

**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 Triebsch
Designated Federal Officer (DFO)—Vickie Hanvey

DATE: **March 2, 2023**
Federal Register Notice: FRN 2023-02205
Meeting Number: 6
DFO Convened at: 9:06 a.m. ET
DFO Adjourned at: 9:51 a.m. ET
Location: Hybrid Meeting—Hosted In-Person Onsite at DOI Headquarters, South Penthouse, and via ZoomGov (Committee Members) Broadcast via MS Teams (Public Access)
Designated Notetaker: Kelly Latimer, Office of Hearings & Appeals
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. Approval of the Committee’s February 2, 2023, plenary session meeting minutes, as amended to correct any non-substantive errors that may later be identified; and
2. Early adjournment of the plenary session to reconvene Subcommittee meetings.

OPENING

The meeting was convened by Designated Federal Officer (DFO) Vickie Hanvey at 9:06 a.m. EST.

BLESSING

Chairman Russel (Buster) Attebery, Karuk Tribe, gave the blessing.

ATTENDANCE:

DFO Hanvey took a roll call of the primary and alternate Committee members, finding that a quorum was in attendance and that the meeting could proceed. See Appendix A for a list of all attendees.

	Present	Absent
Tribal Primary Members	7	0
Federal Primary Members	6	0
Total Primary Attendance	13	0
Tribal Alternate Members*	5	2
Federal Alternate Members	3	2
Total Alternate Attendance	8	4
* One Vacancy		

REVIEW OF FEBRUARY 2, 2022, PLENARY SESSION #5 MEETING MINUTES

The first item on the agenda was to review the draft meeting minutes from the Committee’s February 2, 2022, plenary session, which were sent out by email to the Committee in advance of this meeting.

W. Ron Allen stated that the Tribal caucus has not yet had an opportunity to review the meeting minutes and asked that this agenda item be tabled until the end of the meeting to give the Tribe’s technical team an opportunity to complete their review of the minutes. There were no objections.

UPDATE ON UPCOMING COMMITTEE AND SUBCOMMITTEE SCHEDULE

DFO Hanvey next provided an update on the upcoming Committee and Subcommittee meeting dates. DFO Hanvey informed the Committee that the March meeting schedule has been published in the Federal Register. The March meeting will be a hybrid meeting hosted in-person onsite at DOI Headquarters and via ZoomGov. Subcommittee meetings are scheduled to be held March 27, 28, and 29, 2023, with a full Committee plenary session scheduled for March 30, 2023. March 26 and 31, 2023, have been set aside as travel days.

Committee & Subcommittee Schedule								
		In-person DOI (Virtual option)		In-person FMCS (Virtual option)		Save the date In-person (Virtual option)		Save the date In-person (Virtual option)
		FRN 2023-02205		DRAFT				
S	3/26	Travel	4/16	Travel	5/7	Travel	7/16	Travel
M	3/27	SubCommittee	4/17	SubCommittee	5/8	SubCommittee	7/17	SubCommittee
T	3/28	SubCommittee	4/18	SubCommittee	5/9	SubCommittee	7/18	SubCommittee
W	3/29	SubCommittee	4/19	SubCommittee	5/10	SubCommittee	7/19	SubCommittee
Th	3/30	Full Committee	4/20	Full Committee	5/11	Full Committee	7/20	Full Committee
F	3/31	Travel	4/21	Travel	5/12	Travel	7/21	Travel

All travel forms and instructions have been sent and travel arrangements are being made for the March meeting. If you plan to attend the March meetings in person and have not yet responded to Tyvin Whittaker to make travel arrangements, please do so.

The April meeting is scheduled to be a hybrid meeting with a change in the in-person venue to the Federal Mediation and Conciliation Services (FMCS) facility. Subcommittee meetings are scheduled for April 17, 18, and 19, 2023, with a full Committee Plenary session scheduled for April 20, 2023. April 16 and 21, 2023, are being set aside as travel days.

As a reminder, the Committee's authority expires at midnight on April 21, 2023. Accordingly, the dates set aside in May and June for Committee and Subcommittee meetings are tentative and depend on the Committee's authority being extended.

STATUS OF EXTENSION OF AUTHORITY REQUEST

Rose Petoskey provided an update on the status of obtaining an extension of the Committee's authority. She reminded everyone that the Federal team cannot actively lobby Congress or give a formal position unless asked at a formal hearing or asked directly by an office for technical assistance. While she can't share any specifics, she can share that the Federal team is generally working with several offices to try and get an extension. She assured everyone that this is a priority for the Assistant Secretary and the entire Federal team and that they are doing everything in their power to get the extension.

Chairman Allen reported that the Tribe is continuing to work the Hill to obtain a technical amendment to extend the Committee's authority. He feels that they have strong support from the House but that the request is stuck in the deliberative process, which may be problematic for getting the extension timely passed. He urges the Committee to make as much progress as possible between now and the April 21, 2023, expiration of authority. He hopes that any delay in obtaining an extension will be a short delay.

FMCS opened the floor to discussion. No questions or further comments were made regarding the status of the request for an extension of the Committee's authority.

REVIEW OF SUBCOMMITTEE WORK

DFO Hanvey next provided an update on the work that the Drafting Subcommittee has been doing. She noted that during the February 2, 2022, plenary session, the Committee approved the Drafting Subcommittee's proposed Subpart M (Reassumption), Subpart N (Retrocession), and Subpart S (Conflicts of Interest) into the regulation package. It was also determined at the February 2, 2023, plenary session that the scope of the Drafting Subcommittee be expanded to include all Phase 1, Phase 2, and Phase 3 identified subparts of the 25 C.F.R. Part 1000 Title IV regulations, as follows:

Phase 1:

1. Subpart B (Selection of Tribes for Participation in Tribal Self-Governance)
2. Subpart E (Annual Funding Agreements for BIA Programs)
3. Subpart G (Negotiation Process for Compacts and AFAs, including Final Offer)
4. Subpart J (Waiver of Regulations)
5. Subpart L (Federal Tort Claims)
6. Subpart M (Reassumption)

7. Subpart N (Retrocession)
8. Subpart S (Conflicts of Interest)

Phase 2:

1. Subpart A – General Provisions,
2. Subpart C (Planning and Negotiation Grants)
3. Subpart H (Limitation and/or Reduction of Services)
4. Subpart O (Trust Evaluation Review)
5. Subpart P (Reports)
6. Subpart Q (Miscellaneous Provisions)
7. Subpart R (Appeals)

Phase 3:

1. Subpart D (Other Financial Assistance for Planning and Negotiation Grants)
2. Subpart F (Non-BIA Annual Self-Governance Compacts and Funding Agreements)
3. Subpart I (Public Consultation Process)
4. Subpart K (Construction)
5. Model compact/funding agreement

DFO Hanvey clarified that subcommittee meetings are public meetings. If you are Committee member, you are welcome to join the discussions even if you're not a member of the Drafting Subcommittee. She then asked both the Tribal and Federal teams to provide a Drafting Subcommittee update.

Chairman Allen requested that an updated matrix be provided that shows which Subparts are completed and what the status is for all other Subparts so that anyone can look at the chart and know exactly where we are at. He then asked Melanie Fourkiller to provide a Drafting Subcommittee update.

DFO Hanvey shared on screen a spreadsheet that she had already prepared for tracking the status of each Subpart. She offered to make some edits to the existing spreadsheet to include date drafts are exchanged between the Tribal and Federal Teams (i.e., draft pass backs), for use in tracking the progress of the Drafting Subcommittee. This updated document can be shared with the Subcommittee and Committee.

Melanie Fourkiller reported that the Tribal Drafting Subcommittee has initiated drafts on all Phase I Subparts and most of the Phase 2 Subparts and are continuing to work on drafts for the remaining Phase 2 and Phase 3 Subparts. She reported that the Federal team has responded to many of their drafts, including the drafts for all Phase I Subparts and several Phase II Subparts. The Tribal Team is working on replying to the Federal Team's responses and are engaged in active dialog with the Federal Team. She explained that while the Drafting Subcommittee is close to resolving outstanding issues on several Subparts within Phase I, they are not yet ready to present them to the full Committee for approval. The Leadership Team met to discuss and approved a proposal from Director Freeman. Initially the process will remain the same of passing back entire strikethroughs and comments then reconvening as an entire Subcommittee for further discussion. In addition, the Drafting Subcommittee is going to start documenting consensus by section, narrowing the open issues into a side-by-side document of items that require closure.

FMCS opened the floor up to Committee discussion. DFO Hanvey asked the Federal team if they had any further comments. There were none. Chairman Allen concluded the discussion by expressing his hope that the Committee can approve as many Subparts as possible before the April 21, 2023, expiration of the Committee's authority. He thanked the Federal Team for their focus.

OTHER MATTERS

FMCS received permission from DFO Hanvey to open the floor to Committee discussion of any other matters not listed on the agenda.

Chairman Allen expressed that his preference would be to wrap up the plenary session and resume the Subcommittee meetings to continue work on the Subparts.

Melanie Fourkiller explained that they had an aggressive subcommittee meeting schedule with six or seven Drafting Subcommittee meetings held during the last month. She recommended that the Committee take some time to reserve dates and times for holding Subcommittee meetings between now and the March 30, 2023, plenary session.

Sharee Freeman agreed with Chairman Allen that today's time would best be spent by reconvening Subcommittee meetings to work on the Subparts. The Federal team has been meeting almost daily to meet the aggressive subcommittee meeting schedule.

Gerry Hope expressed that it has been invaluable to be able to meet in-person and that it has been very positive and constructive.

FMCS made a last call for any other matters to be raised before the Committee. There were none.

PUBLIC COMMENT #1

Beginning at 9:40 a.m. ET, members of the public were given an opportunity to comment via a Zoom link or by calling in by telephone. For in-person participants, two chairs were provided at the far end of the table with microphones for use by members of the public who would like to comment.

The public comment session was closed at 9:45 a.m. ET after no members of the public logged into the Zoom meeting, called in for comment, or proceeded in-person to the end of the table.

APPROVAL OF FEBRUARY 2, 2022, PLENARY SESSION #5 MEETING MINUTES

DFO Hanvey asked if the Committee was prepared to approve the February 2, 2022, plenary session meeting minutes with the understanding that the approval is subject to correcting any grammatical or non-substantive errors that may be later identified.

Chairman Allen reported that he had not yet received any feedback from the Tribal team on the Meeting Minutes. He stated that the Tribal Team was prepared to accept the meeting minutes subject to their being amended to correct any non-substantive errors that may later be identified. He agreed that if any substantive issues are later identified, they can be raised and discussed at the next Committee meeting.

Melanie Fourkiller stated that she has only identified grammatical or technical corrections and confirmed that she would provide those corrections to DFO Hanvey.

Melanie Fourkiller moved to approve the February 2, 2023, Plenary Session # 5 Meeting Minutes. President Peterson seconded this motion with the understanding that if a substantive concern is identified after the meeting minutes are approved, the Committee can move to reconsider the minutes and further discuss them. DFO Hanvey confirmed that even once the minutes are certified, they can be reconsidered by the Committee and any corrections or notations could be discussed at the next plenary session and be incorporated into the minutes of that meeting.

Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve the February 2, 2023, plenary session meeting minutes, as amended to correct any non-substantive errors that may later be identified.

ADJOURNMENT

Scott Aikin moved to adjourn the plenary session and resume subcommittee work. Melanie Fourkiller seconded the motion. It was agreed that upcoming Drafting Subcommittee meeting dates would be established by the Subcommittee. No objections were raised.

The meeting was adjourned by DFO Hanvey at 9:51 a.m. ET.

CERTIFICATION

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



Sharee Freeman,
Director Office of Self-Governance, Assistant Secretary – Indian Affairs.
Chair, 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.

Attachments

Appendix A—Attendees

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

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TRIBAL REPRESENTATIVES																
Present	PRIMARY Tribal Representatives															
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Designated Federal Officers (DFOs) Present

Vickie Hanvey, DFO

Regina Gilbert, Alternate DFO

Other Federal:

Andrew Caulum, Attorney-Advisor, Office of the Solicitor

William Hall, Director of Collaborative Action and Dispute Resolution (CADR)

Sarah Palmer, Sr. Program Manager, (CADR)

Molly Tepper, Conflict Management Specialist

Tyvin Whittaker, Administrative Specialist, Office of Self-Governance

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

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

Tim Popham, Audio Visual Production Specialist

Federal Mediation and Conciliation Service (FMCS) Members Present:

Martin Callaghan, Commissioner

Kayla Mack, Commissioner

Moira Caruso, Strategy Officer

Members of the Public (25)