

**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: **March 30, 2023**
Federal Register Notice: FRN 2023-02205
Meeting Number: 7
DFO Convened at: 9:08 a.m. ET
DFO Recessed at: 10:12 a.m. ET
DFO Reconvened at: 3:30 p.m. ET
DFO Adjourned at: 5:41 p.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
Sarah Walker, Bureau of Indian Affairs
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 March 2, 2023, plenary session meeting minutes, as amended to add Karen Fierro as a virtual attendee at the meeting;
2. Approval of Subpart A (General Provisions);
3. Approval of the deletion of Subpart H (Limitation and/or Reduction of Services, Contracts, & Funds) with the exception of one remaining provision, which will be moved to Subpart Q (Miscellaneous);
4. Recess of the plenary session until 3:30 p.m. ET to reconvene Subcommittee meetings;
5. Approval of Subpart O (Trust Evaluation Review).

OPENING

The meeting was convened by Designated Federal Officer (DFO) Vickie Hanvey at 9:08 a.m. ET. Lance Fisher, Financial Specialist, Office of Self-Governance, performed a cultural song.

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.

Committee Attendance		
	Present	Absent
Tribal Primary Members	5	2
Federal Primary Members	5	1
Total Primary Attendance	10	3
Tribal Alternate Members	4	3
Federal Alternate Members*	4	1
Total Alternate Attendance	8	4
* One vacancy		

REVIEW OF MARCH 2, 2023, PLENARY SESSION #6 MEETING MINUTES

The first item on the agenda was to review the draft meeting minutes from the Committee's March 2, 2023, plenary session, which were sent out by email to the Committee in advance of this meeting. DFO Hanvey noted that any grammatical errors could be emailed to her and would be updated. She then opened the floor to a discussion of any substantive changes to the meeting minutes.

Melanie Fourkiller stated that the Tribal caucus had only one change—Karen Fierro was marked absent as she missed the roll call, however she joined late and participated online in Plenary Session #6. Accordingly, page 2 and Appendix A of the meeting minutes should be amended to add Ms. Fierro as an attendee at the meeting. A motion was made and seconded to approve the March 2, 2023, Meeting Minutes, as amended.

Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve the March 2, 2023, plenary session meeting minutes, as amended to add Ms. Fierro as an attendee at the meeting.

STATUS OF EXTENSION OF AUTHORITY REQUEST

Rose Petoskey provided an update on the status of obtaining an extension of the Committee's authority. She explained that a letter was provided by Assistant Secretary Newland to Chairman

Allen confirming that the Committee's authority expires on April 21, 2023, and that the Federal caucus will have limited authority to continue rulemaking after this date. She explained that the Federal caucus is continuing to provide technical assistance to several Congressional offices that are working on legislation to extend the Committee's authority. She expressed that the Federal caucus is happy to continue working with the Tribal caucus on passing legislation to obtain an extension.

Chairman Allen reported that the Tribe is continuing to do its part with both the Senate and House to obtain an extension of the Committee's authority, either as a stand-alone bill or as a rider. He noted that the Tribal Caucus is not expecting to obtain an extension of authority as timely as they would like. He asked that the Federal caucus share the names and contact information of anyone that the Tribal caucus should be engaging with from a Tribal perspective about the importance of obtaining an extension of authority.

He expressed the need to ensure that the Tribal and Federal caucuses are on the same page as to what work can be done after the expiration of the Committee's authority and what limits they have on communicating after this date. He asked that the caucuses coordinate on these points as well as hold potential dates for Committee meetings after July in the expectation of obtaining an extension. He reiterated that the Tribal Caucus' objective is to get regulations promulgated during the current administration and that they plan to continue to work on the draft subparts after April 21, 2023, in anticipation that there will be an extension of the Committee's authority. He is also hopeful that the Committee will be able to approve several more subparts prior to April 21st.

Ms. Petoskey confirmed that the Federal caucus is willing to support the dates that were agreed upon as a Committee to make sure that the regulations are promulgated during the current administration. She noted that they are working with their contact at DOI Regulatory Affairs and Collaborative Action to ensure that any extension of authority is built around this timeline. She also indicated that she and Samuel Kohn are coordinating with the Solicitor's General Law office and working on determining what options and limitations the Federal caucus will have after the expiration of authority on April 21, 2023. One possibility being considered is the option of setting up a separate committee outside of a negotiated rulemaking process, but a different one that could continue to generally discuss self-governance policies. Ms. Petoskey and Mr. Kohn will be prepared to give a detailed presentation of these options and limitations at the April 20, 2023, Committee meeting.

Melanie Fourkiller requested that Ms. Petoskey provide the Tribal caucus with a copy of the letters containing the technical assistance that the Federal caucus provided to Congressional offices. Ms. Petoskey explained that they are not allowed to share these letters and that the Tribal caucus would have to directly request these letters from the Congressional offices. However, she clarified that all technical information provided by the Federal caucus to the Congressional offices has been directly shared with the Tribal caucus.

DFO Hanvey reminded everyone that the Committee's next meeting is scheduled for the week the Committee's extension expires, with April 17 through 19, 2023, being set aside for Subcommittee meetings and April 20, 2023 being set aside for a full Committee Plenary session. These meetings will be hosted at the Federal Conciliatory Mediation Services (FCMS) facility in Washington D.C. with the option of joining virtually. There are two additional tentative sessions scheduled in anticipation of the Committee obtaining an extension of authority—one for May 8 through 11, 2023, and the other for July 17 through 20, 2023. DFO asked that everyone please reserve these dates on their calendars. These dates will later be adjusted as necessary.

Melanie Fourkiller asked DFO Hanvey if she can publish the May and July placeholder meeting dates in the Federal Register and then cancel these dates if an extension of authority is not obtained by then. DFO Hanvey confirmed that the meeting dates can be published in the Federal Register and then later cancelled if the Committee's authority expires, and an extension has not been obtained by those dates.

REVIEW OF SUBCOMMITTEE WORK

DFO Hanvey next provided an update on the substantial amount of work that has been completed by the Drafting Subcommittee members. DFO Hanvey prepared a tracking document to be used by the full Committee in tracking the progress of the Subcommittee. Upon sharing this document, she explained that the portions highlighted in blue indicate items that are ready to move forward to consideration by the full Committee. The portions highlighted in green indicate items that have gone through negotiations but that have not yet reached consensus. The status of these subparts are as follows:

- Subpart B (Selection of Tribes for Participation in Tribal Self-Governance): 6 open items and 3 consensus items;
- Subpart E (Annual Funding Agreements for BIA Programs): 9 open items; Federal response is pending;
- Subpart J (Waiver of Regulations): 12 open items; 2 items with partial consensus; 1 consensus item;
- Subpart L (Federal Tort Claims): Federal response is pending with the Tort Branch;
- Subpart A (General Provisions): Subcommittee consensus reached March 29, 2023; on today's agenda for full Committee consideration.
- Subpart H (Limitation and/or Reduction of Services, Contracts, & Funds): Subcommittee Consensus reached on February 27, 2023, to delete this subpart with the exception of one section, which would be moved to Subpart Q (Miscellaneous Provisions). This is on today's agenda for full Committee consideration; and
- Subpart O (Trust Evaluation Review): Considerable work has been done this week. 6 open items, 5 consensus items. This is almost ready for full Committee consideration.

Melanie Fourkiller explained that a great amount of Subcommittee work was done leading up to today's meeting. She reported that since the March 2, 2023, plenary Committee meeting, the

Drafting Subcommittee has met every week and for the previous three days. Although there have been only three Subparts formally approved by the Committee to date, nearly all of the Subparts are being actively worked on. The Tribal caucus has provided initial drafts of all Phase I and II subparts and at least two subparts may be ready for approval today. The Tribal team has also begun to draft some of the Phase III subparts and they are hopeful that there will be many more subparts ready for approval by the April 20, 2023, plenary Committee meeting.

Sharee Freeman noted that the Federal team has also been working hard on the pending items and has made a lot of progress. The Federal team has been meeting almost daily. She expressed her hope that many of the pending items would be completed in April.

Chairman Allen expressed that the Tribal caucus would like to reach a consensus on Subpart A and O in today's Committee meeting, as well as make progress on Subparts J and L. The Subcommittee has been waiting on Subpart L (Federal Tort Claims) for some time now. Curious as to why it is taking so long to get Subpart L moving forward as it has been over a month.

Andy Caulum responded that it was his responsibility, and he just has not been able to get it finished. He apologized to the Committee, as he just hasn't been able to get that concluded. It is a priority and will continue to work on it. He will work with the Torts Branch on a response to Subpart L.

Chairman Allen moved for a consensus vote to approve Subpart A. Sharee Freeman seconded this motion. **Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart A (General Provisions).**

DFO Hanvey asked if the Committee would consider approving the Subcommittee's recommendation to delete the majority of Subpart H with one remaining section to be moved to Subpart Q (Miscellaneous). **Consensus was tested by FMCS with no Committee members objecting. Accordingly, the parties reached a consensus to delete Subpart H (Limitation and/or Reduction of Services, Contracts, & Funds) with one remaining provision to be moved to Subpart Q (Miscellaneous).**

Sharee Freeman moved to recess the full Committee so that the Subcommittee can resume work. The motion was seconded by Chairman Allen. DFO Hanvey suggested that the Committee schedule a specific time to reconvene. Melanie Fourkiller suggested that the Committee allow for public comment before recessing, with another public comment period to be held this afternoon. It was proposed that the Committee reconvene at 3:30 p.m. ET. **Receiving no objections, the motion to recess the full Committee and convene the Subcommittee until 3:30 p.m. ET was approved.**

PUBLIC COMMENT #1

Beginning at 10:10 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 10:12 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.

RECESSED

The meeting was recessed by DFO Hanvey at 10:12 a.m. ET

RECONVENED

The meeting was reconvened by DFO Hanvey at 3:30 p.m. ET

REVIEW OF SUBCOMMITTEE WORK

The Committee reviewed the proposals exchanged and engaged in deliberations on Subpart O (Trust Evaluation Review). The Federal members requested to caucus in order to discuss the Tribal counter proposal. The Committee members separated into caucuses at 3:45 p.m.

PUBLIC COMMENT #2

Beginning at 3:45 p.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 5:31 p.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.

REVIEW OF SUBCOMMITTEE WORK (continued)

The Federal members provided proposed edits to the Tribal draft language. The Committee engaged in deliberations on Subpart O (Trust Evaluation Review).

DFO Hanvey inquired if there was a motion for consensus on Subpart O (Trust Evaluation Review). Chairman Allen motioned for consensus and Director Freeman seconded.

Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart O (Trust Evaluation Review).

DFO Hanvey stated that the Committee has reached consensus on six subparts thus far and thanked everyone for the dedication and hard work. Expressed desire to keep the momentum going.

PLANNING FOR UPCOMING MEETINGS

DFO Hanvey provided a brief overview of upcoming work. The Federal team will focus next on Subpart J (Waivers), Subpart B (Selection of Tribes), Subpart P (Reports) and Subpart Q (Miscellaneous). Work continues on Subpart G (Compacts, Funding Agreements and

Negotiations), however the Tribal proposal to break this subpart into three separate subparts has caused some issues that are being discussed internally.

Chairman Allen stated he agrees with the next steps but requests language back on Tort Claims.

DFO Hanvey reminded everyone of the upcoming schedule, discussed earlier and displayed below. There may be invited guests, such as the Committee Management Officer and/or General Counsel, to address the Committee regarding the expiration of authority and what Committee can or cannot do in the interim.

Committee & Subcommittee Schedule							
		In-person FMCS (Virtual option)		Save the date In-person (Virtual option)		Save the date In-person (Virtual option)	
S	4/16	Travel		5/7	Travel	7/16	Travel
M	4/17	SubCommittee		5/8	SubCommittee	7/17	SubCommittee
T	4/18	SubCommittee		5/9	SubCommittee	7/18	SubCommittee
W	4/19	SubCommittee		5/10	SubCommittee	7/19	SubCommittee
Th	4/20	Full Committee		5/11	Full Committee	7/20	Full Committee
F	4/21	Travel		5/12	Travel	7/21	Travel

Chairman Allen expressed his annoyance with hotel reservations not being available to tribal technical staff and attorneys and asked that room block rates be made available for technical team.

ADJOURNMENT

The meeting was adjourned by DFO Hanvey at 5:41 p.m. ET.

CERTIFICATION

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

 4/26/2023

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>)

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 (joined after roll call) Council Member Puyallup 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 (joined after roll call) Native American Affairs Advisor Bureau of Reclamation
	(Charles) David Johnson Tribal Liaison Bureau of Land and Minerals Management.
✓	Dorothy FireCloud (joined after roll call) Native American Affairs Liaison National Park Service
✓	Samuel Kohn (joined after roll call) Senior Counselor to ASIA Office of the Assistant Secretary—Indian Affairs.

Designated Federal Officers (DFOs) Present

Vickie Hanvey, DFO
Regina Gilbert, ADFO

Other Federal:

Andrew Caulum, Attorney-Advisor, Office of the Solicitor
Elizabeth Wells Shollenberger, BTFA, Division of Trust Evaluation and Review
Tyvin Whittaker, Administrative Specialist, Office of Self-Governance
Kelly Latimer, Attorney-Advisor, Office of Hearings and Appeals
Sarah Walker, Supervisory Tribal Operations Specialist, BIA
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
Moiria Caruso, Strategy Officer

Members of the Public 15