

# DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education  
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## DOI Self-Governance Advisory Committee and Technical Workgroup Quarterly Meeting

Tuesday, July 19, 2016 (8:00 am to 5:30 pm)  
Wednesday, July 20, 2016 (8:00 am to 12:30 pm)

**Embassy Suites Washington DC - DC Convention Center**  
900-10<sup>th</sup> Street NW  
Washington, DC 20001  
Phone: (202) 739-2001

### MEETING SUMMARY

**Tuesday, July 19, 2016 (8:00 am to 5:00 pm)**

#### **Meeting of the SGAC and Technical Workgroup Members**

##### **Invocation – (All Participants and Invited Guests)**

Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah) provided the opening invocation for SGAC.

##### **Roll Call, Welcome and Opening Remarks**

**W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)**

**Alaska:** William Micklin, 1st Vice President, Central Council Tlingit and Haida Indian Tribes of Alaska

**Eastern:** Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah)  
Marilynn “Lynn” Malerba, Chief, Mohegan Tribe  
Stephanie White, Treasurer, Wampanoag Tribe of Gay Head (Aquinnah)

**Eastern Oklahoma:** Karen Ketcher, Proxy for Bill John Baker, Chief, Cherokee Nation  
Melanie Fourkiller, Proxy for Gary Batton, Chief, Choctaw Nation

**Midwest:** Annette Johnson, Treasurer, Red Lake Band of Chippewa Indians

**Northwest:** W. Ron Allen, Chairman/CEO, Jamestown S’Klallam Tribe (SGAC Chair)  
Julie Finkbonner, Councilwoman, Lummi Indian Council

**Pacific:** Scott Sullivan, Council Secretary, Tolowa Dee-ni’ Nation  
Loren Me’-lash-ne Bommelyn, Chairperson, Tolowa Dee-ni’ Nation

**Southern Plains:** Kasie Nichols, Proxy for John Barrett Jr., Chairman, Citizen Potawatomi Nation  
Kay Rhoads, Principal Chief, Sac & Fox Nation

**Southwest:** Benito Sandoval, Governor, Taos Pueblo  
Chris Gomez, Lieutenant Governor, Ysleta del Sur Pueblo  
Daniel Lucero, Tribal Secretary, Taos Pueblo  
Shawn Duran, Tribal Administrator, Taos Pueblo (SGAC Vice Chair)

**Western:** Delia M. Carlyle, Councilmember Ak-Chin Indian Community  
Lindsey Manning, Chairman, Shoshone-Paiute Tribal Business Council

##### **Office of Self-Governance Update**

**Sharee Freeman, Director, Office of Self-Governance, DOI**

- New Staff in the Office of Self-Governance
  - Fiona Teller, Financial Specialist – OSG, Central Office
  - Cherrise Reyes, Summer Intern – OSG, Central Office

- Model Fast Act Addendum and Funding Agreement on Self-Governance Database – In 2017, the Negotiation Guidance and all of its attachments may be found on the Self-Governance database under a post titled, “2017 Self-Governance Negotiation Guidance for BIA Programs – List of Attachments”
- This new addendum needs to be completed and returned to OSG before the end of September.
- CSC
  - \$97 Million was distributed to SG Tribes, \$590k (.67%) were overpayments in 2015
  - There’s no process in ASAP to fix the overpayments, so OSG requests patience as they determine the best way to receive overpayments.
  - The Bureau just decided they will work through the ASAP process, creating additional work for the Tribe.
  - 15 of 115 Tribes have responded to the December 11, 2015 Data Call Letter
    - Tribes must respond by August 1, 2016
- Tiwahe increases
  - TIWAHE increases for 2015 are base transferred recurring funds and are based on 2014 Green Book numbers. The ICWA increase is 21.54% and the Social Services increase is 8.07%. The Bureau has questions about the amount owed to about 31 Tribes. The Tribes who keep their ICWA and Social Services funds in Aid to Tribal Government or Consolidated Tribal Government Program are the Tribes in question. Some of the Tribes broke their funds out and some did not. For Self-Governance, a number of Tribes have that number as part of their base recurring increase. The Acting Assistant Secretary decided to send a letter to the Tribes asking them how they arrived at their number.
- OST Tribal Trust Evaluation Methodology Listening Sessions. In the regulations there is a requirement for the Bureau and OST to do annual trust evaluations. In the early days of Self-Governance this occurred. However, as Self-Governance grew larger and Tribes took over the responsibilities it became more of a paper exercise and then OST stopped coming out each year. OST has come up with a methodology to have Tribes Self-Certify their trust activities and submit the information collected into a database. It was suggested that they demonstrate what the system looks like and go to the regional meetings to demonstrate to Tribes how the system works.
  - Tuesday, August 2, 2016: BIA-Central California Agency
  - Thursday, August 4, 2016: BIA – Northern California Agency
  - Tuesday, August 30, 2016: BIA – Midwest Regional Office
  - November 29-December 2, 2016: BIA Tribal Providers Conference

#### **Tribal Discussion**

- OST did not send out a DTLL announcing the listening sessions and it is not posted on the website.
- OSG – We suggested that they put the information on their website and provide OSG with a flyer to hand out. They have had two sessions already in OK and AZ. They offered to come to the quarterly meeting to discuss it. We told them we could request that they be put on the agenda and set up a room for them to demonstrate the system.
- OST left it up to the Tribes in the region to invite the other Tribes. They are not sending out a notice but SGCE has included it in the Self-Governance broadcasts.

- OSG – There will be another set of meetings scheduled to discuss H.R.812 or the Trust Asset Reform Act but we don't have the dates yet. There will be a Federal Register Notice with dates of the OST Listening Sessions scheduled to start August 22.
- OST is broken and they are trying to exercise authority in an area in which they have no authority. The meetings are a waste of our time. The new Trust Bill is a great bill. It advances Self-Governance and allows Tribes to develop their own management plans.
- What is the status of the Under Secretary and who will serve in that capacity?
  - It will be a subject addressed during the consultation sessions.
- Who will preside at the Listening Sessions?
  - Representatives from OST, Secretary's Office and AS-IA's Office
- Office of Self-Governance – Distributions 2016
  - Job Placement and Training - \$1,145,223
  - Rights Protection and Implementation (Climate Change) - \$2,081,191
  - Water Management, Planning and Predevelopment - \$657,930
  - Forestry - \$1,071,015
  - Hatchery Maintenance - \$2,602,496
  - Various Trust Obligations - \$1,821,447
  - Contract Support (Pool 2) - \$78,552,133
  - HIP - \$990,950
  - Road Maintenance - \$819,464
  - Real Estate Appraisals – \$557,209
  - CCDF (Discretionary) - \$3,061,925
  - CCDF (Mandatory) - \$1,247,970
  - Supplemental Youth - \$2,550,231
  - Safety of Dams - \$4,834,435
  - Wildland Fire Preparedness/Prevention/TRM (Final and IDC) - \$1,343,290
- DOI Announces Consultations on Regulations Governing Probate
  - Tuesday, July 12 2016: 2:00pm-4:00pm Eastern
  - Wednesday, July 13 2016: 2:00pm-4:00pm Eastern
  - Each Session will use the following call in information: Call-in number (800) 857-7479 Passcode: 6543434
  - Written Comments will be accepted until August 1, 2016. Comments can be submitted electronically to [consultation@bia.gov](mailto:consultation@bia.gov)
- Launch of BIA's Tribal Leaders Directory as a Searchable Electronic Map
  - Acting Assistant Secretary – Indian Affairs Lawrence S. Roberts announced on June 13, 2016, that the Bureau of Indian Affairs' Tribal Leader's Directory is now available as an electronic searchable map.
  - The map provides up-to-date contact information for the nation's 567 federally recognized Tribes and all BIA regional offices and agencies. The map can be accessed via the [bia.gov](http://www.bia.gov) and [indianaffairs.gov](http://www.indianaffairs.gov) websites using the Tribal Leaders Directory. Direct link: [http://www.bia.gov/tribalmmap/DataDotGovSamples/tdl\\_map.html](http://www.bia.gov/tribalmmap/DataDotGovSamples/tdl_map.html)
- Bureau of Indian Education Director Position
  - Closes August 8, 2016
  - Applications must be submitted online to [USAjobs.gov](http://USAjobs.gov)

- Internship Opportunities
  - Native American Political Leadership Program (NAPLP)  
<https://semesterinwashington.gwu.edu/naplp>
  - INSPIRE Internship Program for high school Juniors, Seniors and recently graduated Seniors <https://inspire.naplp.gwu.edu/>
  - The Washington Center <http://www.twc.edu>
  - Washington Internships for Native Students (WINS)  
<http://www.american.edu/spexs/wins/>
- Strategic Plan – We are measured on how well we do on audits and how well we do with management decisions on audits. We have been through discussions trying to change the measures. How do you measure our performance on the Tribal audits? What is it that we should be measured by?
  - We discussed this this morning. We need to engage with you and Melvin Gilchrist and whoever else is involved. We are trying to fix the system to get appropriate measures.

### **Indian Services Update**

*Hankie Ortiz, Deputy Bureau Director, Office of Indian Services, BIA*

*George Bearpaw, Director, Office of Budget and Performance Management, Indian Affairs, DOI*

- FY2015/2016 Contract Support Costs (CSC) Payments to Tribes
  - A timeline report was provided to SG Tribes
  - Normally, once Indian Services receives Self-Governance money within two days.
  - Had to wait for Budget Office to establish a new Treasury code
  - Final Report on CSC Money was sent to Indian Affairs on April 1<sup>st</sup>
    - Initiated FY16 funds out to Tribes.
    - May 26<sup>th</sup> all funding had been distributed to Regions and OSG.
  - They are in the process of bringing Tribes to 100%. SG Tribes were funded at 99.14%.
  - The Budget Office worked daily to get the new warrant to allow for payments to go out to Tribes.
- CSC Workgroup update
  - Tribal consultations were hosted and feedback was gathered.
  - Feedback was organized by topics in order to find solutions.
  - Comments are still being accepted.
  - Comments will be organized and shared with the workgroup.
    - Tentative dates for in-person meeting is August 15<sup>th</sup>.
- Tribal Discussion
  - There is no justification to withhold the initial payment if there is a current rate.
  - The repayment process has not worked. DOI is not cashing checks and is not helping fulfill the outstanding need for other Tribes.
  - Contract Support Costs is supposed to create stability for Tribes. However, the Interior Business Committee (IBC) is not a part of the BIA budget process and does not have a comprehensive understanding of the Self-Governance or the BIA process.
    - Response:
      - IBC is not part of the policy discussion, because the policy is meant to pick up where IBC left off.
      - The policy does allow for at least 4-year old IBC rates so Tribes do not have to renegotiate annually. Additionally, small Tribes can use a flat rate percentage for CSC.

- Lump sum payments do not work for every Tribe and there is some difference how Tribes want to address their payments.
- We need to look at several years because it is clear that a single year process does not allow for smoothing over time.
- It is obvious that the Tribes are frustrated to the point of anger because this is not a new problem. Other than establishing a congressionally authorized separate account, who is responsible for the “harm” to the 350 Tribes? Most Tribes didn’t receive their money and only received CR#1 funds. We didn’t receive CR#2 funds until June (8 months into the fiscal year). We pay billions of dollars to carry out the federal obligation. The system is screwed up. What is the restitution? We get requests from the Bureau saying you have been overpaid and we want the money back within ten days but it is a different story when you owe us then we are forced to wait 8, 9, 10 months for our money. Who is not doing their job? We are still waiting on the remainder of our funds. It is July and we are still waiting.
- It is ironic that one of the measures for whether or not Self-Governance Tribes are performing well is our audit and the CSC money is used to pay for our audits so you have set us up for failure. Our staff is asking us when we will be getting the money because they need to make payroll. We were hopeful when the Department was performing an assessment on the Bureau’s internal budget structure that the recommendations for improvement would remedy the system. Where is this Report and what improvements have been made?
- Couple of years ago we told the Budget Office that most of us have consistent CSC rates and there isn’t any reason why the Feds cannot pay 80% up front. Once the money is allocated to the Bureau we should get our money. Why did the Indian Health Service (IHS) get our CSC out to us a lot quicker than you?
  - Response – The process that we went through this year is not something we need to do every year. It was only something we needed to do this year. We didn’t receive the authority until mid-April. We had unexpected delays and everyone yelling at us. We make getting the CSC money out a priority. There was a contractor that was hired to examine the Bureau’s funding streams and we were looking forward to the recommendations but don’t know what happened. If there is a way for us to do it better we will.
- Next year is going to be an “awkward” year because of the elections. We are hearing it will likely be a six month CR. If this is the course of action that plays out then the Administration needs to be prepared to assist us. If you get 60% of the years funding then we want the money up front. We don’t want just base funding. We want CSC funding in the first quarter. You caused unacceptable harm this year. If there is insufficient money then go back to the Treasury and ask for more money so that it does not impact our programs.
  - Response – That is the FY2016 CSC language but the problem is with FY2015 CSC. A couple of years ago we started the CSC consultations and held eight (8) in-person consultations on CSC. We identified specific questions but also asked for ideas about how we can do it better. We had in-person and written comments submitted by Tribes. We compiled the comments and had a face-to-face meeting with the CSC workgroup consisting of Tribal representatives from every Region and Federal staff. There are Self-Governance Advisory Committee members on the CSC workgroup. We completely revamped a seventeen (17) page document into six (6) pages because the directive from AS-IA was to simplify and clarify it. There were a lot of negotiations that took place at the table. This year in 2016, we started

the second round and have conducted four (4) sessions. We are still collecting comments on the policy which will close July 29<sup>th</sup>. You can submit comments and the BIA website has additional information on how to do this. After the comment period closes, we will have an in-person CSC workgroup meeting. The tentative date is the week of August 15<sup>th</sup>.

- In the past we have had a lot of problems with CSC regarding getting the payments out in a timely fashion and being fair with the way we calculated the payments. There was a lot of litigation. We want to be partners with Tribes and treat everyone fairly. The goal is to make recommendations based on the advice of this group. It is important that we have experts on the workgroup. We will put together the policy and send it to the AS-IA for approval. The goal is to get this finalized before the end of the year. We are working on the dates and have to identify three (3) locations – we need to do a cost comparison.
- In addition to the timeliness of payments, in the policy it states the payments should be upfront. There is no justification to withhold the money especially if you have the first payment. It should be 100% that is paid out especially if a Tribe has a current rate.
  - Response: There is a difference between Title I and Self-Governance. Maybe we need to do it the same way. It is only done that way for Self-Governance.
- There is an issue with your repayment process for Tribes who have deemed were overpaid. We were overpaid by \$3,000 and were asked to provide a check within ten (10) days. We sent a check in and the check was never cashed and now the check is outdated. The repayment process is a failure. You should apply it to future payments rather than cutting checks and reallocating the money.
- When we started Self-Governance in the 1990s we discussed base budgets which included CSC. We are now in 2016 and we are still talking about CSC. The Interior Business Council (IBC) is much like OST they are disconnected from the budget process. We need to get into long term Agreements and if there are changes within that time frame we can agree not to do anything for two years. The new policy ignores the fundamental fix – get back to the base budget concept. If a Tribe has a rate for multiple years then lets lock it in. Why can't we have a long term contractual agreement on CSC?
  - Responses – The IBC is not part of the policy discussion because the purpose of the policy is how we calculate CSC. IBC's role comes before it and they are not part of Indian Affairs. We use the rate that is identified. We kept it in the policy that we will accept an indirect rate that is four (4) years old or less. Other agencies require that you get an annual rate. In BIA and the IHS we are more lenient. In the policy, small Tribes that cannot afford to negotiate we simplified the method and a flat rate would apply if it is less than the audit threshold of 750,000. For larger Tribes, they have the option to negotiate with an awarding official. We did hear some Tribes requesting a lump sum but others said no way we want to negotiate a rate annually because things change year to year. There is a vast difference among Tribes for how they want business done.
- It should be easy for the BIA to keep portfolios as to whether a Tribe has a current rate or a lump sum. This is an easy database to have in place.
  - Response – The regions and OSG tracks this information.

- We are upset with the approach that the IHS is taking regarding reconciling if we charge CSC appropriately. We hope that the BIA will not go down this trail. There are new agreements (SG) that Tribes have with Feds and we have the authority to take the money and redesign it.
- That is what is being undermined. We are governments. These are all treaty and trust obligations. We are sovereigns and have the right to design programs in a way that gives flexibility to the Tribes. The IBC process creates the Ramah problem. It is not appropriate for any agency to say do what we want because Tribes have different ways of doing things.
- Central Council has \$35 million in state and Federal funding. We don't have a casino or enterprise money. We have a trust fund with a little over \$10 million dollars. So, in order to meet our obligations due to shortfalls, deficits, etc. we need to take money from the earnings of our trust fund. Last year, we needed \$266,000 and we only received the final payment two weeks ago. We had to carry the costs with letters of credit and other means. We leverage \$7-10 dollars from our trust. When dollars are delayed, it has a significant effect on our finances and we are not compensated for the loss. This timeline has a real impact on our people. How predictable is it that we will receive a late payment next year? When we talk about reconciliations from year to year we understand it is structured in an odd/even year cycle so if the money is carried forward it will be reconciled in a two (2) year cycle. We thought our external audit made certain what the payments should be year to year.
  - Response – We want to get this resolved. There are differences between the BIA and IHS so we decided to use our own policy.
  - I worked for the IHS for 16 years and prior to that I worked for the Cherokee Nation twice. The last cycle was for ten (10) years. There were problems with the FY2016 Budget. When Congress approved CSC to be a separate line item they were working on the mandatory breakdown. We didn't know all of the things that we needed to change internally to accommodate the separate line item. It was an awakening for the Department. We worked directly with the Treasury to secure the warrant that we needed in order to receive the money. In January, when the money became available, we worked with the Treasury and we went through two formats to try and get the warrant. We worked on it through January and February to try and get the warrant. This back and forth was daily and continued until March 24 or 28 and then Treasury didn't let us know it had finally been approved until the following Friday. It will not happen next year. We are anxious to see the comments on CSC and what we need to do to get timely distributions of the money out.
  - To answer your question on the contract that we secured to examine the funding streams, the contractor found the system to be complicated with the 127 line items. We receive funding from congress and other agencies and it is all factored into the process. The contract was finalized in January of 2015. We reviewed the report and found that it didn't dive into the process deep enough. We are using the Report and working with OMB, Department, BIA and BIE to develop a streamlined mechanism. OMB did pick up on the slowness of the funding distributions and gave us a directive to come up with a streamlined mechanism. We have been working on this since February. We are trying to establish an internal workgroup. We had initial workgroup discussions with Sharee to try and get Self-Governance involved. We

- are going to look at the policy and what the regions are doing. There are a lot of layers that we need to look at.
- What does the warrant officer do?
    - Response – They are the contracting officer or awarding official.
  - Have any initial things risen to the top regarding the streamlining report? Can the Self-Governance Advisory Committee get a copy of the Report?
    - Response – We will see if we are able to release the report. It is a huge report but there is a summary that was attached to the report. We are already looking at the recommendations and trying to implement them. (i.e. There were recommendations for IT signatures). In the report we gave to OMB we are outlining our approach.
  - I want to circle back to the warrant authority. The problem is a Treasury problem because you have been working since February?
  - We understand that 2016 was an anomaly year but prior year distributions have been really late as well. We received a one-time reprogramming award for FY2015. The ideal would be to close out the year but these types of things happen.
    - Response We provided a handout at the TIBC meeting regarding the Treasury complications and staffing changes. We are trying to beef up our budget functions. We have had some turnover. The internal system of distribution is a major problem. We need a better system and we are working to try and come up with it. It is a good system but a huge system to keep track of all Tribes. We are looking to update the system.
  - We want to follow-up later on. We just went through the process to change the system three (3) years ago. Now, we have new problems with the system. We want to stay engaged.
  - **Tiwahe Updates**
    - Tiwahe coordinator will be Michelle Garcia and she will start August 29<sup>th</sup>.
    - This year in 2016 received additional funding and added two new Tribes Fort Belknap and Pascua Yaqui Tribe
    - Will be able to access center of excellence online
    - Published and completed modifications to ICWA and are now on the bia.gov website
    - How will Tribes in the future be selected for Tiwahe Pilot Projects
      - Five new projects were requested in FY17
      - There are no plans right now to guide selection of pilot projects in the future.
    - Tiwahe Training should be available to all tribes no matter their pilot project status
      - The center of excellence is available to all Tribes.

#### Tribal Comments

- Approximately thirty (30) Tribes didn't receive their increases because there was a question about their base numbers. When will the letters go out to the Tribes?
  - Response – We have been working with AS-IA on the letter. We were looking at the funding that was identifiable for FY2014 for Social Services and ICWA and we looked at the Green Book and at the Tribe's Funding Agreements. For some Tribes, we couldn't see it (figure it out). We decided to send a letter out to the Tribes asking them to identify it with additional information.



- We are anxiously awaiting the letter so that Tribes can reconcile their accounts. Records should have been kept at the BIA but since they weren't you should defer to the Tribe's numbers.
  - Response – We have been going back and forth for several weeks. The letter is making its way through the approval process now.
- How were the pilot Tribes chosen and how will additional Tribes be chosen in the future?
  - Responses – We proposed five (5) new pilot sites in FY2017. In the past, the Tribes were selected using various criteria (1 direct, 1 self-governance, 1 Title one). We also wanted Tribes from across the country in Alaska we chose ACVP which includes 39 Tribes.
- You need to be prepared that Tribes will want to know the selection process.
  - We have an issue. We have had to train law enforcement in social services because they are forced to take on those functions. There should be TIWAHE training in every region.
  - The TIWAHE training is for everyone. We recognize there is a shortage of social workers. There is a problem with recruitment and there are housing shortages.
- We will follow-up for more details. These subject matters require breakout sessions.

### **Senate Committee on Indian Affairs Update – Majority**

*Rhonda Harjo, Republican Deputy Chief Counsel for Chairman John Barrasso*

- Senator Barrasso has been trying to get old bills out the door. Public Safety and Economic Development are two of Barrasso's key issues and there have been a number of workgroups and hearings on both issues. The focus is to try and get done what we can get done in short order. Some of the bigger ticket items will have to wait until the next Congress.
  - Public Safety and Economic Development are new issues that the committee is considering
  - Some of items will require more time and will have to move over the next Congress
  - S.2920: TLOA was introduced in May and marked up in June. Self-Governance amendments came in after the deadline, but have been shared with National Congress of American Indians and Department of Justice
    - There is a plan to have at least two hearings and mark up before October.
    - SCIA is meeting with DOJ on the SG Amendments
  - They will be working with House leadership to develop a House Bill and get it introduced.
  - S.3234: Indian Community Economic Enhancement Act main focus is to increase access to capital, accountability Buy Indian Act, build capacity and streamline the process. Indian communities face many challenges to economic development, particularly access to capital. Based on input from several hearings and listening sessions, the bill amends four federal laws to benefit Indian communities by:
    - Increasing access to capital for Indian Tribes and businesses;
    - Increasing opportunities for Indian business promotion; and
    - Creating mechanisms and tools to attract business to Indian communities.
- The bill amends four laws:
- Native American Business Development, Trade Promotion, and Tourism Act of 2000:

- Require coordination between the Secretaries of Commerce, Interior and Treasury to develop initiatives encouraging investment in Indian communities.
- Elevate the Director of Indian Programs in the Department of Commerce.
- Make permanent the waiver of the requirement for Native CDFIs to provide a matching cost share for assistance received by the Treasury CDFI.
- Establish the Indian Economic Development Fund to support the BIA Indian Loan Guarantee and CDFI Bond Guarantee Program for Indian Communities.
- Native American Programs Act:
  - Reauthorize the economic development programs
  - Prioritize applications and technical assistance for building Tribal court systems and code development for economic development, supporting CDFIs and developing master plans for community and economic development.
- Indian Trader Act
  - Authorize the Secretary to waive the licensing requirement in this Act where an Indian Tribe has a Tribal law governing Trade or Commerce in its Indian lands.
- Buy Indian Act
  - Facilitate the use of this Act whereby the BIA and IHS use Indian businesses for procurement and require more accountability in implementing this Act.
- They will need some assistance with language to include some of the advisory committees in statute.
- Interior Improvement Act is one of a couple of bills out there and there was an attempt to pass a bill regarding past acquisitions on the House side. It was partially helpful but not for those Tribes who still can't get their land into trust. Barrasso's Bill was marked up and filed a Committee Report. We are still pushing for 60 votes. We are going to have to look for other bills on the floor, file an amendment and get it included. Barrasso's bill would address the Carcieri issues. Any help we can get to secure the 60 votes would be great. There are key Senators who have raised concerns. Carcieri ignored the 1994 law that required that all Tribes be treated equally under the law.

#### Tribal Discussion

- Do you see any Advisory Committees getting into the bill? We are concerned the Tribal Nations Leadership Council (TNLC) is not authorized through a statute. Is there anything happening with the Interior Improvement Act?
  - As for the TNLC I don't think the Committee would have a problem with inserting it into the statute. I would like to see the language if you have any and I would also like to know what DOJ thinks about it)
- We will provide you with feedback on both bills. Thank you for your work on 477. If your boss could assist us with moving Title IV along on the House side we would appreciate it. We are not going to step back.

#### **Budget Update**

*James N. Burckman, Acting Deputy Assistant Secretary – Indian Affairs (Management), DOI  
George Bearpaw, Director, Office of Budget and Performance Management, Indian Affairs, DOI  
Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, Indian Affairs, DOI*

- Update on the distribution of funds
  - January 2016 – OMB informed the CSC account would be removed from the Operation of Indian Program Appropriation to its own separate account
  - January 29<sup>th</sup> – Treasury Warrant for OIP received without the CSC funding
  - February 4 – Unobligated CSC funding is withdrawn from OIP and are in unavailable status
  - February 26 – Treasury warrant for new CSC Appropriation was received
  - March 8 – CSC funds posted to new appropriation
  - March 11 – Fund Distribution posted for Funding Documents received from OIS for CR#1 that were withdrawn from the OIP CSC account, and then all open Tribal obligations and drawdowns had to be moved from the OIP CSC account to the separate account.
  - TPA processes and procedures were updated and caused delays in getting funding out. At the same time we had a change-over in staff and new staff is learning the processes and procedures.
- Update on Funding Distribution Review Committee Recommendations (Bearpaw)
- Tribal Discussion
  - Can the Advisory Committee see the report?
  - Yes, there are recommendations to IT to make more timely. Outline to OMB for better approach to recommendations.
  - Late prior year payments causing a perfect storm of items causing repeated delays in payments, should this be the norm?
  - Response- No, we are trying to change the functions and it is not an excuse however it will not happen again. The system of distribution internally is broken and we need to get a better solution, currently working with IT to recreate the system to a more functional one.
  - The new system change over caused delays in the past and will this happen again? We need a system that works.
- 2017 Indian Affairs House/Senate Mark
  - FY2017, the Administration requests for \$2.93 billion for Indian Affairs, an increase of \$137.6 million above the 2016 enacted levels.
    - House - \$2.87
    - Senate - \$2.85
    - House of Representatives Appropriations Bill H.R.5538
    - Senate Appropriations Bill S.3068
  - Tribal Government
    - New Tribes – only funded in the Senate not the House Bill
    - Small and Needy – flat in the House; above the request in the Senate
    - Road Maintenance – Above request in both the House and Senate by \$3 million.
    - Tribal Government Program Oversight – Increases not accepted in the House or Senate.
  - Human Services
    - Social Services – House and Senate funded increases but not at the requested level.
    - ICWA – House proposed a decrease
  - Trust Natural Resources Management

- Administration requested increases not accepted by either the House or Senate except:
  - Irrigation Operations and Maintenance – Senate accepted an increase
- Rights Protection Implementation – House accepted increase, Senate accepted a partial increase but below the request level
- Tribal Management/Development Program – Senate accepted a partial increase below the request level.
- Fish, Wildlife & Parks Projects – House accepted a partial increase below the requested level, Senate proposed above the requested level.
- Trust Real Estate Services
  - Requested increases were not accepted by either the House or Senate except:
    - Water Rights Negotiations/Litigation – Senate accepted \$1.5 million above the FY2016 level, but below the requested level.
- Public Safety and Justice
  - Criminal Investigations and Police Services – House and Senate funded above the requested level. (\$3 million and \$5.32 million respectfully)
  - Detentions and Corrections – House and Senate accepted request level (\$1 million increase)
  - Tribal Justice Support – House and Senate funded at the 2016 enacted level.
- Community and Economic Development
  - Community Development Oversight – House accepted the proposed increase
- Executive Direction and Administrative Services
  - Assistant Secretary Support – House and Senate did not accept the requested level
  - Regional Safety Management – House accepted the requested level
  - Intra-Governmental Payments – House and Senate did not accept requested increase
- Bureau of Indian Education
  - Tribal Education Departments – House proposed increase above the request (\$1 million)
  - Student Transportation and Early Childhood and Family Development – House accepted requested increase and Senate accepted partial increase but below the requested level
  - Facilities Operation and Maintenance – Senate numbers appear to be transposed but at the requested level (Department is trying to rectify this situation)
  - Juvenile Detention Center Education – Senate appears to eliminate this funding but lack of direct wording makes this unclear.
  - Johnson-O'Malley Assistance Grants (TPA) – House and Senate did not accept requested increase
  - Scholarships and Adult Education – House accepts the requested increase but the Senate did not
  - Special Higher Education Scholarships – House accepts requested increase and Senate does not
  - Education Program Management – House accepts requested increase and Senate does not.
  - Education IT – House does not accept the requested increase and Senate accepts a partial increase below the requested level.

- Contract Support Costs
  - House and Senate fully funded CSC \$273 million and ISDF \$5 million
- Construction
  - Education Facilities Improvement and Repair – Senate reduced funding below the FY2016 level -\$5 million
  - Resources Management Safety of Dams – House and Senate accepted the requested level (\$2 million increase)
  - Other Program Facilities Improvement and Repair – House and Senate accepted request level (\$1 million increase)
- Indian Land and Water Settlements
  - House and Senate funded below requested level (-\$6.1 million and -\$5.7 million)
- Indian Loan Guaranteed Loan Program
  - House and Senate funded above the requested level (\$1 million increase)
- Other issues – There are some concerns regarding the Senate mark not clearly identifying all internal transfers and fixed cost increases.
- Greenbook and Self-Governance inclusion
  - The budget team set down with all the budget officers last week at TIBC and there seems to be a great understanding of the FY 2018 budget formulation process.
  - Central Office is providing additional support to Budget Office
  - They are trying to streamline the process
  - May be adopting a survey process.
  - Developing regional priorities.
  - Please provide input to the Self-Governance Program Description, etc.
  - We do request recommendations throughout the process to improve the process in the future.
- Will the President develop an FY18 Budget?
  - Yes it has been submitted.
  - The President will develop an FY18, but the detail will be less because of the administrative change in January

### **Legislative/Regulatory Update**

*Caroline P. Mayhew, Associate, Hobbs, Straus, Dean & Walker, LLP*

*Phil Baker-Shenk, Partner, Holland & Knight, LLP*

1. Tribal Tax Reform and Investment Act H.R.4943 – The Act would amend the IRS Code to treat Tribal governments the same as state governments for five Federal Tax Purposes:

1. Tax Exempt Bonds
2. Pension and Health Plans
3. Tribal Charities
4. Access to the National Parent Locator Service and Child Support Enforcement
5. Adoption Tax Credit

2. Tribal Adoption Parity Act – Provision is included in the proposed amendments to the Tribal Tax Reform and Investment Act. The Act would allow Tribal courts to issue a finding of “special needs” in Tribal adoption cases similar to state court adoption processes.

3. Title IV - Title IV was first enacted in 1994 and since 2000 Tribes have been trying to amend Title IV. State agencies were challenging us but they changed their mind after we worked with them to address their concerns but we insisted we were not going to retreat on non-BIA. A staffer on the hill wanted to add a clause stating there would be no expansion of Tribal Agreements for

the Bureau of Reclamation. We will not agree to this and we are trying to get our friends on the Committee to talk to the Chairman and get around the staffer.

4. Interior Improvement Act – Reported out of Committee in December. We are still working on getting sixty (60) votes. The Bill would affirm the status of Tribal trust land and the Secretary of Interior's authority to take land into trust. On the House side, Senator Cole added a provision into the Appropriations Bill that would affirm the status of land that has been taken into trust but it would not affirm the Secretary's authority and it would not address land into trust for all Tribes. The provision was stripped out of the bill last minute and the Appropriations Bill passed without it in it.

5. 477 – S.1443 passed by unanimous voice vote to make 477 permanent. The Bill clarifies the waiver plan approval as well as other provisions. Senate included authority to comingle differently sourced funding and section 14 of the bill cleans up the reporting requirements. In March, the House Bill, H.R.329 passed the House Natural Resource Committee unanimously but the Committee never released the report. Tribes are urging them to send the Senate Bill to the House floor. The House is on recess until September 26<sup>th</sup>.

6. Indian Trust Asset Reform Act – Title I Reaffirms the trust responsibility of the US. Title II creates a pilot project where Tribes manage their own trust assets. The pilot is established for ten (10) years but the time can be extended. The Plans could also incorporate Forest Service regulations. Title III Permits the Secretary of Interior to establish an Under-Secretary position and issue a report in consultation with the Tribes on the transition of functions and termination of the Office of the Special Trustee (OST). The law speaks to a transition within two (2) years but, if that is not feasible, the Secretary can propose an alternative timeline. (Similar provisions to the Hearsh Act) Secretary would approve regulations as part of the asset management plan.

7. Fast Act – signed into law in December and introduced a Self-Governance program in the Department of Transportation. Requires the DOT to develop regulations using the negotiated rulemaking process – expect notice of Committee Members to be published in the Federal Register in the very near future. Committee will put together the proposed rule subject to review and comment period. There are 25 positions and 31 nominees. The Act is self-implementing so Tribes can request it. The negotiating rulemaking committee could take 10-12 months. The hope is to convene the first meeting within 30 days of the notice that identifies the appointed members of the committee. Tribes can pursue their rights irrespective of neg. reg.

- Tribal Comment: SGAC send letter to Secretary of DOT stating that Tribes want to begin negotiations and should be allowed to do so because the law is self-implementing.

8. Indian Child Welfare Act Regulations – On June 14, the final rule was published. Regulations are effective 180 days later (December 12<sup>th</sup>) promotes the uniform protection of Native children, parents and Tribes. The Regulations amend 25 CFR Part 23. Provisions include: require state court to ask if ICWA applies; require if the child is an Indian child it must be treated like an Indian child; only Tribes determine membership; emergency rule on placement limits how long it lasts; prompt notice required involving emergency placement or termination of parental rights. The Regulations strengthens Tribes position and authority.

9. Contract Support Costs – The House passed FY2017 Interior Appropriations which includes significant increases for CSC \$800 million for Indian Health Service and \$278 million for the Bureau of Indian Affairs. CSC is now a separate line item. The Senate placed the Bill on the calendar. The proviso limiting carry-over authority for CSC was removed and not included in the House Appropriations Bill and Tribes hope it will not be in the Senate version.

- Ramah Navajo Update CSC – The hope is that the Administration will send the payment notices out soon and the distributions will start by the end of the summer.
- Appropriations Outlook - Some conservative House Republicans are discussing the possibility of a six (6) month CR – although they are also promising provisions for a full FY2017 Appropriations.

10. Tribal Employment and Jobs Protection Act – H.R.3080 (Nomes) and S.1771 (Daines) House Bill reported out of House Ways and Means on July 5<sup>th</sup>. The Bill would amend the IRS code to provide an exemption from the Employer Mandate to Tribes. It would exclude Tribes from the definition of large employer. Tribes have been meeting with the Treasury and IRS to request waivers which are authorized under the Act. The problem with the Act is that Tribes can't take advantage of the Indian specific provisions yet Veteran Affairs was given an exemption. Tribes have been working with the National Indian Health Board to request an exemption and at the same time make clear to the Treasury that tax credits should still be available because it would be cost prohibitive. H.R.3080 was reported favorably out of the Ways and Means Committee. Tribes should ask Senior House leadership to pass it this year.

11. Tribal Youth and Community Protection Act – The Bill was co-sponsored by Franken, Udall and Cantwell in an effort to address crimes against children, drug offenses, and crimes against Tribal Enforcement Officials. The Bill would amend the Indian Alcohol and Substance Abuse Prevention Act allowing \$10 million (increase of \$5 m) in grants and would define terms dating, domestic, child violence, drug offense and related conduct. Lankford (OK) proposed an amendment that would prohibit Tribes cultivating marijuana from receiving Federal funds.

### **Environmental Protection Agency**

*Jane Toshiko Nishida, Assistant Administrator, Office of International and Tribal Affairs*  
*JoAnn Chase, Director, American Indian Environmental Office, EPA*

- Update from SGAC Workgroup
  - There was a meeting at NCAI that instigated a follow up meeting with the Advisory Committee.
- Update from EPA
  - There has not been a complete legal analysis from EPA
  - They are here to continue to hear from the Advisory Committee and move forward as quickly as possible.
  - EPA would like Tribes to talk about the examples provided by the Advisory Committee
  - EPA requested additional information regarding the examples shared.
- Cherokee Nation Example
  - In 2006/2007, we received a letter from the EPA on how to work with other agencies for solid waste efforts. The funding (\$77,000 plus) came through our [Self-Governance] compact and it was forward funded and the Cherokee Nation took over National Environmental Protection Act (NEPA) responsibilities.
    - EPA: Is there a way to do a pilot project to show how it is being done? Cherokee met with a lot of regional Tribes to discuss 638 models. Now, these are becoming national discussions and people are talking about this. We would like a pilot project so that we could take all of the EPA money that comes through for assessments (Cherokee gets about \$2.5 million) and use the money in a manner that is best fitting to Cherokee so if we needed to address solid waste, clean water or drinking water we would make those decisions.
- Red Lake Band of Chippewa Indians Example

- We received Consortium funding from EPA, DNR and others to work with other Tribes and other agencies. We received money through our IHS compact to address arsenic in our water. It was efficient and effective to operate this way.
  - EPA: On the Great Lakes Initiative, do you know the dollar amount?
    - No but will follow up with that information.
- Alaska Example
  - The Association of Village Council Presidents (AVCP) is a consortium of 56 Tribes along the Yukon River. We have two issues of concern:
    - Emergency Responders; and
    - 2. Abandoned Barges.
    - We have villages from fifty (50) people to fifteen hundred (1500) people scattered across a large region. Our Villages have Village Public Safety Officers (VPSOs) and Health Aids who serve as our first responders. A couple of weeks ago we had a Norwegian Flag Ship off of the coast of Nunavik Island carrying twelve (12) million gallons of fuel. We are concerned anytime we see large ships or people in trouble wash up on the beach. If anything happens in the water, it comes up into our water and land. We put together a proposal for an emergency response center. We have a lot of abandoned barges in our rivers that were abandoned by people sixty (60) to seventy (70) years ago. We need to address the clean-up of these barges. Our concern is how these barges are impacting our subsistence
      - EPA: President Obama was in Alaska last year as part of the Artic Council and he feels very strongly about addressing the needs of Alaska Natives. There is an interagency group composed of Coast Guard, EPA and others who are charged with studying the impacts associated with increased vessels in the Artic.
        - Response: It would take the Coast Guard a couple days to respond if there was an emergency. We need a Center.
- Ak-Chin Indian Community Example
  - We have seven (7) EPA grants and we participate in the Performance Partnership Grants (PPG) and consolidated the grants to help with reporting. Each grant had separate reporting requirements and we had an EPA American Recovery and Reinvestment Act (AARA) grant. In 2009, we had to address two sources of non-point source pollution in the washes. We wanted to take 319 funds and put it into vegetation to help the washes. If we had a pilot, we would be able to move the funds around and it would help with the reporting requirements.
    - EPA: There have probably been several of you who have used the PPG model to streamline the process and lower the administrative burden. How would the Self-Governance model go a step further?
  - We have five (5) grants in PPG but it would be helpful if we were able to consolidate all seven (7) into one focus/one project and have the freedom to move the funds around.

### **Tribal Discussion**

- We would like to be able to take EPA funds and consolidate them with other resources. Maybe we can get a handful of Tribes together to show how it can work. We think we have an edge to make it work.
- We are dealing with Klamath River Issues. There are two parts to Self-Governance, the money part and the trust part. Consolidation works. Our Self-



- Governance consolidation project deals with water quality issues in a multiple-agency arena and we are dealing with the EPA from Region nine (9) and Region ten (10).
- EPA: You raise a good point regarding a greater need for coordination. All agencies are interested in better outcomes. Can you demonstrate how the Self-Governance approach leads to better outcomes?
  - Twenty-five (25) years ago we operated under a program that pre-ceded the General Assistance Program (GAP) program and it facilitated the removal of tailings out of the mine creek bed. It was an effort that was coordinated by EPA, Tribes and the state.
    - OSG: At Interior, there are Climate Change Grants provided and Tribes put together plans. EPA could be part of those plans to prove synergy and prove the use of EPA funds to improve habitat. We do it in other arenas with families so this can be extended to land, water and habitat. So, many Tribes can pilot EPA funds with other resources.
  - Lead based paint, brownfields, underground storage, GAP, clean water, etc. Initially, we thought it would create better latitude to use the money where it is needed. We do the NEPA work for climate change and clean water. With synergy you get so much more bang for your buck. We constantly look for things to create efficiency.
  - If Tribes negotiate with EPA, they would need to negotiate with the state of Oklahoma in order to be treated like a state agency.
    - EPA: The situation in Oklahoma continues to be a huge concern with the obstacles that arose due to the rider language. We can follow up with you and let you know how others have maneuvered it.
  - There are a number of other authorities used. The Northwest Region Interagency workgroup (which includes EPA) works together to accomplish four (4) main goals. It is interpreted very liberally. Whatever the overlap, there is authority to provide for interagency transfer of funds. We gave up some of our programs due to the burden associated with the reporting requirements. There is some good testimony out there about why it makes sense for Tribes to do it. Leslie Wheelock [Department of Agriculture) is trying to make pilots happen. Once it is established it makes sense to the new administration but it is harder to get it going if there isn't something already in place. Collaboration and cooperation with Tribes makes sense. The Navajo have to report to four (4) offices because they overlap four (4) states. A separate office for Navajo makes sense.
  - The Federal government acts in silos. Another agency has approximately 577 grants available for Tribes. Who can apply for all of those grants? Tribes with the most capacity receive the funds and those with the most need are often not recipients because they do not have the capacity to write the grants. We need to eliminate barriers and uphold the trust and treaties. It would be more impactful to combine all resources into one vehicle.
  - We can coordinate a conference call to see about next steps.
    - EPA: Yes, it would be very helpful for me to understand two aspects: 1. Flexibility and Funding; and, 2. Services you need. While the agencies can coordinate you need the flexibility to implement the program to suit your needs.
    - I saw the program at its inception and witnessed the resistance and now I see example after example of the extension of Self-Determination. Our commitment is that we want to move it consistent with the directive of this Administration. We will go back and come up with a timeframe. We will continue to be in touch with you.

- The bottom line is that we appreciate the sincerity of the Administration and your leadership. SGAC would send a follow up letter to document this discussion and continue with the next steps. SGAC EPA Workgroup will compile responses to information highlighted above and share with EPA. Following the distribution of information, (1) schedule conference call between Tribal Workgroup and EPA; and/or, (2) face-to-face meeting with the group and the EPA team.

### **Department of the Interior Strategic Plan – Tribal Proposal**

#### Tribal Recommendations:

- Ensure whatever priorities we push forward with the White House Council go into the Strategic Plan
- Governmental Capacity is the fundamental mission for us to serve our communities
- Consider the Expansion of Self-Governance rather than funneling money into grants
- Audits do not measure Tribal capacity – policy, payment process, streamlining plans, timely payments, simplifying approval processes, parity in fund distribution should all be considered
- Appropriate inclusion of Self-Governance in Appropriations Requests and throughout the Green Book.
- There needs to be greater collaboration between the Regions and the Tribes during Budget formulation. Some Regions just report to the Tribes what they intend to submit and the Tribes are left out of the process.
- Administration deserves high marks for Management of Indian Programs but not for Indian Water Settlements. We were vigilant last year in seeking out bills that would have impacted our water rights. As resources get more stressed, Tribal trust is more conflicted.
- Advancement of the Tribes agenda in the Bureau of Reclamation including the protection of Tribal water rights. We need to reinforce it so there is a duty to protect or restore these rights.
- Endangered Species Act – the Administration looks at it from the point of Federal law but Tribes deal with its impact on Tribal Trust Assets. It impacts salmon, game, vegetation, timber, grazing, etc.

### **White House Council on Native American Affairs – Update**

#### *Morgan Rodman, Executive Director, White House Council on Native American Affairs*

- Update on the status of action items/requests presented at the March 2016 *Quarterly Meeting and Annual Self-Governance Conference*.
- Request for Tribal Representation
  - Brian Cladoosby will participate in the next Principals meeting.
  - Secretary will propose that the subgroups invite Tribal leader participation.
- Data Collection and Analysis
  - Collecting different data sets across the agencies
  - Engaging Tribes about how this information should be shared
  - Workshop on September 13<sup>th</sup>
- Economic Development Infrastructure
  - Compile easy to use matrices that relate to housing and feasibility and planning studies.
- Broadband/Telecom
  - WH Recently gathered a group of folks to discussion expansion and metrics to measure access for Tribal communities.
  - FCC, local stakeholders, and industry all must be involved in the expansion.
  - Commerce and WH will host a summit later this Fall.
- Treaty Rights at Risk

- Subcommittee discussion focused on how to protect Treaty Rights. EPA has consultation guidance on Treaty Rights that includes affirmative steps to take. We want to break down the silos and embed positive policies across all agencies. We want to see how it can fit into the agencies that don't have this. The Office of General Council in EPA is looking at creating a "think tank" on treaty rights. We are creating a culture of knowledge on treaty rights and the protection of treaty rights.
- The only executive agency doing this.
- OGC EPA is thinking of establishing a group to share information regarding treaty rights.
- Natural Resource meeting convened at the White House on May 16<sup>th</sup>. The goal was to gather a good cross section of Indian country and keep the dialogue at an intimate level. There were eight (8) Tribal leaders and organizations represented; nine (9) agencies; Secretary Jewell and Karen Diver. This will be a regular occurrence.
  - Tribal Comment – We were very impressed with the coalition of Senior Federal Officials. We discussed water, fish, marine mammals, natural resource protection, etc. It allowed for a deep dive into the subject matter with Tribal experts, including, treaty rights, designated a lead agency, co-management plan (there will be two seats at the table when it involves public lands)
- The next principles meeting will be late summer, early fall.
- The White House meeting dates have not yet been set, but they are looking at early fall.
- Tribal Discussion:
  - For the past eight (8) years the President has met with Tribal leaders and the establishment of your office and the White House Council were part of the major achievements. We are appreciative of the work of the subcommittees but we need a task force to get more specific on these issues. It is all about the empowerment of Tribes and strengthening governmental capacity. You can only help us become self-reliant if we have strong governments. You have to help us get there and weave into these areas. We have a range of levels of sophistication of governments and you can use that as a measure of how well the US Government is doing to strengthen capacity.
  - Verizon has a contract for fiber optics nationwide to do fiber optic installation. In Taos, they brought the fiber optics to a point outside of the school and we are trying to track down someone to find a resolution before the start of the school year. It is not just Taos that has a problem it is an issue for other Tribes too.
  - Morgan Rodman – We can get in touch with our AS-IA colleagues but broadband access is something our Economic Development and Infrastructure Subcommittee is working on.
  - The Obama Administration has been progressive but for their policy on the Trinity River, Climate and Central Valley area you get an F. If a conflict of interest arises on water issues it does not give you a pass on the trust responsibility. We are gearing up to stop two proposals from this Administration. When we approach the agencies there is a disconnect when it comes to the trust and the crosscut. You need to find constructive contracting vehicles to get the money into Indian country. Agencies need to streamline contract mechanisms and find flexible ways to get the money out.
  - We were looking at the DOI Strategic Plan earlier today. It is a very mechanical description of what Tribes think would lend itself to creating more economic opportunities and jurisdictional authority that will improve the quality of life in Tribal

- communities. We hope at the end of this Administration and in the transition documents you will speak to jurisdictional authority. Authority to reallocate resources, break down silos and be more productive with the allocations that are capped – more meaningful expenditures of funds. It is important to look at meaningful changes regarding Tribal authority and Administrative exercise. It is often not the laws but the regulations that hurt us. Or, the narrow interpretations of court decisions. We hope that the Executive Branch can be as active as the courts. What is the full manifestation of Self-Determination? We need to talk about the Trust and Tax Reform in terms of what is better for Tribes.
- What is the Department of States role with respect to Tribal Nations? How can we utilize some of the concepts they use working with Territories?
  - Morgan Rodman – The Department of State has been involved with Tribal issues concerning sacred sites, data, sacred objects, and the Declaration on the Rights of Indigenous Peoples.
  - Tribal comment – It doesn't have to pertain to another country for the Department of State to be involved.
  - We have been very successful working with the Department of State for the last three years and the US mission of supporting Tribes obtaining status in the UN but there is a disconnect between the UN Mission and the Department of State. You need to visit us to discuss transboundary issues because until the state steps up in alignment with the Administration's policy it is difficult.
  - Morgan Rodman – Department of State has been a good partner in issues relating to repatriation. Cheryl (BIA) helps lead with State and DOJ.
  - We are very sensitive to those who are in the front lines of Indian country. When you try to absorb the issues it can be overwhelming. When we talk about strengthening economic capacity we need to talk about the OMB crosscut because we all know the number is a fraction of what is needed. It is about strengthening Tribes capacity to become self-reliant. The Federal government cannot live up to its promises to Indigenous Peoples. We need ten times the number that is out there. Tax revenues can be used to serve our people and strengthen our governmental capacity. It is part of the solution for a healthier US.
  - Oversee all of the programs delivered in western Alaska. In the villages we need to think of things all the time such as whether we should gather berries, fish to feed our families. When the summer is warmer than normal we need to read what the weather and the water is saying to us.

### **Climate Change**

*Sean J. Hart, BIA Climate Change Coordinator, DOI*

- Update on the impact of climate change funding in Tribal communities
  - Funding is divided up into three areas
    - Strategy and Planning
    - Monitoring
    - Travel support
    - Ocean Coastal
    - Research Internship
    - Youth Engagement
    - Small and Needy Tribes (to build capacity) – this is sort of a pre-award to help Tribes think about a future grant opportunity.
- Building out the Office Capacity
- Providing contract for basic environmental training
- Interagency Tribal Youth Climate Change Youth Center
  - Was hosted last week

- FWS designs and runs the program
- Small and Needy – low capacity Tribes receive pre-awards to do research and write grants for the following year.
- GIS Specialist – technical support (website contains all of the information that the federal agencies provide)
- Staff – There are five (5) positions in the Climate Science Centers. We will be able to bring research out to the Tribal offices and bring back the Tribal needs. We will have a Tribal representative at the table.
- National Contract for Training – we provide some basic training but at some point people are going to need different types of training. There are five Tribes and five Federal partners that provide training.
- Interagency Tribal Climate Youth Agency Conference – 100 kids from Indian country gather in West Virginia and discuss climate impacts. There are speakers in science and community outreach. Kids get together and generate ideas on how to be impactful. For every five kids there is one mentor.
- Contracts – we require quarterly reports so we have information to feed the White House so they know we are doing a good job.
- Tribal comment – We need to discuss how BOR is defining Climate Change with respect to water.
  - We all have experiences in terms of impacts of climate change and as the sea levels continue to rise you will see changes all over the map.
- How do we get managers to take the local knowledge and think about it? What have Tribes been doing with Climate Change dollars to deal with external factors? Climate change knows no boundaries so we need cooperation to build resilient communities. How can we leverage funding? How can we collect data to get recurring funding?
- We view the \$10 million as base funding and we need to make the case for more. We need to inform OMB what we are doing well.
- Can you discuss collaboration and the leveraging of dollars? EPA is a member of the Council for Environmental Cooperation and many Tribes straddle the US/Canada border and US/Mexico border. There are five Tribal ecological experts. You should be at the table talking about issues of mutual concern.
  - We do work with the EPA so it will be easy to connect on it. Our award funding restricts International funding but this year the cross border stuff would be effective.

**Adjourn for the Day**

**Wednesday, July 20, 2016 (8:00 am to 12:30 pm)**

**Meeting of the SGAC and Technical Workgroup with Office of the Assistant Secretary –  
Indian Affairs, Department of the Interior  
(only Members of the SGAC and Proxies to be seated at the table)**

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**Opening Remarks and Updates**

*W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)*

**SGAC Committee Business**

**MOTION**

Mohegan Tribe made a motion to approve SGAC meeting summary from March 2016.  
Motion was seconded by Choctaw Nation.  
Summary was approved without changes.

**Planning for 2016 Self-Governance Strategy Session**

- Planning for Strategic plan looking for 7 to 8 big ideas
  - Taxation issues
  - Budget Issues
  - Appointments received/wanted targeting key individuals
  - OMB- who should be elected to advisory committee and how Indian country should be represented
  - Target Agencies that have government to government policies
  - Trust modernization
  - Breaking down the silos of communication for measurement and streamlining of policy
  - EPA
  - OMB office that fits Native American regulation policy- emphasize governments and jurisdiction
- SGCE and tech team to design a rough draft agenda

**Opening Remarks and Updates**

*Lawrence (Larry) Roberts, Acting Assistant Secretary Indian Affairs – DOI*

- Thank you for your participation and patience with the teleconference line.
- If we would like him to participate in September, he will make himself available.
- Many employees are acting in two positions
  - Larry Roberts
  - AnneMarie Bledsoe-Downs
  - Jim Burchman
- Please use the staff to engage in pressing issues
- ICWA Regulations
  - Focusing trainings on states and state regulations
  - A number of trainings are in State Capitols to try and assemble as many state leaders as possible.
  - There has been some significant support from a number of States where Tribes reside heavily.
  - Insure that children are treated as Indian
- Fee-to-Trust
  - DOI is still working towards their goal
  - Working to complete policies and handbooks to make sure the transition is smooth
  - Success of fee to trust due to tribal involvement
  - While in Alaska taking steps to move forward within this administration

- Alaska Representatives request additional support due to the recent court hearings.
  - Include a measurement about the amount of time for applications.
- Reservation Proclamation
  - Updated process for reservation proclamation, by now having reformed the process so that fee to trust and reservation proclamation are processed in tandem
  - Updated title standards and are now in place
- White House Council
  - Morgan Rodman is career employee who will add continuity into next administration
  - Encourage tribal leaders to participate in sub groups. Will engage at a higher level with tribal leaders within the sub groups. Meetings held every 3-4 months. Sub group co chairs will work with Tribal leaders to identify members for participation within sub committee
  - Brian Cladoosby from NCAI has been invited to represent Indian community at next white house council meeting to discuss the next administration.
  - Appropriations increases are in large part due to the collective efforts of Indian country. This Administration has shown that Indian country is a priority.
- Budget
  - Funding increases recommendations have been put forth for numerous areas including Tiwahe, roads, schools.
  - Alternative ways to develop the Greenbook numbers, while being sensitive to the TIBC Process
- Internship Program – Every region and senior level leadership have summer interns.
- OST Listening Sessions
  - New Trust Audit Methodology listening sessions.
  - We need to be clear about how these several issues are moving forward while we're consulting on HR 812.
- HR 812 – Trust Asset Act
  - Will be consulting on what functions should or should not remain with OST.
  - The Secretary has requested the report be completed before the next administration.
  - Tribal leaders have already requested that functions and activities of OST be identified within the agency prior to the office
  - Multiple agencies will be participating in the HR 812 consultation...Coordination is actually through the Deputy Secretary's Office.
  - What functions are contractible? This should be included in the report.
  - Under Secretary Position
    - Some questions DOI has received about the Under Secretary is who pays for the office? What will their responsibility be?
    - This position would be helpful to advance the Trust Responsibility.
    - DOI is not planning to fill the position during this Administration. DOI needs to discuss the position within the Department, its role, and how it interacts with the White House Council. The Act also advances the Hearsh Act by providing Hearsh Act management and streamlining the process for appraisals.
      - Tribal Discussion: The definition section of the Act defines ground leases and authority provided by the Act for ground lease approval not limited to forestry issues. There is broad authority for a Tribe to approve a ground lease if they have an approved plan.
      - Response: The Solicitor's Office is looking through the Act as a whole.
- Delay in CSC Payments

- It is frustrating that funding is not going out in a timely manner.
- ICWA and Social Service Funding
  - DOI is developing a methodology to make sure Tribes are getting appropriate increases.
  - Also trying to develop a system to make sure these increases are not missed in the future.
- Strategic Plan – There will be webinars and consultations the end of August. The Department Plan is final in FY2018 and Indian Affairs is also working on a Strategic Plan – a more robust plan and we will consult with Tribes.
  - Tribal comment: webinars are a good idea and it is important that you communicate with Tribes that you are on two tracks.
    - Response: We need to aim higher with the metrics and make sure that they are appropriate. We are aware there is an issue with the road maintenance goal not set high enough.
    - Response: We are starting to work on the Indian Affairs Strategic Plan to ensure we maintain integrity between DOI and IA Plans. As for the Contract Support Cost Issues we are aware there was a delay in distributing payments and it has caused frustration for the Tribes and AS-IA. We hope this is a one-time thing but we will work with OSG, AS-IA staff to try and figure out ways to streamline the funding distribution system and how to deal with overpayments in future budget cycles. Social Services and ICWA dollars were distributed to all Self-Governance Tribes except a small handful who we will be working with directly to resolve the issue and provide them the right level of funding.
  - Tribal comment: In terms of fee-to-trust for Alaska, our experience in California is that it is important that the final notice of decision be written in compliance with NEPA. Interior Board of Appeals takes a strong stance of remanding cases back to the BIA offices. Thanks for updating the title standards to make applications easier to get through the process.
    - Response: We continue to prioritize fee-to-trust. We are looking at the metrics to see if the regional directors can take some action so the applications are not pending for an extended period of time.
  - Tribal comment: There are issues with the Administration's role when it comes to trust assets and ESA issues. There is a distinctive role for Indian trust obligations and you need to fix it in the Department's Policy.
    - Response: We started the internship program to bring young people into Interior to get them working in the offices. There is a need for young talent coming up through the ranks. We also have two high level positions (Deputy Assistant Secretary for Management and Director of the Bureau of Indian Education) that we are actively working on filling.
  - Tribal comments: It is a balance we still need advocates to champion our agenda with Congress.
- Strategic Plan - In the Strategic Plan, we appreciate you trying to improve the BIE and those schools but a large majority of our kids are in public school so we need you to engage with those systems to ensure our children receive the education they need.
- Talking Points:
  - Self-Governance - Our Self-Governance agenda is an upward swing and we need your continued support. There are more and more Tribes going into Self-Governance and things are changing.
  - CSC – we don't want the repayment of overpayments to become an obstruction. Tribes sent in checks but the Bureau wouldn't accept it. The system needs to be remedied. We had to wait 8-9 months to receive our CSC dollars and one of the



- measures you use to prove our success is our audit. The irony is we need the CSC money to pay for the audit. We appreciate that you are sensitive to it.
- Distribution of funds - We are hearing there is a potential for a CR. Regardless of whether it is long term or short term the objective is to fix the system so we get the money out in the first quarter.
  - Interior Business Council (IBC) – Tribes keep their rates as current as possible but there are challenges within the system to securing a current rate. The policy should be structured so that if the rates have already been negotiated it should be a done deal. Tribes should receive their money upfront. IBC needs to be staffed up so they can negotiate rates in a timely fashion.
  - Social Services and ICWA – We need you to get the letters out to the affected Tribes asap. The burden of the identification of the base is mutual. If you don't know the number than let the Tribes provide you with their number.
  - FY2018 Budget – We have high hopes that the process will continue to improve. TIBC mentioned they would like to explore alternative ways to deal with the budget process. Make sure the Green Book process is structured so that it is respectful of Self-Governance Tribes. We want to work with you and your team to see if there is a better way to deal with prioritization and we know this is a sensitive issue for Tribes.
  - Office of Special Trustee Listening Sessions – Be clear about the different tracks regarding OST Self-Certification Consultation Sessions and the BIA Self-Asset Reform Act Consultation Sessions.
    - AS-IA – There will be multiple offices within the Department that will participate in the Trust Asset Reform Consultations. The point of the Consultations is to gather information because we need to provide a report to congress on the transition plan for OST. The Consultations are being organized and run out of the Deputy Secretary's Office.
    - Tribal Comment – What functions are contractible? What is an inherent federal function v. what we can compact?
    - Consultation has yet to start. OST has had two meetings and how are they notifying people?
    - AS-IA – There will be a Dear Tribal Leader Letter on the Trust Asset Reform Bill and the consultations will focus on Section 304 of the Bill regarding the functions and services of OST.
    - The OST Listening Sessions are on the Self-Certification of Trust Evaluations.
    - SGCE sent out the Dear Tribal Leader Letter but some of the Self-Governance Tribes will be in Washington attending the Strategy Session while the consultation is occurring in Oklahoma.
  - EPA – We had a good conversation yesterday with the EPA. We would like you (BIA) to engage with us and EPA leadership (Jane Nashika/JoAnn Chase) to try and make something happen to institute a pilot project.
    - AS-IA – We would be happy to help meet with the EPA and a handful of Tribes.
    - Tribal Comments - There are a number of programs in EPA and BIA that we think funds could be transferred to Tribes through our compacts and contracts if the two agencies enter into an MOU. What would be the requirements that need to be in place for the agencies to allow the Tribes to consolidate and redesign programs and services?
    - What are the next steps with EPA? There is a precedent for MOU with IHS it happens every year for sanitation projects. We would like your thoughts on next steps on how we will move forward.

- BIA – JoAnn Chase (EPA) is a great representative for Indian country. She got Tribes inserted into the Volkswagen settlement.
- OSG - Did you have an idea about how to merge the EPA into the funding agreements?
- At the Indian Health Service there is an interagency MOU and the funds are negotiated and included in the funding agreement. It is the easiest way to move formula based funding rather than through a grant (i.e. GAP)
- OSG – It is important to get consolidated plans at the community level recognized as part of the plan.
- It should not only be environmental issues but family services, department of education, etc. We should put them all together but they all have different requirements.
- White House Council on Native American Affairs – We appreciate you getting the Tribes engaged. There was a good report on what you are doing now. It is important to get the One Stop Shop up and going so that Tribes can consolidate resources. There needs to be a database on all of the different areas: What is the current profile? What is the unmet need? It all circles back to the budget process. What is the metrics? We need a better database for the White House Council to be more effective.
  - AS-IA – We had discussions at TIBC about unmet need.
  - Tribal Comment – We know there is \$10 million to address Climate Change but the “ask” is for \$30 million. We need a database to show why we need \$30 million. Whose responsibility is it to gather that data?
  - AS-IA - There may be some areas that we can move forward on.
  - We need the right data to show the success of TIWAHE, etc.
  - Tribal comment – We appreciate the inflation adjustment – thank you for making the process work in our favor.
- AS-IA – Has anyone started outreach to you on the Federal Register Notice?
  - In California Region, the state and counties have a hard relationship with the Tribes. The state claims they have no relationship with the Tribes but they want to regulate us. We own land in the Pacific Ocean. We had to fight to sustain our food. They are trying to include the counties and districts in gaming arena. What is the role of the feds when it comes to curbing the states effort to erode our rights?
  - AS-IA – We need to do a better job interfacing with the state and local governments. With the ICWA Regulations, we are reaching out and training state agencies on ICWA. At the end of the day, the relationships are at the local level. Where it doesn’t work the Federal government needs to take a formal role to educate the local government.
  - Thank you. It underscores our point that you have to do what you can to strengthen our governmental capacity in order to help move the Tribal agenda forward. It would be helpful to develop a letter or discussion paper describing the problem and steps the Federal government can take to solve the problem.
  - The Indian Trader Act is an important initiative and we need to get it “t’ up for discussion. It is a means to assert Federal authority over state and local governments.
  - The framework of the US Constitution defines the application of state v. federal jurisdiction. We need to figure out how Tribal law fits into the constitutional framework.
  - Water Rights v. the Endangered Species Act (ESA) – Federal agencies provide more support to Federal activities than Tribal trust. We filed a lawsuit regarding the Klamath River because the Federal agencies failed to

- recognize Tribal rights in these water discussions. EPA has an obligation to look at the Tribal trust obligation first. They need to recognize and respect the proper role of the treaties.
- BIA – This is an important issue to bring forward to the White House Council because it is across all Bureaus. The Secretary is trying her best to consult about treaty rights. So, if you are not invited to the table or if there is an issue that you are struggling with by all means let us know so we can make sure you are at the table or that we pump the brakes.
  - Is there a current Indian Affairs Strategic Plan?
    - BIA - Going forward we are going to establish our own Indian Affairs Plan.
    - In the original DOI Plan, we couldn't find Indians and we had to insist on having a section. There are a couple of areas we need to address like the protection of water rights at the Bureau of Reclamation (BOR) because they are often undermined.
    - Within Interior, each Bureau has a plan but I don't see a separate one for Indian Affairs. The Pacific Region has a plan. Is it discretionary for the regions to have a plan? The two measures in the DOI Plan for Self-Governance are unrelated.
    - BIA – The regions do operational plans. We are working with the Tribes and leadership to figure out our priorities for the next several years.
    - The most recent Strategic Plan was FY2014-2018. Typically, the smaller agencies develop a plan that is more detailed. There will be measurements for success. It is a four year plan.
    - The Pacific Regional Office Plan contains a lot of details. Is there an Indian country plan?
  - There is an issue with the way Self-Governance numbers are presented in the budget for requests and increases. Consolidated Tribal Government Programs (CTGP) is a common program. If increases come back into the pot, we lose out on the increases. Increases and decreases over time have not been spread to the various line items in the budget. We want a plan to rectify it. If we fix it then we won't have to deal with it again.
    - OSG – When the scholarships came down we could deconstruct the numbers. Central Office needs to talk to OSG before they give increases. We can deconstruct the numbers. The problem is with the database and how it is set up. We should deconstruct the numbers to figure out the increases and decreases but allow Tribes to capture it in CTGP. It would probably cost around \$2 million to straighten out the database. The group that worked on the Ramah numbers would be the perfect group to bid on this project.
    - Right now, we need to ask the Tribes to provide the numbers and move forward and deal with it on a case by case basis. We need to develop a plan to get around this.
    - OSG - The President submits his budget and then we should adjust for what is appropriated, when we have a CR, across the board cuts, etc.
    - Across the board, non Self-Governance is easy to identify and some Self-Governance Tribes are easy to identify. Other Tribes have been a challenge so we need to work with these Tribes.
  - Budget Formulation – we are encouraged to hear you are trying to make improvements to the budget process at the regional level to get some consistency in the process and engage Self-Governance Tribes. In our region, we get presented to about the budget. We are often asked for our individual participation but it is rarely a collaborative process for the region. We provide supportive

information but the process would be more effective if Tribes prepare the regional submission.

- OSG – Why do we need 123 accounting centers?
- OSG – We complained that Self-Governance Tribes were being left out of the regional budget process. Pacific, Midwest, Southwest and Northwest included the Self-Governance Tribes. Some of the regional directors do the work themselves and some send it out to the agencies to do it. It is a helter/skelter way of doing it. OSG needs to hear how they are doing it better.
- Maybe include best practices because in our region it is a presentation and we are not asked what we should do. At the national level, the process has improved a lot with TIBC.
- If there are carry-over funds available then the Central Office needs to recommend a process.
- There needs to be more funding for Tribal courts.
- BIA agencies need to recognize Tribal jurisdiction. The BIA Officers are not heeding Tribal extradition law and not honoring our court orders for review of files. Internal is just as important as state and local government issues. We need more money for our court systems because it is an area of capacity building for our government. In budget formulation we need a way to frame our unmet needs. In the 70's the federal government started to move to evaluative measures performance v. unmet need.
- GPRA is how the system measures how well the feds perform not how well the Tribes perform.
- Yet, the Tribes have taken on those programs
- We touched on the 302 (b) allocations and the Administration has its own caps and that is what the pass back process is all about. Folks championed to get road maintenance funded at a higher rate and it went up to \$26 million but \$250 million is the need. There was a request to move it out of the budget line but it doesn't matter where you move it because it will still receive the same amount of funding. It is about how we make the case for more money. We need better metrics. We asked for a contract for someone to identify better measures in order to identify the unmet need. There is a meeting this afternoon about how to change the system. It is easier said than done. If we are trying to regionalize it, all of the regions have different agendas but at the end of the day we are still all dealing with the same bottom line. The AS-IA pointed out that we have to remember where we were to where we are now. We are better off but we still have a way to go. You can be disappointed but don't get discouraged. DOI Strategic Plan has measures but we need the right measures to show you are doing well.
  - We need to be speaking the same language on how we are performing.
  - GPRA replaced unmet need and then the government said no we are still dealing with performance.
  - GPRA was evaluating how well we are performing with what we got not how well we are performing with what we need. Self-Governance changed the rules so there is a big disconnect. We want to keep working with you. There are a number of asks. We are supportive of the process and how we identify unmet needs. We proposed an exit plan – a report out of what the White House government-to-government meetings are reflective of how well we performed but where we need to go.
- BIA – The AS-IA is willing to attend the Self-Governance Strategy Session. You can also request consultations or delegation meetings and we can also have one-on-one meetings.
- There was a Dear Tribal Leader Letter regarding the Controlled Substances Act and how it is Federal law and there is no exception to that and no place for the Cole Memorandum

issued by DOJ. It raises a lot of questions. If the Bureau policy is there is no exemption, there seems to be conflicting federal policies. We need clarification on the letters that were sent out.

- We need to use an asset building model rather than a deficiency model. We need to encourage the strength of the community rather than focusing on what we don't have.