

# DOI Self-Governance Advisory Committee Meeting Summary

Wednesday, July 14, 2021

1:00 – 5:00 PM Eastern Time

Virtual Meeting

## **Attendance:**

A quorum was established for the SGAC meeting.

## **Committee Business:**

- February 2020 minutes were approved.

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

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

Director Freeman began with personnel changes:

- Kathryn Isom-Clause, Deputy Assistant Secretary – Policy and Economic Development
- Heidi Todacheene, Senior Counselor to the Assistant Secretary – Indian Affairs
- Stephanie Sfiridis, Counselor to the Assistant Secretary – Indian Affairs
- Sam Kohl, Counselor to the Assistant Secretary – Indian Affairs
- Denise Edwards, Acting Director, Office of Indian Economic Development
- Anthony (Morgan) Rodman, Director of White House Council
- George Bearpaw, (retired) – Previously, the BIA Director of the Office of Budget and Performance Management.

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 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 F.Y. 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 four new Tribes for F.Y. 2022(Cowlitz Indian Tribe (Northwest), Paiute Indian Tribe of Utah (Western), Wichita and Affiliated Tribes (Midwest), and Igiugig Tribal Village Council (Alaska)).

Office of Self-Governance Finance for F.Y. 2020: To date, OSG has received and obligated approximately \$821,017,801 in F.Y. 2020 funding to Self-Governance Tribes. To date, OSG has received and obligated approximately \$1,304,162,480 in F.Y. 2021 funding to Self-Governance Tribes.

Breakdown of 2021 Funding: Child Care Development (Discretionary): \$91,105,098; Childcare Development Fund (Mandatory): \$15,613,443; Temporary Assistance for Needy Families/Native Employment Works: \$17,865,845, Community Service Block Grant: \$557,032, Operation of Indian Programs (2-year): \$274,021,472, Contract Support Costs (awaiting some data): \$134,891,314; Department of the Interior, Wildland Fire \$7,142,001; DOJ – Bureau of Justice Assistance: \$879,982; Operation of Indian Programs – Reimbursable: \$4,786,030; Bureau of Education – Facilities Operations and Maintenance: \$1,432,357

Resources Management Construction – Safety of Dams: \$17,348; Operation and Maintenance – Indian Irrigation Systems: \$59,482; Department of Transportation; Coronavirus Response & Relief Supplemental Appropriations (CARES) Act of 2021: \$73,661,600; American Rescue Plan Act – Child Care Stabilization: \$193,258,345; American Rescue Plan Act – Child Care Development Funds (Discretionary): \$120,456,810.

CARES Act – DOT – Transportation Highway Infrastructure Program \$6,196,362; Pandemic Emergency Assistance Funds: \$4,621,490; ARPA – Housing Program, Law Enforcement Special Initiative, Aid to Tribal Government: \$334,237,166. Total: \$1,304,162,480.

Contract Support Costs 2019 Distributions: FY 2019 paid to date \$ 108,628,210. Seven Tribes remain unresponsive to OSG's CSC 2019 data request.

Contract Support Cost for FY 2020: FY 2020 paid to date \$115,356,907. FY 2020 CSC data request deadline was August 3, 2020. Twenty-Six (26) Tribes remain unresponsive to OSG's CSC data request.

Contract Support Cost for CARES Act F.Y. 2020: F.Y. 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 fifty (50) Tribes remain unresponsive to OSG's CARES Act CSC 2020 data request. For FY 2021, CSC received by OSG Date: \$134,981,314.

New Contract Support Email: [OSG-CSC@bia.gov](mailto:OSG-CSC@bia.gov) Tribes are requested to please email all correspondence and documentation regarding Self-Governance Contract Support to this email address, including the 2021 CSC Data.

The PROGRESS ACT Negotiated Rulemaking Charter has been drafted and awaiting Secretarial review. Federal and Non-Federal candidates are in the process of vetting as required for Secretarial appointments. The appointment letters have been drafted and will be released upon White House clearance. A Federal Register Notice for Proposed Membership has been drafted to notify the public with a 30-day notice of public comment.

The OSG requests Self Governance Tribes to provide information on their 2020 Tribal Self Governance Activities by August 13, 2021, for inclusion in the Annual Report to Congress.

The OSG has been developing a new website on the DOI – Indian Affairs webpage. The site should be operational by July 9, 2021, and can be found at: <https://www.bia.gov/as-ia/osg> .

### **Follow Up**

The application for the broadband (NTIA) grant is overly complicated. SGCETC should draft a letter to Commerce detailing some of the issues Tribes face as they attempt to apply for broadband funding. Additionally, the letter should remind Commerce of the OMB's memo released in March regarding maximum flexibility, streamlining the process, and potential deadline extensions.

A discussion needs to happen between Tribal leaders and federal officials regarding staff vacancies and ensuring plans for potential succession is in place.

Schedule a discussion regarding CSC between workgroup members and federal officials.

### **Trust Evaluations – Realty Functions and HEARTH Act Leases**

***Elizabeth Wells Shollenberger, J.D., MPA, Director, Trust Evaluation and Review, Bureau of Trust Funds Administration***

Director Well Shollenberger began the discussion explaining an issue the Administration has encountered regarding the role of the Tribal Self Governance Evaluations and the P.L. 93-638 Compact Tribes who are approved to administer and conduct leasing activities without Secretarial approval under the HEARTH Act or the ITARA Act. Several Self-Governance Tribes have held that this authority prohibits the Secretary (BTFA) from reviewing tribal leases or lease transactions pursuant to this authority.

Director Well Shollenberger shared the BTFA's perspective that the ITARA/HEARTH Act(s) do not waive, cancel or preclude any requirements mandated in the Indian Self-Determination Act (ISDEA) or the Tribal Self-Governance Act. Furthermore, a meeting was held on March 25, 2001, with several DOI Solicitors, BTFA-DTER and OSG, who were advised that Tribes have leasing authority pursuant to ITARA and the HEARTH Act are still bound by requirements under ISDEAA and the Tribal Self-Governance Act. Therefore, pursuant to 25 USC 5363 and CFR 1000.350, DTER will continue to review the Tribal HEARTH Act of ITARA tribal leases and leasing transactions as a part of the Annual Tribal Trust Evaluation requirement.

The BTFA's authority is granted under section 458(cc) of the ISDEAA, and the federal code of regulations prescribes the process for conducting the trust evaluations in 25 CFR 1000.350.

Trust evaluations are conducted in accordance with 25 CFR 1000.355(d) 1-7. Tribal leases will only be reviewed for the following:

- Compliance with 25 CFR 162 and/or 163
- Environmental compliance
- Compliance with the documentation requirements under the HEARTH Act (25 USC 41(h) and ITARA (25 USC 5601)

The Tribal Trust Evaluation **will not do** the following:

- Review or request the approved Tribal Regulations
- Review or request the approved Tribal Indian Trust Asset Management (ITAMP)
- Review for any approval of the Secretary

If you have any questions or concerns, you can reach Director Well Shollenberger at [Elizabeth\\_wellshollenberger@btfa.gov](mailto:Elizabeth_wellshollenberger@btfa.gov).

### **Q&A**

Q: Can we get a formal opinion from the Solicitors regarding the matter? Has there been any discussion regarding continuing to streamline the process of HEARTH Act consideration?

A: I will follow up with possibly getting something in writing regarding the Solicitor's position.

### **Update from Bryan Newland, Assistant Secretary – Indian Affairs**

Secretary Newland announced that Kathryn Isom-Clause (Taos Pueblo) was appointed Deputy Secretary for Indian Affairs. Additional staff added to the team include:

- Heidi Todacheene (Navajo Nation), Senior Counselor to the Assistant Secretary
- Stephanie Sfiridis (Mashpee Wampanoag), Counselor to the Assistant Secretary – Indian Affairs
- Sam Kohl (Crow Nation), Counselor to the Assistant Secretary – Indian Affairs
- Maria Wiseman, Specialist on Environmental Justice – Indian Affairs
- Rich Myers, Chief of Staff – Indian Affairs

Policy Issues and Priorities:

- Working to implement the PROGRESS Act
  - Working to establish the negotiated rulemaking committee
- Preparing to engage in consultation regarding 105(l) leasing – in conjunction with the IHS
- The upcoming budget includes an additional \$500,000 for additional staffing within the OSG and other needs to meet the PROGRESS Act requirements
- Communications are ongoing with the Office of the Solicitor General regarding the *Brackeen* litigation and what comes next
- President Biden's Administration is going to defend the Indian Child Welfare Act.
- Work on the Secretary's Boarding School Initiative is ongoing.

They will be issuing a report to Secretary Haaland in April of 2022. There were over 300 boarding schools operating in the federal system for over a century, with hundreds of thousands of children being placed in those schools. So, nine months is a very short period of time to identify all of the schools and students. They are focusing on obtaining all existing records and identifying which records that they do not have access to. The overall process will take longer than nine months.

- Another area of focus is the MMIW crisis and public safety in Indian Country
- Land & Realty Issues – President Biden requested an additional \$150 million to continue land consolidation efforts of the land buyback program.
- The Administration supports a "clean" *Carciari* fix.
- In the budget request for next year, the Administration included \$10 million for the acquisition of land for landless and recently recognized Tribes.

## **Q&A**

Q: In the area of public safety & justice, regarding enforcement, court systems, and detention facilities, there is frustration because it seems that it is difficult to ensure effective collaboration between the DOJ and BIA/OJS. Do you think we can improve collaboration?

A: Every administration comes in and says we want to break down silos and coordinate across bureaus. It's probably the most bipartisan saying in government, but it is often challenging in practice because each agency has its core mission. We all have statutes that we are responsible for implementing. That's one of the reasons that the White House Council is so important. We are making our best attempt to coordinate, but it is going to be challenging.

## **DOI SGAC Concerns**

***W. Ron Allen, Tribal Chairman/CEO, Jamestown S'Klallam Tribe, and SGAC Chairman  
Bryan Newland, Principal Deputy Assistant Secretary – Indian Affairs***

- the impact of the CARES and the ARPA funding will have on the indirect cost rate because the supplemental funding can skew the rate, so it is crucial to secure an exemption for CARES and ARPA funds when calculating base funding
- 105 (I) leases – need to move the agenda forward, so we can start negotiating the agreements for new facilities
- recruitment of talent to staff Indian Affairs has been challenging
  - We need to collaborate to improve recruitment efforts.

## **Cybersecurity Issues**

### ***Jason Freihage, Deputy Assistant Secretary – Management***

During a previous consultation, a discussion was had intended to create awareness about trying to avoid purchasing any equipment from the five Chinese vendors. By purchasing equipment from such vendors, you are potentially inviting them to view your data. The agency is working on organizing a type of listening session that would be for all tribal leaders and staff effectively to provide technical assistance regarding topics such as prohibited equipment, ransomware, best practices. Announcements are forthcoming regarding the technical assistance.

In conjunction with the IHS, the agency is very close to announcing a consultation regarding 105(l) leases. 2021 was a good year for 105(l) because Congress approved an indefinite appropriation similar to contract support costs. If the agency needs more than they estimated, they can go to Treasury – circumventing the issue of reprogramming. Part of the President's proposal was to shift the 105(l) lease funding to the mandatory side of the federal budget.

The agency has advertised for a chief information officer (CIO), and they elevated the associate chief information officer to an SCS position because it has been so important.

## **Budget Update**

### ***Jeannine Brooks, Deputy Director, Office of Budget and Performance Management Sharon***

Overall, the House mark for Indian Affairs was favorable. For the Bureau of Indian Affairs (BIA), the 2022 request was \$2.7 billion. The House is recommending \$2.55 billion. The key difference is in the Indian Land Consolidation program. The House only accepted half (\$75 million) of the agency's request of \$150 million. There was a reduction for Contract Support Costs based on CBO scoring – the request was for \$347 million; however, the House is recommending \$240 million.

The request for the Bureau of Indian Education (BIE) for 2022 is \$1.347 billion. The House is recommending \$1.35 billion (a slight increase mainly in education construction).

The request for the Bureau of Trust Fund Administration (BTFA) was \$110.6 million. The House is recommending \$109 million.

The House supports the expansion of the Tiwahe program and recommends an increase of \$3 million to support two additional sites.

The House is including \$355.4 million for tribal government programs (\$1 million below the budget request but \$14.4 million above the enacted level).

The agency requested \$8 million for a small Tribes supplement; however, the House recommends \$6 million.

The House is recommending \$38.4 million for Road Maintenance (\$1 million above request).

The House provides \$176.8 million for Human Services programs (\$1.5 million above agency request). \$63.3 million was requested for Social Services (\$12.1 million above enacted level). The increase includes \$10 million to implement Sections 3209 and 3210 of the Indian Child Protection and Family Violence Prevention Act. The House included \$70.5 million for Welfare Assistance (\$500,000 above request).

\$18.8 million was requested for ICWA.

\$12.7 million was received for the Housing Improvement Program (HIP)(\$1 million above request).

### **Office of Justice Services**

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

Deputy Director O'Neal began the discussion by providing an update on the Not Invisible Act and their new Missing and Murdered Unit. The Not Invisible Act was signed into law on October 10, 2020. The Act requires the Secretary of Interior to designate a coordinator within BIA's Office of Justice Services to coordinate with several federal agencies. The Act mandates a congressional report highlighting all coordination activities, training completed, and recommendations for improving coordination across the federal agencies.

In F.Y. 2020, as part of Operation Lady Justice, BIA OJS announced hiring ten agents across the United States in seven geographic locations.

The BIA has developed a tip 411, a unit email, and 1-800 number to combat the missing and murdered crisis. To date, they have about 212 referrals that have been made to the Missing and Murdered Unit.

On April 1, Secretary Haaland announced the formation of the Unresolved Case Unit (missing and murdered cases). The ten agents previously recruited and trained have been assigned to this unit. The unit comprises the unit chief, two supervisory special agents, ten additional missing and murdered units, a program analyst specialist, and a victims specialist. The unit's primary mission is to gather evidence on active missing and murdered cases, review and prioritize cases, develop investigative plans, and constantly analyze missing person protocols.

## **Legislative Update/Priorities**

***Mike Andrews, Chief Counsel and Majority Staff Director for the United States Senate Committee on Indian Affairs (SCIA).***

***Jennifer Romero, Majority Chief Counsel/Staff Director (Chairman Brian Schatz, HI)***

Christi Williams (staffer for Senator Murkowski) will be taking over the committee (SCIA) at the end of the work period because Mike Andrews is leaving the committee.

Today, Mr. Newland's confirmation as Assistant Secretary of Indian Affairs will be moving through the Senate Committee on Indian Affairs.

The Senate has recently passed nine bills that originated in the committee and pertained to Native issues.

The committee is preparing to work on ensuring that tribal priorities are included in any bipartisan infrastructure plan.

The number of hearings is expected to increase as members introduce their bills.

### **Q&A**

Q: What are your thoughts regarding the viability of a *Carcieri* fix for land into trust?

A: We know that *Carcieri* continues to be a high priority for Indian Country. We recognize that a fix is a long time coming - it has been over ten years. We have come close at one point, but I know that since Senator Schatz became chairman, he has made it public that he supports a *Carcieri* fix. He is a cosponsor of the Tester bill. As chairman, he has pledged to have a hearing on the bill.

## **Department of Transportation**

***Milo Booth, Tribal Affairs Director***

The agency has received notification from a second Tribe that they are working on an application to participate in the DOT's self-governance program. Deputy Assistant Secretary Teller was not able to join because he is hosting a roundtable in Arizona.

The DOT will be publishing their agency consultation plan and policy (both of which are 20 years old) for 120 days for comments and recommendations.

DOT staff co-chair the Economic Development and Infrastructure Subcommittee of the White House Council on Native American Affairs. They have been putting forward numerous projects for which they want to receive clearance from the WHCNA as a deliverable.

## **SGAC Meeting Adjourned**

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