**DOI Self-Governance Advisory Committee (SGAC)**

**Meeting Summary**

**November 10, 2022**

**Park Hyatt Regency**

1201 24th Street NW

Washington, D.C., 20037

**Attendance:**

A quorum was established.

**Committee Business:**

* The August 2022 meeting minutes were approved.

**Strategic planning for SGAC/ Results from Focus Group**

*Jennifer McLaughlin, Self-Governance Legislative Associate, Jamestown S’Klallam Tribe*

*Jay Spaan, Executive Director, SGCETC*

Mr. Spaan began the discussion by providing an overview of the SGAC’s strategic planning process and identified goals. The following are the goals of the strategic planning process:

* to enhance the effectiveness and efficiency of the advisory committee
* to help ensure challenges or issues are not just being exchanged in letters but that actions are taken to overcome challenges and address issues
* to help ensure advisory meetings are a productive use of time for all
* to help measure the effectiveness of the committee and to identify areas for improvement

Mr. Spaan then shared how the focus group was organized and the findings. The following are some of the concerns expressed during the convening of focus groups:

* Adequate Staffing
* Tribal Shares, PSFAs, and Negotiations
* Increase Support and Promotion of Self-Governance Authority
* Timely Distribution of Funds, Information, and Responses
* Inconsistencies
* System/Tech Modernization
* Suggestions for Improvement of SGAC
* Contract Support Costs

The next step will be to convene small workgroups to explore other solutions for the issues shared during the focus groups. Following the convening of workgroups, a strategic plan will be presented to SGAC for review and consideration.

**Update from the PROGRESS Act Negotiated Rulemaking Committee**

*W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe*

*Melanie Fourkiller, Director of Self-Governance, Choctaw Nation Vickie Hanvey, Office of Self-Governance, DOI*

The PROGRESS Act Negotiated Rulemaking Committee (“Committee”) had its first official meeting on August 29, 2022. The tribal side of the Committee selected W. Ron Allen and Melanie Fourkiller to serve as tribal co-leaders. The designated federal officer (DFO) is Vickie Hanvey, and her alternate is Regina Gilbert. The federal lead is Director Freeman.

The Committee has determined that they will need an extension and are exploring how that should be advanced with Congress because an extension needs to be secured soon. The Committee has been working on establishing a set of protocols. A protocol draft has been completed and is currently undergoing revision.

The Committee has established the following workgroups:

* Non-BIA Workgroup
* Negotiation Topics Workgroup

The Committee has also been discussing the budget. OSG has provided some budget estimates. As the Committee alternates come from different Tribes in different locations, the Committee wants to ensure that travel expenses for alternates are covered.

Vickey Hanvey (DSFO) provided contact info: Vickie.Hanvey@bia.gov. She also provided the address to the official Committee website: <https://www.bia.gov/service/progress-act>. The alternate DFO is Regina Gilbert, and she can be contacted at Regina.Gilbert@bia.gov.

The Committee must comply with the GSA Annual Comprehensive Review (ACR) process.

Hanvey also provided an overview of the issues that the Committee has reached a consensus on thus far. The following is a list of areas of consensus:

* A recommendation is that the Department submit a draft bill to extend the statutory deadline for promulgating regulations implementing the PROGRESS Act.
* Audit Threshold Conflict: Concerning the conflicting audit threshold requirements outlined in the PROGRESS Act ($500,000) and the Single Audit Act ($750,000),
	1. defer consideration of the proposal to resolve the conflicting audit threshold requirements by technical amendment while the Department obtains a Solicitor’s opinion regarding how to deal with these conflicting provisions;
	2. the Department confer with Indian Health Services regarding these conflicting audit threshold provisions; and
	3. that the Committee continues to separately move forward with its request to extend the deadline for exercising authority to promulgate regulations implementing the PROGRESS Act.

The next Committee meetings will be on November 14, 2022, and December 16, 2022. Additionally, week-long hybrid meetings have been scheduled for January, February, and March of 2023 (exact dates in each month TBD).

**Office of Tribal Self-Governance Update**

*Sharee Freeman, Director, OSG*

Director Freeman provided an update on personnel changes within the Office of Tribal Self-Governance (OSG). Michelle Watchman is the Acting BIA Alaska Regional Director. Tyvin Whittaker is the new Administrative Specialist. The OSG is currently hiring a Program Analyst for 105(l) leases and a PROGRESS Act Assistant, and a Compact Negotiator position is vacant in the Northwest Office.

The OSTG budget request includes funding for a Deputy Director (D.C. office) and a Compact Negotiator (D.C. office). The request also includes funding for SGCETC, SGDB maintenance, PROGRESS Act implementation, and implementation grants.

For the fiscal year 2023, there are 288 Self-Governance Tribe. The OSG has 138 funding agreements, which include 11 consortia made up of 162 Tribes. The Spirit Lake Tribe, located in the Great Plains Region, has joined Self-Governance for FY 2023.

The OSG has received and obligated approximately $1,392,845,364 in FY 2021 funding to Self-Governance Tribes and approximately $639,827,992 in FY 2022 funding. The OSG has received approximately $53,721,878 in FY 2023 funding for Self-Governance Tribes, and $32,330,506 has been obligated.

The OSG has distributed $99,901,891 in contract support cost (CSC) funding in FY 2022. CSC data is still needed from 48 Self-Governance Tribes. The OSG is awaiting FY 2023 CSC funds for distribution.

Tribes are requested to email all correspondence and documentation regarding Self-Governance Contract Support, including CSC Data, to the following email address:

OSG-CSC@bia.gov

Tribes are requested to email all correspondence and documentation regarding Self-Governance Financial Assistance & Social Services Report (FASSR) to the following email address:

OSG-FASSR@bia.gov

**Tiwahe Initiative**

*Johnna Blackhair Acting Deputy Bureau Chief, Office of Indian Services, Indian Affairs, DOI*

*Meghan Bishop, Policy Specialist, Office of the Assistant Secretary, Indian Affairs, DOI*

Deputy Chief Blackhair emphasized the agency's ongoing support for the Indian Child Welfare Act (ICWA). They have re-established the ICWA Interagency Planning Workgroup. Members of the workgroup include the Department of Justice, Department of Human Services, and Department of Interior. Workgroup meetings have focused on fostering tribal capacity building, technical assistance, and training needs.

Approximately $3.5 million in ICWA off-reservation grant funding to eleven tribal organizations.

The grants are designed to ensure that tribal members residing off-reservation receive the assistance they need for stability and to keep them in contact with their tribal communities.

Specialist Bishop provided some updates regarding the Tiwahe initiative. Tiwahe funds six programmatic areas, including housing improvement, ICWA, social services, job placement & training, recidivism reduction (“Pathways to Wellness”), and tribal justice services. Tiwahe began in 2015. Initially, four pilot sites were funded, and in 2017, two additional Tribes were added. Tiwahe is not grant funding; eventually, the funding becomes part of a Tribe's base funding. However, approval for participation consists of a competitive process.

A “Dear Tribal Leader Letter” (DTL) was released on October 31. The letter requests that Tribes answer the following three questions:

* What is the background of your Tribe (e.g., who are you, what kind of funding mechanisms do you utilize)?
* What are your needs?
* How would Tiwahe help you address those needs?

A Tribe does not need a completed needs assessment to request participation in Tiwahe. The letter of intent period closes on December 31, 2022.

**USET SPF Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan | Report Overview**

Kitcki Carroll, Executive Director, USET

Director Carroll delivered an informational presentation on the history of unmet needs of Tribes and the U.S. failure to uphold the trust responsibilities and honor treaty obligations. Director Carroll gave an overview of the Quiet Crisis Report released in 2003 by the United States Commission on Civil Rights (USCCR) and the follow-up report titled Broken Promises in 2018. The Broken Promises report exhibits findings that indicate that the U.S. failed to uphold its trust and treaty obligations has not improved since 2003, and conditions have worsened.

Director Carroll then highlighted a plan to secure a Tribal Marshall Plan to address the failures of the U.S. Tribes are encouraged to support a Tribal Marshall Plan, and for further information or to sign on in support, Tribes can visit <https://www.usetinc.org/>.

**Administrative/Legislative/Judicial Updates**

*Geoff Strommer, Managing Partner of Portland Office, Hobbs, Straus, Dean, and Walker, LLP*

*Matthew Jaffe, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP*

Mr. Strommer provided an update on the 477 MOA. It has been since 2018 that the Department issued the first MOA, which contradicted the spirit and letter of the amendments enacted to try to modify the 477 Program to make it more effective. Just a few weeks ago, the new MOA was signed.

There has been a multi-year effort by some members of the Senate to force a vote on the Lumbee recognition bill. Those who have been advocating for a vote have now taken a position that they will place a hold on Indian legislation until they get their vote. The deadlock over the Lumbee recognition bill halts progress for about fourteen other Native bills.

Mr. Jaffe expounded on the urgency of securing approval for the extension of the PROGRESS Act Negotiated Rulemaking Committee deadline. The federal and tribal representatives are hopeful that Congress will accept the recommendation to extend the deadline until September 21, 2023, for the draft rule. And an extension of the PROGRESS Act rulemaking authority to September 21, 2024, for the final rule.

Legislation of interest that has not been enacted includes:

* Legislation about advanced appropriations for DOI (BIA) and HHS (IHS)
* Native American voting rights legislation
* Legislation to create parity for tribal law enforcement
* Tribal Labor Sovereignty ACT
* Treating Tribes and Counties as Good Neighbors Act
* Legislation pertaining to the "Kiddie Tax"
* Tribal Adoption Parity Act
* Carcieri fix legislation

If the bills are not enacted in the 117th Congress during the lame duck session, they will die and need to be reintroduced in the 118th Congress.

**Budget Update**

*Jeannie Brooks, Deputy Director, Office of Budget and Performance Management, DOI*

99.9% of all DOI tribal funding from last year has been expended. Director Brooks provided the group with budget tables highlighting the differences between House and Senate marks for 2023.

The DOI has submitted a request for an exception apportionment for fiscal year Tribes. The request was recently approved, and they have initiated allocating the funding to the regions.

The budget requests for 2024 have been submitted to OMB and are under review. The DOI is hoping for a pass back by the beginning of December.

**Law Enforcement/Public Safety**

*Richard “Glen” Melville, Deputy Bureau Director, Office of Justice Services, Indian Affairs*

Deputy Director Richard Melville has served officially since the beginning of the fiscal year. Melville served the BIA Office of Justice Services for several years. He enjoyed a brief thirteen months of retirement before returning to serve in the Deputy Director capacity.

Deputy Director Melville provided an update regarding interagency partnerships. The BIA OJS is developing and implementing an MOU between BIA Law Enforcement and the Federal Bureau of Investigation (FBI). Additionally, they are forming new partnerships with the FBI to better respond to incidents of MMIW. They are also working on fostering partnerships with state law enforcement agencies.

Additional funding has been set aside for Oklahoma Tribes directly impacted by the *McGirt* decision. They are in the process of planning the distribution of the funds based on the formula. Distribution should commence soon.

**Comments:**

Chairman Allen emphasized the importance of improved collaboration between the DOJ and BIA OJS concerning utilizing available resources to best serve Tribes. Interdepartmental transfers of funding may be a way to improve collaboration.

Chairman Allen suggested the organization of a National Tribal Law Enforcement & Judicial Summit to gain a better understanding of needs and to share potential solutions.

**Department of Transportation Update**

*Arlando S. Teller, Assistant Secretary for Tribal Government Affairs, DOT*

Organizational planning is underway for the new office that will serve as the headquarters for the Office of Tribal Government Affairs, DOT. The office will have conference rooms to host consultations. Additionally, they are adding more employees. They will soon advertise the Tribal Specialist position. The Tribal Specialist will primarily focus on tribal transportation issues and concerns while providing guidance and support to the team.

The Cherokee Nation has been fully approved for participation in the DOT Tribal Self-Governance Program. The agreement was signed on June 7, 2022. There are also two Tribes currently engaged in negotiations.

There have been questions raised regarding climate change funding. Assistant Secretary Teller is anticipating visitation of the areas devastated by climate change. The DOT is currently organizing funding opportunities to provide disaster relief. Visitations will occur following the release of funding opportunities.

If your Tribe has submitted grants for RAISE, Safe Streets for All, or other non-tribal-specific grants, make sure to request a debriefing.

**Question:** Has there been any discussion regarding extending grant funding deadlines?

**Answer:** I am sincerely interested in how we can work together regarding an extension request.

**Co-Management of Public Lands**

*Samuel Kohn*

In November of last year, President Biden announced his Tribal Homelands Initiative. Shortly after, Secretary Haaland and Secretary Vilsack issued Joint Secretarial Order 3403, entitled Fulfilling the Trust Responsibility to Indian Tribes and the Stewardship of Federal Lands & Waters. The order directs the two departments to ensure that all decisions related to federal stewardship of lands, waters, and wildlife consider how to safeguard the treaty, spiritual, subsistence, and cultural interests of Indian Tribes.

The DOI will soon be releasing a legal report from the Office of the Solicitor on responsibilities

and authorities related to current land, water, and wildlife treaty responsibilities that could support co-stewardship and tribal stewardship. Additionally, in September of 2022, the Bureau of Land Management (BLM), National Park Service (NPS), and the United States Fish and Wildlife Service (USFWS) each released departmental guidance to improve federal stewardship of public lands, waters, and wildlife under their jurisdiction. Also, the BIA continues to explore how and whether its guidance would be helpful in this realm.

Finally, following the self-governance conference held in San Francisco this year, the Assistance Secretary of Indian Affairs office is continuing to examine the annual publication of the list of programs, services, functions, and activities of non-BIA bureaus that are eligible to be planned, conducted, consolidated, and administered by Self-Governance Tribes pursuant to a compacting agreement.

**Discussion with AS-IA**

*Bryan Newland, Assistant Secretary – Indian Affairs*, *Department of Interior*

The DOI is exploring how programs utilize their self-governance authority outside the BIA. The DOI has not conducted a comprehensive review of the non-BIA programs in a very long time. Assistant Secretary of Indian Affairs Newland (AS-IA) expressed his support for ensuring that all agencies and bureaus share the trust responsibility.

The AS-IA explained the shift in federal Indian policy from assimilation to self-determination. He emphasized the federal government’s responsibility for ensuring that Indian people continue to exist as Indian people. The AS-IA emphasized the importance of the DOI’s ongoing efforts to improve the fee-to-trust process.

Chairman Allen explained to the AS-IA that Tribes do not want Self-Governance to be treated like just another program and to consider that when engaged in budget planning. Also, Chairman Allen shared Tribes’ frustration with the Federal Advisory Committee Act (FACA) process.

The AS-IA acknowledged the frustrations communicated by Tribes regarding FACA regulations and expressed the frustrations experienced by the DOI. He doesn’t foresee an exemption or waiver from FACA in the immediate future; however; he expressed the importance of ensuring that FACA is not wielded as a weapon.

Will Micklin (Executive Council, Tlingit & Haida) mentioned that the FACA, the RACA, and the authorizing statute as in the PROGRESS Act are all given flexibility by the Negotiated Rule Making Act.

Will Micklin also requested consideration of the rescission of the Sansonetti opinion; it is not a full solicitor’s opinion and is only an opinion letter.

Chairman Allen expressed interest in applying for the Payments in Lieu of Taxes Program for lands taken into trust for Tribes. The AS-IA noted that it would need to be approved by Congress.