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| Recorder: Jennifer McLaughlin | Date: April 26, 2018 |
| Session Title: Revenue Generating Opportunities in Indian Country |
| Panelists: The Honorable Brian Cladoosby, Chairman Swinomish Indian SenateWilliam Micklin, Second Vice President, Central Council of the Tlingit-Haida Indian Tribes of Alaska and Chief Executive Officer, Ewiiaapaayp Band of Kumeyaay IndiansLind Austin, Director of Operations, Ysleta del Sur PuebloJerry Rayburn, Contractor, Office of Indian Energy and Economic Development, DOI |
| Summary of Issues and Items Discussed: Chairman Cladoosby – Chairman of Swinomish 34 year on Council 22 year as Chairman – Senator Slade Gorton was from WA state and was one of the biggest anti-Indians. Held field hearing in Seattle in 1999 and trying to base funding on the revenue generated at home. He was only doing it on Tribes not states or corps. Field Hearing he challenged Tribes to look at a tax base to provide services to people. A few years back Lummi started implementing a utility tax to businesses that crossed Lummi homelands. They were challenged in court and won. So we said if Lummi did it we will do it so we implemented a utility tax 15 years ago. Immediately non-Indians challenged it taxation without representation. Since then, in last 15 years we tax gas cigarettes, TERO tax liquor tax and taxes on non-Indian homes on trust lands. 10 years ago sued state for gas tax and we won. We were going to do a value added to gas and brought our own blend so we could sell to anyone 100% tax free, Judge said you could bring any product on reservation sell it to anyone and keep 100% of gas tax. We had Republican AG and Democratic Governor so we needed to offer them something so they would not appeal to the court. We said what we can put on the table to keep the state from appealing to the 9th circuit. We offered the state 25 cents of every dollar generated for the state budget and they accepted it. We signed a compact with them on gas, alcohol and cigarettes and very beneficial to Tribes in WA. Great Wolf Lodge Decision – there is one that was built on the Chehalis Reservation 51/49 partnership with non-Indian and built it on trust land. Had anti-Indian assessor who challenged it and said 51 not minimum to be tax exempt and wanted the Tribe to pay taxes. All Tribes banded together to support the Chehalis Tribe and it made it to the 9th circuit court of appeal and it was a game changer. Court ruled you cannot tax the Great Wolf Lodge but if there are any homes on leased land you cannot tax those improvements and this was a game changer. At Swinomish we were losing tons of tac money $2 million a year; Tulalip was losing $1.5 million a year. We were the only governments in the US being pilfered by another government. The worst case in the US North Dakota (Tribes being pilfered by another govt $1 billion in oil taxes being collected by the State of North Dakota.) Money is still important to Tribes – the poorest of the poor. In 60s we leased 1000 lots to non-Indians so from 60s to 2013 the money generated by those homes was going to the county. The county kicked them off the roles and the judge ruled each person would receive 6 million refund to all those homes. Swinomish had to make a big decision quick. Taxing districts didn’t have $6 million so we could have said you owe Swinomish $6 million but we decided to take a different route. We set up an IRS Department – the Indian Revenue Service – worked with the county the first year to assess the homes and the second year hired our own assessor – 2 person office Collection rate from the homes – 99, 99 and 98 percent of taxes. School, Fire District, library, Medic One we put money into their coffers. Swinomish collects about $10 million a year in taxes. It is about 20% of our total budget and it has helped tremendously to fund programs that are underfunded. We have been able to plug dollars in so it has been a great impact to us. We will open retail marijuana store and opened a heroin treatment center for non-Indian addicts. If you want to see ordinances or have additional information cell phone: 360-708-7533.Will Micklin, 2nd Vice President Tlingit-Haida Tribes of Alaska – Foundations of a Tribal Government AuthorityTribal economic development has always been a project pursued by Tribes with great enthusiasm and any Federal partners looking to conduct a study. Unless certain actions taken there will always be economic development projects but not tribal economies – need legal and physical infrastructure to make economic development happen. It is needed to support Tribal government and develop an economy to support priorities of Tribes and eliminate the intervention of other governments. Principal issues – US Congress and state legislatures have yet to regard infrastructure as worthy or capital investment. Tax increase is the third reel in domestic politics. Infrastructure requires investment and continued maintenance. Transportation, utilities, housing and communication – Tribes need to build economies and opportunities. Foundation – Tribal SG offer opportunities for compacting and contracting from Bureaus within Interior and other Departments and agencies outside of Interior. Other agencies resist these partnerships because they are territorial. It has been an ongoing effort. Tribal communities are surrounded by opportunities for contracting and compacting with our Federal partner. It is important because the opportunity for funding from Fed government continues to shrink in response to increasing federal debt and annual federal deficit. Tax Cut and Jobs Act – projections for revenues against tax cuts continuing question about the revenues projected. Annual deficits will continue to increase above the projections considered at the time. Reliance on Federal Appropriations will be more challenging in the future than they are today. Revenue Generating Opportunities Taxes – we need ways to retain these revenues in Tribal treasuries and stop the flow of these revenues to state and local governments.ITARA is an additional opportunity that authorizes Tribes to submit trust asset management plans and waive federal regulations for plans approved by the Secretary. Our Federal partners are currently emphasizing Title II consolidation of OST and Treatment of Appraisals but the First Title of the Act is important and if interpreted according to intent it is not simply limited to Hearth Act but ability for Tribes to impose their regulatory regime it could be a significant new authority for Tribes to rely on. Section 17 Corporations – Federal Charter Tribes can apply for and receive as a corporate entity is tax exempt and Tribal lands can be assign dot it and remove nexus to Federal decision making – so actions will not trigger NEPA for environmental documents and it can diminish cost and time for the development of projects. Political Subdivisions – define tax exemptions and Federal law can displace state and local law – being tested by Tulalip Tribes (Village – county is trying to tax non-Tribal businesses in the village). Hoping the Tulalip Tribes prevail. Every Tribe should be looking at Political Subdivision to roll back the assertion of state and local governments. Tribal Law Corporations – limited liability corporation – one yet untested by the IRS – whether Tribal Law Corporation carries with it sovereign immunity and exemption from taxes. If Tribe Chartered Corp and it operates off of your land – immunities with Tribes – long held on their priority list examining integral part determination (open question that has not yet been tested) Conservation Districts opportunity to assert Tribal jurisdiction to assert immunities privilege for Tribal enterprises. Tribal Energy Resource Agreements – Tribes can create TERA to spur energy development for Tribes but concerns TERA doesn’t displace the NEPA documents and there is a parallel Tribal Environmental Review – definition of third parties – that could have an interest in Tribal projects are a concern. National Environmental Policy Act – is subject to review Tribes proposed use of resources should not constitute major federal action. If project on Tribal land and not significant impact it is a categorical exclusion so an environmental assessment is not necessary. View from Tribal side it is beyond dispute the portion of Trust property being used should remain subject to the will of the Tribe. Fed – because consider CATEX federal action you need NEPA. Tribes maintain there is no change in use that the Secretary bears fiduciary responsibility to Tribe or allottee and it is a nondiscretionary duty in the best interest of the beneficiary. It is often an inhibitor of the economic development on Tribal lands – NEPA is so costly and long – opportunity to apply for categorical exclusion for projects. Taxation – struck out with Tax Reform. This Administration is seeking to reduce the regulatory burden so there is an opportunity for Tribes to look at CATEX. Tribal Governments as Nation States – legal infrastructure is the foundation for the rule of law and people who seek to do business with Tribes seek out this infrastructure. Linda Austin – Ysleta del Sur – Primary Data Sources Identifying Tribal Priorities only Pueblo in Texas and only 3 Federally Recognized Tribes in Texas. Foundational work before searching for revenue streams – very important that communities know what their needs are and what they are trying to create. Approach identify our needs first and see what our community is looking to build, capacity building for our community and align resources with these needs. The information that you collect from members will be most meaningful. Served Pueblo for 23 years – always looking at everything from a birds eye view. For us, in conducting our socio-economic profile and as a result - last week we were invited to present testimony before SCIA because of our work and we were recognized as a Best Practice. These types of demonstrations help to build the case for SG. For us data we compile highlights community strengths and needs. Tribes build capacity to do it in-house. It is an expression of Self-Governance and Sovereignty. Education, Employment, household sizes, income and manage own data to capture custom data on cultural participation to make sure community is engaged and participating in events. Those are the benefits you can achieve when you manage and design your own instruments. Key indicators – population, education, etc. chose based on reports in existence. Based instrument on the US Census so we were able to utilize what the census was reporting and we can report back. Findings from report can help in many areas – tells strengths and where we need to make improvement. Needs – better informed – we can go after funding more meaningful and in alignment with needs and design compacts to meet these priorities. Tribal leaders – we share data internally with all stakeholders so we all work in tandem to make these improvements. We need to be creative and resourceful in small Tribes and band together resources from multiple departments. Census focus is not our Tribe so it is important for us to manage own data and produce it at a level that is comparable to other agencies. For most part there is not meaningful data in Indian country. We partner with University of Arizona to do Nation Building – happy we are blazing this trail. We have been collecting data for quite some time. We were recognized in the late 1980s – we use to have a questionnaire and a requirement that Tribal members need to register with Census department once a year so we have current information on address and other needs. We always had a foundation for doing it. Our 2016 Report is the best produced and made a sizeable investment to go electronic. It is not cheap but if it is important to Tribe worthwhile and they pay for themselves in the long run. We had a team of consultants that worked with us to make it happen. 1. We wanted electronic; 2. Model it after the American Community Survey; Committee we formed encompassed internal and external partners – we refined it and included customized questions. Windows of time we administer it – rolling come in on birthday but we deviated from this and administered it from August to December and published it in October. We use to do it annually but realized not much change in one year so now do it every four years. Conducted through email and used custom features – next round we will work on weaknesses. Always challenged to go to the next level and clean it up. It is important when you work with consultants they understand who they are coming to partner with. Governor last week at the SCIA brought the Report with him – it is about capturing your own information and SG works when you have proper data. We offered a small financial incentive for members to complete the survey. Key Findings – Where the Tribal Members live – important to establish who is our primary access – over 3000 members but only half live in service area 22% live off reservation and over 90% live in CA, TX, NM and Az. Educational attainment – 30% have some college – how do we structure programs that are more meaningful – people not finishing college so we need to examine this. Jerry Ryburn – Office of Indian Energy and Economic Development – DOICommonly known as BIA Loan Guarantee & Insurance Program – Division of Capital Investment – broken into 4 geographic zones. Program Legal Authority – Indian Financing Act of 1974 – this is where we get our authority and regulations. We consider program to be the best in the federal government because we can leverage every dollar that congress appropriates 17-20 times. We serve as a financial intermediary of private sector debt capital – enhance credit into 90% loan guarantee. Every borrower required 20% equity into business being financed and there are some ways we can address it. Don’t assume not eligible for deals – call us to see if we can finesse it with you. There are 4 requirements – eligible borrower and lender, 20% equity, reasonable prospect of repayment and there has to be an economic benefit to a reservation based economy – revenue stream, job creation or provision of needed services. Business does not have to be located on the reservation they do plenty of off-reservation deals. Loan terms are conventional commercial lending terms – lenders are able to give you fairly good commercial terms. Interest rates we hope will be a little bit below market because of Federal guarantee. Loan amounts – no floor or ceilings except if Indian individual borrow money $500,000 cap on it. Depending on funding year – type of economic benefits – 3rd quarter fiscal year and only obligated small portion of budget – so give them a call. There is some urgency to use this money up. As far as our budget is concerned – we get about $6 million a year from Congress and turn that into about $120 million a year in loans to our borrowers. We have two programs Loan Guarantee up to 90% and an Insurance Program – smaller deals $250,000 or less. It is not 90% guarantee. There is a cost to guarantee – 2% loan guarantee and 1% on insurance – generally born by borrower – looking to do about 122.5 million this year. You work with lender to start loan and lender will determine if do the loan and if require guarantee and we process it within 2-4 weeks. Lender does not have to be a commercial bank we love to deal with Native CDFIs. Loan Program is available and we need to get some money out so let us know if you have deals you are looking to finance.  |
| Questions from the Audience:Red Lake – Need for our Tribe to develop databases and realizing how expensive they are – we can train our own people and make our own databases. Did you create your own database?Answer – We had a platform already – we use a census database PDS People Data System and it is customized software and the portal we use rests on top of it – this is why we used consultants. The new portal we are working on we can customize it to meet whatever Tribal program you want to include. Alaska – Organized an Alaska 8a program and went to BIA loan guarantee and SBA loan program and experience was not good. They wanted several things the company couldn’t provide. As a Tribe in AK our track record was limited. They wanted us to have a partnership and mentor and they wanted to know about management capacity and required us to work with lenders. In regard to all this frustration I concluded if I was an enterprise bank I would sue the government because using public funds to compete with public enterprises. Why do you mimic the white man’s way of capital management on business planning? There is no tax base in rural Alaska – you only get tax base in municipalities so how do you provide a business loan to the entity. We never did get a loan.Answer – Apologize your experience. We don’t make loans we just guarantee them. The lender comes to us and tells us they will make the loan if we guarantee it. Grand Traverse – We try to do surveys every 5 years. Ours need to be mailed out. I didn’t see anything as far as substance and alcohol abuse. If send email no confidentiality? When individual returns it how is it protected?Answer – We own the survey – everything is housed at the Tribe. If you look at the raw data you can see who entered what but we have a unique identifier. Oregon – How did you require Tribal members to fill it out?Answer – not everyone would fill it out but our system generated reminders and we offered an incentive of $50 gift cards. We aligned it with community distribution we normally do it. Pueblos were use to complete the survey. We only had a 75% return rate. New Zealand – When you did these surveys did you do one per family or individual?Answer – It was an individual survey and minors guardians were asked to complete it and if elder a third party could fill it out for them.  |
| Follow Materials, Documents, Websites for Reference:**Swinomish**Brian Cladoosby, Chairman, Swinomishcell phone: 360-708-7533.**Indian Loan and Insurance Guarantee Programs - BIA**Alsace LaFramboise, Zone Manager, telephone: 505-563-5466; cell: 505-554-9526Alsace.laframboise@bia.govJerry Ryburn, ContractorTelephone: 505-563-5470; cell: 505-681-1223Jerry.ryburn@bia.gov |