

DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Sent electronically to john.tahsuda@bia.gov

January 16, 2018

John Tahsuda, Acting Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, NW
MS-4660-MIB
Washington, DC 20240

RE: Follow-up from the Self-Governance Advisory Committee October 25-26, 2017 Quarterly Meeting

Dear Acting Assistant Secretary Tahsuda:

On behalf of the Department of the Interior Self-Governance Advisory Committee (SGAC), I write to express our appreciation for your recent attendance and engagement with Tribal leadership at the Self-Governance October 2017 Quarterly Meeting held in Washington DC. We are optimistic that we can work together as government-to-government partners to address issues from a principled standpoint. We firmly believe that adhering to mutually agreed upon solution-oriented processes will create policies that promote and support Tribal sovereignty and self-determination.

The SGAC provides information and advice to the Department of the Interior (DOI) Assistant Secretary -Indian Affairs (ASIA) and the Director of the Office of Self-Governance (OSG) and serves as a liaison for the Self-Governance Tribes within their respective regions regarding implementation of the Self-Governance program, Federal laws, regulations, policies and budget issues. This Tribal-Federal partnership remains a work in progress to ensure that the treaty and trust obligations of the Federal government are upheld and serve as a backdrop against which all policy decisions should be measured.

While we are encouraged by the Administration's willingness to meet with the SGAC to discuss policy issues that are of utmost concern to Tribes across the US, including, but not limited to, the President's budget request, the reorganization of the Federal government and land into trust for off reservation parcels, we have several outstanding concerns about the method and direction that the Administration has opted to take with respect to several policies that substantially impact Tribal governmental interests.

We urge you to defer to the respected leadership who serve on this Committee for advice and guidance on how these policy decisions stand to impact our respective Tribal citizens and communities. Further, it remains critically important that the Federal government engage in meaningful consultation with Tribes before formally implementing and institutionalizing any significant changes to departmental policies and procedures.

As a courtesy, we have attached the list of issues we raised at our last meeting along with our upcoming FY2018 Self-Governance Advisory Committee schedule so that we can continue to engage in meaningful discussions on an ongoing basis. If you have any questions, please do not hesitate to call me at (360) 681-4621 or email me at rallen@jamestowntribe.org. Thank you.

Sincerely,



W Ron Allen, Chairman/CEO Jamestown S'Klallam Tribe
And Chairman of the SGAC

cc: Sharee Freeman, Director, Office of Self-Governance, DOI
Bryan Rice, Director, Bureau of Indian Affairs, DOI
SGAC Members and Technical Workgroup

DOI Self-Governance Advisory Committee October 2017 Quarterly Meeting Talking Points

Burial Assistance Program

Tribes are concerned about the way some regional offices are interpreting regulations that apply to social service programs, such as, burial assistance. Federal funding is insufficient to address the true needs in Tribal communities so Tribes must subsidize Federal programs and services with many different sources of funding. One region in particular informed a Tribe that if they subsidize the program with anything other than judgement fund dollars they are not allowed to use BIA funds.

- Tribes should not be penalized for carrying out Federal trust responsibilities that are underfunded.
- The regulations were written in 2000 prior to Self-Governance and regional offices are interpreting the regulations in a narrow way that conflicts with the legal tenets of Self-Governance.

Indian Trader Act Regulations

Tribes urge the Administration to undertake amendments to the current Indian Trader Regulations to recognize Tribal jurisdiction and authority with respect to their lands.

- It would help re-establish a tax revenue base for Tribes and allow us to solicit and secure outside investors to conduct business on our lands.
- These changes are needed to ensure Tribes are able to generate business and economic development and achieve self-sufficiency.
- While some state and local governments may object to changes to their taxing authority, the bottom line is that they are collecting these revenues but not providing any services to the Tribes. When you pay taxes you expect something in return in the form of services (police, fire, first responders). All they are doing is reaching into Tribal economies and trying to extract from us a tax base that is rightfully ours. We need our Federal trustees to fight for us.
- The unfulfilled Federal obligation to Indian country exceeds \$200 billion dollars and Federal funding will never be sufficient to make Tribes whole. Therefore, we need you to recognize and support our authority so we can get the job done.

Office of Trust Services Review and Audit

OST is casting a wide net that seems to be an over-reach of their authority and they are targeting small and medium Tribes with restrictions against allocations.

- Some Tribes are being issued findings over their traditional agricultural practices and this is unacceptable.

Department of Interior Strategic Plan Update

The Department's Strategic Plan is tied to the reorganizational effort and Tribes have requested numerous times to be consulted and allowed to provide input on these initiatives but the response has been that it is an internal matter or that you will seek our feedback after the fact.

- The Self-Governance Advisory Committee is an advisory committee to the Department as established in our organizational Charter. We are tasked with providing direction to the Secretary of Interior on matters that impact or have the potential to impact our interests. You have a duty to engage us in these efforts and we should be consulted and involved in the process.
- It is reasonable to assert that if there is any realignment of positions it will have a material impact on Tribes.

Executive Order 13871 "Comprehensive Plan for Reorganizing the Executive Branch"

Tribes are supportive of making processes more effective and efficient and of reducing regulatory restrictions that impede the Tribes ability to serve their communities and citizens but we strongly oppose changes that would impose additional burdens or diminish services.

- We are deeply concerned by the dramatic changes being implemented at the Central Office level without Tribal consultation, including, the transitioning of many SES and career employees out into the field and the shifting of regional directors. Many of these individuals have been an asset to the communities they serve and to unilaterally make a decision without first consulting Tribes on how the organizational scheme is working is paternalistic and an affront to the government-to-government relationship.
- Regional directors are well versed in the specific issues that impact the Tribes in the areas they serve and Tribes rely on their expertise. If there are competency issues in some regions you do not fix those issues by taking the regional directors from regions where they are performing well and doing their job.
- Tribes have expressed frustration that the Administration has unilaterally implemented changes without Tribal consultation. Consulting and working with Tribes at the beginning of the process is essential before any changes are approved and implemented that do not work for Indian country.
- While we support reviewing regulations that seek to improve current processes at both the regional and central office levels, we are opposed to changes that will create additional barriers, such as, centralizing programs and services that work well at the regional level or vice versa.
- There needs to be a clear perspective for empowering and strengthening Tribal communities and Tribes need to be included in every level of the decision-making process.

Office of Self-Governance – OSG provides a critical role in supporting the operations of Self-Governance Tribes.

- OSG has a small Federal staff of fourteen (14) people and when you compare this to the number of FTEs carrying out the rest of the Bureaus functions and activities we are already running a lean and efficient operation.
- There needs to be consideration given to the fact that when new Tribes transfer from 638 to Self-Governance OSG takes on those administrative duties. If there is increased responsibility on OSG to serve additional Tribes there should be greater attention devoted to whether or not additional staffing or funding needs are required to allow OSG to carry out their responsibilities to Self-Governance Tribes.
- There should be better coordination and communication with the Office of Self-Governance and OSG should be invited to all of the meetings with regional directors, including, teleconference calls and included on any correspondence that is sent to the Regional Directors.

Consistent and Robust Meetings with Tribal Leadership to Ensure Better Policy Decisions

As a principal of sovereignty and in order to uphold the Federal trust responsibility, the SGAC requests that this Administration maintain regular meetings of the Tribal advisory committees and that the Department leverage those meetings initially to vet ideas for agency reorganization, regulation dissolution, amendment, or development, and other administrative actions.

Office of Justice Services

We understand that the Office of Justice Services has said that Tribal police officers who are asked to assist in off-reservation police activities will not be covered by the Federal Tort Act.

- It is inconceivable that the Department would implement any policy change that may effectively jeopardize the safety and welfare of police officers – Tribal and non-Tribal. If there is a need for Tribal assistance off-reservation, the officers should be able to freely provide that assistance without hesitation or concern regarding whether or not they are protected by the Federal Tort Claims Act.
- There needs to be better coordination and cooperation between the Office of Justice Services and the Office of Self-Governance so that Tribes are aware of any proposed policy changes or other actions that will impact their communities.

Johnson O'Malley Student Counts/Need for Better Data

Congress wants better metrics to support the funding request for Native students. American Indians/Alaska Natives (AI/AN) continue to face challenges in securing and/or increasing Federal funding for programs and services because current data that is collected is either insufficient, unreliable, or non-existent. On the Federal level, accurate data is a prerequisite to securing larger programmatic investments and establishing and advancing policy goals. The Administration and Congress require Tribal budget requests to be accompanied by data that demonstrates a return on the Federal investment and program success.

- There are real negative repercussions at the local level for failing to provide accurate, meaningful and timely data. A prime example is in the area of AI/AN education.
- The Johnson O'Malley (JOM) Program is a program that was created to meet the specialized and unique educational needs of Indian children attending public and some private schools. Ninety percent (90%) of Native children attend public schools.
- In 1995, the Bureau of Indian Education (BIE) conducted the last JOM count of 271,884 AI/AN students – these numbers are used to calculate education funding for AI/AN. In the 2010 Census (seven years ago), 798,486 AI/AN students were reported as eligible for JOM funds illustrating a substantial portion of unserved students. Since then, there have been two other attempts to calculate the student counts in 2012 and 2014 and both efforts were unsuccessful.
- The current funding level provided to these students based on the 1995 count is approximately \$68.08 per student annually compared to \$12,509 national average. This is both outrageous and unacceptable and the funding for AI/AN is going to continue to recede because Congress will not appropriate any additional funds until the BIE provides them with an accurate count of eligible students.

Tribes Assisting Tribes in Disaster Situations

If Tribes want to exercise their inherent sovereign right to enter into Intergovernmental Agreements with other Tribes to provide assistance in times of Natural Disasters there shouldn't be any impediments to these efforts.

Budget

It is unconscionable to impose budgetary reductions on Tribes who are already severely underfunded. There are trust and treaty obligations that are not being met. This is a Federal obligation not an entitlement.

- Tribes should be a priority when it comes to funding.
- There should be mandatory not discretionary funding for Tribes.
- Tribes already made their contribution to the "balanced budget" with their land and resources which were taken in exchange for the Federal provision of programs and services.

Budget Formulation Process

The BIA has been working with Tribes to improve the budget formulation process but there are still significant improvements that need to be made to the process.

- There are approximately 127 line items and Tribes are told to choose 10 priorities but everything is a priority to Tribes.
- The process doesn't work well for Self-Governance Tribes because we are allowed to redesign our programs and services to best suit our communities needs and it doesn't align with the Bureau's line item by line item process.
- Tribal priorities vary from region to region and the process requires a national roll-up which often negates some of the regional priorities. "cookie cutter" doesn't work in Indian country and sovereign nations have the right to choose and select their priorities.
- Some of the regions have been refusing to meet with their Tribes at the regional level or assist them with the budget formulation process. All regional directors need to be directed to hold these meetings and actively engage with and assist the Tribes in their area.

- Some regions have an urgent need for some programs and services (Alaska public safety is the number one priority) but they receive no money from the Bureau for these services.

Support for Self-Governance throughout the Federal System – The Indian Self-Determination and Education Assistance Act marked a new era in Indian Policy recognizing the Tribal Nations' inherent authority and right to Self-Govern. This historic legislation marked a turning point in the Tribal/Federal relationship from paternalistic Federal control to increases Tribal control over Federal programs and services.

- The Administration has on numerous occasions vocalized their support for Self-Governance and Tribal leadership wants to work collaboratively with you to further our vision to preserve, protect and advance Tribal sovereignty and self-governance throughout the Federal system of government.
- Making America "Great" means local control and Self-Governance is about local control and we have twenty-five years of success behind us.
- In the past, we have been met with resistance due to agency territorial issues or a lack of knowledge of Self-Governance.
- Tribal governments are regulators so the competency is there we just need the willingness of our Federal partners to fully embrace Tribal Self-Governance.

Ensure the Tribal Transportation Self-Governance Program is implemented in accordance with the Fast Act, P.L. 114-94 - The Fast Act passed in December 2015 marked the first ever expansion of Self-Governance outside of DOI and HHS.

- Self-Governance Tribes urge this Administration to complete regulation development as required by the Fast Act.

Tribal Consultation

In recognition of Tribal nations' sovereign status, when contemplating actions that impact Tribal citizens and/ or their lands, and resources, the Department needs to engage directly with Tribes on a government-to-government basis. Consultation with Tribes is different than mere public participation where the agency informs the public about its intended future action. Government-to-Government consultation is a collaborative process that involves direct participation and coordination with Tribal leadership with the goal of attaining consensus of Tribal leaders and Federal officials. We view regular and meaningful Tribal consultation as an essential component of the Tribal/Federal partnership.

- Tribes need to be consulted in the initial phase of the process and prior to the agency taking any actions that impact Tribal interests;
- Consultation must be meaningful and timely;
- Provide adequate notice and provide ample time for Tribes to prepare for consultation;
- Consultations must be open and candid to allow for informed decisions;
- Allow for the assessment of impacts a decision will have on Tribal citizens, lands and resources;
- Assure Tribal rights and concerns are prioritized and given careful and meaningful consideration;
- Remove procedural impediments that hinder collaboration;
- Allow for flexibility when issues involve the coordination with other agencies;
- Agency employees responsible for implementing, administering or supervising Tribal consultation must be held accountable;
- Give deference to Tribal law where appropriate; and,
- Understand that certain information may be confidential and should be protected from public access to the fullest extent possible.

DOI - SGAC 2018 Calendar of Events

Date	Meeting	Location
January 23-24	DOI SGAC Quarterly Meeting	Embassy Suites – DC Convention Center
March 27-28	DOI SGAC Quarterly Meeting	Embassy Suites – DC Convention Center
April 22-26	Annual Tribal Self-Governance Consultation Conference	Albuquerque Convention Center Albuquerque, NM
July 17-18	DOI SGAC Quarterly Meeting	Embassy Suites – DC Convention Center
October 2-3	DOI SGAC Quarterly Meeting	Embassy Suites – DC Convention Center