

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



MEETING MINUTES

Designated Federal Officer (DFO)—Vickie Hanvey

DATE: **December 20, 2023**
Federal Register Notice: FRN 2023-26124
Meeting Number: 10
DFO Convened at: 1:05 p.m. ET
DFO Adjourned at: 4:59 p.m. ET
Location: Virtual Meeting via Zoom Link
(Managed by Self-Governance Communication and Education Tribal Consortium)
Broadcast via Federal Register Zoom (Public Access)
Designated Notetaker: Janelle Naranjo, Office of Self Governance
Facilitation: None

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 November 6, 2023, plenary session meeting minutes.
2. Approval of the change of facilitators from Federal Mediation and Conciliation Services (FMCS) and to engage Office of Collaborative Action and Dispute Resolution (CADR) on an “as-needed” basis.
3. Approval of Subpart L (Tort Claim)
4. Approval of Subpart G1 (Final Offer)
5. Approval of Subpart G3 (Negotiations)

OPENING

The meeting was convened by Designated Federal Officer (DFO) Vickie Hanvey at 1:05 p.m. ET.

BLESSING

Chairman Russel (Buster) Attebery 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	7	0
Federal Primary Members*	4	1
Total Primary Attendance	11	1
Tribal Alternate Members*	2	4
Federal Alternate Members	4	2
Total Alternate Attendance	6	6
* One Vacancy		

REVIEW OF NOVEMBER 6, 2023, PLENARY SESSION #9 MEETING MINUTES

DFO Hanvey sent out draft minutes from November 6, 2023, plenary meeting for review and understands that not everyone may have had time to do a full review.

Melanie Fourkiller stated she was able to review and doesn't have any edits and would like to move for approval. Ron Allen seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve the November 6, 2023, plenary session meeting minutes.

CHARTER EXTENSION AND COMMITTEE MEMBERSHIP EXTENSIONS

DFO Hanvey reported that Rose Petosky has taken another position at the White House, Sam Kohn is her designated Alternate and will be filling in throughout the timeframe of the Committee. In addition, Sandra Sampson, Confederated Tribes of the Umatilla Indian Reservation Board Treasurer, was not reelected as a tribal official. DFO Hanvey asked the Committee what the recommendation would be regarding filling the Tribal Alternate position. Considering the amount of time to have someone selected and vetted, the timeline may not be conducive to fill the vacancy. Discussion followed and Ron Allen and Melanie Fourkiller both confirmed the Tribal recommendation would be to leave the position as vacant.

DFO Hanvey reported that the Charter extension as well as the Membership extensions are in process. The Charter as well as Appointments are for a two-year period. The Committee cannot meet without an approved Charter. Therefore, we are beginning the process early to ensure timely approval. The extension letters have been drafted by the ADFO Gilbert and ready to begin the Indian Affairs surnaming process. Current appointments for Primary and Alternate Members will just be extended for the duration of the Committee work.

Ron Allen stated that we have a good team as it is and would like to maintain the team for the duration of the work to be completed.

FACILITATION CONTRACT

DFO Hanvey reported that the Leadership Team has engaged in limited discussions regarding the facilitation services provided by Federal Mediation and Conciliation Services but there hasn't been an opportunity for a follow up discussion. Upon further review it was discovered that the contract with FMCS was expiring. During those discussions the Leadership Team indicated we should reduce the number of FMCS facilitators from three to one. During follow up conversation with FMCS, it was indicated they couldn't adequately facilitate without 3-4 facilitators.

DFO Hanvey indicated another option is to utilize Sarah Palmer, Sr. Program Manager with Office of Collaborative Action and Dispute Resolution (CADR). CADR also coordinates facilitator contracts on behalf of the Department. We've had discussions with Ms. Palmer should the committee want to consider having a facilitator for our more difficult subparts. Should we need a facilitator, CADR will be willing to provide the facilitation to reach consensus for a specific topic. DFO Hanvey stated that FMCS is named within the Committee protocols. Therefore, the Committee will need to take formal action a change is made.

The Committee engaged in further discussions and options. Melanie Fourkiller asked how much it would cost to obtain CADR. DFO Hanvey indicated that CADR is comparable regarding costs. They can also provide a note taker. However, I think we can cover the notetaking without engaging a professional notetaker which was expensive. CADR will provide one facilitator (rather than FMCS three or four) so in that respect CADR would be cheaper overall.

Melanie Fourkiller asked how much lead time would be needed to get them engaged. DFO Hanvey responded that Sarah has already been provided a heads up of our situation. It comes down to availability and which facilitator is available. We have provided her the upcoming meeting dates. If we come to an area where we can't reach consensus on our own, we can schedule them in or engage them to participate in ongoing meetings. With her team facilitating the contract with FMCS, Ms. Palmer has already been engaged in reviewing the work of the Committee, has attended or watched Committee meetings, and is familiar with the work already.

Ron Allen stated that personally he thinks there is a limited need for facilitation. If they can come in and make quick adjustments. It's a simple formality. We are doing well without a facilitator. We don't need FMCS period. I think the need will be moderate to get through these final stages. The biggest lift is Construction. We've been doing a good job without them.

Matt Kallappa, stated that we want to keep in mind the progress and our willingness to work together. We are coming up to some of the other Subparts where we would engage in more difficult discussion. We would like to have someone on board to come in very quickly for when we need them. When we do need their help, we would like to bring them in quickly.

Ron Allen indicated it's a matter of getting to the sweet spot. We've created a better atmosphere with the regulations. I'm confident that we can get there. I see it play out over the next 2 months. We've worked out an aggressive schedule the next two months.

DFO Hanvey reiterated that what she was hearing was to change facilitators from FMCS and engage CADR on a "stand-by" or "as needed" basis. If that is the case, will need a motion and approval from the Committee.

Ron Allen made a motion to change facilitators from Federal Mediation and Conciliation Services (FMCS) and to engage Office of Collaborative Action and Dispute Resolution (CADR) on an “as-needed” basis. Matt Kallappa seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve changing facilitators from Federal Mediation and Conciliation Services (FMCS) and to engage Office of Collaborative Action and Dispute Resolution (CADR) on an “as-needed” basis.

RACA UPDATE

ADFO Gilbert provided an update from Office of Regulatory Affairs and Collaborative Action (RACA) regarding the process for the proposed rule through the various stages and timelines to the final rule. Regina provided a link in the chat to a draft document and will work with other RACA staff to finalize for the full Committee. RACA staff recommends that we start the Indian Affairs internal review process for those subparts that have consensus has already been reached. Once we have all of them completed and surnamed we prepare a package for OMB review. ADFO Gilbert provided an overview of the timelines and stated that the timeline will be affected by the OMB determination of whether the rule is “significant”.

Matt Jaffee indicated that the prior rule was not deemed significant. Andy Callum said we can go back to look at that information submitted. In addition, to his recollection the Department of Transportation self-governance rule was not considered “significant”.

REVIEW OF SRAFTING SUBCOMMITTEE WORK

The Committee discussed recessing to move into subcommittee work to attempt to reach consensus on two additional Subparts as there is only Subpart L ready to approve by the full Committee.

RECESS

At 1:54 pm ET, a motion was made by Melanie Fourkiller to recess and reconvene at 4:30 pm ET. Matt Kallappa seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to recess and reconvene at 4:30 pm ET.

RECONVENE

At 4:30 p.m. ET, the Committee reconvened. The Drafting Subcommittee reported they have reached consensus on three Subparts for submission to the full Committee’s review and approval.

DFO Hanvey displayed Subpart L (Tort Claim) on the screen with Jody Schwarz providing a brief overview. Matt Kallappa made a motion to approve Subpart L (Tort Claim) and Ron Allen seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart L (Tort Claim).

Subpart G of the existing regulations were divided into three parts including G1- Final Offer, G2- Compacts, and G3- Negotiations. DFO Hanvey stated that due to the timing of the Drafting Subcommittee reaching consensus a clean version is not available at this time. She requested that a Tribal member of the Subcommittee assist with that process. Matt Kallappa and Jordan Romero-Villanueva will work together after this meeting on all the Subpart G documents.

Matt Kallappa displayed Subpart G1 (Final Offer) and provided a section-by-section overview. He made a note that #3 needs to be reviewed for consistency with previously approved subparts email and mailing addresses. Melanie Fourkiller made a motion to approve Subpart G1 (Final Offer) and Matt Kallappa seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart G1 (Final Offer).

Matt Kallappa displayed Subpart G3 (Negotiations) and provided a section-by-section overview. Ron Allen made a motion to approve Subpart G3 (Negotiations) and Kelly Titensor seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart G3 (Negotiations).

PUBLIC COMMENT

Beginning at 4:52 p.m. ET, members of the public were given an opportunity to comment via a Zoom link or by calling in by telephone. No members of the public were present in person. DFO Hanvey stated that no virtual comments have been received by the public at any plenary sessions to date. She reminded everyone that members of the public may also submit written comments to the Committee.

The public comment session was closed at 4:54 p.m. ET after no members of the public logged into the Zoom meeting or called in for comment.

REVIEW OF TIMELINE AND MEETING SCHEDULE

Reginia went over the schedule for the upcoming meetings in 2024.

Committee & Subcommittee Schedule									
		DOI HYBRID In-person (Virtual option)		Save the date VIRTUAL		DOI HYBRID In-person (Virtual option)		DOI HYBRID In-person (Virtual option)	
		FRN 2023-26124				FRN 2023-26124		FRN 2023-26124	
S								S	
M	1/15	Travel (Holiday)				2/5	Travel	2/26	Travel
T	1/16	SubCommittee 9am to 5pm	1/30	SubCommittee 1-5pm		2/6	SubCommittee 9am to 5pm	2/27	SubCommittee 9am to 5pm
W	1/17	SubCommittee 9am to 5pm	1/31	SubCommittee 1-5pm		2/7	SubCommittee 9am to 5pm	2/28	SubCommittee 9am to 5pm
Th	1/18	1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid	2/1	SubCommittee 1-5pm		2/8	1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid	2/29	1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid
F	1/19	Travel				2/9	Travel	3/1	Travel

OTHER MATTERS TO BE DISCUSSED

DFO Hanvey inquired if there are any other matters to be discussed at this time. Ron Allen stated the team has stayed focused even during the holiday season. He further expressed deep appreciation to Vickie Hanvey and Regina Gilbert for commitment and dedication through this process. Sharee Freeman expressed congratulations to everyone for the hard work during the holiday season.

ADJOURNMENT

DFO Hanvey wished everyone a Merry Christmas and adjourned the meeting at 4:59 p.m. E.T.

CERTIFICATION

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

 1/25/2024
 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>)

Designated Federal Officers (DFOs) Present

Vickie Hanvey, DFO

Regina Gilbert, ADFO

Members of the Public (18)

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		
	Vacant (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 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.	
	Vacant (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	
✓	Andrew Caulum	
	Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor	
✓	Nathalie Washington	
	Native American Affairs Advisor Bureau of Reclamation	
	Nicole Hanna	
	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.	