

**U.S. Department of the Interior
Office of Self-Governance - Indian Affairs
Self-Governance PROGRESS Act Negotiated Rulemaking Committee**



MEETING MINUTES

Advisory Committee Management Officer (CMO) - Margaret Triebisch
Designated Federal Officer (DFO)- Vickie Hanvey

DATE: **November 14, 2022**
Federal Register Notice: FRN 2022-56694
Meeting Number: 3
DFO Convened at: 1:15 p.m. ET
DFO Adjourned at: 5:35 p.m. ET
Location: Hosted via ZoomGov (Committee Members)
Broadcast via MS Teams (Public Access)
Designated Notetaker: Sarah Walker, BIA Alaska Region
Facilitation: Federal Mediation and Conciliation Service (FMCS)

In accordance with the provisions of Federal Advisory Committee Act (Public Law 92-463, as amended), the meeting was open to the public.

CONSENSUS AGREEMENTS SUMMARY:

The Self-Governance PROGRESS Act Negotiated Rulemaking Committee (the "Committee") reached consensus on the following during the meeting:

1. Meeting minutes of October 3, 2022.
-

OPENING

Meeting Convened by Alternate Designated Federal Official (ADFO), Regina Gilbert, at 1:15 p.m. EST.

INVOCATION/BLESSING

Chairman Russel (Buster) Attebery, Karuk Tribe

WELCOME AND INTRODUCTORY REMARKS

Kayla Mack, Federal Mediation and Conciliation Service (FMCS), provided a welcome and meeting overview. Today's meeting consists of two primary portions separated by public comment opportunities. The first portion we will hear an update from the Committee and have a discussion on protocols. This is followed by a recess for caucuses. Once back from caucus, there will be a discussion on the topics to be discussed in negotiations. Followed by discussion on next meeting and FY23-Q1 hybrid meetings. Just a note to confirm that parties still meeting separately.

FMCS requests that non-committee members request to be recognized, or committee members will need to cede time and FMCS will ask if there is any objection before recognizing.

ATTENDANCE

Membership update was provided by ADFO, Regina Gilbert.

- Bryan Shade, Primary member from the Office of the Solicitor has left federal government employment. Jody Schwarz, Alternate member will become the Primary member. Andrew Caulum is currently in the process of submitting documentation for Secretarial appointment as Alternate member.
- David Johnson with the Bureau of Land Management has announced his upcoming retirement. Mr. Johnson will serve as a committee member until Nicole Hannah completes the process of submitting documentation for Secretarial appointment.

Question by Ron Allen: Are Andrew and Nicole official members now or does it have to be announced in the Federal Register? ADFO responded, they will be official members once the Secretary sends them a letter appointing them to Committee.

See Appendix A for a list of all attendees.

Committee Attendance		
	Present	Absent
Tribal Primary Members	6	1
Federal Primary Members	5	1
Total Primary Attendance	11	2
Tribal Alternate Members	3	4
Federal Alternate Members*	5	0
Total Alternate Attendance	8	4
* One vacancy		

APPROVAL OF OCTOBER 3, 2022, MEETING MINUTES

Regina Gilbert, ADFO, reminded the Committee that the draft meeting minutes were sent out by email in advance of this meeting so that there was time to review. Are there any edits prior to approval?

Ron Allen did not look at them closely. Wondering about tabling approval, as he was not sure the Committee is prepared to approve. He deferred to Melanie.

Melanie Fourkiller has reviewed and has no edits. Melanie posed the question if anybody else needs more time [to review the minutes]? Gerry Hope posed the question for a quick review[of the minutes] in tribal caucus this morning. Comment in chat: Sandra Sampson reviewed and has no edits. Ron Allen requests to table [approval of the minutes] until after caucus.

ADFO Gilbert approved tabling approval of minutes until after caucus.

COMMITTEE OPERATING PROTOCOLS AND NEGOTIATION PROCESS

FMCS-facilitated discussion and deliberations began at 1:30 pm ET.

1. Protocols Subcommittee Report-Out:

A) *Subcommittee Tribal Leads:* Gerry Hope and Will Micklin

- Mr. Hope called on Matt Jaffe to take the lead in reporting:
- Matt Jaffe: The news to report is good news. The two sides made a great deal of progress. The workgroup decided that tribal committee will propose different route than the original 12-pages of protocol proposed during the first plenary meeting on August 29. Tribal Committee proposed to put aside the [19-page] redline version and turn to the Department of Health and Human Services Title V protocol developed in 2001 and 2002. From the DHSS Title V protocol, the Tribal workgroup put together some of consensus points and modified the Title V five-page protocol and sent it to the Federal Committee Members. The Tribal Committee members believe that this will streamline the Negotiated Rule Making process and let the Committee get down to negotiating and not get tied up with procedures. This is also in line with the Assistant Secretary's (AS-IA) statements that FACA is not intended to get in the way of this Committee's work. This proposal was sent to the Federal Committee members with a few issues to discuss. This is an eight part charter: (1) participation, (2) meetings, (3) decision making, (4) agreement, (5) discussion, (6) facilitators, and (7) leadership team.
- Will Micklin: Mr. Jaffee's summary was succinct. DHHS Title V covers all necessary portions with our few additions to fit this committee. Discussion with our Federal Partners will focus on the following sections of the charter: Alternate tribal representatives, recognition of agenda for approval, facilitators chairing the meetings, use of Roberts Rules of Order, and Committee Participation for final rule.
- Gerry Hope: Thanks to the attendees from both the Tribal and Federal committee members who took the time to meet with their various meeting schedules. The Federal mediators had positive role in the meetings. Hopefully the results of our meetings will be comfortable with both sides; I believe we are close to the finish.

B) *Subcommittee Federal Leads:* Jody H. Schwarz and Sharee Freeman

- Agree it was collaborative process with a lot of ground to cover. Appreciate the suggestion to switch to DHHS Title V provision. Agree that we are close to consensus. The federal committee members want to be mindful of what FACA requires and make sure the process of this committee we interpret in such a way that it benefits and does not hinder this committee. Open, willing, and want to engage with Tribal colleagues. Still a few issues to discuss before reaching consensus. It is not necessary for remaining (federal) members to speak at this time.
- Sharee Freeman: DFO started with protocols from Title IV rulemaking which Title V is very similar to. At the beginning of this process, we were given the FACA protocols used normally—which were different than Title IV. That's how it [draft protocols from august 29] started. We are delighted now that we have the support from AS-IA and tribes to use the Title V protocols.

2. **Committee Deliberations: Ms. Mack posed the question if the Protocols Sub committee wishes to continue the deliberations on the protocols?**
 - Jody Schwarz asked to go into caucus to finish discussion.
 - Ms. Mack asked if there was any objection. Hearing no objection, will break the group into tribal and federal caucuses.
 - Melanie Fourkiller requested the estimated time to be in caucus?
 - Jody Schwarz responded with about 15-20 minutes--so to return at top of hour.
 - Committee has no objections and defer to to Protocols subcommittee to complete the Protocols.

3. **Protocols subcommittee breakout meetings for the protocols, 2:10 p.m. to 4:57 p.m.**
 - At 4:59 p.m., Ms. Caruso brought the committee back from caucuses.
 - Tentative language drafted under participation section is projected on the screen for discussion.
 - Gerry Hope comments on proposed language to include intent on DOI looking for additional funding.
 - Ron Allen does not see the language Mr. Hope is seeking. Comments that he sees that DOI is providing for primary member travel funding, and that alternate member travel will be subject to any additional funding. Personally, can live with the language as proposed. He will take the upcoming TIBC meeting as a time to make the case for use of carry over funding.
 - Melanie Fourkiller agrees; will move forward on the current budget. Provide for the alternate now, knowing that Committee is seeking additional funding for the years down the road. IT is important for the alternates to be there for committee discussions.
 - Gerry Hope: In the subcommittee, there were strong words of support from the Federal team, but need to hear stronger sense of commitment. Need to find additional funding for alternates.
 - Buster Attebery: same question as Chairman Allen. Last sentence "where possible" does it mean that you can't find a room with phone or video?
 - Sharee Freeman: Will definitely have telephone, but uncertain if video.
 - Ron Allen: in previous meeting you reference updated meeting rooms with audio/visual capacity.
 - Sharee Freeman: Not all do, but the ones we currently have reserved do.
 - Rose Petoskey: agree that federal side intends to have alternates travel to the meetings.
 - Ron Allen: participating in TIBC, they know they have flexibility—just not sure on how much.
 - Sharee Freeman: Provided budget for those that asked for it. Will run back the numbers and take a look.

- Ms. Caruso asked ADFO to test for consensus via roll call?
- ADFO: Any concerns or needs for edits before consensus?
- Ron Allen not on the call, defer to Melanie Fourkiller. Rely on good faith of AS-IA to seek additional funding. Ready to move it forward.

AGENDA SETTING

A travel overview was provided by ADFO, Regina Gilbert.

- Next Committee meeting: December 16 (virtual) 1-5pm
- Confirmation of Hybrid Meetings in Washington, D.C, Main Interior Building to take place Tuesday-Thursday, with Monday and Friday being travel days. Need to provide notice for the meetings in the Federal Register. The meeting space has already been reserved for the following dates:
 - o January 30 – February 3
 - o February 27 – March 3
 - o March 27 – March 31
- Ron Allen: Will circle back on agenda for December meeting? Send recommendation to Matt Jaffe on low hanging fruit for discussion?
- Ms. Caruso: FMCS will be convening Leadership Teams meetings to discuss travel guidelines: As invitational travelers DOI will make arrangements pursuant to the Temporary Duty Travel Policy.
- That policy provides that:
 - a) Invitational travelers will receive the same allowances as DOI employees.
 - b) Government contract flights.
 - c) DOI does not reimburse for seat upgrades.
 - d) Lodging at federal per diem rate.
 - e) No reimbursement of additional fees.
 - f) Meals provided would be deducted from per diem. Per diem is for breakfast, lunch, and dinner
 - g) Invitational travelers not allowed personal vehicles.
 - h) Reimbursed for taxi/shuttles/uber/lyft, airport parking. 20% tipping.
 - i) All expenses require receipts:
 - j) Non reimbursable expenses are listed on the GSA website
 - k) Travel voucher process: submit the receipts then the approvers review and sign. Reimbursements for per diem are made by direct deposit to banking.

APPROVAL OF OCTOBER 3, 2022, MEETING MINUTES (tabled from earlier in the meeting)

- ADFO Gilbert: Has the Tribal caucus had an opportunity to review?
- Melanie Fourkiller, Yes. Move for approval with minor edits (name misspelled)

Consensus on the motion was tested by FMCS, with all Committee members concurring. Consensus was thus reached on approval of October 3, 2022 meeting minutes.

- Proposal for next set of minutes that for decisions made by consensus there be a summary added at the end.

NOTE: A summary of consensus items is summarized at the beginning of each meeting minutes.

REVIEW OF NEGOTIATION TOPICS

- Melanie Fourkiller: Suggest do some work now before next meeting to prepare sections that would be noncontroversial and to be sent to federal team. To have those sections ready to deliver to the Federal team a week before next meeting.
- Ms Caruso: We can discuss during next Leadership Team meeting.
- Melanie Fourkiller: I am interested in keeping momentum going.
- Ron Allen: There can be designated key people on each subject matters. Can Director Freeman identify federal key people as well?
- Sharee Freeman: Can the tribal representatives get a list of those people so (Director Freeman) can review and develop the list of federal representatives. So that they can be working forward together.
- Ms. Caruso: will work this evening to get a date for the Leadership Team to meet.

PUBLIC COMMENT

At 5:33 p.m. ET, FMCS invited public viewing members to make public comment. Slide is up and the link for the zoom call is up on the Q&A page. Public comment is an important part of this process. In addition, interested persons are invited to submit written comments, via email to comments@bia.gov.

As of 5:35 p.m. E.T. no individuals had accessed waiting room by telephone or computer.

ADJOURNMENT

The meeting was adjourned by ADFO Regina Gilbert at 5:36 p.m. ET.

CERTIFICATION

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

 DEC 29 2022

Sharee Freeman,
Director Office of Self-Governance, Assistant Secretary – Indian Affairs
Agency Lead, Self-Governance PROGRESS Act Negotiated Rulemaking Committee

These minutes will be formally considered by the Committee at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

Appendix A—Attendees

Documents will be posted to the website (<https://www.bia.gov/service/progress-act>)

Appendix A—Attendees

TRIBAL REPRESENTATIVES		
Present	PRIMARY Tribal Representatives	
	Name	
	Affiliation	
	✓ W. Ron Allen	Chairman/CEO Jamestown S'Klallan Tribe
	✓ Melanie Benjamin	Chief Executive Mille Lacs Band of Ojibwe
	✓ Richard Peterson	President Central Council Tlingit and Haida Indian Tribes of Alaska
	✓ Michael Dolson	Councilman The Confederated Salish and Kootenai Tribes of the Flathead Nation
	✓ Melanie Fourkiller	Director of Self-Governance Choctaw Nation of Oklahoma
	✓ Russel (Buster) Attebery	Chairman Karuk Tribe
	Karen Fierro	Self-Governance Director Ak-Chin Indian Community
ALTERNATE Tribal Representatives		
✓ Sandra Sampson	Board Treasurer Confederated Tribes of the Umatilla Indian Reservation	
Jennifer Webster	Councilwoman Oneida Nation	
✓ Gerry Hope	Transportation Director, Former Tribal Leader Sitka Tribe of Alaska	
Jody LaMere	Councilwoman Chippewa Cree Tribe of the Rocky Boy's Reservation	
Lana Butler	Secretary Sac and Fox Nation	
✓ Will Micklin	Second Vice President Central Council Tlingit and Haida Indian Tribes of Alaska	
Annette Bryan	Council Member Puvallup Tribes of Indians	
FEDERAL REPRESENTATIVES		
Present	PRIMARY Federal Representatives	
	Name	
	Affiliation	
	✓ Sharee Feeman	Director Office of Self-Governance, AS-IA
	✓ Jody H. Schwarz	Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor
	✓ Kelly Titensor	Native American Affairs Advisor Bureau of Reclamation
	✓ Byron Loosle	Division Chief National Conservation Lands, Bureau of Land and Minerals Management
	Scott Aikin	National Native American Programs Coordinator U.S. Fish and Wildlife Service Head Quarters
	✓ Rose Petoskey	Senior Counselor to AS-IA Office of the Assistant Secretary—Indian Affairs
	ALTERNATE Federal Representatives	
✓ Matt Kallappa	Northwest Field Office Manager Office of Self-Governance, AS-IA	
Vacant	Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor	
✓ Nathalie Washington	Native American Affairs Advisor Bureau of Reclamation	
✓ (Charles) David Johnson	Tribal Liaison Bureau of Land and Minerals Management	
✓ Dorothy FireCloud	Native American Affairs Liaison National Park Service	
✓ Samuel Kohn	Senior Counselor to ASIA Office of the Assistant Secretary—Indian Affairs	

Designated Federal Officers (DFOs) Present

Regina Gilbert, Alternate DFO

Other Federal:

Andrew Caulum-Office of the Solicitor, Department of Indian Affairs

Tyvin Whittaker, Administrative Specialist, Office of Self-Governance

Kelly Latimer, Attorney-Adviser, Office of Hearings and Appeals

Sarah Walker, Supervisory Tribal Operations Specialist, BIA-AK

Michael Hershfeld, Audio Visual Team Leader, Office of Facilities and Administrative Services

Timothy Popham, DOI AV Tech

Federal Mediation and Conciliation Service (FMCS) Members Present:

Martin Callaghan, Commissioner

Kayla Mack, Commissioner

Moira Caruso, Strategy Officer

Members of the Public: 27