**DOI Self-Governance Advisory Committee Meeting Minutes**

**Thursday, February 18, 2021**

**Virtual Meeting**

Attendance:

A quorum was established for the SGAC meeting.

Committee Business:

* October 2020 minutes were approved.
* SGAC members voted electronically to re-elect Ron Allen as SGAC Chair and elected Delia Carlyle as SGAC Vice-Chair.
* SGAC approved Scott Sullivan's nomination from Tolowa Dee-ni Nation as the alternate delegate for the Pacific Region.

Update from Darryl LaCounte, BIA Director

The administration's main priorities:

* COVID-19 response
* Vaccinations
* Climate Change

BIA is currently revisiting the issue of collecting tribal data.

BIA understands that some Tribes are upset with the CARES Act Funds' distribution based on the data that the Treasury used.

Jennifer Van Der Heide Escobar, Chief of Staff, Department of the Interior

Chief of Staff Van Der Heide is a former Tribal Attorney with the Hoopa Valley Tribe and California Indian Legal Services. Over the last two years, she has served as Congresswoman Haaland’s Chief of Staff. She was also involved in the effort to pass the Progress Act.

Tribal issues will be front of mind for everything that will be happening in the Department of Interior, including: COVID-19, opportunities of co-management across the agency, Missing and Murdered Indigenous Women, resources for schools at BIE, and many other issues. Self-Governance and how to move it forward will be top of the agenda.

Climate change, renewable energy development, and racial and social equality are all priorities of the Administration.

Ann Marie Bledsoe Downes, Deputy Solicitor for Indian Affairs, Department of the Interior

Ms. Bledsoe Downes is a member of the Winnebago Tribe of Nebraska. She is a new appointee; she landed day one as the new Deputy Solicitor for Indian Affairs.

Ms. Bledsoe Downes has been working on consultation for the past few weeks. She apologized for the short notice of the Dear Tribal Leader letter that went out last week. She said President Biden wanted to know very quickly what could be done. They want to maximize the amount that can be done in the four years. They have a good starting point and have heard where things have not been done well in the past and are working on where they can do better as an agency, not just in Indian Affairs, but all bureaus within DOI.

Q & A

**Q:** What would you say is your goal for Self-Governance from the Solicitor's Office?

**A:** Generally, I think that our Solicitors Office goal setting is going to come from what we hear from all of you. Identifying the issue you raised earlier, I think it is extremely important not to sort of bake those priorities in a vacuum, and we are doing it in a very deliberate process with you all. My general goal is that those will be Tribal driven goals, but I know there are things like the 477 MOU. You have raised the issue of disbursement of funds, regardless of whether that is COVID Relief or formula distributions.

**Q:** Who will be the point person on the Section 105(l) agreements that have to be negotiated?

**A:** I don't have an answer for that, but I can say I do know that Mila Ervin in the Solicitor's office was instrumental in getting that first one through the agency. She is still on our team, and I know she has a wealth of knowledge. There is high interest across the department in making sure that we implement that and expand that opportunity.

**Q:** Are you reviewing many of the decisions that were made that were not in the best interest of Indian Country that came out of the Solicitors Office?

**A:** Yes, that was one of our initial priorities in the first week. To review everything that was out there and identify the things that needed to be analyzed and whether they needed to be withdrawn. We have done a thorough review of those things. Right now, we have some tentative plans. I'm not in a position right now to finalize any kind of announcement on things, but we are absolutely doing a thorough review.

**Q:** On the new bureau Trust Fund Administration, there is a secretarial order to establish it. With the congressional language rejecting the budget structure, including funding for OST and not the new bureau for Trust Funds Administration. So, the issue is where is the Interior going to take that conversation and that transition?

**A:** I don't have anything new to say on that. We haven't made any final decisions in our meetings. There is a report due in response to that request in the report on appropriations. We did an initial analysis, but there have been no new policy decisions on that.

**Comment:** In our Tribal Caucus, we were frustrated at the fast turnaround request that we got on data for CARES money and contract support cost that accompanies it. The timing and the turnaround time have to be more reasonable when you ask for stuff from the Tribes. Then at that point, no one received their money. The Office of Indian Services is notorious for being slow in getting their job done to get those resources out to the Tribes.

**Q:** On the issue of banning electronic equipment, software, and services from a number of Chinese companies—in the new Consolidated Appropriations Act for 2021 there is language that appears to speak to the issue that BIA raised with Tribes concerning funding for the cost of removal or replacement of this unsecured equipment. We need better feedback on where Interior is going with that. I imagine it would vary from Tribe to Tribe depending on who has what equipment or software or which company. What is the process going to be in terms of assisting Tribes in making any kind of transition if there is an I.T. security problem?

**A:** (Jason Freihage) I will talk to that. I will be able to provide a follow-up from the consultation we held on this a month or two ago. I will address that later.

Office of Self-Governance Update

Sharee Freeman, Director, Office of Self-Governance

Director Freeman began with personnel changes:

* Ann Marie Bledsoe Downs, Deputy Solicitor for Indian Affairs
* Daryl LaCounte, exercising the delegated authority for the Assistant Secretary
* Johnna Blackhair is exercising the delegated authority for the BIA Director
* Jim James, who was the former BIA Deputy Bureau Director for Field Operations, has retired and Bart Stephens is Acting Deputy Bureau Director
* Charles Addington, who was the previous Director for OJS is now appointed to Senior Advisor for Law Enforcement, Security, and School Safety
* Jason O'Neal, previously the OJS Assistant Deputy Bureau Director is now the OJS Deputy Bureau Director.

OSG is waiting on Approval from the new administration to fill three positions—Financial Specialist, Financial Specialist/Audits, and Compact Negotiator. OSG hopes to have enough money to add more staff pursuant to the PROGRESS Act. They hope to be able to add a Deputy Director for the Office of Self-Governance, to help move forward all of the new initiatives that have come from the PROGRESS Act.

The number of Self-Governance Tribes for FY 2021 by region: Alaska-186 Tribes (35 Funding Agreements and 11 Consortium Funding Agreements), Northwest-26 Tribes, Pacific- 23 Tribes, Rocky Mountains -1 Tribe, Western-7 Tribes, Eastern-2 Tribes, Eastern Oklahoma-12 Tribes, Midwest-13 Tribes, Southern Plains-8 Tribes, and Southwest-6 Tribes.

For the Fiscal Year 2021, OSG has 133 Funding Agreements, 11 Consortia (162 Tribes in Consortia), and 3 new Tribes (Nottawaseppi Huron Band of Potawatomi, Native Village of Unalakleet, and Gulkana Village Council).

Office of Self-Governance Finance for FY 2020: To date, OSG has received and obligated approximately $797,167,607 in FY 2020 funding to Self-Governance Tribes. To date, OSG has received and obligated approximately $289,430,314 in FY 2021 funding to Self-Governance Tribes.

Breakdown of 2021 Funding: Child Care Development (Discretionary) $76,781,910, Childcare Development Fund (Mandatory) $13,271,356, Temporary Assistance for Needy Families/Native Employment Works $17,865,845, Operation of Indian Progress (2 year) $138,489,974, Contract Support Costs $37,594,332, Department of the Interior, Wildland Fire $ 1,085,281, Operation of Indian Programs/

Construction/Settlement/Damage Assessment (Annual) $258,961, and Department of Transportation, Construction and Planning $4,082,655.

Contract Support Costs 2019 Distributions: FY 2019 paid to date $ 108,628,210. Additional funds were requested for the remaining final payments in August 2020 and again in January 2021. Additional funds will primarily fund outstanding Direct Contract Support Cost Needs, with 99.19% of Indirect Contract Support Costs previously funded. Eight Tribes remain unresponsive to OSG's CSC 2019 data request.

Contract Support Cost for FY 2020: FY 2020 paid to date $106,439,494. An additional $15,661,369 has been requested for final payment. FY 2020 CSC data request deadline was August 3, 2020. 91 Tribal responses have been received, and thirty-nine Tribes remain unresponsive to OSG's CSC data request. OSG cannot pay CSC without current year data from Tribes.

Contract Support Cost for CARES Act FY 2020: FY 2020 data request for CSC to accompany BIA CARES Act funding initiated at the direction of OIS memo dated October 29, 2020, with a November 13, 2020 deadline to respond. $27,862,443 in CSC funding was requested for Self-Governance Tribes, and 78 CARES Act CSC Tribal responses have been received to date.

New Contract Support Email: OSG-CSC@bia.gov Tribes are requested to please email all correspondence and documentation regarding Self-Governance Contract Support to this email address. Information sent to this address goes to multiple people who work on Contract Support, so nothing gets missed.

GSA Memorandum of Agreement-Leasing GSA Fleet Vehicles: The DOI and GSA entered an MOA on January 7, 2021, to speed the process for Tribes to secure GSA motor vehicles. The AS-IA is required to submit a list of S.G. Tribes bi-annually for GSA to assess the eligibility of Tribal entities to use GSA Fleet Vehicles. If there is an issue with eligibility, GSA will coordinate with the following in the order they are listed: Tribal Representative/Leader and then S.G. Compact Negotiators. A copy of the MOA is provided to SGCE for distribution.

On December 17, 2020, the notice of the deadline for submitting completed applications to begin participation in the Tribal Self-Governance Program in FY 2022 or calendar year 2022 Federal Register Notice was published. The deadline for submission is March 1, 2021.

On February 1, 2021, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee Establishment; Nomination Federal Register Notices was published. The deadline to submit written comments regarding the intent to establish this committee and nominations for committee members is March 3, 2021. All comments and nominations can be submitted by email (preferred) at consultation@bia.gov.

CARES Act FASSR: Tribes/Tribal Organizations that operate their CARES Act Welfare Assistance program under Title IV of Pub. L. 93-638, as amended, are requested to submit their Financial Assistance and Social Services Report form. Please submit by email to Kenneth.Reinfeld@bia.gov by Tuesday, March 2, 2021. The Memorandum and form can be found at the Self-Governance Database http://osgdb.org/OSG/. A copy is provided to SGCE for distribution.

A Tribal Justice Seminar Series will be held Wednesdays from 12 pm-1 pm on Zoom by UC Davis School of Law, February 10, 2021-May 5, 2021. https://ucdavislaw.zoom.us/meeting/refister/tJArcuGurjwrGdUp2k\_Dl4zaNcDCv\_ZVxAOH. For more information, contact tribaljusticeseminar@law.ucdavis.edu or (530)400-2754.

DOI will host four consultation sessions for improving consultations with Tribes. https://www.bia.gov/as-ia/concultations-listening-sessions/schedule.

Q & A

**Q:** Why do the GSA folks not go to the Self-Governance for clarification and eligibility verification first, rather than wait and pass the time? Since the authority should be in the compact, Self-Governance should be provided and agency to agency clarification first.

**A:** The MOA was negotiated by the prior Assistant Secretary and Deputy Assistant Secretary. It is in place now. The process, until we change it, we are probably going to have to live by. While I understand why you think it would be better to do it that way, it's only if there is a problem that pops up on GSA's part. The last time we talked about this, you suggested that GSA use the published list. As the first order of business, they are going to use that published list of Tribal Leaders in determining eligibility if they have questions or concerns or there is something that doesn't match up. One of the questions I raised is if a Tribe has both a 638 Contract and Self-Governance Agreement, and GSA says this is not under the Self-Governance Agreement, how can we fund this Tribe? I wouldn't know that they have a Title I, so it was one of the questions that were raised, and the thought was, why not just ask the tribes?

Jason Freihage, Deputy Assistant Secretary for Management

Deputy Assistant Freihage began with his response to the previous question about prohibited equipment. Is the funding available to help Tribes purchase new equipment? The National Defense Authorization Act of 2019 had language saying that federal funds should not be used to purchase certain surveillance and other IT equipment from five specific vendors that are all Chinese companies. The concern was if you are buying equipment from them, they could be spying on you. There is no specific pot of funding for this because of the timing of when the new legal requirement came out. They are planning to follow up with the Tribes to look at the level of risk associated with it, and they are looking at available and potential funding resources.

Broken Promises Hearing: One of the main things they did at the hearing was to separate out BIE's budget from BIA and to do a management realignment. The goal was to give BIE more control over both their budget and their management actions. On the management side, they have been transitioning to them the ability to take care of their own acquisitions for safety and facility management. So far, they have been able to take over all of their safety actions and are doing all of their inspections in a timely fashion and identifying the actions needed to fix the facilities in a timelier manner. The facilities management piece is still building up staff. It will probably be another year before they are able to fully take on direct management of their facilities.

Another thing they have done is to highlight the steps they have gone through to improve educational facilities. One was to develop a standard operating procedure to process requests to address BIE facility needs. They have rolled out a new Site Assessment and Capital Investment Process for identifying the next major school construction projects and how to implement them. Implementing this has helped them become included in the Great Americas Outdoors Act, which is providing an additional 95 million dollars a year to address BIE facility needs on top of the appropriated funding.

They have also come up with a consistent Educational Space Facility Criteria Handbook to identify the correct size facility to construct based on the number of students.

On the IT side, they worked with the BIE and their bureau-operated schools to move toward a standardized single cloud-based learning management system. This is part of the broader effort to carry out the use of CARE Act funding. They have bought over 10,000 computers and over 6,000 hot spots for Wi-Fi access. They are hoping by the beginning of the next school year to have a better learning management system to help with more effective distance-learning or make better use of technology in the classroom. Another big effort was to increase broadband at schools. They are down to two schools that do not meet the criteria to access broadband, and they are on the verge of getting that in place. They have also rolled out a project to put Wi-Fi on 25 busses with the longest bus routes, so they can do more work if they have a long commute. Right now, since not as many kids are going to school, they are looking at using those as hotspots in communities for distance learning.

The Department of Commerce's National Telecommunications and Information Agency received a billion dollars in the last part of the COVID supplemental piece of the Omnibus Bill, and they have been working with them on how to distribute the funds.

Section 105(l) leases:

The program is being managed under the Office of Facilities and Property Safety Management. They are working closely with the Solicitors Office and have executed 10 leases so far. They have developed a National Policy Memorandum, which streamlines the process. There are also Excel templates for Tribes to help speed up the process. There is an indefinite appropriation for Section 105(l) leases in the omnibus.

Indian Affairs is taking steps to improve the timeliness and accuracy of payments to the Tribes. They have created a National Policy Memorandum for use with carryover funds to ensure that funding is moving quickly and they are not letting it lag.

Concerning the GAO's high-risk list, they have created a new Indian Affairs Manual chapter, including technical exhibits regarding the process for making payments to the Tribes and the actual methodologies for making each major Tribal funding line. It is the methodology for how the funds are allocated across Tribes and the process for doing so. This allowed them to submit closure packages to GAO on the two recommendations they had related to improving the administration of Tribal Programs. They have high hopes the GAO will allow them to close those out.

They are down to one GAO high-risk recommendation they need to close related to school safety. They have also submitted the closure package for that.

They have sent 84 million dollars over the previous fiscal year to Indian-owned businesses.

Jerold "Jerry" Gidner, Director, Bureau of Trust Funds Administration (BTFA)

There is about 5.7 billion in investments that BTFA manages, with about 3,500 Tribal accounts and about 25,000 IAM accounts.

BTFA runs the American Indian Records Repository in Kansas, where they have over 330 thousand boxes of records. They are beginning an electronic records management program. They are beginning to digitize all of the documents stored there for better management. Their goal is to digitize all of the Tribal records and make a database available to the tribes.

They also want to put out kiosks in places where there is no staff to have video contact with their call center. They also plan to make it available for the person using the kiosk to scan documents to the kiosk on the spot. They have a contractor they are working with on the kiosks. They also want the beneficiaries to have online access to their accounts.

They are hiring field accounting technicians. These are entry-level positions. They are GS 5,6, and 7 positions. These positions are in 8 or 10 locations around the country.

Milo Booth, Tribal Affairs Director, Office of Intergovernmental Affairs, DOT

Mr. Booth began with the rollout of the Department of Transportation's Tribal Transportation Self-Governance Program last October. Since the rollout, they have had the opportunity to engage with a number of Tribes.

They will be going into Tribal Consultation regarding the Executive Order that the President has signed regarding consultation and coordination with Tribal Governments. They plan on having two or three listening sessions.

They will be having a webinar on Rural Opportunities to Use Transportation for Economic Success (ROUTES Initiative) next week. This is a program that helps put the access of the grant dollars into rural America and Indian Country.

Since the rollout of the TTPSGP program, there has been a change in administration. Mr. Booth was sitting in the Office of the Secretary under Governmental Affairs, but that was under the previous administration. Mr. Arlando Teller was appointed to fill the Deputy Assistant Secretary for Tribal Affairs Duties. He comes from the Navajo Nation and has a long list of experience with transportation issues. He has served in both the Director and Deputy Director capacities with the Transportation Program at the Navajo Nation. He most recently served as a Representative in The House at the state level in Arizona. He is well versed in everything from FAA to FRA to FTA. He really has a good grasp on all things transportation.

Q & A

**Q:** How many Tribes are applying for the Self-Governance Agreement with DOT?

**A:** We received our first one last week, and we have had roughly three dozen one on one meetings where there has been a lot of interest expressed. Whether that's someone wanting someone else to be the first person through the door or the change in administration hampered their willingness to apply until everyone showed up. That is currently where we are right now.

Tribal Chairwoman Shelly Fyant, CSKT

Chairwoman Fryant began with a brief history of CSKT's efforts to re-acquire the National Bison Range. The range is approximately 1,800 acres in the middle of the CSKT's reservation, taken during the Roosevelt Presidency in 1908.

CKST began efforts to obtain management of the Bison Range shortly after Self-Governance was made permanent by the 1994 amendments to ISDEAA. The first funding agreement was signed December 15, 2004, for 2005-2006, but FWS canceled the agreement on December 11, 2006. A second funding agreement was proposed for 2008-2011, but a federal court rescinded the agreement on procedural grounds on September 29, 2010.

It took 14 years for CSKT to be vindicated of the negative reports by Fish and Wildlife Services regarding performance at the National Bison Range during the first agreement. Restoration of the NBR was included in S. 3019, the Montana Water Rights Protection Act, introduced in 2019. This was included in the F.Y. 2021 Omnibus and COVID Relief and Response Act signed into law on December 27, 2020. On January 15, 2021, Interior Secretary signed Secretarial Order 3390 that directed the U.S. Fish and Wildlife Service and the Bureau of Land Management to facilitate the transition of property related to the NBR to the BIA. The BIA has formally recorded that Congress restored the land back into trust for the CSKT on the Flathead Indian Reservation.

CSKT is now working on maintenance items for the range. Items being reviewed are the need for new facilities, upgrading to a hands-free fee collection system, noxious weed eradication, and updated visitors center design. They are looking forward to hosting a celebration and a blessing at the range.

Jason O'Neal, Deputy Bureau Director, Office of Justice Services

Mr. O'Neal began with a brief introduction. He has spent the bulk of his 25-year career working in Indian Country as a uniform officer for the BIA. For 8 of those years, he worked with the Chickasaw Nation to compact their function from the BIA and spent eight years as their Chief of Police before returning to the BIA.

He reported that one thing that has been important for Tribal Law Enforcement Programs is the Special Law Enforcement Commissions.

As they go through the landscape of the McGirt Decision, they intend to make sure everyone knows the appropriate authority to deal with the new jurisdictional challenges.

Q & A

**Q:** What can we do to improve the collaboration with the DOJ?

**A:** To me, collaboration is a priority. Last week I met with Tracy Toulou and his staff. His office and my co-chair an Indian Country Law Enforcement working group. Chris Chaney is the co-chair of the Office of Tribal Justice; he and I have been talking about how we can get some of the other Federal Law Enforcement Partners active in that group. Certainly TIBIC, I want to be more involved in that group. I am welcoming of ideas Tribe has, and I'm looking forward to developing solutions to problems Indian Country Law Enforcement is facing.

**Q:** Because of the McGirt Decision and the changing of the legal standing of Muscogee Nation and the other Oklahoma Tribes, what are you doing in preparation for that? Is there a report that talks about what OJS can do for Tribes in 280 states?

**A:** As far as McGirt, there has been a lot of internal deliberation as far a resource needs for the Tribes being impacted. All of those are Tribally ran programs except one; we still maintain Criminal Investigations for a portion down there. Our biggest initial attack has been on those Law Enforcement Commissions. That is something that can be done quickly and can ensure there are enough Law Enforcement Officers in that area that have jurisdictional authority to take action. Resources for all Tribes are controlled through appropriations; however, we have been looking at the numbers and the impact to the Tribes there would be acreage in our funding methodology. We have numbers squared away and have been looking at those as well. We haven't in the last few weeks had any discussion on additional initiatives there, but we have been fully engaged, especially with our Cold Case Teams, in making sure that those are available nationwide. Our Drug Division is available nationwide. So, there are a couple of programs readily available to provide services throughout the country.

**Q:** The Tribal Law and Order Act has always been an unfunded mandate. Are we looking at ways to identify a raise to attention for the appropriations, for that matter, or even the new administration?

**A:** We are required under that act to produce an annual needs report. Our most recent was the 2018 report that came out this year. They are located on our website. Those are the reports to Congress that outline what the existing funding and resource need are out there. There are a number of issues in the Tribal Law and Order Act that we continue to collaborate on with the DOJ. Probably the biggest annual visibility report would be that needs report.

SGAC Meeting Adjourned

Chairman Ron Allen thanked everyone for attending and closed out the meeting.