

DOI Self-Governance Advisory Committee (TSGAC)

Meeting Summary

March 8 - 9, 2023

Embassy Suites

900 10th Street NW

Washington, D.C., 20001

Attendance:

A quorum was established for the SGAC meeting.

Committee Business:

- The November 2023 meeting summary/minutes were approved.
- Motion made by the Southern Plains representative and seconded by Cheryl Andrews-Maltais to appoint Chairman Robert Miguel as the primary representative for the Western Region and Karen Fierro as the alternate. Motion carried.
- Motion made by Cheryl Andrews-Maltais and seconded by a representative of the Chippewa Cree Tribe to appoint Governor Gary J. Lujan as the primary representative and COO Shawn Duran as the technical advisor for the Southwest Region. Motion carried.
- Motion made by the Southern Plains representative and seconded by Cheryl Andrews-Maltais to appoint Vernelle Lussier as the primary representative and Donna Swallows as the alternate representative for the Midwest Region. Motion Carried.

Office of Self-Governance (OSG) Update

Sharee Freeman, Director, OSG

Director Freeman provided an update on personnel changes within the Office of Tribal Self-Governance (OSG). Janelle Naranjo (Santa Ana Pueblo) joined the OSG as a program analyst. Robert "Gabe" Morgan is currently serving as the Acting BIA Southern Plains Regional Director. The OSG seeks to fill a compact negotiator position and a PROGRESS Act assistant position.

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 (\$70,000).

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 in the Great Plains Region has joined Self-Governance for FY 2023.

The OSG has received and obligated approximately \$734,477,015 in FY 2022 funding to Self-Governance Tribes. The OSG has received approximately \$526,122,560 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. For FY 2023, the OSG has distributed \$28,519,902 to Tribes who have reported FY 2022 CSC data.

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.

Budget Update

Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, BIA
Melissa Fortney, Budget Analyst, Office of Budget and Performance Management, BIA

Deputy Director Brooks provided an overview of funding for tribal self-governance. They are pushing SGAC funding back because it used to be paid for from carryover; however, they do not have as much carryover. Carryover is disappearing quickly because the agency has increased efforts to use funds. The BIA does continue to request additional funding from Congress; however, they continue to receive a small portion of what is needed. Assistant Secretary Newland has been supportive in setting forward these requests; however, they have not come to fruition.

Deputy Director Brooks provided some updated information pertaining to the budget. General increase funding was received for Natural Resources TPA, Forestry TPA, Water Resources TPA, Wildlife and Parks TPA, and Tribal Courts TPA.

Melissa Fortney provided an overview of the 638 pay cost data call. The 2022 salary data is collected for the 2024 pay cost. Data submission and review are important because the Tribes are entitled to the same rate of pay increase as federal employees. Data collected from Tribes is used to formulate the fixed cost increases for pay and benefits that will be included in the President's Budget Request. Out of 574 federally recognized Tribes, 488 Tribes/Consortia provide salary data annually. For the 2024 data call, 23 Tribes were listed as "Non-Participating."

Regions are responsible for the collection of pay cost data. There is a four-year limit of no response for tribal pay cost data, after which point the Tribe will not be eligible for pay

increases. It is important for your Tribe to take advantage of this opportunity to increase base funds permanently.

Public Safety/Law Enforcement/ Justice Update

Richard "Glen" Melville, Deputy Bureau Director

Under Tribal Justice Services, which Associate Director Tricia Tingle heads up, the agency constantly works with Tribes to help improve tribal courts. The office has recently conducted two VAWA virtual roundtables. Associate Director also works with the Bureau of Prisons to house tribal defendants under enhanced VAWA. She is also working on getting a presentencing report established. The office will be assigned a federal probation officer to assist the office and Tribes with establishing presentencing guidelines to assist judges in better understanding the sentencing they will be imposing.

The Victims Assistance Program, which Linda Bearcrane Couture heads up, aids with responding to crimes against women and children. The program also provides substantial assistance to victims of sexual assault, domestic violence, child abuse, kidnapping, homicides, and human trafficking. The program is branching out and will utilize Victim Specialists with the Missing and Murdered Unit (MMU).

The MMU currently operates with twenty agents across the nation. The program has released an announcement that they are looking for eleven more agents across the nation. The goal is to eventually have up to forty agents. The program is currently working with the FBI to get an MMU agent embedded in the FBI to work on Indian country cases. They are also collaborating with the FBI on selecting and implementing a centralized reporting system.

Deputy Director Melville provided the group an overview of the MMU Quarterly Report (updated on February 21, 2023). The MMU has had 697 missing person cases (307 active and 351 closed) and 243 murder cases (96 active and 147 closed).

Mr. Kevin Martin provided an update regarding the budget. For 2023, the Public Safety program increases totaled \$33.4 million. Congress does include appropriation language that sections off components to that overall increase, and they constrain the purpose of those various components. For example, a \$7 million increase was specifically for Tribes that have not established a law enforcement program.

DOI STAC & Not Invisible Act Commission Update

Heidi Todacheene, Senior Advisor to the Secretary, Office of the Secretary, DOI

Senior Advisor Todacheene provided an update on efforts to implement the Not Invisible Act and Commission activities. The Section 3 Report is a report to Congress that is intended to assist with federal coordination. The report will be submitted through the Indian Affairs Department or OJS. The report covers the coordination of the different activities of the federal agencies, summarized training, and recommendations. Section 4 of the Not Invisible Act

establishes the Commission and requires them to make report recommendations; however, it is a one-time report with the full Commission instead of an annual report. The forty-member Commission is organized into around six subcommittees. Part of the work that the subcommittee is engaged in is drafting recommendations. When the report is released, it will include recommendations to address every identified issue. Subsequent hearings will be held to review the recommendations.

Section 105(l) Update

Michael Wischnewski, Deputy Director, Office of Facilities, Property and Safety Management, BIA

Deputy Director Wischnewski provided an informative presentation regarding the background of 105(l) lease agreements and the ISDEAA 105(l) Facility Lease Technical Assistance (TA) Guidebook. The first two lease agreements were executed in 2019. The ISDEAA 105(l) Technical Assistance Guidebook was published in August 2022. 105(l) facility leases are not traditional leases. They are actually facility cost agreements. The leases are a statutory requirement.

The Tribe/Tribal Organization (T/TO) owner must have a title to the facility, a leasehold interest in the facility, or a trust interest in the facility. The facility must be occupied and used by the Tribe to carry out an ISDEAA contract or compact program or 100-297 grant function service or activity (includes 477 programs incorporated in funding agreements).

The lease agreement/cost agreement compensation types include fair market rental, cost element listed in 25 CFR Section 900.70 (a) – (h) only, or a combination of fair market value and cost estimates.

To initiate the 105(l) lease process, contact the BIA at ISDEAA105L@BIA.GOV. There isn't a standard application. The proposal should include verification that the Tribe holds title to, a leasehold interest in, or a trust interest in a specific facility. The proposal should also confirm that the Tribe is using the facility to administer an approved ISDEAA PFSA, the types of compensation sought, the address of the facilities for which the Tribe requests compensation, and the contact information for the Tribal representative.

The lease process consists of determining eligibility and method of lease compensation. The Tribe submits a proposal to ISDEAA105L@BIA.GOV. Indian Affairs will verify the funding agreement vehicle on which the lease is based. A review of facility documentation will be conducted. Technical Assistance meetings will be scheduled as needed. A CFO certification and legal sufficiency review are required. A review of the draft lease will be conducted. A tribal resolution will be required. After all, requirements are satisfied, a lease will be executed and funding dispersed.

Co-Management of Public Lands

Samuel Kohn, Senior Counselor to the Assistant Secretary – Indian Affairs

Senior Counselor Kohn provided an overview of the co-management of public lands. Collaborative stewardship is a complementary tool for PSFAS for non-BIA bureaus. If a Tribe is considering undertaking one of the PSFAS for any land management bureau, that falls under the umbrella of collaborative stewardship agreements. What makes a collaborative stewardship agreement different is the ability to add more. For example, suppose a Tribe is interested in arranging access or collaborative stewardship of other pieces of that federal land or water unit. In that case, that is where co-stewardship becomes an interesting path forward.

Collaborative stewardship is one of the pillars of President Biden's Tribal Homelands Initiative. The Departments of Interior and Agriculture have signed joint Secretarial Order 3403, which set forth some of the priorities and basis for co-stewardship. Between the Tribal Nations Summit 2021 and 2022, DOI entered into thirteen new agreements with eighteen Tribes that fell within the co-stewardship umbrella. Of those agreements, several 638 agreements included non-BIA bureaus – specifically the National Parks Service, Bureau of Land Management, and Bureau of Reclamation. Some of the PSFAS assumed related to water settlements, so the numbers in those agreements were significant - tens of millions of dollars.

At the Tribal Nations Summit 2022, the Department of Commerce joined the Departments of Interior and Agriculture on Secretarial Order 3403. So far this year, there are twenty agreements in the process. A number of those agreements include 638 contracts.

Office of Indian Energy and Economic Development's Electrification Program

Onna Lebeau, Director, Office of Indian Economic Development

Director Lebeau provided updates pertaining to the Office of Indian Energy and Economic Development's Electrification Program. The Tribal Electrification Program has a total of \$150 million in funding (\$145.5 million for programs and \$4.5 million for administration). The program intends to provide financial and technical assistance to Tribes to increase the number of tribal homes with zero-emission electricity. Funding will be awarded through a proposal process implemented via PL-638. Criteria for selection will vary based on the categories of capability to implement, and parameters will be determined based on need and project readiness – each category receiving no less than 15% of the total funding available.

The Inflation Reduction Act Executive Committee will monitor the performance. Areas reviewed include project milestones and the number of households with zero emission electrification and megawatts of clean energy deployed as a result of this program.

For additional information, please contact Onna LeBeau at onna.lebeau@bia.gov.

Legislative Update

Geoff Strommer, Partner, Hobbs, Straus, Dean and Walker, LLP

Anna Sherman-Weiss, Associate, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

Anna Sherman provided an update pertaining to the PROGRESS Act and negotiated rulemaking. The deadline for negotiated rulemaking is April 21. Advocates are working hard to obtain an extension through Congress so the group has more time to produce the draft rule. On the Senate side, they are currently working with different offices to secure a Republican sponsor.

If the SCIA and Senate can pass the PROGRESS Act extension legislation by March, it will be referred to the House (House Natural Resource Committee). There are two paths as to how this could go. One is if the bill we put forward is a stand-alone one, it would go just to the House Natural Resources Committee. The other option, because it is a technical amendment, could be added as a rider to another piece of legislation – that could delay the process a little more because that would likely mean that the bill would need to be considered by multiple committees.

If the April 21 deadline comes and we haven't secured an extension, we will need to suspend the work that the committee is engaged in. That creates a question regarding how long the suspension of committee work will be and what kind of impact a suspension of work will have. The extension, as drafted, has deadlines in it indicating that the draft rule would be completed by September 21, 2023, and the final rule the following year by September 21, 2024. If the suspension is not that long, we can keep those dates. If the suspension goes on past the August recess, which begins at the end of July, then it may be very challenging to meet any of the September dates – then, we would need to discuss new dates.

Mr. Strommer provided an update regarding a few pieces of legislation relevant to Indian Country and tribal self-governance. It is appropriations testimony week, and areas of particular importance are contract support costs and 105(l) lease funding. We do have language for both of those line items that makes sure they are fully funded. But the end goal is to try to get them moved over to the mandatory funding category so they do not continue to compete with all of the other discretionary funding needs on an annual basis.

The 2018 Farm Bill is set to expire in September 2023. The Farm Bill is the next significant expansion of self-governance. The Native Farm Bill Coalition has been working on reauthorization language, and there are a couple of items that they are working on that are important to the expansion of self-determination contracting opportunities as well as self-governance within the United States Department of Agriculture.

There is currently an effort underway to persuade Congress to enact a piece of legislation that would allow Tribes to consolidate funds from all of the agencies in the federal government that deal with climate change and environmental disasters. It has not been introduced yet, but there is a major push.

SGCETC Update

Director Spaan provided an update on SGCETC's efforts to promote and expand self-governance. SGCETC provides administrative and technical support to three tribal advisory committees and hosts and sponsors the annual tribal self-governance conference (in coordination with IHS and DOI).

SGCETC funding is used to provide services to the DOI, IHS, and advisory bodies. Expenses include meeting space, audio & visual, hotel room reimbursements, travel reimbursement, food & beverage, technical support for meeting planning, meeting follow-up, maintenance of the SGCETC website, conducting training, sharing information, and conference costs. SGCETC is currently seeking an increase in funding to offset inflation.

SGCETC is anticipating good news within the next two months regarding the introduction of Title VI (HHS self-governance expansion legislation) in the Senate. Planning is underway to move the legislation through the House.

SGCETC has been focusing on innovative ways to share information regarding tribal self-governance. Efforts include developing and releasing a docuseries and animated tutorials on the benefits of tribal self-governance.

For more information regarding self-governance, the advisory bodies, to view the document library, and the new docuseries and animated 105(I) lease clips, please visit <https://www.tribalselfgov.org/>.

CSC Discussion

Johnna Blackhair, Acting Deputy Director, BIA

Sunshine Jordan, Acting Division Chief, Office of Indian Services, BIA

Linda Austin, Chief Operations Officer, Ysleta Del Sur Pueblo

Since being detailed to Indian Services, Acting Deputy Director Blackhair has been working to automate the ISDEAA and the 477 process to manage the fiduciary relationship more effectively.

COO Austin provided an update regarding the CSC Workgroup. The workgroup has been somewhat inactive over the past few years because of COVID. However, the workgroup is increasing activity and showing a renewed desire to progress with the work. The workgroup is convening the week of April 3 in Pheonix. They have been making strides in filling seat vacancies. The priority for the meeting will be to contemplate the recent letter and discussions that the workgroup has had in concern to the contract support cost payment, the formulation and strategy from the Office of Self-Governance, and establishing some pre-conditions for the release of funding. Additionally, the workgroup will allocate some time to review the handbook developed as a guideline for Tribes and federal partners to utilize in conducting CSC activities.

Acting Division Chief Sunshine Jordan explained how the CSC report that goes to Congress used to be called the shortfall report and that it would capture how much a Tribe was underfunded. Since the appropriation passed, they are now at full funding. They receive an appropriation, then they allocate what the Tribe was paid last year to each region and OSG, and then compute the Tribe's current need. If the Tribe's indirect cost rate is four years or newer, that is what they use – it does not have to be for twelve months like some other federal programs. The report is point-blank on what the statute asks for. They do not manipulate the template. They may only use another template for special circumstances like CARES Act funding because that was funded separately from regular appropriations.

Discussion with Assistant Secretary Bryan Newland

Assistant Secretary Newland began the discussion with a dialogue regarding the ongoing work around the PROGRESS Act. He informed the group that PROGRESS Act work would remain a priority. The BIA has communicated to Congress that the PROGRESS Act extension is needed. However, the BIA has not yet determined what they believe will happen on April 21 if an extension is not secured. They are actively exploring their options to get to a final rule. Assistant Secretary Newland recommends that the group have at least the text for a proposed rule by April 21, which would leave the group with more options.

This week is budget week, and the President's proposed budget will be released tomorrow; however, Assistant Secretary Newland is prohibited from going into any detail regarding the budget. Although, he did mention that you can expect to see an ongoing prioritization of Indian Country in the President's budget. The focus is on public safety & wellness, infrastructure, education, and reaffirming the commitment to preserve tribal culture. Assistant Secretary Newland closed his comments and opened the floor for discussion by thanking tribal leaders and advocates for their ongoing partnership.

Chairman Allen shared his concern about the capacity of the office (OSG) to deal with its affairs (a reference to the need for additional staffing and a succession plan). He reiterated the request for an increase in funding for the Self-Governance Communication and Education and Tribal Consortium and advisory bodies.

Chairman Allen also expressed the need for a public safety agreement between DOJ and DOI.

Assistant Secretary Newland responded by expressing their principle of getting the resources into the hands of the Tribes and allowing tribal governments to do their thing at the ground level. They must comply with all applicable statutes; however, their operating principle is maximum flexibility for Tribes. The assistant secretary emphasized his efforts to encourage officials at other agencies to use their authority to waive regulations and procedures to advance the trust responsibility.

Shawn Duran made a recommendation regarding public safety & justice. She suggested incorporating a 477 model and supporting it with direct funding based on function. She also

mentioned that the funding formula for public safety needs to be examined because Tribes are subsidizing law enforcement and can not afford what they need.

Assistant Secretary responded that he would not disagree with Shawn Duran's assessment of law enforcement funding and programming. The agency is preparing a presentation illustrating how funding flows for the next TIBC meeting. The BIA has reclassified all its law enforcement positions to be on par with their counterparts. Last fall, Assistant Secretary Newland testified before Congress to support legislation that would make tribal police officers and law enforcement officers eligible for some federal retirement benefits.

Federal officials are having ongoing discussions regarding an interagency plan and directed funding. It is becoming apparent to officials in different agencies that some clarity from Congress on the ability to provide directed funding.