveraging different funding sources across the Federal government to solve crosscutting issues would be helpful and may encourage great coordination.
  - One concern is that some agencies are using Grants.gov as the vehicle for the application process and Self-Governance Tribes want to make sure that Tribes are not getting lost in the process. DOI does not go through grants.gov. Instead, the money is funneled through SG compacts. We need

to be sure that compacts do not become a collection of grant funds. A compact is an agreement between two sovereigns. On the HHS side, all funds go through grants.gov and there is an application process whether it is tied to a funding agreement or not. We don't want it done this way at DOI.

## **Budget Update**

*Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management)*

- The Budget situation is difficult. We experienced a 2% reduction in FY2015.
- Democrats voted on the budget yesterday.
- President Obama indicated he will not sign another Continuing Resolution (CR) in December.
- Debt Ceiling is set to expire on November 10<sup>th</sup>.
- The new Speaker of the House will have a direct impact on the budget and debt ceiling.
- Senator McConnell is proposing a two year budget deal. If you recall, Murray/Ryan came up with a fix for FY2013/FY2014.
- At this point, it is difficult to project a sequester amount for FY2016 if Congress does nothing.
- There are three different budget numbers: OMB sets their mark in February; Congressional Budget Office proposes a number; and Congress has their own number.
- There is still hope for mandatory CSC. The House and Senate didn't give what the President had asked for but the Senate made it an indefinite appropriation so it wouldn't impact Tribal programs and services. The House side would make it X year funds and put the cap back on.
- CSC class action was presented to the judge. They are in the process of identifying all of the class members and giving folks who want to drop out of the class action the opportunity to do it. The expected timeframe for this process is 3-4 months. If there are no defectors, they can move through the process faster.
- SGAC Response: Once the settlement money comes out of the judgment fund, the main issue will be how we continue to implement 100% funding and try to get a handle on where the landmines are. We have been in discussions with folks on the Hill and have been engaging with appropriations staff. Mandatory appropriations are the target but we cannot transition to mandatory in 2016/2017 until the authorizing committee approves the concept. We are in a CR until December 11<sup>th</sup>. What is the timing for the Tribes to receive their funding allocations?
  - Response: Next Tuesday we will be loading into the system the budget allocations and make the sub-allocations to the regions and OSG. We are doing away with blame and looking at solutions to move forward. There are 119 lines in the comp table when we reprogram line to another line it takes time.
- SGAC Discussion: Understand that this happens at the Tribal level too. Who do we talk to so when we design the Tribal GPRA we can tie it into the Federal GPRA?
  - Response: George Bearpaw is developing "accountability measures" rather than GPRA measures.
- SGAC Discussion: In SG compacts we often have funding from BIA, BOR, Law Enforcement and others, SG Tribes want to report to the Federal government. How do we report it? We designed a system at the Tribal level to report it back and we are broadening it out into other agencies. We want to report without multiple reports.
  - Response: Grants.gov will come out with a policy. Notification will be on grants.gov but because we asked for an exemption we can get away from

application issue as Indian Self-Determination Education Assistance Act awards and not contracts and grants. Some funding is asking for collaborate responses on research and activities. There may be an attachment to the Funding Agreement because they want to connect the funding to data. You should receive CSC on all of the funding because it is part of the annual funding agreement. We will do internal training so that it is applied equally across the board.

- SGAC Discussion: Regarding grant.gov notification for new funding, will Tribes have to search for it or will notice come to the Tribe?
  - Response: One of the initiatives out of the White House Council and TIBC is Native One Stop (a referral system for Tribes). It will link to any resources that are available across the government. Tribes will receive notification. It will address the Buy Indian Act. All procurement plans will be posted there and it will create a repository of Buy Indian vendors to address it in a more proactive manner.
- SGAC Question: Will it tie into the Crosscut?
  - Response: The dollar amounts will not be out there but the resources will be available. It will grow over time. We have asked our sister agencies for data calls. In the FY2016 Budget Request, we requested additional resources for the collection of data and community development technical assistance but neither the House nor the Senate authorized it in the first mark.
- SGAC Request: The Tribal Transportation Program High Priority Projects is important and we ask you to support Tribes in getting it funded. The Data Management Committee – we need new traction on this effort.
  - Response: We have to look at the matrix to see what we want the outcome to be so we can tell the story of Indian country to OMB, the Department and Congress. We need to focus on marketing.
- SGAC Discussion: SG Tribes feel as if there has been an effort by the Federal government to undermine the project.
  - Response: I don't know if we have a solution. If we throw enough mud on the wall, something will stick. We need to demonstrate progress and how we are meeting the metrics.
- SGAC Discussion: VPSO Program is important in Alaska because they are the First Responders for any accident. The VPSO, Tribal Police and Health Aids work in tandem. There has been a lot of discussion about opening up the Artic but they are leaving Alaska Natives out of the discussion. Major Industrial Nations are using that passage and there are public safety concerns. Our communities need staffing and housing.
  - Response: Have you done any outreach to Homeland Security? The Coast Guard reports to Homeland Security.
  - SGAC: We have had discussions about the needs of the coastal villages. We put in a proposal with the legislature about creating a Western Alaska Emergency Response Center.
    - Response: You should talk to Loudermilk about getting this on the agenda at the Providers Conference.
- SGAC Discussion: There are silos. How do we deal with those issues? There are too many boxes and lots of agendas to try and deal with the issues that come up. The Federal Government is not ready for Climate Change.

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## **SGAC Business – Priority Areas and Subcommittee Structure**

In order to support greater output from the SGAC the Technical Workgroup is proposing a formal/informal subcommittee structure. The subcommittees will:

- Identify Key Federal Partners
- Develop a list of issues and questions
- Prepare talking points
- Coordinate invitation to quarterly meetings when necessary

The subcommittee areas and involved individuals include:

1. Budget Equity Funding – Charles (Dave), Terra, Kasie
2. Funding Program Matrix – Cyndi, Karen, Vickie, Clyde, Danny
3. OJS/DOJ Workgroup – Jennifer, Linda, John, Bruce, Liz Peterson, Eugena Hobucket, Shawn
4. Trust Review – Robert Scabby, Brenda Golden, Eugena
5. Expansion of SG in EPA – Pitt, Vickie, Tom, Karen, Jennifer
6. Transportation – Jerry, Vickie

### **Thursday, October 8, 2015 (8:30 to 1:30 PM)**

Meeting of the SGAC and Technical Workgroup Members

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## **SGAC Tribal Caucus**

### **Title IV Update**

Title IV legislation passed on the Senate side. The Bill is specifically BIA focused. Last couple of years, it has been challenging trying to address BOR concerns and we had to navigate through the language to make sure it didn't do any harm. Association of Fish and Wildlife Agency (State Agency) has an objection to the legislation. We met with them yesterday morning but their interest is a State Sovereignty Issue (State v. Federal Government) and whose sovereignty is greater. They were misreading the law. Bishop, Cole, McCullum and Kiel Weaver (staffer) are involved in the discussion. Kiel put a hold on the Bill due to water issues but we met with him to address his concerns. Bishop is in control of the bill and we want him to accept the Senate Bill but he wants to hold his own Hearing and wants a House Bill with someone other than Congressman Young as the sponsor. Our best chance for passage is if they accept the Senate version at the House. We have been trying to get Cole and McCullum to co-sign a letter to Bishop but McCullum is hesitant.

The Association of Fish and Wildlife (AFWA) sent letter after the bill passed the Senate on July 7<sup>th</sup>. Chairman Allen responded to the letter and sat down with the Committee on Indian Affairs to address their concerns last week. Chris Fleur email indicated he will meet with Geoff Strommer next week. They want a provision in the bill that Tribes/Feds would have to consult with the state agency before a funding agreement could move forward. They want to change existing law so that states have more of a role. Tribes are only trying to preserve status quo. Kiel is going to reach out to AFWA. Cole and McCullum meetings went well. They are supportive.

There is a vote for the House Speaker today but a final vote will take place at the end of the month. Debt Ceiling and Appropriations issues are looming. Looming is the AFWA issue and we don't want it to gain traction. Kiel Weavers issues have been addressed with the help of Cole and McCullum. The Bill has been referred to the subcommittee but we want it

to be reported to the Full Committee and voted on the House Floor. Congress may extend their session because of critical issues (Continuing Resolution, Debt Ceiling, and Transportation). We have to get the Bill into one of their markups.

### Tribal Transportation Unity Caucus

Share link with other members. They said that the US Department of Transportation (DOT) doesn't understand Self-Governance. Tribes have been very clear about what they mean. In February, we had a meeting and discussion. Tribes need more meetings with the US DOT.

There are growing pains with the progression of moving things along. Self-Governance provisions are a step in the right direction. We need a technical workgroup.

### Tribal Data Exchange

Chickasaw has been engaging with Interior. Part of the problem is our fault because we only have a handful of Tribes involved. We are going to try to use TIWAHE as an area to get more Tribal involvement. TDE's purpose is to show that you are using the Federal money effectively. \$220,000 is the funding that is needed to support this effort.

Tribes need to unify and be passionate about these issues and support Tribal driven initiatives.

### White House Tribal Nations Meeting

Sometimes Tribes lose energy and focus on their own issues. The White House meeting is the first week in November. On November 4<sup>th</sup> NCAI will lead the discussion on Strategy and in the afternoon we will go into breakout sessions. November 5<sup>th</sup> is the meeting with the President.

- We need a discussion paper on why Self-Governance is important for the White House meeting. Weave into it a discussion of our issues: Title IV and Title VI; Mandatory CSC; Desk at OMB; Consultation Policies – government to government relationship including how the agencies are complying with the policy and reporting back on how they are implementing the policy.
- The technical team can pull together a list of issues that are important to us. (ICWA, Taxation, NLRB, etc.)
- We need to keep working on the Title IV legislation but if there are things that we can do administratively to address some of the issues, it is important that we try to go that route. Public Safety/TLOA/VAWA – capacity to implement the legislative authority, the requirements and needs of Tribes and concerns of Tribes in PL280 states are all issues to consider.
- This is the last year the President will hear and try and execute something. There are a lot of issue areas but what are the overarching principles? Have a Secretary and Assistant Secretary who are very supportive of Tribes. Provide ideas for a longer term vision for the future of Self-Governance for the next Administration. Obama needs to up the anti so we can get closer to the vision. Ask them to take Affirmative Action.
- Make permanent the White House Council on Native American Affairs. We need an Indian desk at OMB. Focus on the top level issues and then we can start to pick things off. Describe what we want, what we think we can do and challenge them.

## **Meeting Called to Order at 8:25**

### **Invocation**

Delia Carlyle, Councilmember, Ak-Chin provided the invocation.

### **Roll Call**

Alaska: Robert Keith, Chairman of the Board, Kawerak, Inc.  
William Micklin, 1<sup>st</sup> Vice President, Central Council of Tlingit and Haid Indian Tribes of Alaska

Eastern Oklahoma: Vickie Hanvey, Self-Governance Coordinator, Cherokee Nation  
Mickey Peercy, Executive Director, Choctaw Nation

Midwest: Jessica Burger, Councilor, Little River Band of Ottawa Indians

Pacific: Danny Jordan, Self-Governance Coordinator, Hoopa Valley Tribe  
Scott Sullivan, Council Secretary, Tolowa Dee-ni' Nation

Phoenix: Lindsey Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation  
Delia Carlyle, Vice Chair, Ak-Chin Indian Community

Southern Plains: Rhonda Butcher, Director, Citizen Potawatomi Nation

Southwest: Louis Romero, Governor, Pueblo of Taos  
Chris Gomez, Lt. Governor, Ysleta del Sur Pueblo

Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe  
Tyson Johnston, Vice President, Quinault Indian Nation

### **Committee Business**

#### **MOTION**

Chairman Robert Keith (Alaska Representative) made a motion to approve the July 2015 SGAC Meeting Summary as submitted.

Lt. Governor Chris Gomez (Southwest Representative) seconded the main motion.

Motion was approved without objection.

### **Opening Remarks**

*Kevin K. Washburn, Assistant Secretary – Indian Affairs, Department of the Interior*

#### **CSC: Ramah Settlement**

- DOI has a proposed settlement and if it goes through it will save 10-15 years of litigation with each Tribe. We hope Indian Country agrees to mandatory funding for CSC. We asked for it but the House and Senate have not provided it yet.
- SGAC Response:
  - We received an update yesterday from Tommy Thompson on CSC. We understand the court issues need to be sorted out. If everything goes well, we will receive our checks sometime in the spring. We are excited about this. The negotiations were challenging. We are aware of the desire for mandatory funding for CSC but we are also seeking another route and have proposed transitional language. We are engaged on the CSC issue and do not want the obligation to fund CSC 100% to infringe on program needs. We appreciate the work you have been doing to update the CSC policy. The BIA is leading the way in this area.
  - The Indian Health Service may approach the BIA looking for direction because we keep saying that the BIA has it right.

Budget

- We are under a CR until early December. We continue to look for opportunities in the Budget. We will consider the Budget again in December. The President asked for a \$300 million increase for Indian Affairs.
- SGAC Request: We ask that you continue to champion and support our request for an exemption from sequestration.
  - Response: Every agency of the government wants an exemption from sequestration. Frankly, it is up to Congress and I would encourage you to keep up the advocacy efforts on this. We cannot meet our trust responsibility if the budget is cut.

Native Hawaiians

DOI proposed rule for Native Hawaiians will give the Hawaiians a path to follow similar to the Tribes if they choose to go down that path. There are people in Hawaii who do not want to be recognized as a Government, they just want Hawaii back. Currently, there is no government-to-government relationship with the Native Hawaiians but there are more than a dozen statutes that deal with Native Hawaiians.

Carcieri Fix

The 2009 decision leaves some Tribes out of the land-into-trust process. Only Tribes that were under Federal Jurisdiction in 1934 can take land into trust. We tried to take administrative action by developing the Patchak Patch and we are working on a Solicitors Opinion on how to interpret the Carcieri Case. We recently took land-into-trust for the Mashpee Tribe. We are continuing to work on a Carcieri fix. Senator Barrasso introduced the Interior Improvement Act but the administration has taken no formal position on the bill. We have taken 304,000 acres of land into trust. Cobell restored more than 1.4 million acres to Tribes. Some Tribes are not able to take land into trust (Narragansett Tribe has houses sitting empty because of this issue).

- SGAC Response: Tribes have been very vocal about their support for the Barrasso Bill. It provides too much authority to local governments and diminishes Tribal authority. We know that he is trying to do the right thing. It is not helping in that it will slow down land-into-trust. The closer we can get to a clean fix the better. We feel a clean fix is the solution. Trying to address other issues is not the answer.
  - ASIA Response: The Interior Improvement Act codifies what is already in practice. We have been trying for six (6) years to fix this. We believe in a clean fix but a compromise may be in order.

White House Tribal Nations Conference

This will be the 7<sup>th</sup> White House Tribal Nations Conference. What do all of the agencies need to be focused on so the positive aspects of Obama's legacy carry forward? What other kinds of things can we push across the finish line? We need broad participation across Indian country. During the Clinton Administration, the land-into-trust regulations were issued during the Lame Duck Session but they were not effective for 30 days. The first thing that George Bush did was to issue an Executive Order that all regulations that were not in effect were put on hold indefinitely. We want to make sure that everything that we worked hard to accomplish happens. Ongoing work includes:

- Indian Child Welfare Act – we faced a lot of opposition and survived the first major motion in the court.
- Tribes are unified over protecting Indian children. ICWA dramatically improved things. We are trying to tighten up the loop holes. Since that time, there has been backlash in Congress on Indian programs as evidenced in the Hearings held last



spring. Our efforts to take 304,000 acres of land into trust have caught the attention of some members of Congress who are opposed to this. We may see members of Congress who oppose ICWA.

- SGAC suggests that the BIA staff that deals with the documentation of the effectiveness of ICWA try to spin this in that way. In Washington State, the law requires the state to comply with ICWA. Interior should be proactive on this and expect a bill to emerge. The public relations perspective is difficult. We have been employing NCAI and NICWA to help us. We need your help too.
- Right of Way Regulations – drawn fire from the states, public utilities, telecom companies. They are opposing it because the proposed rule defers to Tribal sovereignty. The regulations are at the White House for final review and we hope to issue those within a matter of weeks.
- Leasing Regulations and Hearth Act Regulations we are trying to get finished have a broad theme to promote greater Tribal self-determination and Tribal sovereignty by expanding and protecting Tribal sovereignty.

SGAC is reflecting on our recent Tribal Strategy Session and how we prepare against the backdrop of issues that Self-Governance would like to highlight. We need to collaborate on how we envision progressive growth of Self-Governance for this Administration and tee up for the next Administration. We know that you are actively involved in shaping the agenda and messages – this issue (Self-Governance) has to stay front and center as one of the success stories.

- SGAC Question: What is the most important Self-Governance issue – the big thing that the Administration can accomplish?
  - Response: We got full funding \$940 million. Mandatory funding would be perfect. It is a big one to try and get across the finish line. We are still working on the CSC process.
- SGAC Discussion: Just give us the tools to do for ourselves. If you last 17 months (as AS-IA) will you be breaking any records? There was a period during the last Administration when we didn't have an AS-IA forever.
  - Response: I think the President had a ball in Alaska. He really enjoyed it. There is nothing better than when the President spends time in Indian communities. Appreciate the Alaska Natives making it a positive experience for him. We always do a conference in November/December and one thought was to do it earlier. Would propose Hawaii but given the logistics it is important to do it in Washington DC. We want the other agencies at the table, the cabinet secretaries and important staff. Longest serving AS-IA in 15 years, Kevin Gover served slightly longer. We are getting a lot of things across the finish line.
- SGAC Discussion: We appreciate the consistency of leadership. In the last Administration, the team kept changing. Staying for the long haul is important. We know that you are trying to fill key leadership positions. We want to make sure to move Self-Governance forward (EPA, HUD, Transportation and other agencies). We need help to get Title IV passed. Send a strong message that we are in a new frontier of strengthening the capacity of Tribes. We need a report on what we have achieved in eight years.

#### CSC Policy

Data Call needs to be better for CSC final 2015 amounts Funding Agreement. There was a total of \$88 million in CSC distributed as of September 25, 2015.

- SGAC Question: What kind of breakthrough did you have for facilities?
  - Response: We have had discussions about Operation and Maintenance square footage formula.
- SGAC Question: We never received facilities money from OJS. There are different kinds of facilities: education, detention, etc. Is there a special facilities formula?
  - DOI: The National Distribution Methodology is used for law enforcement, Tribal courts, etc. Buildings have been built and some Tribes have base square footage in there.
    - SGAC: Many have Tribal courts but we don't receive anything relative to the formula. Our Tribe did it at our own expense.
      - DOI: All of the Federally owned buildings that Tribes are using nationwide are part of the formula funding. FY2015 Budget the Tribes were funded about 48 cents to the dollar. It is all based on whether it is federally owned. If it is a Tribally operated facility it can go into the indirect cost pool or you can directly charge it to the program. If the Tribe builds it for their own exclusive use they should enter into an Agreement. Allocation of costs will be negotiated based on the origin of the funding.
- SGAC Question: We have been negotiating our position but our fringe benefits are only 15%. Why is it so low?
  - DOI Response: Fringe should raise it to about 35%.
    - The Portland area said 15% is the standard that they have been using.
    - DOI Response: If you count service employee it is less but if it is new it is about 35%. Cost information for pay costs includes fringe benefits for health insurance. The cost for FY2016 is going up about 7.5 % so it will go into our calculation. It is important to report current staffing levels.
- SGAC Discussion: Our FY2015 AFA is held up on our Tribal name. It is finished, signed and ready to go. We filled out the worksheet for CSC and sent it in. We submitted comments to Nic Longley. The table is a good tool but some areas need further definitions.
  - DOI Response: At the next meeting of the CSC workgroup we can take it up.
  - SGAC Discussion: The spreadsheet is pretty onerous. We need to come up with a one pager with precise information. We need to do this so it is easier for Tribes to provide the information.

### **Update on Contract Support Costs (CSC) Ramah Settlement**

*Don Simone, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP*  
Settlement

- The case was filed as a class action in 1990 and has been pending for twenty-five years. In 2012, the class won the claim in the Supreme Court by a 5-4 decision. Finally, the Class Action Suit has reached a settlement, which was filed three weeks ago.
- Proposed settlement of \$940 million is the projected payment to the class.
- There were approximately 12,000 separate contracts and each of which had their own damages calculation. To individually assess each contract would have taken ten plus years so the method used was sampling.
- There is a strong correlation between the amount the class received and the amount owed. Able to allocate money over all class members.

- There is a listing of the percentage for each class member by name. Go to the class website RWCSettlement.com (estimated dollar amount) the percentage of fees will be applied to the net amount after. There are attorney fees, reserve account administrator and litigation fees that will be deducted from settlement.

#### Process for Settlement Approval

- Three weeks ago we submitted to the District Court with a request for preliminary approval. The Judge held a Hearing and granted preliminary approval of the settlement. It triggers formal notice to the class regarding the terms of the settlement. The notices were mailed out last Friday by class counsel, the BIA and it was published in major newspapers.
- Class members have a forty-five (45) day period to file comments or objections with the court. Then, there is a month (mid-December) for class counsel and the government to respond.
- The judge set a fairness hearing for February 20<sup>th</sup> and objectors can argue support for their objections.
- After the Fairness Hearing, there will be a decision of the court on whether to grant final approval of the settlement. (estimate that this will take about two months mid-March 2016)
- If the court grants final approval, there will be another sixty (60) day period and if there is no appeal then the final decision will be issued within 10 days.

#### Payment Process

- The Department of the Treasury will pay the settlement to the class and start the distribution process. (next spring April/May)
- An Administrator will be appointed by the court and will send out the claim form with a specific amount.
- The class member has to sign the form and send it back.
- The process will be supervised by the class monitor.
- The dollar amounts are a percentage of the net estimate.

#### Discussion

- SGAC Question: Is there any expectation of any objectors? Do you think that it will be minimal if there are objectors?
  - I think the settlement is very good and the alternative is not good. The government will argue that the class will be decertified.
- SGAC Question: Does every Tribe has the option to opt out?
  - No. The vast majority of class members had two opportunities to opt out in 1993. In 2002, there were additional claims so the opt out is really right at the beginning when the class is formed. A subset of class members (Alaska became a class member in 2002) will be given the opportunity.
- SGAC Question: Will there be communication regarding no good alternatives?
  - We are trying to do as much outreach as we can do. Notices were sent directly to class members and are posted on the class website.
- SGAC Question: Will class council make work papers available on Tribal shares?
  - No, because it is covered by the confidentiality of the court. We have made a percentage available for review.
- SGAC Question: How does the Tribe evaluate the number?
  - The theory is the more CSC the Tribe received, the greater their settlement. Navajo received the largest amount.

- SGAC Question: The case was based on the framework of self-determination so it applies to BIA and IHS?
  - No, it only applies to the BIA. Due to the case, Congress and the Administration changed their position on fully funding CSC.
- SGAC Question: It flows to the IHS because it dealt with the cap issue last year. With regard to the amounts, is there a comparison of the funding levels in the Green book?
  - \$4 million in reserve has been set aside for Administrative costs.

## **Legislative Update**

### **Mandatory CSC**

The President's Budget proposed mandatory funding for CSC. However, we have to work with the Appropriators and Authorizers to get it passed in Congress. There are two versions in the House and Senate. The Senate side has language establishing a CSC line item that would not be capped but it would still be under the discretionary budget. The House said the final bill will reflect the Senate language. Some language that needs to be discussed is the IHS "incurred cost" approach but decided to wait on it to allow the Self-Governance group to work with the IHS on it first. Discuss strategy for active advocacy on the hill which involves the Budget Committee and need to have conversations with the Majority and Minority staff. It will be an education process. We have appropriators who are supportive of making this mandatory. They have already accounted for it with offsets.

### **Sequestration/Rescissions/Reductions**

Budget Control Act (BCA) 2011 made a series of cuts to the tune of about a \$500 million impact on the BIA and IHS. The 2013 Budget Agreement offered temporary relief but it is set to expire in 2016. Tribes need to consider how sequestration will impact their programs. The Budget is below 2015 enacted levels. Tester/Udall introduced S.1497 which would exempt BIA and IHS from sequestration. Before 2011, the IHS was exempted from sequestration. In 2011, the IHS was taken out of the excepted programs. It is very difficult to get back into the exempted programs because the money would have to come from somewhere else so it would be robbing Peter to pay Paul. We need to keep hammering away at this. Why are any Tribal programs subject to sequestration? Tribes need to plan for the worst case scenario. The leader of the Republican Party wants a Budget deal. If there is no deal we are left with FY2015 levels with a 2% off the top cut. Encourage Tribal CFO to plan for a 2% cut.

### **Tribal Labor Sovereignty Act**

Labor Unions and the National Labor Relations Board (NLRB) are of the position that Tribal sovereignty is less important than employee bargaining. We have an opportunity to pass the legislation in the House and think that a vote will happen anytime now. We have a real chance in the Senate if it is framed as a sovereignty issue. Shakopee sent a letter to the White House asking them to support it as a matter of sovereignty. We may be able to push this through if we frame this as a self-governance issue. Tribes' set terms of employment issues with employees not some outside organizer. It only has to be one aggrieved employee in any sector of government to go to the regional office of the NLRB and they can file an unfair labor practice against the Tribal government. The NLRB is saying prove it is a government and prove that you spend money on government functions. It is an intrusive subpoena of records. The NLRB is questioning the Tribal preference provisions, the basis for Tribal ordinances and the fairness of Tribal courts.

### Interior Improvement Act

Tribes have engaged in dialogue with the Committee for a clean fix to Carcieri. Bills in the House and Senate have bipartisan support and like Carcieri any parcel in trust is confirmed to be held in trust.

### Tribal Transportation

Expiration of the Highway Reauthorization the issue is about finding offsets. In order to do an extension, they will need to find an offset. Shuster wants to get this done.

### 477 Update

There was a good Hearing in the House. The Administration (HHS) opposes the Bill. The BIA has been a terrific advocate and has been working hard with the Authorizers in the House and Senate to move it forward. Hopeful to get it out of the House Committee.

### Tribal Capital Improvement

Change the IRS code to have Tribe as members of an S Corp.

### Voting Rights

Tester has introduced a Bill. Murkowski has joined Leahy staff's approach but this is a low not high priority for the majority on the Senate. It is a tough battle. Alabama just shut down their DMV and you need the DMV to register to vote. Legislative approach is one aspect but there is an effort to get more litigation. In 2016, this will be a critical issue. There is litigation in Indian country in Alaska on bilingual and remote access.

### NAHASDA

The Senate wants to move their bill. The House passed their version. There are some differences. NAHASDA reauthorizes the Native Hawaiian Block Grant and the Senate objects to the reauthorization. Barrasso kept it in the Bill. He is a leader and well respected in the Republican caucus. There is no funding for it in the budget this year because there is a backlog in spending and this is a difficult obstacle. Young has no intention to drop it. Murkowski is supportive of it. Hawaii remains a significant issue. Mike Andrews came from HUD and worked in ONAP and has made this one of his highest priorities.

### ESEA

Bills have been passed in the House and Senate and it is ready to roll depending on how the stars line up.

### Budget

McCarthy withdrew so the Speaker position is wide open. FY2016 Continuing Resolution 19.67% of sequestered amount from FY2015. Across the Board Reduction off of 2015. \$2.6 Billion of FY2015 enacted sequestered amount is 5.843 million which would lower the 2016 amount to \$2.59 million. \$510 million for all operations comp table will be loaded on Tuesday. There are 130 lines, 130 protocols times 567 Tribes. There may be 3-4 protocols for a singular fund. FY2016 forward will depend on who is the House Speaker. Treasury has indicated that the first week of November they will be out of funds. OSG needs to get the money out before the first week of November. If Congress doesn't address the BCA, we are looking at Across the Board Cut for the entire year. Hopefully, they will come up with a Budget deal so we can plan accordingly. \$2.9 Billion President's Budget Request. The CR money will go out two weeks from Tuesday to Tribes. FY2017 the priorities and initiatives are the same as they were for 2016. TIWAHE – need to work on metrics that shows it is a viable option and ties into President's Gen-I initiative. In 2018, Tribes need to be engaged

at the regional level. 10% needs based initiative form at the regional level to justify your numbers. After the regions complete their meetings, the 12 proposals will be consolidated together. Under the need issue, you can identify the agencies who need to participate. We are working on changing the silo model.