

Self-Governance Advisory Committee Meeting

January 2020

Attendance: A quorum was present for the meeting.

Action Item: SGAC approved the minutes from the October advisory meeting.

Sharee Freeman, Office of Self-Governance (OSG)

DOI Workforce: Johnna Blackhair has been appointed to be the Deputy Bureau Director for Trust Services at the BIA's headquarters. Patricia Mattingly has been appointed as Regional Director of the BIA's Southwest Regional Office in Albuquerque. Vanessa Schneider has been appointed as Chief of Staff for the Deputy Assistant Secretary - Management. They are waiting for Rufina Villicana to clear the new security requirements, then she will fill the Financial Manager position. A new Financial Specialist will be coming on board soon to focus on the self-governance database work. A person has been chosen and is awaiting security clearance. They are looking for a candidate to fill a Compact Negotiator position and Financial Analyst position to do contracts and support. The OSG is down from 14 employees to 11.

Self-Governance Participation: There are 288 Self-Governance Tribes and there continues to be interest in Self-Governance from Tribes across the country. Specifically, 11 Tribes expressed interest in learning more about Self-Governance in recent months. Three of the eleven Tribes entered into Self-Governance agreements and eight did not enter at this time for various reasons.

Finance & Funding Related Updates: OSG has received and obligated for \$532 million to self-governance tribes. For FY 2020, they have obligated \$141 million for self-governance tribes. A few calendar year tribes and a few fiscal year tribes have yet to submit their documents. For contract support costs, \$19 million has gone out so far. In 2019, they paid out \$85 million, and they are waiting for an additional amount of money from OIS. As of January 15, 108 of 129 funding agreements have been submitted.

They are moving the ASIA offices and BIA offices to grant solutions in October of 2020. The OSG has advocated against transitioning to this system. Weekly meetings are held to try to educate grant solutions staff about how tribal funds are not discretionary.

Other Updates:

- Keeping part of FPMS and phasing part out by October 2020
- Reminder to submit crime reports
- Reminder to submit data for BIA/BIE (JOM) student count
- OSG has a new address – now located in Main Interior Bldg. (3624) in the BIE hallway
- Secretarial Order regarding oil and gas went out over the holidays
- Information posted regarding COPS hiring program

Follow-Up: Where is the funding coming from to cover the Grant Solutions subscription cost?

Tony Dearman, Director, BIE

Angela Barnett, JOM Program Analyst, Bureau of Indian Education, DOI

JOM Student Counts: The overall count of the JOM entities that received JOM funds is 351. Of the 351, they have received counts from 220 participants and still need data from 131. They are reaching out the best they know how to obtain student counts. The number of OSG contractors that receive JOM funding is 90. The number that they have received to date is 46, so there are still 44 that need to submit. The count that they have received to date for OSG tribes only is 88,000.

Overall, for all JOM programs, to date the count received is 284,085. The last count in 1995 was 271,884. They have surpassed the 1995 numbers, but they haven't had 100% of student counts submitted yet (awaiting 131 submissions). From within the OSG tribes, out of the 22 tribes in the Northwest Region, they have only received 8 student counts. For the Alaska Region, they received 12 out of 25. Student counts that are not received by Friday will not be included in the report to Congress.

Once they get forms filled out and returned, they will create a database and send out mass informational emails to JOM funded entities.

Follow Up: Make sure JOM student count form is circulated and accessible to tribes.

Tribal Questions:

1. Are you only accepting counts from tribes that are currently receiving JOM monies?

Response: If anyone does send in a student count, and they are not currently on the list to receive JOM funds, I am taking those counts and including them in a potential participant file so they will have an idea of who submitted a count but is not yet receiving funding.

2. Will there be a negative consequence for tribes who do not submit JOM student count numbers?

Response: Within the Modernization Act that was passed on December 31, 2018, it says that if tribes do not submit their count, they will not receive funding the next calendar year.

3. Are amounts and base budgets going to change according to the counts that are received?

Response: If it does change, it probably will not be until 2021.

Recruitment/Staffing Updates: At the contract level, employees are school employees. Their contracts are renewed on a yearly basis. Contract (Title XXV) employees are at less than a 10% vacancy rate. At the Title V level, they are at a 43% vacancy rate. By September, they want to be at an 80% filled rate with a 20% vacancy rate.

They went from an average of 96 days (all the system counted because it didn't go above 96) to complete a background check to 18 days. They are finding that the time needed for completion of a background check largely depends on an applicant. The EQUIP system is complicated and lengthy.

They are trying to address housing concerns. Housing does not fall under their authority, so they are collaborating with the Deputy Assistant Secretary – Management and Division Facilities Management and Construction to find solutions to remedy housing concerns.

They are partnering with OJS to address public safety concerns. They have safety committees within every school. It is challenging to function within the jurisdictional complexities of the areas served but efforts to educate and function under such complexities is ongoing.

Spike Bighorn, Acting Associate Deputy Bureau Director, Office of Indian Services, BIA
Terry Parks, Division Chief, Office of Indian Services, BIA
Katie Klass, Attorney, Hobbs Straus

477 Program: They have begun a process of entering into a deliberation on the OMB reporting form for the 477 program. Now that they have eight additional federal partners, they needed to update the form because it expires in about a year. They have had three meetings so far. The next meeting will be at the end of the month of February in Las Vegas. They have identified some issues that they need to address including getting more of the federal partners actively involved.

The Office of Indian Services (OIS) has not had a permanent Deputy Bureau Director for around a year and a half. Effective today, they now have Deputy Bureau Director for the OIS. The candidate chosen for the position is Jeanette Hanna.

Program Inclusion Update:

- HHS denied adding LIHEAP to the 477 program
- Title IV-B denied
- Voc. Rehab. has been officially denied

The new law says that federal agencies have 90 days to approve, deny, or request an extension requests for program inclusion in 477. If a response is not provided or an extension granted within 90 days, the request is approved by default. Department of Justice did not respond within 90 days, so purpose area three and purpose area nine are by default included.

Other updates:

- Some programs officially denied inclusion into the 477 program
- Advocates working to get the MOA amended
- Working to update the OMB reporting forms for the 477 program

Kayla Gebeck, Holland & Knight

Diane Cullo, Director, Office of Tribal Relations, United States Department of Agriculture

Hemp: In December, the USDA announced that three tribal plans to produce and monitor hemp have been approved. However, there are 18 other plans that have been submitted to the USDA and are either under review, currently being drafted, or they are pending resubmission.

If you are considering submitting a plan, there are various requirements that you need to meet. Your plan has to maintain relevant information about the producers and the status of the land used for production. You need to have a plan for accurate and effective sampling of the crops. You need a plan to dispose of any crops that have a THC level over the authorized level. You need a plan for inspection procedures. Lastly, a plan for collecting information is needed for reporting requirements. Draft plans should be submitted to farmbill.hemp@usda.gov.

Food: Section 4003 of the 2018 Farm Bill authorized Congress to appropriate up to \$ 5 million for tribes or tribal organizations to enter into 638 contracts for the Food Distribution Program on Indian Reservations (FDPIR). However, only \$3 million was appropriated through FY 2021.

Sherriann Moore, Tribal Deputy Director, Tribal Affairs Division, Office of Violence Against Women, DOJ

Charles Addington (Kevin Martin – Alternate), Director, Office of Justice Services, BIA-DOI

Charles Heurich, MFS, Senior Physical Scientist, National Institute of Justice, Office of Investigative and Forensic Sciences, National Unidentified Missing Persons System

MMIW Task Force: On November 26, 2019, the President signed an Executive Order (EO) to establish a task force on missing and murdered indigenous women and girls. The EO will enhance the operation of the criminal justice system and address legitimate concerns regarding missing and murdered indigenous people. The EO requires top federal officials to coordinate and engages with tribal governments through the establishment of a task force. The task force is co-chaired by the Attorney General of the Department of Justice and the Secretary of the Department of Interior. Attorney General Barr has delegated the co-chair responsibilities to the Deputy Assistant Attorney General Katie Sullivan.

The MMIW task force has had one meeting on January 8, and they have a second meeting planned for January 29. They are planning meetings and consultations to discuss the functions of the task force and more details are forthcoming. The mission and the functions of the task force are to conduct consultations with tribal governments and develop model protocols and procedures to apply to new and unsolved cases of missing and murdered indigenous people.

NAMUS: NAMUS originated from a task force that the Attorney General put together in 2005 to examine the problems and gaps with investigating and reporting missing adult cases. One of the mandates that came out of the task force is that there should be a national centralized data base for missing person cases and unidentified remains cases. That mandate became what created the NAMUS system. The NAMUS system is free to use.

Annually, over 600,000 people are reported missing in the U.S. Many of those are found within 24 hours. A lot of those are reported to the NCIC system. They could be habitual runaways, so they go in and out of the system. At any given time there are generally 90,000 to 100,000 people that go missing on any given day in the U.S. Regarding unidentified remains, approximately 4,400 remains are found per year in the U.S., and after one year, approximately 1,000 of those remain unidentified.

Other updates:

- They are working with the Native American Law Enforcement Training Center in Artesia to develop a training block on the NAMUS system.
- If you would like a NAMUS training for your community, contact Charles.Heurich@ojp.usdoj.gov or NamUs toll-free hotline: (855) 626-7600 or NamUs@unthsc.edu
- Nine states have passed legislation mandating the use of NAMUS for missing persons cases.

Update from AS-IA

Tara Sweeney, AS-IA and Mark Cruz

AS-IA Sweeney provided the following updates from Indian Affairs.

2019 Accomplishments:

REALTY, Fee to Trust:

- Accepted over 29,600 acres of land into trust for tribes
- Streamlined the process for rights of way by removing the bond requirement under circumstances related to public safety use

TERA:

- Updated tribal regulations to make it easier for tribes to enter into TERAs
- On December 16, Secretary Bernhardt issued Secretarial Order 3377 directing the Officer of the Solicitor to develop by March 15, 2020 a list of inherently federal functions related to fluid mineral development that are available for inclusion in an approved TERA.
- Reduced the backlog of pending oil and gas drilling applications from 451 to 120
- Streamlining regulations has resulted in an increase of oil and gas revenue from approximately \$940 million to almost \$1.7 billion.

Economic Development:

- Worked with the Department of Treasury to update their business property leases on trust lands
- Continued collaboration with Native owned CDFIs to support access to capital for Indian Country
- Began the process of streamlining the review and approval of HEARTH Act regulations
- Hosted the first national tribal broadband summit

BIE:

- Reopened the Santa Rosa Ranch School
- Finalized a standard operating procedure for funding request to address facility needs
- BIA will deliver quarterly safety inspection reports to Indian Affairs
- 100% of BIE funded schools completed Native American student information system data entry training
- Opened the first school under the 105(I) leasing program at the Gila River Indian Community
- Expanded access to IHS mental health services and law enforcement services to five BIE funded schools

Public Safety:

- Deployed the Tribal Access Program (TAP) kiosks with partners from the DOJ
- Sponsored the first three female employees to attend the Fire Leadership for Women program at the National Interagency Prescribed Fire Training Center
- Sent wildland fire personnel to Australia
- Since December, 95 firefighters from DOI and the Fish and Wildlife Service have been deployed at the request of the Australian Fire and Emergency Services Council
- 14 opioid task force operations conducted throughout Indian Country which led to 313 arrests and the seizure of over 1,000 pounds of illegal narcotics with an estimated street value of \$6 million
- K-9 enforcement team seized 1,500 pounds of illegal narcotics with an estimated street value of \$13.6 million

2020 Secretarial Priorities:

- Connectivity (broadband and energy transmission)
- Safe Schools

2020 Internal Administrative Priorities:

- Transparency
- Compliance
- Asset Management
- Economic Development
- Student Success
- Managing People
- Administrative Procedures
- Continued focus on MMIP

Budget:

- 2020 budget request will be released on February 10
- Apportionment request was submitted to OMB at the end of the year
- Final 2020 appropriation bill included \$3.2 billion for Indian Affairs (increase of \$142 million)
- BIE received \$1.2 billion

- Bill included the budget separation of BIA and BIE
- BIA received a total of \$2 billion
- Included report language for the House, Senate, BIA, and IHS to work together to develop a sustainable funding strategy for 105(l) leases
- They are revising the Buy Indian Act regulations
- Taking comments on the Alaska IRA until March 2 – send comments to consultation@bia.gov

Tribal Questions:

1. Is the opioid funding limited to enforcement only?

Response: The opioid funding was appropriated to a specific BIA budget line item, and it is criminal investigations and police services. That budget line item funds specific activities, and that is how we determined the possible uses. We did consider the only authorized purposes for that budget line would be what we would use that funding for.

2. Why are our contract support costs for 2018 being delayed? We are also wondering where our 2019 money is?

Response: I will follow up with the OIS and see what the deal is. We should be able to get you a response this week.

Ronald Jackson, Assistant General Counsel for Operations, DOT DOT Designated Federal Official for Tribal Transportation Self-Governance Program, Negotiated Rulemaking Committee

They are still summarizing the comments received from the recent consultations. They received 23 individual sets of comments – close to a total of 200 comments. The statutory deadline to publish the final rule is June 1. They will meet with the drafting subcommittee in two weeks to put finalize a rough draft. They are attempting to schedule a plenary full session meeting of committee the first week of March because there is a change that there will be a 90-day agency review period. However, it may only be subject to a 30-day review period.

Congressional Staff Geoff Strommer, Partner, Hobbs Straus

Senator Tina Smith will be reintroducing the Tribal Food Sovereignty Act. She had previously introduced this legislation in the 115th Congress. Overall, the bill would give tribes' 638 authority over the SNAP program.

Other Updates:

Title IV Legislation:

- The Title IV Amendment legislation passed the Senate in July of 2019
- The bill passed out of House committee on December 5 and now awaits a decision from the full House.
- They are currently trying to determine if the bill can be added to the suspension calander of the Senate (preferred option)

- If it makes it on the suspension calendar and does not get passed by the House, or they conclude that it can not make it on the suspension calendar, it can go directly to the House floor. (option 2)

Litigation:

- In the *Brackeen* matter, the Fifth Circuit heard oral arguments this morning.
- The oral arguments should be available four or five hours after conclusion.
- If the court upholds the decision of the three-judge panel, it is likely that the plaintiffs will appeal to the Supreme Court.
- Briefs were filed on behalf of 486 tribal governments supporting the tribal position. Many of those were consolidated into one friend of the court's brief.

Annette Johnson, Treasurer, Red Lake Band of Ojibwe
Jason Freihage, Assistant Secretary for Management, Office of the Assistant Secretary Indian Affairs, DOI
Phil Baker-Shenk, Partner, Holland & Knight
Geoff Strommer, Partner, Hobbs Straus

Red Lake 105(l) Lease Experience: The 105(l) lease was finalized and signed on October 22 and will provide funds for the Red Lake Criminal Justice Complex. Under the lease agreement the BIA will also provide funding annually for depreciation and replacement costs, principle and interest, and ongoing operations and maintenance expenditures associated with detention, law enforcement, and courts facility. For more than 20 years, the BIA has only provided a fixed and inadequate amount of operation and maintenance funds for our criminal justice complex. The funds received have sextupled since finalizing and commencing with the agreement.

Additional 105(l) Lease Information:

- IHS has been (somewhat reluctantly) negotiating these leases for a number of years.
- BIA has historically refused or has not made the leases a priority
- However, last year, Gila River negotiated a lease with the BIE
- A lease request is a mandatory request directed by statute.
- The facility has to be something the tribe controls (either owns, leases, or has trust interest in it)
- The space that is leased has to be used within the scope of a 638 agreement.
- There are three different options that can be used to determine how much money will be paid for the lease:
 1. You can bargain for a lease based on the fair market value.
 - Can be problematic if there are no comparable properties in the area
 2. You can base the lease on a combination of the fair market value plus a number of cost factors (just as long as you are not double collecting).
 3. You can ignore fair market value and just look at the cost factors.
- Cost factors include (make sure costs are reasonable and are not duplicative):
 1. Depreciation and use allowance
 2. Contribute to a reserve fund every year to replace the facility some day
 3. Debt service
 4. Regular operation and maintenance expenses (utilities, pest control, etc.)

- The right to a fully funded 105(l) lease is only 4 to 5 years old.
- Since then, we have seen growth of 4 or 5 leases to about 150 today on the IHS side
- \$0 value for the IHS in the beginning to 2020 appropriations of \$125 million
- IHS and BIA continues to work on methods for projecting how much funding is needed to fully fund 105(l) leases – a tribal workgroup is needed to assist with this endeavor.

Assistant Secretary for Management: The DOI/BIA is still in the building process of developing a 105(l) program. They are trying to learn from IHS where they can, but they are also different. The DOI has a wider array of facilities. Going through each of the cost elements and finding an approach they can replicate takes time. They are developing stronger internal policies to drive their ability to assess the leases quicker.

Tribal Questions:

1. Is this allowable to be used in combination with grants?

Response: You can have other funds involved as long as you are not receiving funds for the exact same purpose.

Tyler Scribner, Policy Analyst, National Congress of American Indians
George Bearpaw, Director, Office of Budget and Performance Management, DOI
Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, DOI
Jason Freihage, Assistant Secretary for Management, Office of the Assistant Secretary Indian Affairs, DOI

Budget Update:

- \$3.23 billion (increase of \$142 million over 2019, \$449 M above 2020 request)
- \$1.19 billion for the BIE (increase of \$48.5 million over 2019, \$255 M above 2020 request)
 - Operation of Indian Education Programs – total of \$943 M (\$38.5 M above 2019 and \$77.5 M above 2020 request)
 - Construction reductions were restored with a \$10 M increase over 2019
 - JOM was funded at \$20.3 M which is an increase of \$5.4 M over 2019
 - \$4 M was provided for Native language immersion
 - \$6 M above 2019 for facility operations
 - \$248.3 M for Indian Education Construction - \$10 M increase
- \$2.32 billion for the BIA (increase of \$93.8 million over 2019)
 - \$1.577 B for operation of Indian programs – increase of \$67.1 M
 - Human Services received \$155.69 M
 - Trust Natural Resources received \$226.8 M
 - Construction received \$126.6 M (\$6.122 M above 2019, \$68 above request)
 - \$42.8 M for Public Safety & Justice construction
 - \$71.3 for Resources Management construction
 - Trust Real Estate Services received \$138.1 M (\$7.4 M above 2019, \$16.1 M above request)
 - Public Safety & Justice received \$434.3 M (\$21M above 2019, \$25.17 above request)
 - \$52.5 M received for Community and Economic Development (\$5 M above 2019, \$8 M above request)

- \$45.6 M received for Settlements and Misc. Payments
- \$12 M received for the Indian Loan Guarantee Program
- Received 30-day apportionment
- Should receive full apportionment in January

Tribal Questions:

1. One concern that self-governance is having is that the BIA is receiving increases, but the distribution of those increases is either not transparent or we only find out after you have given away all the money how you decided to give it away. I would encourage your office to support tribal consultation or assess how best to distribute funds.
2. Is there a plan for consultation on the distribution of funds for language immersion?

Response: That may be a segue into the next topic which is the allocation - the standard operating procedure that we are trying to establish with all the programs.

3. Under the executive direction, there is \$4.2 million for rentals. Is that a specific request that the agency made?

Response: That line is for GSA rentals.

- a. Like vehicles?

Response: Not necessarily. It can be used for buildings, too.

4. There seems to be divergent ideas about how to submit pay costs, and self-governance tribes have made a recommendation that pay costs should not have to be allocated back to a federal line item. And we are concerned that you are artificially capping the amount for pay costs. We have had neither consultation or any type of conversation about how you are choosing to make those caps. Regions are collecting that information inconsistently, then arbitrarily capping pay costs submissions. Our recommendation is that you allow self-governance tribes to submit one number, and if you are capping it, we need to have a consultation about what is included in the cap.

We need to come to a conclusion about how you are going to handle tribes who have not submitted recent data. We know that there is an issue. We recognize that some tribes are not as responsive, and sometimes its just a matter of you might be reaching out to the wrong person. Because you are not collecting it consistently across regions, we are not able to help you do peer-to-peer outreach. It would be really helpful to understand from the bureau how they are handling outdated pay cost data, and what you consider outdated. We are under the impression now that there are tribes who did not receive pay cost distributions because you did not have recent data.

Response: We work well with the regional budget officers. We do ask for a data cull around November, and we do look at each one of the tribes. If there is a hole there, we try to work with them to make sure it's not a zero. If they did not submit

numbers, then we ask the regions to work with us on the previous submission to see if we can use that in the interim until they submit data.

You mentioned caps. Self-governance is exempt from any cap. At least that's my understanding. You are not held to the limitation of the current base funding cap without consultation. Our worksheet provides that information.

Follow-Up: Reach out to tribes to determine if any tribes did get zeroed out.

5. Is there any way to find out what the regions are reporting?

Response: This could be a follow-up area or special project. George in his team, in response to the GAO requirements, has been developing all of the funding methodologies across all of our major programs for tribal payments. And this could be a good deep dive next.

Will Micklin, First Vice President of the Central Council of the Tlingit-Haida Indian Tribes of Alaska

**Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head Aquinnah
Sayuri Rajapakse, Deputy Chief, Office of Native Affairs and Policy, and Commission, FCC TBD, 2.5 GHz Expert, Wireless Bureau, FCC**

Native Nations Communications Task Force Update:

- The FCC released reports in 2011 and 2018 that demonstrate the need in Indian Country for broadband.
- A GAO report was released in 2018 that addressed the shortcomings in broadband access and what measures the FCC could take to improve access to spectrum for broadband deployment.
- The Consolidated Appropriations Act of 2018 set the one-year challenge for the FCC to produce a report.
- The FCC then formed the Native Nations Communications Task Force
- The task force released a report:
https://www.fcc.gov/sites/default/files/nnctf_tribal_broadband_report.pdf
- Last year the FCC sought nominations to fill vacancies on the task force. The commission is currently reviewing nominations and will make an announcement as soon as possible.
- This is the third iteration of the task force, and so far it has been amazingly productive.

2.5 GHz:

- Across the country there is EBS spectrum that is available.
- Some of it is unassigned and most of it is unutilized.
- There are two spectrums: EBS and CBRS.
- The FCC created a tribal priority window: <https://www.fcc.gov/25-ghz-rural-tribal-window>
- At tribal priority window website, you will find information such as an explanation of the allocation, the application procedures, the mapping tool, and contacts for assistance.

- The technical aspect is fairly trivial. For most grant applications for broadband you need to spend about \$80,000 for engineering services. That is not so with this tribal priority window.
- The application process is simple.
- The challenge is identifying the spectrum available to you, creating a profile to determine the spectrum you can use, and submitting an application that best fits your needs.
- **One caution is that once the window closes, you cannot amend your application; however, you can amend it up to the closing date.**
- **They will notify if you if they find that your application is incomplete.**
- 2.5 GHz is very suitable for broadband.
- **After the tribal priority window closes, the FCC will move to a public auction for the remaining 2.5GHz spectrum.**
- 2.5GHz will be important to the 5G plans.
- It is unlicensed and can be leased.
- It is an educational broadband spectrum, so if you see assignments or leases, its going to generally be to a university or school district.